

香港律師會的信頭

LETTERHEAD OF THE LAW SOCIETY OF HONG KONG

Our Ref : SG/FA/1149
Your Ref :
Direct Line :

25th February, 1999

Mr. S. Y. Chan, JP.
Director of Legal Aid,
Legal Aid Department,
27th Floor, Queensway Government Offices,
66 Queensway,
Hong Kong.

by fax and post
(fax no. 2877 5122)

URGENT

Dear S. Y.,

I refer to my letter dated 22nd February and have now had the opportunity of consulting briefly with members of the Legal Aid Committee.

In your letter of 13th February you refer to "tremendous difficulties" in recovering monies paid over the aided persons by their solicitors without your authority. We would be grateful to have some rather more precise information as to the number of occasions on which this has occurred and over how long a period of time, the outcome of the efforts made to resolve each matter and whether any loss has actually been sustained by the LAD.

Members of the Committee had already considered the case of Manley vs The Law Society but I am grateful to you for providing the copy. However, that case involved a deliberate attempt by the solicitor to deprive the legal aid fund of the charge in respect of his costs and as such must be distinguished from the position where a solicitor negligently fails to account to the Director under Section 19(A)(1). In the former event the solicitor would be precluded from making any claim on the legal aid fund for his costs and might also be liable to disciplinary sanction but where the solicitor has acted negligently he would be liable to compensate the Director for the loss occasioned by his failure to comply with Section 19(A)(1).

I think that I can confidently say that all members of the Committee are aware of the point that you are making namely whether an assigned solicitor should still be entitled to make the legal aid fund pay his costs when monies recovered in the course of

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proceedings have been paid directly to the aided persons. In general terms the answer must be “no” but we question whether this is such a frequent occurrence that it justifies a change in the law and we are concerned that there may be occasions when the avoidance of the first charge takes place without the solicitor’s knowledge.

I mentioned in my letter to you that Section 19(A) provides that only the Director of Legal Aid can give a valid receipt for any monies paid to the aided person. That is the law and is a matter of which those engaged in litigation should be well aware. If the paying party pays directly to the aided person, it must be said to be doing so at its own risk. I understand that notices of assignment all clearly set out the provisions of Section 19(A). You may wish to include a similar warning on the Notice of Legal Aid served on the opposing party. I have little doubt that The Law Society would be very ready to issue a reminder to members that they must comply with Section 19(A) and account to you for any monies recovered.

Another aspect of the proposal which concerns the Legal Aid Committee is the absence of any “checks and balances” if authority were given to the Director of Legal Aid to withhold payment of costs. Members of the Committee felt that at the very least there should be some form of appeal procedure on the exercise of such power.

I note your suggestion that this matter should be discussed further and that you would be prepared to send a representative from the Legal Aid Department to meet with the Committee. I think that this is the most appropriate way in which to proceed with the matter and perhaps the LegCo Panel can be told that this is what we intend to do so that the discussion on 25th February can then be adjourned pending a meeting of The Law Society Legal Aid Committee to which a representative from your Department would be invited to attend.

Yours sincerely,

Patrick Moss
Secretary General

c.c. The Hon. Ms. Margaret Ng (Fax No. 2801 7134)