《2001 年贍養費欠款利息條例草案》委員會 二零零二年七月二十二日舉行第一次會議所提事項

A. 二零零二年一月十六日香港律師會的函件

背景

有關向贍養費欠款徵收利息的建議,源自一個跨部門工作小組向贍養費欠款徵收附加費的建議。二零零零年十月,我們就報告書的各項建議諮詢香港大律師公會(下稱大律師公會)和香港律師會(下稱律師會),並特別指出有關附加費的建議,尋求其意見。律師會於二零零零年十一月十三日回覆本局,表示轄下的家庭法律委員會"認為各項建議合理,予以支持"。不過,大律師公會於同年十一月十七日來信反對向贍養費徵收附加費,其理由如下一

- (a) 附加費等同懲罰,有違家庭法的精神;及
- (b) 此舉會使贍養費受款人不合理地獲得額外款項。
- 2. 政府在聽取這些意見後,重新考慮徵收附加費的建議,結果決定採用向贍養費欠款徵收利息的辦法。我們於二零零一年六月向律師會提出這項"新"建議,並徵詢其意見。二零零一年七月十三日,律師會函覆本局,表示"基本上同意向贍養費欠款徵收利息的原則",並建議賦予家事法庭法官"權力,就定期付款和整筆付款的贍養費欠款,按判定利率徵收利息"。政府其後提出《2001年贍養費欠款利息條例草案》。

律師會的函件

3. 二零零二年一月十六日,律師會致函本法案委員會,表示"支持這

項政策",但同時關注利息的計算方法。律師會認為,須"訂定額外條文 ,說明如何劃分欠繳本金金額,以便計算本金和利息"。該會同時指出, "現時的草案不易理解"。該函現載於附件 A。

政府的回應

- 4. 條例草案現時所採用的計算公式,可以說是最簡單的;它只包括計算利息最基本的項目,即有關的款額(欠款)、利率(所有判定債項均使用的判定利率)及應計利息的期間。這公式與學校算術科課本所使用的計算公式無異。我們相信,大部分商業銀行亦使用同一概念來計算儲蓄存款的利息。因此,條例草案建議的利息計算方法,應為大多數市民所熟悉。
- 5. 我們當然知道,在不少拖欠贍養費的個案中,支付人慣常地不按時繳付贍養費,而且這種做法持續一段期間。儘管如此,我們認為條例草案不需加入"劃分欠款的條文",因為支付人繳付贍養費的當日,有關的數額會從累積的贍養費欠款中扣除。
- 6. 附件 B 載列律師會假設的例子,以說明計算利息的方法。根據該例子,截至二零零一年二月二十五日為止,判定債務人(即贍養費支付人)須繳付的贍養費欠款及利息合共為 31,431 元;如果計算至二零零二年二月一日為止,則判定債務人須繳付的贍養費欠款及利息合共為 58,602 元。
- 7. 若議員同意,我們會清楚解釋條例草案中的新安排。

B. 二零零二年七月二十二日會議上提出的事項

(a) 阻嚇作用

- 8. 由於贍養費欠款是贍養費支付人拖欠受款人的債項,我們認為,跟 其他民事債項一樣,贍養費受款人應該可以要求支付人就欠款繳付利息, 這實在是公平的做法。
- 9. 法庭如勒令贍養費支付人須就贍養費欠款繳付利息,實質上是規定 未能準時悉數支付贍養費的支付人須付予受款人額外款項。我們相信,條 例草案對贍養費支付人能起阻嚇作用,因為他知道受款人可以就贍養費欠 款申索利息。條例草案獲通過後,我們會把向贍養費欠款徵收利息的新規 定公布周知。
- 10. 至於贍養費受款人是否值得在追討贍養費欠款的訴訟中申索利息 ,實視乎有關個案的情況而定。欠款總額、拖欠的時間以及所涉及的法律 費用(如有的話)等因素,都可能影響贍養費受款人對申索利息一事的看法 。這項條文訂立後,贍養費受款人如欲就贍養費欠款申索利息,便可根據 有關條文向法庭提出申請。

(b) 公式中有關 "B" 的部分

11. "B"代表按有關贍養令指明應付款的日期當日的判定利率。我們曾研究律師會提出的假設例子,結論是如把贍養費支付人支付的款項,在付款當日,從累積的贍養費欠款總額中扣除,會是計算以定期付款方式支付的贍養費欠款利息較為簡易的做法。在這種情況下,當日的贍養費欠款餘額便會以當時的判定利率計算。換言之,判定利率是不固定的。

(c) 法律援助署處理的個案

- 12. 在二零零及二零零一年,法律援助署(法援署)發出有關離婚和其他婚姻訟案的法律援助證書分別為 5 445 張(佔 10 314 宗申請的 52.8%)及 5 875 張(佔 11 148 宗申請的 52.7%)。至於當中有多少是申請贍養費的個案,以及法庭判給贍養費受款人每月平均的贍養費數額,法援署沒有這方面的分項數字。
- 13. 申請法律援助的個案中,約有 25%由法援署的律師處理,其餘的則由法律援助律師名冊內的私人執業律師跟進,法援署沒有後者(即交予私人執業律師處理的個案)的詳情。依法援署律師的經驗,所處理的個案中,由妻子提出的離婚和婚姻訴訟,大多數都有申請贍養費;但當中亦有不少呈請人接受每年一元象徵式贍養費的個案。女方呈請人通常基於下列原因接受象徵式贍養費或放棄贍養費
 - a) 答辯人下落不明;
 - b) 答辯人失業,沒有資產或收入;
 - c) 答辯人正在領取綜合社會保障援助金;
 - d) 答辯人是散工,收入非常不穩定,難以維持自己的生活;
 - e) 答辯人收入微薄,而且負債纍纍;
 - f) 答辯人是散工,收入不穩定,而且染上惡習(例如吸毒),無法 期望他能支付贍養費;
 - g) 答辯人收入不高,而呈請人亦已將子女的管養權交予答辯人 ;
 - h) 呈請人工作所得的報酬,能夠維持自己和子女的生活,因此 不想向答辯人收取贍養費;及
 - i) 呈請人正與一名男子同居,並在同居者幫助下,能夠維持自己和子女的生活。

(d) 向贍養費受款人提供緊急援助

14. 贍養費受款人向社會福利署(社署)申請綜合社會保障援助,由遞交申請日期起計至批准發放款項當日,平均需時約 28 個工作天。如果申請人急需現金援助,社署可以在完成調查的情況下,安排在數天內批出款項。此外,如果贍養費受款人有極大的經濟困難,社署會視乎個別情況,最快在接獲申請當天便通過慈善信託基金提供現金援助,協助申請人應付緊急財務需要。

民政事務局 二零零二年九月 HAB/CR/1/19/96 Pt.II

Practitioners Affairs

FL0204/02/55668 HAB/CR/1/19/96 II

16 January, 2002

The Chairman
Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central, Hong Kong

Dear Sir/Madam,

Re: Legislative Council Brief for the Interest on Arrears of Maintenance Bill 2001

The Law Society's Family Law Committee was consulted by the Home Affairs Bureau on the policy of awarding interest on arrears of maintenance payment. The Law Society endorsed the policy and suggested it would be appropriate to adopt judgment rate to calculate interest on arrears.

After perusal of the Bill concern has been expressed by practitioners on the calculation of interest.

I attach an example of the complications that practitioners, and indeed members of the Legal Aid Department, will face in calculating the interest on arrears of maintenance payment. The Law Society is of the opinion that additional provisions are required on apportionment of arrears of principal to assist with the calculation of principal and interest. This is obvious when the judgment debtor has a long history of either defaulting on payment, or habitually making irregular payment of maintenance. The Bill as currently drafted is not user-friendly. The computation of the interest on arrears will be a complicated and time consuming exercise with serious cost implications for the class of people the legislation is intended to benefit.

The Law Society would be willing to discuss this matter further.

Yours sincerely,

Joyce Wong Director of Practitioners Affairs e-mail: dpa@hklawsoc.org.hk

cc Betty Chan, Legal Aid Department
Mr. Andrew Cheung, Home Affairs Bureau

Encl.



Interest on Arrears of Maintenance Bill 2001 ("the Bill")

The Law Society of Hong Kong's Family Law Committee has the following observations on the Bill as follows:

1. Arrears of Maintenance

Arrears of maintenance are not like other judgment debts as the amount of arrears may vary from time to time. These payments are usually paid on a monthly basis and so when arrears occur any payment by the judgment debtor will require an apportionment exercise. The payment will have to be apportioned to repay the arrears on the outstanding maintenance first and then any surplus will be apportioned to subsequent maintenance outstanding. It should be acknowledged that many maintenance payers make irregular payments of maintenance.

The Bill does not contain any provision for apportionment of arrears, only the formula to calculate the interest on the arrears. The following example will serve as an illustration of the difficulties private practitioners and the staff of the Legal Aid Department will face when attempting to calculate interest on arrears of maintenance.

The example is hypothetical but in fact is a rather typical situation assuming that the provisions in the current Bill has been in force at all material times:

- i) The Maintenance Payer (JD) was ordered to pay the Maintenance Payee (JC) periodical payments at the rate of \$5000 per month commencing from 1.6.2000 and thereafter payment on the 1st day of each and every succeeding month.
- ii) JD has failed to make adequate payments since the date of the Order. A Judgment Summons was issued against JD and was heard on 25.2.2001. Payments made by JD from 1.6.2000 to 25.2.2001 were as follows:

Dates of payment	13.6.2000	\$3000
	26.8.2000	\$2000
	9.10.2000	\$8000
	23.12.2000	\$2000
Total amount paid:		\$15,000
Amount due:		\$45,000
Total arrears		\$30,000
Interest:		?

iii) Upon hearing the Judgment Summons on 25.2.2001 the Judge made a committal order against JD, and an interest order in favour of the JC.

The committal order was suspended on condition that:

JD settle the arrears of periodical payments together with interest thereon at judgement rate from their respective due dates of payment. The JD was also ordered to pay fixed costs for the enforcement proceedings in the sum of \$5000. The arrears were to be paid by monthly instalments of \$2000 each commencing from 1.3.2001 and thereafter payment on the 1st day of each and every succeeding month until full payment.

The Judge reminded JD that the \$2000 per month was to be paid by him on top on the recurring maintenance of \$5000 per month due under the original maintenance order.

iv) JD made the following payments during the period from 1.3.2001 to 1.2.2002:

Dates and amount of payment:

1.3.2001	\$7000
3.4.2001	\$5000
6.5.2001	\$7500
3.7.2001	\$8000
1.9.2001	\$3000
15.10.2001	\$2000

- v) Questions for consideration:
 - a. What is the amount of arrears of maintenance and interest payable by JD as at 25.2.2001?
 - b. What is the amount of arrears of maintenance and interest owing by JD as at 1.2.2002?
- 2. The Law Society considers that further consideration is required on the practical problem of apportionment which the current Bill has failed to address.

贍養費欠款和有關欠款利息的計算方法(截至 2001 年 2 月 25 日)

日期	應付款項	判定債務人所付款項	可計算利息 的贍養費	計算利息的期間	日數	判定利率	按判定利率計算 的利息(註 1)
	元	元	元			年利率(%)	
1 6 2000	7.000		7.000	2/6/2000 12/6/2000	1.0	11 5 40/	10
1.6.2000	5,000		5,000	2/6/2000-13/6/2000	12	11.54%	19
13.6.2000		3,000	2,000	14/6/2000-1/7/2000	18	11.54%	11
1.7.2000	5,000		7,000	2/7/2000-1/8/2000	31	11.98%	71
1.8.2000	5,000		12,000	2/8/2000-26/8/2000	25	11.98%	98
26.8.2000		2,000	10,000	27/8/2000-1/9/2000	6	11.98%	20
1.9.2000	5,000		15,000	2/9/2000-1/10/2000	30	11.98%	148
1.10.2000	5,000		20,000	2/10/2000-9/10/2000	8	12.50%	55
9.10.2000		8,000	12,000	10/10/2000-1/11/2000	23	12.50%	95
1.11.2000	5,000		17,000	2/11/2000-1/12/2000	30	12.50%	175
1.12.2000	5,000		22,000	2/12/2000-23/12/2000	22	12.50%	166
23.12.2000		2,000	20,000	24/12/2000-1/1/2001	9	12.50%	62
1.1.2001	5,000		25,000	2/1/2001-1/2/2001	31	12.50%	265
1.2.2001	5,000		30,000	2/2/2001-25/2/2001	24	12.50%	247
	45,000	15,000			269		1,431

註

1.	司法機構建議的判定利率:	生效日期	生效期間	判定利率(年利率(%))
		1.4.2000	1.4.2000-30.6.2000	11.54
		1.7.2000	1.7.2000-30.9.2000	11.98
		1 10 2000	1 10 2000-31 3 2001	12.5

2. 截至 2001 年 2 月 25 日的贍養費餘額 = 45,000 元 - 15,000 元 = 30,000 元

判定債務人應付的贍養費欠款和利息的計算方法(截至 2002 年 2 月 1 日)

日期		應付款項	Ì	判定債務	人所付款項	可計算利息 的贍養費	計算利息的期間	日數	判定利率	按判定利率
	定額訟費	贍	養費	贍養費	定額訟費					計算的利息(註 3)
		欠款	定期應繳款項							
		(註 1)								
	元	元	元	元	元	元				
25.2.2001	5,000									
1.3.2001		2,000	5,000	2,000	5,000	5,000	2.3.2001-1.4.2001	31	12.50%	53
		• • • • •	7 000		(註 2)	12 000			12 000	
1.4.2001		2,000	5,000	7 000		,	2.4.2001-3.4.2001	2	12.08%	8
3.4.2001		2 000	5,000	5,000		*	4.4.2001-1.5.2001	28	12.08%	65
1.5.2001		2,000	5,000	7.500		14,000	2.5.2001-6.5.2001	5	12.08%	23
6.5.2001		2 000	5 000	7,500		6,500	7.5.2001-1.6.2001	26	12.08%	56
1.6.2001		2,000	5,000			13,500	2.6.2001-1.7.2001	30	12.08%	134
1.7.2001		2,000	5,000	0.000		20,500	2.7.2001-3.7.2001	2	10.86%	12
3.7.2001		2 000	5,000	8,000		12,500	4.7.2001-1.8.2001	29	10.86%	108
1.8.2001		2,000	5,000	2 000		19,500	2.8.2001-1.9.2001	31	10.86%	180
1.9.2001 1.10.2001		2,000	5,000 5,000	3,000		23,500	2.9.2001-1.10.2001 2.10.2001-15.10.2001	30 14	10.86% 9.82%	210 115
15.10.2001		2,000	3,000	2,000		30,500 28,500	16.10.2001-13.10.2001	17	9.82%	113
1.11.2001		2,000	5,000	2,000		35,500	2.11.2001-1.12.2001	30	9.82%	287
1.11.2001		2,000	5,000			42,500	2.12.2001-1.12.2001	31	9.82%	354
1.12.2001		2,000	5,000			42,500	2.12.2001-1.1.2002	31	9.82% 8.72%	367
1.2.2002		2,000	5,000			56,500	2.1.2002-1.2.2002	31	0.72%	307
1.2.2002	5,000	24,000	60,000	27,500	5,000	50,500		337		2,102
	3,000	24,000	00,000	27,300	3,000			337		2,102

註

- 1. 根據法庭判決,判定債務人須分期支付贍養費欠款連同有關欠款的利息,每月付款額為2,000元,並由2001年3月1日起開始付款,以後每月的首天為付款日。
- 2. 我們假設判定債務人在2001年3月1日支付的款項會用作清償定額訟費,而定額訟費不會計算利息。
- 3. 司法機構建議的判定利率如下:

生效日期	生效期間	判定利率(年利率(%))
1.10.2000	1.10.2000-31.3.2001	12.5
1.4.2001	1.4.2001-30.6.2001	12.08
1.7.2001	1.7.2001-30.9.2001	10.86
1.10.2001	1.10.2001-31.12.2001	9.82
1.1.2002	1.1.2002-現時	8.72

4. 截至 2002 年 2 月 1 日的贍養費餘額 = 24,000 元 + (60,000-27,500)元 = 56,500 元