

**Notes on LEGCO Panel on Administration of Justice and
Legal Services meeting on 31st March 2003**

The Rule of Law not only needs to be upheld, but must be seen to be upheld.

It is not good enough for the Administration to keep repeating in the media that the SAR Government would “implement the Basic Law and to uphold the principle of One Country, Two Systems” and to protect the Rule of Law. Rule of Law is a fragile thing and has to be seen to be upheld by the Administration by the general public.

Providing an accessible, transparent, committed, effective, fair and just Legal Aid service is a cornerstone of upholding the Rule of Law in Hong Kong.

The Bar considers that the requests made by the LASC as stated in its letter dated 9th April 2002 to the Administration are all very humble and modest. They included:

- (1) Powers to enter contracts
- (2) Composition of Council and Quorum
- (3) Networking with Other Institutions
- (4) Powers to appoint its own staff

The above suggested changes are only consistent with a credible independent body which is charged with overseeing the provisions of legal aid services in a ‘world class’ City like Hong Kong.

Powers to enter contracts

The fact that the Council still have to enter contracts in the name of the Government does not, in the Bar’s view, sit in well with the image of an independent supervisory body. It will not be consistent with the Government’s claim that it wishes to uphold the Rule of Law and to implement the principle of One Country, two systems.

Composition of Council and Quorum

For the more efficient use of the Council member's time, a reasonable quorum for the Council's meeting as currently suggested by the Council in its letter to the Panel dated 14th November 2002 is in the Bar's view not unreasonable. In order to allow the Council to operate in a more efficient manner, we would support the proposal of the Council to amend the quorum requirement from 6 members plus the Chairman to 5 members plus the Chairman: see p.3 par 2 of letter of LASC to Panel dated 14.11.2002.

Networking with other institutions

The Bar thinks that the Administration should have more faith in the ability and integrity of the Members of the Legal Aid Service Council appointed by them. The Bar has complete confidence in the Council that they would not be doing anything to compromise the independence of the LASC. We are of the view that the joining of an international body on legal aid for the purpose of 'exchanging information, research or enhancing good practices, etc.' as currently proposed by the Council will only enhance the efficiency and cross-fertilization of views amongst such institutions. We cannot see the basis of the Administration's objection to this and how the networking with other institutions 'may run the risk of compromising (the LASC's) independent status.

Power to appoint own staff

This in the view of the Bar is a very modest move towards a more independent body. This is only consistent with the trend in other common law jurisdictions where more and more of such bodies which has independent power to enter into 'private contracts', including employment contracts. To continue the present arrangement of using civil servants after the Council has been set up more than 7 years ago does not in our view enhance the image of the Council as a supposedly independent body. The Bar takes the view that these changes need not have to wait for the 'concrete plan' from the Council to change its existing arrangement for staffing its secretariat with civil servants before the Administration can think of more 'specific statutory provision': see letter from Government Secretariat to LASC dated 5.2.2002

Direction, Strategy and Action Plan Paper dated 14th March 2003

The Bar notes the contents of this very useful Paper which provides a summary of the LASC's direction, strategy and action.

The Bar echoes with the views stated by the LASC in that Paper. In particular, we take note of the points made under para 7 of the Paper. It appears to the Bar that the lack of progress over the years to make the LASC as an independent Legal Aid Authority is purely due to a lack of political will on the part of the SAR Government.

The Bar would urge the Administration to re-visit this matter again so that this cornerstone of our Rule of Law, i.e the provision of first class legal aid service in the only City in China would not be compromised due to the lack of a truly independent, whether in substance or by general public perception, Legal Aid advisory and supervisory body.

Lastly, the Bar says that the Administration needs to put their money where their mouth is and to take concrete and urgent steps to move forward to make the Legal Aid Service Council a truly independent and credible body.

Dated this the 31st day of March 2003.

Hong Kong Bar Association