

立法會  
*Legislative Council*

LC Paper No. CB(2) 2605/99-00  
(These minutes have been seen by  
the Administration and cleared  
with the Chairman)

Ref : CB2/BC/1/99

**Minutes of the fourth meeting of the  
Bills Committee on the Legal Aid (Amendment) Bill 1999 held on  
Thursday, 20 April 2000 at 10:45 am  
in Conference Room B of the Legislative Council Building**

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

**Absent with Apology** : Hon Cyd HO Sau-lan  
Hon LEUNG Yiu-chung

**Public Officers Attending** : Ms Miranda CHIU  
Deputy Director of Administration

Ms Rosanna LAW  
Assistant Director of Administration

Mr Benjamin CHEUNG  
Acting Director of Legal Aid

Mrs Fanny YU  
Deputy 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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**I. Confirmation of minutes of meeting held on 28 January 2000**

*(LC Paper No. CB(2) 1613/99-00 tabled at the meeting on 10 April 2000 and subsequently issued to members vide LC Paper No. CB(2) 1666/99-00 on 11 April 2000)*

The minutes of meeting held on 28 January 2000 were confirmed.

**II. Meeting with the Administration**

*(LC Paper Nos. CB(2) 1751/99-00 (01) and (02))*

2. At the invitation of the Chairman, Deputy Director of Administration (DD of Adm) introduced the Administration's paper [(LC Paper No. CB(2) 1751/99-00 (01))] which detailed the revised draft clause 9 of the Legal Aid (Amendment) Regulation 2000 (the Regulation). DD of Adm said that in response to members' concern expressed at the last meeting held on 10 April 2000 that the proposed clause 9 of the Regulation might inadvertently restrict the types of family members of the deceased who could be granted legal aid involving cases of public interest at coroners' inquests, the Administration had undertaken to re-draft clause 9 to the effect that if the Director of Legal Aid (DLA) was satisfied that legal aid could not be reasonably granted to person of the description of new Rule 15B(1), he could grant legal aid to persons who, in his opinion, might reasonably be regarded as a surviving close relative of the deceased. DD of Adm added that the revised draft should address members' concern and ensure that DLA could exercise his discretion without hindrance.

3. Members considered the revised draft clause 9 of the Regulation acceptable.

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4. Deputy Director of Legal Aid (DDLA) took members through the "Notice to the Applicant pursuant to Refusal of Legal Aid (on merits for Criminal/Magistracy Appeal)" [(LC Paper No. CB(2) 1751/99-00 (01)]. In particular, DDLA said that notwithstanding DLA's refusal to grant legal aid to appeal, if the judge or the Court of Appeal considered that the appellant should be granted legal aid, the judge or the Court of Appeal might, subject to the appellant's financial resources not exceeding the statutory maximum limit, grant an appeal legal aid certificate pursuant to Rule 12(3) of the Legal Aid in Criminal Cases Rules. DDLA further said that once the appeal legal aid certificate had been granted by the judge or the Court of Appeal, DLA would be required to assign a solicitor and one or two counsel to represent the appellant.

5. Miss Margaret NG said that the Notice should also state that unsuccessful applicants could appeal to the judge or the Court of Appeal against the refusal of legal aid. Mr Albert HO shared Miss NG's views, and added that the Notice should also state that unsuccessful applicants could seek such recourse from the judge or the Court of Appeal prior to the commencement of the trial. Miss NG further said that the drafting of the Notice should be improved to make it more easily understood by the general public.

6. DDLA responded that the Legal Aid Department (LAD) would revise the Notice in response to the views expressed by Miss NG and Mr HO in paragraph 5 above. DDLA further said that apart from appealing to the judge or the Court of Appeal, unsuccessful applicants might request DLA to reconsider their applications. DDLA added that there was no limit to the number of times that unsuccessful applicants could make a request for reconsideration from DLA.

7. Miss Margaret NG said that that it would be preferable if LAD could liaise with the Judiciary in revising the Notice. DD of Adm responded that this would be done.

8. DDLA said that although DLA must satisfy that an applicant had valid grounds of appeal with a reasonable prospect of success before granting legal aid, such criteria were not applied to criminal trials as it was the Government's policy that no one should be deprived of legal assistance because of the lack of financial means. DDLA further said that unlike applications for legal aid to appeal, applications for legal aid in criminal trials were rarely refused by DLA.

9. In reply to Mrs Miriam LAU's enquiry about the channel of appeal against refusal of legal aid in criminal trials, DDLA said that the procedure adopted for appeal against refusal of legal aid in criminal appeal cases would apply. DDLA further said that the notice to the unsuccessful applicants contained information identical to paragraphs 1 and 2 of the notice to unsuccessful applicants for legal aid to appeal. Mrs LAU opined that the notice should also indicate that unsuccessful applicants had the right to request DLA to reconsider their applications as provided in Rule 8(3) of the Legal Aid in Criminal Cases Rules. DDLA undertook to include the provision of Rule 8(3) in the notice.

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10. Mr Albert HO said that in order not to delay the enactment of the Bill, the two revised notices should be submitted to the Panel on Administration of Justice and Legal Services (AJLS Panel) for consideration in the next legislative session. DDLA agreed. Miss Margaret NG said that the clerk should write to the AJLS Panel requesting it to follow up the matter in the next legislative session.

11. Mr LEE Cheuk-yan reiterated his view expressed at the previous meetings that the median household expenditure figure, instead of the average monthly expenditure of the lowest 35% households as revealed in the Household Expenditure Survey, should be used in determining the disposable income of legal aid applicants.

12. DD of Adm responded that the Bill, if enacted, would enable about 58% of the total households in Hong Kong to become financially eligible for legal aid, up from 48% under the existing arrangement where Comprehensive Social Security Assistance rates were used as the personal allowances deductible from the gross income of legal aid applicants in assessing their financial capacity. DD of Adm further said that as the review of the legal aid services was a continuous process, the Administration would consider in its future reviews about using the median monthly household expenditure figure in calculating the disposable income of legal aid applicants.

13. Mrs Miriam LAU said that she had suggested at the previous meeting that in view of the fact that damages received in a miscellaneous personal injury case could be of quite a substantial amount, successful aided persons under the Supplementary Legal Aid Scheme (SLAS) should contribute according to a sliding scale, instead of the proposed contribution rate of 12% across the board. In reply to Mrs LAU's enquiry about the timetable for the next review of legal aid services, DD of Adm said that the Administration would conduct review on a particular aspect of the legal aid services as and when necessary. As regards the implementation of Mrs LAU's suggestion, DD of Adm said that as the SLAS Fund was self-financing, it was imperative to see how the reduction of the rate of contribution under the SLAS from 15% to 12% would impact on the SLAS Fund before deciding whether a sliding scale could be adopted. At the request of Mrs LAU, DD of Adm agreed to provide information on the amount received by SLAS Fund under the existing 15% contribution rate.

Adm

*(Post-meeting note : According to the Director of Administration in his letter to the Legislative Council on 8 September 2000, the Legal Aid Department has advised that the amount of contribution received in respect of the SLAS Scheme under 15% in 1999 is \$5.1 million.)*

14. The Chairman concluded that 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.

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15. There being no other business, the meeting ended at 11:20 am.

Legislative Council Secretariat

20 September 2000