

立法會
Legislative Council

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**Minutes of the first meeting of the
Bills Committee on the Legal Aid (Amendment) Bill 1999 held on
Tuesday, 11 January 2000 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members Present : Hon Ambrose LAU Hon-chuen, JP(Chairman)
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Margaret NG
Hon CHAN Kwok-keung
Hon LEUNG Yiu-chung
Hon Jasper TSANG Yok-sing, JP

Absent with Apology : Hon Mrs Miriam LAU Kin-ye, 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

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 : Mr LAW Wing-lok
Chief Assistant Secretary (2) 5

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Miss Mary SO
Senior Assistant Secretary (2)8

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Miss Margaret NG and Mr Albert HO declared that they were on the Panel of the Legal Aid Department (LAD).

I. Election of Chairman

2. Mr Ambrose LAU was elected Chairman of the Bills Committee.

II. Meeting with the Administration

3. The Chairman welcomed representatives of the Administration to the meeting.
4. At the invitation of the Chairman, Deputy Director of Administration (DD of Adm) said that the Legal Aid (Amendment) Bill 1999 (the Bill) was to implement three out of the seven final recommendations of the Legal Aid Policy Review 1997. They were as follows -
 - a) to give the Director of Legal Aid (DLA) the discretion to reduce or not to seek interest on a preserved or recovered property;
 - b) to require legally aided persons under the Supplementary Legal Aid Scheme (SLAS) to pay an interim contribution regardless of the outcome of the case; and
 - c) to extend legal assistance to the next of kin of the deceased in coroner's inquests concerning cases of great public concern.

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In regards to the remaining four final recommendations, DD of Adm said that they would be implemented separately through amendments to the Legal Aid Regulations and the Legal Aid (Assessment of Resources and Contributions) Regulations following the enactment of the Bill.

5. DD of Adm further said that before arriving at the final recommendations, the Administration had considered the views of 13 interested parties who had responded to the consultation paper on the Legal Aid Policy Review 1997. A copy of the draft Bill was also forwarded to the Legal Aid Services Council. The Administration had also briefed the Panel on Administration of Justice and Legal Services (AJLS Panel) on the public's responses on the Legal Aid Policy Review 1997 on three occasions between September 1998 and February 1999.

6. Miss Margaret NG enquired whether the Administration had consulted the public, particularly the Law Society of Hong Kong, the Hong Kong Bar Association and the Legal Aid Services Council, on the Bill; and if not, why not.

7. DD of Adm replied that before introducing the Bill into the Council, the Administration had briefed and secured the endorsement of the Legal Aid Services Council of the final recommendations of the Legal Aid Policy Review 1997. A copy of the draft Bill was also forwarded to the Legal Aid Services Council. DD of Adm further said that the Administration had no objection to seeking the views of the Law Society of Hong Kong and the Hong Kong Bar Association on the Bill if members so wished.

8. Miss Margaret NG suggested that the Bills Committee should invite the Law Society of Hong Kong, the Hong Kong Bar Association and the Legal Aid Services Council to give their views on the Bill.

9. Mr LEUNG Yiu-chung said that as the Bill sought to revise the contributions payable by legally aided persons, he was of the view that the public should also be consulted on the Bill.

10. DD of Adm responded that the public had been consulted on the proposed contribution scales payable by legally aided persons during the public consultation exercise on the Legal Aid Policy Review 1997. DD of Adm said that the Administration had no objection to conducting a public consultation on the Bill if members so requested. She however pointed out that as the enactment of the Bill would allow approximately 180,000 households to become financially eligible for legal aid, it would be preferable for the Bill to be passed into law as soon as possible.

11. The Chairman enquired whether the 13 interested parties who had responded to the consultation paper on the Legal Aid Policy Review 1997 had raised any objection to the revised contribution scales proposed therein.

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12. DD of Adm replied that some dissenting views had been received from the public. For example, some of the interested parties had expressed objection to the proposal that all legally aided persons should pay a contribution according to a revamped sliding scale of contribution, except those on Comprehensive Social Security Assistance (CSSA) who should be exempted from paying any contribution. They were of the view that apart from CSSA recipients, applicants with very limited financial resources should also be exempted from paying any contribution. In the light of the views expressed, the Administration had decided that those with financial resources below \$20,000, i.e. the lowest level of the revamped scale of contribution, would not need to contribute.

13. Mr LEE Cheuk-yan said that the trade unions considered that the median household expenditure figure, instead of the average expenditure of the lowest 35% households as revealed in the Household Expenditure Survey, should be used in determining disposable income of legal aid applicants, as the former was considered more appropriate in describing the expenditure pattern of lower-middle class households which were the target group for legal aid services. Mr LEE further opined that employees seeking to obtain legal aid to recover arrears of wages from the Protection of Wages on Insolvency Fund should be exempted from making any contribution if the amount of contribution exceeded that of the wages outstanding.

14. DD of Adm replied that the use of the average expenditure of the lowest 35% households as revealed in the Household Expenditure Survey could realistically reflect the expenditure pattern of lower-middle class households which were the target group for legal aid services. Moreover, such index would take into account the expenditure situation of each household size group. DD of Adm further said that the median household expenditure figure was not an appropriate indicator, since it also included the middle and upper class households which were not the target group for legal aid services.

15. Mr LEE Cheuk-yan enquired whether the revised method of assessing disposable income of legal aid applicants would be implemented through amendments to the relevant Legal Aid Regulation; and if so, whether such amendments would be subject to positive or negative vetting by the Council.

16. DD of Adm replied that such revision would be implemented through amendments to the Legal Aid (Assessment of Resources and Contributions) Regulations. She further said that although this and other amendment regulations would be published in the Gazette for negative vetting by the Council after the Bill had been passed into law, it was the intention of the Administration to present the draft amendment regulations to the Bills Committee for perusal.

17. Miss Margaret NG expressed support for considering the Bill and the draft amendment regulations in tandem, as the decision on whether the Bill should be

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supported would depend on the proposals in the amendment regulations. The Chairman echoed Miss NG's views.

Adm

18. In reply to the Chairman's enquiry about when the draft amendment regulations could be presented to the Bills Committee for perusal, DD of Adm said that they would be available in about two weeks' time.

19. Mr LEUNG Yiu-chung said that should the Bills Committee decide to conduct a public consultation on the Bill, the scope of consultation should be expanded to cover the draft amendment regulations. Mr LEE Cheuk-yan concurred with Mr LEUNG.

20. In reply to the Chairman's enquiry as to whether Mr LEUNG's suggestion was outside the ambit of the Bills Committee, Assistant Legal Adviser said that although the ambit of the Bills Committee was to scrutinize the provisions in the Bill, it was acceptable practice for a Bills Committee to discuss issues related to or arising from the provisions.

Clerk

21. Miss Margaret NG suggested that members be provided with the relevant papers pertaining to the deliberations of the AJLS Panel on the Legal Aid Policy Review 1997. The Clerk undertook to circulate these papers to members.

22. Miss Cyd HO said that as the Bill did not contain any provision exempting legally aided persons involved in Bills of Rights cases from making contributions, she asked whether it was appropriate for the Bills Committee to invite human rights groups to give their views in this regard. Assistant Legal Adviser said that if the Bills Committee so wished, it could consider inviting human rights groups to express their views.

23. DD of Adm said that the Administration considered it reasonable to require aided persons in Bills of Rights cases to pay a portion of their resources for the publicly-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-subsidised legal aid at no cost simply because of the nature of the cases in question.

24. Mr Albert HO enquired whether amendments seeking to exempt legally aided persons involved in Basic Law cases from making contributions could be proposed by Members.

25. Assistant Legal Adviser replied that amendments to bills were governed by the rule that an amendment must be relevant to the subject matter of the bill. He also pointed out that such amendments were further governed by the rule that they must not have the effect of disposing or charging any part of the revenue or public moneys of Hong Kong, unless Members concerned had obtained the written consent of the Chief

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Executive (CE) to the proposals. He further said that the Administration's position was that under Article 74 of the Basic Law Members were not allowed to propose Committee Stage amendments relating to political structure or operation of the Government or if they related to government policies, unless with consent. In his view, Article 74 of the Basic Law applied to Members' bills but not Committee Stage amendments to bills proposed by Members.

26. Mr HO further enquired whether an amendment seeking to expand the scope of legal aid assistance such as waiving the financial eligibility limit for appeal cases brought under the Employees' Compensation Ordinance, would be permissible. Assistant Legal Adviser replied that it was difficult to give a definite answer without knowing the nature or content of the amendment.

27. Mr HO also asked whether legal aid expenses involved public money, given the nature of legal aid funding. DD of Adm replied that the provision of legal aid services was funded by the Government through the LAD and the Duty Lawyer Service which was administered by the Law Society and the Bar Association. The LAD also operated the self-financing SLAS. DD of Adm added that as a result of implementing the proposals to increase the personal allowances deductibles and to expand the assistance in coroner's inquests, an estimated additional expenditure of \$10.6 million would be incurred in legal aid fees and duty lawyer fees. In addition, the LAD would require five additional non-directorate posts at an annual staff cost of \$2.5 million to handle the expected increase in legal aid applications and the additional receipt of contribution.

28. DD of Adm said that as review of the legal aid policy was a continuous process, there was no need for members to seek public's views on the policy during the scrutiny of the Bill. She suggested that the AJLS Panel would be a more appropriate forum to discuss the legal aid policy. The Chairman and Mr Albert HO shared DD of Adm's view. Mr HO further said that if public's views were sought on issues not covered by the Bill, the Bills Committee might run the risk of giving false hope to the public that their views could bring about changes which were outside the scope of the Bill.

29. The Chairman suggested that only the views of the Law Society of Hong Kong, the Hong Kong Bar Association and the Legal Aid Services Council on the Bill should be sought. Members agreed.

30. Miss Margaret NG enquired under which provision of the Legal Aid Ordinance (Cap. 91) were legally aided persons involved in human rights cases required to make contributions. She further said that even if there was no provision in Cap. 91 stipulating such, amending the Legal Aid (Assessment of Resources and Contributions) Regulations could still achieve the objective of exempting legally aided persons involved in human rights cases from making contribution. DD of Adm agreed to give a reply in writing.

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31. Referring to clause 5 of the Bill which sought to give the DLA the discretion to reduce or not to seek interest on the DLA's charges on a preserved or recovered property, Mr Albert HO enquired under what circumstances would the DLA be allowed to exercise the discretion. DD of Adm replied that under clause 5 (b) (c)(i) (A) and (B) of the Bill, the DLA could waive or reduce the interest accrued if he was satisfied that the enforcement of the first charge would cause serious hardship to the aided person, or that in the circumstances it was just and equitable to do so. Mr HO remarked that the drafting of clause 5(b)(c)(i)(A) and (B) was vague. For example, there was no definition of the term "serious hardship". DD of Adm said that the DLA would exercise the discretion wisely in accordance with the circumstances of each case.

32. The Chairman enquired whether the LAD would draw up a set of internal guidelines on the circumstances under which the discretion to waive or reduce interest on a preserved or recovered property under clause 5 of the Bill would be exercised. Assistant Director of Legal Aid (ADLA) replied that the LAD would consider drawing up such guidelines.

33. Mr Albert HO enquired whether legally aided applicants in coroner's inquests would be required to undergo financial capacity assessment and to make contribution to cover the legal costs to be incurred by the DLA. DD of Adm replied in the positive.

34. Mr Albert HO said that there had been incidents where the DLA had enforced a first charge over a property from a legally aided person who had won a matrimonial case, in order to recoup the legal costs incurred by the LAD because the former spouse of the aided person had disappeared or was unable to settle such costs. Mr HO pointed out that this was extremely unfair to the aided person, particularly where the amount of legal costs exceeded the value of the property which was recovered or preserved.

35. ADLA replied that the DLA was empowered to do so under section 18A of Cap. 91. However, if the property recovered or preserved could not practically be sold because there was a genuine need for the legally aided person to use the property as a home for himself/herself or his/her dependants, enforcement of the first charge over that property could be deferred by the DLA and the legally aided person would be required to pay an interest accrued at a rate of 10% per annum from the date on which the charge was first registered. ADLA further said that following the enactment of the Bill, the difficulties encountered by these legally aided persons should be ameliorated as the DLA had the discretion under clause 5 of the Bill to waive or reduce the interest. At the request of members, Deputy Director of Legal Aid undertook to provide members with the number of such incidents occurred in recent years.

Adm

III. Date of next meeting

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36. Members agreed that the Bills Committee would next meet on Friday, 28 January 2000 at 4:30 pm.

37. There being no other business, the meeting ended at 4:03pm.

Legislative Council Secretariat

27 January 2000