

立法會
Legislative Council

LC Paper No. CB(2) 1613/99-00
(These minutes have been seen by
the Administration)

Ref : CB2/BC/1/99

**Minutes of the second meeting of the
Bills Committee on the Legal Aid (Amendment) Bill 1999 held on
Friday, 28 January 2000 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Ambrose LAU Hon-chuen, JP(Chairman)
Hon Cyd HO Sau-lan
Hon LEE Cheuk-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 Albert HO Chun-yan
Hon LEUNG Yiu-chung

Public Officers Attending : Ms Miranda CHIU
Deputy Director of Administration

Ms Rosanna LAW
Assistant Director of Administration

Mr Harry MAK
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)

By invitation: : Mr Andrew LI
Hong Kong Bar Association

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 the last meeting held on 11 January 2000
(*LC Paper No. CB(2) 974/99-00*)

The minutes were confirmed.

II. Meeting with representative from the Hong Kong Bar Association
(*LC Paper No. CB(2) 990/99-00(01) tabled at the meeting*)

2. The Chairman informed members that submissions on the Legal Aid (Amendment) Bill 1999 (the Bill) had been received from the Legal Aid Services Council (LC Paper No. CB(2) 932/99-00 issued on 21 January 2000), the Law Society of the Hong Kong (LC Paper No. CB(2) 973/99-00 (01) issued on 27 January 2000), and the Hong Kong Bar Association (LC Paper No. CB(2) 990/99-00(01)) respectively. The Chairman further said that apart from the Hong Kong Bar Association, the Legal Aid Services Council and the Law Society of the Hong Kong had indicated that they would not send their representatives to attend the meeting to give oral representation.

3. At the invitation of the Chairman, Mr Andrew LI of the Hong Kong Bar Association (the Bar Association) took members through the paper which detailed the views of the Bar on the Bill and related issues. In essence, Mr LI said that the Bar Association would welcome any positive changes introduced under the Bill so long as such changes would assist more people who otherwise would not be able to gain

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access to justice due to their limited means and financial resources. If anything, the Bill should have included proposals to raise the financial eligibility limits for legal aid under the standard legal aid scheme and under the Supplementary Legal Aid Scheme (SLAS), so as to enable more people, particularly the "sandwich class", to gain access to legal aid. In his view, it was not unreasonable to raise the upper eligibility limit of \$169,700 of the standard legal aid scheme and the upper eligibility limit of \$471,600 of the SLAS twofold.

4. In response to Miss Margaret NG, Mr LI said that the Bar Association would advise the Bills Committee if they had any queries on the drafting aspects of the Bill.

III. Meeting with the Administration

(LC Paper No. CB(2) 932/99-00, LC Paper No. CB(2) 973/99-00(01), LC Paper No. CB(2) 973/99-00(03) and the Explanatory Notes setting out a short summary of the clauses in the Bill tabled at the meeting)

5. Miss Margaret NG and Mrs Miriam LAU concurred with the Bar Association that the upper limits of the standard legal aid scheme and of the SLAS should be increased, particularly so for the latter in order to enable more people in the "sandwich class" to gain access to legal aid. They were of the view that even if the upper limit of \$471,600 of the SLAS was increased twofold, it would not jeopardize the financial viability of the SLAS Fund, having regard to the fact that a "merit test" would be conducted before granting legal aid to an applicant. Moreover, successful aided persons would need to contribute a sum equal to the total legal costs incurred by the Legal Aid Department (LAD) and 15% of the property recovered or preserved.

6. Deputy Director of Administration (Dep D of Adm) replied that comments made by the Bar Association that the present financial eligibility limits were too low had been conveyed to the Administration during the consultation exercise on the Legal Aid Policy Review 1997. The Administration concluded that the present limits should be maintained, having regard to the fact that the average litigation costs per case during the period April to July 1997 for the four types of cases (i.e. matrimonial, employee compensation, traffic running down and miscellaneous personal injury), which represented about 80% of cases handled by the LAD, were below or only slightly higher than the present limits. For example, the current financial eligibility of the standard scheme of \$169,700 was well above the average costs for matrimonial and employee compensation cases at \$30,000 and \$90,000 respectively. Although the average costs for traffic running down and miscellaneous personal injury cases were higher than the upper limit for the standard scheme, they were below or only slightly higher than the upper limit of \$471,600 for the SLAS. Dep D of Adm further pointed out that the average costs per case handled by the LAD were considered somewhat "inflated" since assigned lawyers in legally aided cases had to report to both their clients and the LAD, whereas in non-legal aid cases, lawyers had to report to their clients only.

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7. Dep D of Adm further said that although the present eligibility limits remained unchanged, the revised method for assessing disposable income, i.e. using the expenditure patterns of households (of various sizes) in the 35-percentile as revealed in the Household Expenditure Survey as the benchmark, would on average allow 58% (up from the existing 48%) of the total number of households in Hong Kong to become financially eligible for legal aid under the standard legal aid scheme. In regard to the current arrangement for successful cases under the SLAS in which the aided persons had to contribute 15% of the property recovered or preserved in addition to the sum of total legal costs incurred by the LAD, DD of Adm said that following the enactment of the Bill, amendment would be made to the Legal Aid (Assessment of Resources and Contributions) Regulations to reduce the rate of contribution from the existing 15% to 12%.

8. Dep D of Adm assured members said that the review of the provision of legal aid services was a continuous process. Apart from the expenditure patterns which would be revised every year according to Consumer Price Index A to take account of inflation until the next five-yearly Household Expenditure Survey had revealed a new expenditure figure, the financial eligibility limits for the two legal aid schemes would also be reviewed annually to take account of inflation and biennially to take account of the change in litigation costs and other relevant factors.

9. Mrs Miriam LAU suggested that as the cost of the property recovered or the damages received in a miscellaneous personal injury case could be of quite a substantial amount, successful aided persons under the SLAS should contribute according to a sliding scale, instead of the proposed contribution rate of 12% across the board. Dep D of Adm said that she would bear in mind Mrs LAU's suggestion in future reviews.

10. The Chairman sought members' views on the submission from the Legal Aid Services Council (LC Paper No. CB(2) 932/99-00).

11. Mr LEE Cheuk-yan concurred with the view of the Legal Aid Services Council that the median household expenditure, 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.

12. Dep D of Adm replied that the Administration had taken into account the Council's views into consideration in drawing up the final recommendation. She further said that the fact that 58% of the total number of households in Hong Kong would be eligible for legal aid under the standard scheme clearly indicated that the lower-middle class households would be covered by the legal aid scheme. Moreover, people whose financial resources exceeding the eligibility limit of \$169,700 of the

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standard legal aid scheme could apply for legal aid under the SLAS.

13. Miss Margaret NG remarked that the fact that 58% of the households in Hong Kong would be eligible for legal aid did not necessarily mean that the remaining 42% households would be able to afford the costs of private legal representation.

14. The Chairman next sought members' view on the submission from the Law Society of Hong Kong (LC Paper No. CB(2) 973/99-00(01)).

15. Assistant Director of Legal Aid briefed members on the Director of Legal Aid (DLA)'s letter to the Law Society of Hong Kong dated 27 January 2000 responding to the queries raised by the Law Society concerning the provision of legal representation at coroner's inquests. A copy of the DLA's reply to the Law Society of Hong Kong was tabled at the meeting for members' reference (see the **Appendix**). Miss Margaret NG said that the Law Society of Hong Kong supported the proposal of extending legal assistance to the next of kin of the deceased in coroner's inquests involving cases of great public concern, but hoped that the administrative procedures for implementing the proposal would be embodied in the legislation. Members did not raise any queries on the DLA's reply.

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16. Referring to the Administration's letter dated 25 January 2000 enclosing the draft Legal Aid Regulations and the Legal Aid (Assessment of Resources and Contributions) Regulations (LC Paper No. CB(2) 973/99-00(03)), Dep D of Adm suggested to defer discussion of the draft Regulations to the next meeting as clause 5 of the draft Legal Aid (Assessment of Resources and Contributions) Regulations had yet to be finalized. Members agreed.

17. Dep D of Adm further briefed members on the relevant provisions in the Legal Aid Ordinance relating to contributions by legally aided persons under the standard legal aid scheme and the SLAS as well as the first charge on property recovered/preserved, as set out in Annex B of the Administration's letter.

Adm

18. At the request of members, Deputy Director of Legal Aid (Dep DLA) agreed to provide information on the number of successful matrimonial cases which were subject to the DLA's first charge on a property held by a legally aided person, for the purpose of recouping the outstanding costs owed by the former spouse of the aided person.

19. Members then proceeded to examine the Bill clause by clause on the basis of the Explanatory Notes provided by the Administration. Queries/concerns raised by members at the meeting were summarized as follows -

Clause 5 - Charge on property recovered or preserved

20. Mr LEE Cheuk-yan enquired whether the DLA could waive the first charge on

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a recovered or preserved property if there was unpaid contribution or the total contribution was less than the net liability of DLA in the case, as stipulated under section 18A of the Legal Aid Ordinance (the Ordinance).

21. Dep DLA replied that under section 19B(1)(a)(iii) of the Ordinance, the DLA was empowered to reduce the first charge on a recovered or preserved property by such amount not exceeding \$57,400 if he was satisfied that the enforcement of the first charge would cause serious hardship to the aided person and that in all the circumstances it was just and equitable to do so.

22. Mr LEE further enquired why the DLA could not waive the first charge on a recovered or preserved property in cases where the aided persons were in a difficult financial situation and had no other financial resources apart from the property recovered. Dep D of Adm replied that introducing alternative arrangements for such persons would not be fair to those aided persons who were able to pay up because the damages recovered were in cash. Dep D of Adm further said that the first charge in favour of the Government was not unique to legal aid cases. In other instances, the Government would also register a first charge on an individual's property if he could not pay off the liability owed to the Government. One example was where the Government had carried out urgent and necessary building repair works and owners subsequently refused to pay.

23. Mr LEE also enquired about the procedures for implementing the proposal to give the DLA the discretion to waive or reduce the interest accrued on the DLA's first charge on a preserved or recovered property.

24. Dep DLA replied that the LAD had not yet drawn up the details for the implementation of the new provision. He however assured members that there had not been any cases where an aided person in a difficult financial situation was asked by the LAD to sell the recovered or preserved property to pay off the outstanding amount.

25. In reply to the Chairman's enquiry, Dep DLA said that if an aided person was aggrieved by the DLA's determination to sell the recovered or preserved property to pay off the outstanding amount, he could appeal to the Registrar of the High Court under section 26 of the Ordinance.

26. Miss Cyd HO opined that aided persons who received the damages in cash would invariably have to pay off the amount due to the LAD, whereas those aided persons in matrimonial cases who received the damages in the form of a real property could ask for deferment of payment on the grounds that the property recovered or preserved was their principal residence. Miss HO said that such a situation was unfair to those aided persons who received the damages in cash and should be rectified.

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27. Dep D of Adm responded that the point made by Miss HO would be considered in the next review exercise. Dep D of Adm however pointed out that the great majority of aided persons under the standard scheme were not required to contribute to their legal costs.

28. Dep DLA supplemented that the LAD made reference to the definition of the term "grave hardship" contained in the United Kingdom's legal aid handbook in its interpretation of "serious hardship" in the Ordinance. Mrs LAU said that the mere use of the word "hardship" in the Ordinance should be sufficient, as the DLA had the discretion to reduce the first charge on a recovered or preserved property to an amount not exceeding \$57,400 and to waive or reduce the interest on the property concerned. In response to Mrs Miriam LAU, Dep DLA undertook to provide the relevant extract from the United Kingdom's legal aid handbook for members' reference.

Adm

Clause 8 - Regulations

29. Mr TSANG Yok-sing enquired about the need for introducing the clause which sought to provide the Chief Executive in Council with the power to make regulation as to how the resources of a person receiving assistance under the Comprehensive Social Security Assistance (CSSA) Scheme were to be treated for the purpose of determining the resources of the person. In response, Dep DLA said that this amendment was intended to make it clear that the Chief Executive in Council had the power to make provision to enable the DLA to exempt CSSA recipients from the means test.

30. Members raised no queries on clauses 1 to 4, 6 to 7 and 9 to 10 of the Bill.

IV. Date of next meeting

31. Members generally agreed that the Bills Committee would meet again when the draft Legal Aid Regulations and the Legal Aid (Assessment of Resources and Contributions) Regulations were available. Exact date of the meeting would be agreed with the Administration through the Secretariat.

32. There being no other business, the meeting ended at 6:30 pm.

Legislative Council Secretariat

7 April 2000