

SG/PA/1070  
CB2/BC/1/99

CB(2)973/99-00(01)

26th January, 2000

by fax and post  
(fax no. 2509 0775)

Mr. Law Wing Lok,  
Clerk to Bills Committee,  
Legislative Council,  
Legislative Council Building,  
8 Jackson Road, Central,  
Hong Kong.

Dear Mr. Law,

**Re : Legal Aid (Amendment) Bill 1999**

I refer to the meeting of the Bills Committee on 28th January and am grateful to you for letting me have a copy of the draft Bill and the LegCo briefing papers.

The Law Society generally welcomes the amendments proposed in the Bill. However, we do have some reservations concerning the provision of representation at coroner's inquests as set out in Clause 10 of the Bill. We have recently raised this issue with the Director of Legal Aid but he has not yet had an opportunity to respond to our request for clarification. It does appear from Clause 10 and from the LegCo brief and our experience of such matters that representation can be provided at an inquest under one of the three methods, namely :

- (i) by the Legal Aid Department if a Legal Aid Certificate has been granted to a person who is required to attend an inquest and the DLA is satisfied that legal representation is necessary for the proper conduct of the case for which legal aid has been given;

...../2

26th January, 2000

Mr. Law Wing Lok  
Clerk to Bills Committee  
Legislative Council

- 2 -

- (ii) by the Legal Aid Department for an inquest into the death of a person which occurred in official custody or an inquest ordered by the Secretary for Justice under Section 16 of the Coroner's Ordinance or inquests involving great public concern; and
- (iii) by the Duty Lawyer Service to persons who are likely to face a reasonable chance of criminal prosecution that would lead to a jail sentence or loss of livelihood as a result of giving evidence at a coroner's inquest.

Whilst we accept the desirability of making the availability of legal aid as flexible as possible nevertheless we have some concerns that the administrative arrangements in (i) and (iii) above will not be embodied in legislation but that (ii) above will be included in the Legal Aid Ordinance if the amendment bill is passed into law.

In the past as a result of administrative changes, the Duty Lawyer Service has provided representation on matters outside its original terms of reference, for example, in administrative appeals. Whilst flexibility is desirable we would like to know by whom the determination as to eligibility for representation will be made within the Duty Lawyer Service and whether any appeal from a refusal of representation will lie in respect of an application for representation in inquest under (i) and (iii) above and if so, to whom that appeal will lie.

We welcome the decision by the Administration to drop the proposal to penalize solicitors in those rare instances where money is paid to an aided person direct and not to the Director of Legal Aid.

...../3

26th January, 2000

Mr. Law Wing Lok  
Clerk to Bills Committee  
Legislative Council

- 3 -

In view of the fact that our concerns over the Bill are relatively minor and that the majority of the proposals are acceptable, we do not propose to attend the Bills Committee hearing unless the Committee specifically requests us to do so.

Yours sincerely,

Patrick Moss  
Secretary General

PM/ff