

CSO/ADM CR 5/3231/99

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25 January 2000

Clerk to Bills Committee
Legislative Council Secretariat
3/F, Citibank Tower
Hong Kong

By Fax

[Attn: Ms Mary So]

Dear Ms So,

**Bills Committee on
Legal Aid (Amendment) Bill 1999**

Thank you for sending the Legal Aid Services Council's submission with regard to the Legal Aid Policy Review 1997 vide your letter of 20 January 2000 to us. We have taken into account, inter alia, the Council's views into consideration throughout the preparation of our final recommendations.

Members of the Bills Committee may wish to note that we informed the Council of our final recommendations vide a letter dated 14 July 1999 (copy at Annex A), and attended the Council's meeting on 23 July 1999 to brief the Council on the outcome of the Legal Aid Policy Review 1997. The Council endorsed our final recommendations, and called for the early implementation of the recommendations at the meeting. It also requested further elaboration on why some of the proposals put forward by the Council with regard to the original recommendations were not taken on board. We subsequently set out our consideration in greater detail vide a letter dated 29 September 1999 (copy at Annex B). Copies of the Legal Aid (Amendment) Bill 1999 were sent to the Council on both 14 July and 29 September 1999.

Yours sincerely,

(Ms Rosanna Law)
for Director of Administration

CSO/ADM CR 1/8/3221/91(99)
(17) in LASC/CR 2/2/1 in Pt.2

Room 1228
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14 July 1999

Mr J P Lee, JP
Chairman
Legal Aid Services Council
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89 Queensway
Hong Kong

Legal Aid Policy Review 1997

We consulted you in late 1997 on the recommendations of the Legal Aid Policy Review 1997. After considering the advice tendered by the Council, as well as views collected from other parties in the consultation exercise, we have now finalised our recommendations. A list of the final recommendations approved by the Executive Council is at the Annex for your information.

You may wish to note that the final recommendations included the Council's suggestions with regard to -

(a) *Method of computing disposable income*

We share your view that the average monthly expenditure of each household size should be calculated separately to arrive at the allowance figures. In the light of comments received from other parties which suggested that the proposed allowance figures were too low, we have amended our proposal from using the average monthly expenditure of the lowest 50% households (roughly the 25-percentile figure) to the 35-percentile household expenditure of the respective household size group. CSSA recipients will continue

to be eligible for legal aid and be exempted from paying a contribution, unless there is evidence suggesting that they should not or should pay a contribution;

(b) *Legal assistance for persons required to attend coroner's inquests*

The Council suggested that duty lawyers should be remunerated for the legal assistance given to persons required to attend coroner's inquests. We have taken on board this suggestion and recommended that duty lawyers providing assistance at coroner's inquests should be remunerated at the standard fee; and

(c) *Increased publicity*

The Council recommended that successful applicants should be made fully aware of their rights and liabilities during the various stages of application. We agree that all legal aid applicants should understand clearly the application process as well as their rights and obligations. The Legal Aid Department has improved the contents of the relevant information leaflets and strengthened its publicity efforts.

We have not been able to adopt the Council's proposals with regard

to -

(d) *Financial eligibility limit for standard legal aid scheme*

The Council recommended that we should explore adopting different financial eligibility limits for different types of cases. We have considered this proposal carefully. However, we believe setting a higher limit for a particular type of case may trigger off calls for higher limits for other types of cases and therefore have not adopted the proposed approach.

(e) *Financial eligibility limit for supplementary Legal Aid Scheme (SLAS)*

The Council recommended that we should increase the upper eligibility limit of SLAS. However, given that the revised assessment method for disposable income will enable more people to be financially eligible for legal aid, we do not consider it appropriate to also increase the limit at this stage. We will nevertheless continue to review the limits annually to take account of inflation and biennially to consider other relevant factors.

(f) Review cycle

The Council proposed amending the legislation to enable the Chief Executive in Council to revise the financial eligibility limit annually. Our current arrangement is to amend the limit by resolution of the Legislative Council. Given that the approval of the Legislative Council is still required even if the power to amend is vested with the Chief Executive in Council, we believe the existing arrangement is more efficient.

We shall be pleased to meet with the Council and brief members on the final recommendations if you should find this useful.

Some of the recommendations require legislative amendments. We intend to introduce the Legal Aid (Amendment) Bill 1999 into the Legislative Council immediately after the summer recess and brief the LegCo Panel on Administration of Justice and Legal Services on the final recommendations at its next meeting on 20 July 1999. An advance copy of the Panel paper which includes the Bill is also attached for your reference.

Thank you again for the Council's invaluable comments. I continue to look forward to the Council's advice and support in our continuing effort to improve legal aid services.

Yours sincerely,

(Ms Miranda Chiu)
for Director of Administration

Encl.

29 September 1999

Mr J P Lee, JP
Chairman
Legal Aid Services Council
c/o Lippo Limited
Hong Kong Corporate Office
Tower 1, 24/F, Lippo Centre
89 Queensway
Hong Kong

Legal Aid Policy Review 1997

I am grateful to you for giving us the opportunity to meet and brief the Legal Aid Services Council on the outcome of the Legal Aid Policy Review 1997 on 23 July 1999. I am pleased that the Council endorsed our final recommendations.

At the meeting, members of the Council requested further elaboration on why some of the proposals put forward by the Council with regard to the original recommendations were not taken on board, viz:

- a) different financial eligibility limits for different types of cases;
- b) raising the eligibility limit for the Supplementary Legal aid Scheme (SLAS); and
- c) enabling the Chief Executive in Council to revise the financial eligibility limit annually.

I set out hereunder our consideration in greater detail.

Different Eligibility Limits for Different Types of Cases

LAD's experience is that it is difficult to determine objectively which type of cases involve higher legal costs and therefore a higher financial eligibility limit shall be provided for applicants involved in such cases, as costs vary from case to case depending on individual circumstances, such as the lawyer assigned, the complexity of the case, and the stance of the opposite side, etc. We consider it important that we should have a simple scheme which is readily comprehensible to the public in general and our target clients in particular. It should also be noted that our legal aid schemes are premised on the applicants' affordability and the merit of individual cases, rather than the type of cases or the litigation costs of the case. In line with this principle, we do not see it justified to adopt different eligibility limits for different types of cases.

Eligibility Limit for the SLAS

The eligibility limit for the SLAS was substantially adjusted from \$280,000 to \$400,000 in 1995 when the scope of the SLAS was significantly expanded. As a result, an average of 35% more cases involving \$3 million more in litigation costs are brought about each year. The adjustment to be made to the method for calculating disposable income will have an indirect impact on the eligibility limit, as a result of which 10% more households in Hong Kong would become financially eligible for legal aid. We are of the view that modification to the scheme should be introduced progressively, in the light of demand and experience. As explained, review of the legal aid schemes is a continuing process and we will bear in mind the Council's proposal in future exercises.

Enabling the CE in Council to Revise the Financial Eligibility Limit Annually

Our objective is to have in place the simplest mechanism for bringing about adjustments to the financial eligibility limits. Since adjustments to the amount specified in Section 5 of the Legal Aid Ordinance determined by the Chief Executive in Council would pursuant to Section 7 of that Ordinance be subject to vetting and approval by Legislative Council, we have decided to retain the existing mechanism, which by comparison is more direct and straightforward. In this connection, we are also mindful of the need to avoid over-burdening ExCo with approvals of routine annual adjustments to limits.

I hope the foregoing clarifies the position. I would like to take this opportunity to express again our appreciation of the Council's support in the Review. I also attach for the Council's reference a copy of the Legal Aid (Amendment) Bill 1999, which seeks to give effect to the improvements emerging from the Review, and which has been approved by ExCo for introduction into the LegCo on 13 October 1999.

Best regards,

(Ms Miranda Chiu)
for Director of Administration

Encl.