

立法會  
*Legislative Council*

LC Paper No. CB(2) 2604/99-00  
(These minutes have been seen by  
the Administration and cleared  
with the Chairman)

Ref : CB2/BC/1/99

**Minutes of the third meeting of the  
Bills Committee on the Legal Aid (Amendment) Bill 1999 held on  
Monday, 10 April 2000 at 2:30 pm  
in Conference Room B of the Legislative Council Building**

**Members Present** : Hon Ambrose LAU Hon-chuen, JP(Chairman)  
Hon Albert HO Chun-yan  
Hon Margaret NG  
Hon CHAN Kwok-keung  
Hon Jasper TSANG Yok-sing, JP

**Absent with Apology** : Hon Cyd HO Sau-lan  
Hon LEE Cheuk-yan  
Hon LEUNG Yiu-chung  
Hon Mrs Miriam LAU Kin-yee, JP

**Public Officers Attending** : Ms Miranda CHIU  
Deputy Director of Administration  
  
Ms Rosanna LAW  
Assistant Director of Administration  
  
Mrs Fanny YU  
Deputy Director of Legal Aid (Policy & Administration)  
  
Mr Harry MAK  
Deputy Director of Legal Aid (Litigation)  
  
Mr William CHAN  
Assistant Director of Legal Aid  
  
Mr J D SCOTT  
Senior Assistant Law Draftsman

Mr W L CHEUNG  
Senior Government Counsel

Mr Ryan CHIU  
Assistant Secretary (Administration)

**Clerk in Attendance** : Miss Mary SO  
Acting Chief Assistant Secretary (2)5

**Staff in Attendance** : Mr Arthur CHEUNG  
Assistant Legal Adviser 5

Mr Stanley MA  
Senior Assistant Secretary (2)6

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**I. Confirmation of minutes of the last meeting held on 28 January 2000**  
(*LC Paper No. CB(2) 1613/99-00 tabled at the meeting*)

The Chairman suggested and members agreed to defer confirmation of the minutes of the last meeting held on 28 January 2000 to the next meeting.

**II. Meeting with the Administration**  
(*LC Paper Nos. CB(2) 1614/99-00(01)-(02) and, LC Paper Nos. CB(2) 1643/99-00(01)-(03)*)

2. At the invitation of the Chairman, Deputy Director of Administration (DD of Adm) briefed members on the Administration's paper entitled "The first charge registered on property recovered or preserved for the aided person for recouping the cost owed by the opposite party" [LC Paper No. CB(2) 1614/99-00(01)]. In essence, DD of Adm said that out of the 407 matrimonial cases where a first charge had been registered on properties of aided persons in 1997 and 1999, only one of those instances was triggered by outstanding payments involving party to party costs (being the cost payable by the opposite party for a legally aided person who had won his/her case). Even in that case, the first charge was eventually not exercised since the opposite party had settled the cost owed in the end. DD of Adm further pointed out that the 407 matrimonial cases represented a mere 1.2% of the total number of civil legal aid cases in the same three-year period.

3. Mr Albert HO expressed surprise that there was only one case during the three-year period between 1997 and 1999 where the Director of Legal Aid (DLA) had

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enforced a first charge over a property from a legally aided person who had won the matrimonial case for the purpose of recouping the cost owed by the opposite party. To his knowledge, the number of such instances should be higher. Mr HO further said that he would go back to check his own files and where necessary seek clarification from the Administration on the figures given.

4. Members then proceeded to examine the draft Legal Aid (Amendment) Regulation 2000 and the draft Legal Aid (Assessment of Resources and Contributions)(Amendment) Regulation 2000 on the basis of the two Explanatory Notes provided by the Administration. Queries/concerns raised by members at the meeting on these two items of subsidiary legislation were summarized in the ensuing paragraphs.

*Legal Aid (Amendment) Regulation 2000*

Clause 5

5. In reply to Mr Albert HO and Miss Margaret NG' s enquiry, Assistant Director of Legal Aid (ADLA) said that clause 5 of the above draft Regulation was to extend the provision of the existing Regulation 6C to also apply to the legal aid certificate granted for Bill of Rights cases because it was possible that the legal costs incurred was more than the contribution initially assessed by DLA and the legally-aided persons should under the existing arrangement be required to make the maximum contribution in accordance to the contribution rates for Bill of Rights cases set out in paragraphs (a) and (c) of Part I of Schedule 3 of the Legal Aid (Assessment of Resources and Contributions)(Amendment) Regulations. Deputy Director of Legal Aid (Litigation) (DDLA(L)) supplemented that the reason for introducing clause 5 was to provide that legally-aided persons involving in Bill of Rights cases would not be required to pay the assessed legal costs incurred in full at the outset. He pointed out that if the legal costs incurred should eventually turn out to exceed the maximum contribution to be made by the legally-aided persons involving in Bill of Rights, the persons concerned would not be liable to pay the excess amount. This was in line with the existing arrangement under the standard legal aid scheme. In reply to Miss NG's further enquiry as to the legal basis for extending the coverage of the existing Regulation 6C to include legally-aided persons involving Bill of Rights cases, DDLA(L) said that it was based on sections 18 and 28(2)(j) of the Legal Aid Ordinance (Cap. 91).

6. Mr Albert HO and Miss Margaret NG said that the implementation of clause 5 would not ease the financial burden of the legally-aided persons involving in Bill of Rights cases. Given that most if not all Bill of Rights cases involved important points of law affecting human rights of the community, they were of the view that persons involved in Bill of Rights cases should not be required to contribute according to the sliding scale as set out in paragraphs (a) and (c) of Part I of Schedule 3 of the Legal Aid (Assessment of Resources and Contributions)(Amendment) Regulations.

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7. DD of Adm responded that the Administration considered it reasonable to require aided persons in Bill of Rights cases to pay a portion of their resources for the public-funded services which they were receiving. In the Administration's view, it would not be a proper use of public money if relatively well-off persons were allowed to enjoy Government-subsidized legal aid at no cost simply because of the nature of the cases in question. DD of Adm further said that although there was no financial eligibility limit set for legal aid applicants in Bill of Rights cases, the maximum contribution rate was capped at 67% if their financial resources were \$1,278,000 and above.

8. In reply to Miss Margaret NG's enquiry about the financial liability of an aided person if he/she lost the case, ADLA said that an aided person would not be required to pay contribution in excess of the maximum amount of contribution determined in accordance with the sliding scale. Excess amount would be settled by public fund.

9. Mr Albert HO enquired about the financial liability of an aided person if he/she decided not to proceed with the case. ADLA replied that if the aided person sought to abort the case in progress on unreasonable grounds, DLA could revoke his certificate. In the circumstances, the person concerned would be liable to bear all the legal costs incurred by the Legal Aid Department and by the opposite party. However, if the aided person wished to discharge the case on financial ground and if the case was considered to have a very reasonable prospect of success, consideration could be given to continue with the proceedings and to withhold requiring the aided person to pay the legal costs incurred which had exceeded the initial assessment. Miss Margaret NG pointed out that Regulation 6C did not give DLA the discretion to withhold the aided persons from contributing towards the costs of litigation according to their financial capacity. ADLA concurred with Miss NG. He however pointed out that DLA had the power to revise the contribution which the aided person was required to pay if his/her financial position was found to have worsened.

Clause 9

10. New Rule 15B(1) in clause 9 of the draft Regulation provided for the types of relatives of a deceased person to whom DLA could exercise discretion to grant legal aid in coroners' inquests involving cases of public interest. In reply to the Miss Margaret NG's enquiry about the basis on which the Administration had drawn up such category of persons, DD of Adm said that reference was made to the existing legislation, such as the Labour Tribunal (Suitors' Funds) Rules. Senior Assistant Law Draftsman (SALD) supplemented that reference was also made with regard to the Intestates' Estates Ordinance (Cap. 73) and Rule 21 of the Non-Contentious Probate Rules under the Probate and Administration Ordinance (Cap. 10).

11. Miss Margaret NG said that as the intention of new Rule 15B was to grant legal aid to family members of the deceased to inquire into the death of the deceased, it was doubtful whether the very precise concept of intestacy was suitable to be applied to

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describe the types of family members who could be granted legal aid for attending coroners' inquests since intestacy meant that the person concerned could inherit properties from the deceased and therefore how he/she was related to the deceased was very important. Miss NG expressed concern that such precise description of persons in new Rule 15B(1) would inevitably restrict the types of family members who might be granted legal aid in coroners' inquests involving cases of public interest. Miss NG further said that although new Rule 15B(2) gave DLA the discretion to grant legal aid to a surviving close relative if he was satisfied that legal aid could not be practicably made to the person described in new Rule 15B(1), the whole arrangement was far from ideal as DLA still had to look at precise family relationship before he could grant legal aid. To rectify the situation, Miss NG said that consideration should be given to using a more appropriate term for new Rule 15B(1).

12. Mr Albert HO was of the view that a surviving close relative of the deceased as referred to in new Rule 15B(2) should also include a person who had no blood ties with the deceased but nevertheless had a very close relationship with the deceased.

13. DD of Adm said that new Rule 15B was made in response to the request made by Mr James TO at the Panel on Administration of Justice and Legal Services to extend legal aid to the next of kin of the deceased for attending coroners' inquests. As extension of legal assistance to persons required to attend coroners' inquests was a new thing, DD of Adm considered it better to wait and see how the new Rule 15B worked in practice before introducing amendments to the Rule.

14. Miss Margaret NG said that the very precise description of persons in Rule 15B(1) and the very stringent conditions which DLA must satisfy before he could grant legal aid to a surviving close relative of the deceased, i.e DLA must satisfy that a person covered by new Rule 15B no longer existed or could not be practicably traced, would create much difficulties for DLA to exercise his discretion to grant legal aid for persons required to attend coroners' inquests. In respect of the latter point, Miss NG remarked that it would be a very time-consuming exercise for DLA to locate a family member of the deceased who resided in the Mainland and had lost touch with the deceased for a long time. Even if DLA could eventually locate such a person, he/she might not be interested to know the circumstances under which the deceased had died.

15. At the request of members, DD of Adm agreed to re-visit the drafting of the proposed clause 9 to address members' concern raised at the meeting so as to ensure that DLA could exercise his discretion without hindrance.

16. Members did not raise any queries on the remaining clauses of the draft Regulation.

17. Referring to Regulation 6A(a) of the Legal Aid Regulations which stipulated that DLA might amend an error in a legal aid certificate. Mr Albert HO enquired whether this provision would cover the situation where the effective date of the

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certificate could be made retrospectively to make up for an administrative oversight. DDLA replied in the negative. DDLA further pointed out that there was a precedent case in the United Kingdom where the court had ruled that making the effective date of the legal aid certificate retrospective was unlawful.

*Legal Aid (Assessment of Resources and Contributions)(Amendment) Regulation 2000*

18. Miss Margaret NG said that she would like to put on record that although the Bill would enable more people to gain access to legal aid, the present limits on financial eligibility were still too low. She urged the Administration to follow this up in its continuous review of the legal aid services.

19. Members did not raise any queries on the above draft Regulation.

20. Mr Albert HO expressed concern that applications for legal aid to appeal against conviction and/or sentence were often refused by DLA, thereby leaving the persons concerned with no financial resources to seek legal recourse. Deputy Director of Legal Aid (Policy & Administration) DDLA(P&A) responded that under the existing arrangement, notwithstanding the refusal by DLA for legal aid in criminal/magistracy appeal case, the applicant would be served with a notice informing him/her that if it appeared to a judge or the Court of Appeal that he/she should be granted legal aid, the judge or the Court of Appeal might, subject to the financial resources of the person concerned not exceeding the statutory maximum limit, grant him/her an appeal aid certificate pursuant to Rule 12(3) of the Legal Aid in Criminal Cases Rules (Cap. 221). At the request of the Chairman, DDLA(P&A) undertook to provide a copy of the aforesaid notice to members for reference.

**IV. Date of next meeting**

21. DD of Adm said that the Administration hoped that the Second Reading debate on the Bill could resume on 3 May 2000. Following passage of the Bill, the Administration intended to introduce the Legal Aid (Amendment) Regulation 2000 and the Legal Aid (Assessment of Resources and Contributions)(Amendment) Regulation 2000 as soon as possible to allow time for LegCo Members to consider the two Amendment Regulations in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap.1) before the end of the current legislative term. DD of Adm further said that as the earliest possible date for the Bills Committee to submit its report to the House Committee was 28 April 2000, she hoped that the Bills Committee would support the Administration's action to seek the President's permission for the Second Reading debate on the Bill to resume on 3 May 2000 in accordance with Rule 54(5)(c) of the Rules of Procedure.

22. Members agreed to hold another meeting at 10:45 am on 20 April 2000 to round up discussions on any outstanding issues on the Bill and the two Amendment

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Regulations. Members further agreed that a report on the Bill would be made to the House Committee on 28 April 2000 recommending that the Administration's proposal that the Second Reading debate on the Bill be resumed on 3 May 2000 be supported.

23. There being no other business, the meeting ended at 4:25 pm.

Legislative Council Secretariat

20 September 2000