

**立法會**  
***Legislative Council***

Ref : CB2/SS/5/03

LC Paper No. CB(2)1894/03-04  
(These minutes have been seen  
by the Administration)

**Subcommittee on proposed resolution  
under section 7(a) of the Legal Aid Ordinance**

**Minutes of first meeting  
held on Friday, 6 February 2004 at 8:30 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Miriam LAU Kin-yee, JP  
Hon LI Fung-ying, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Public Officers attending** : Mr Andrew H Y WONG  
Director of Administration

Mr S Y CHAN  
Director of Legal Aid

Miss Eliza LEE  
Deputy Director of Administration

Mrs Fanny YU  
Deputy Director of Legal Aid

Mr CHAN Yum-min, James  
Assistant Director of Administration

**Clerk in attendance** : Mr Paul WOO  
Senior Council Secretary (2) 3

**Staff in Attendance** : Miss Anita HO  
Assistant Legal Adviser 2

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Action

**I. Election of Chairman**

Hon Margaret NG was elected Chairman of the Subcommittee.

**II. Meeting with the Administration**

(LC Paper Nos. CB(2) 1201/03-04(02), (03) and (04))

2. The Subcommittee deliberated (index of proceedings attached at **Annex.**).

Issues raised by members

*Review of financial eligibility limits of legal aid applicants*

3. Members noted that there was no statutory requirement that adjustments to the financial eligibility limits of legal aid applicants had to follow the result of the annual review to take account of changes in consumer prices. Mr TSANG Yok-sing pointed out the Administration had in fact deferred making adjustments to the limits in the past in view of the small changes in consumer prices. Moreover, it was anticipated the present deflationary situation of Hong Kong might cease soon. Mr TSANG Yok-sing and Ms LI Fung-ying asked whether the Administration would consider deferring the proposed reduction in the eligibility limits, pending a further review.

4. Director of Administration (D of A) replied that the existing annual review cycle was implemented in 2000 as a result of the adoption of the recommendations of the Legal Aid Policy Review in 1997. The purpose of adjusting the financial eligibility limits was to maintain the real value of the limits, based on changes in Consumer Price Index (C) (CPI(C)) and litigation costs. In the view of the Administration, the significant and persistent decrease in CPI(C) justified a downward revision of the eligibility limits. The present proposal to lower the financial eligibility limits was to reflect the cumulative reduction in CPI(C) of 8.2% recorded during July 2000 to July 2003.

Action

*Changes in litigation costs*

5. D of A explained that in conducting the biennial review of the financial eligibility limits to take into account changes in litigation costs during the period July 2000 to July 2002, the Administration had tried to ascertain the changes in litigation costs from the two legal professional bodies, the Legal Aid Department (LAD) and the Judiciary. However, neither the legal professional bodies nor the Judiciary possessed statistics of sufficient details for establishing a definite trend of changes in litigation costs. Also, the changes in the median litigation costs compiled by LAD might not be representative of the increase or reduction in the costs of private litigation, and the costs of each case might be affected by the work done by counsel and lawyers, the length of the hearing and the complexity of the case. In the absence of comprehensive information on real changes in litigation costs, the Administration did not consider that there was a case for adjusting the financial eligibility limits to reflect changes in litigation costs in the past two years.

*Financial eligibility limits to reflect financial viability of legal aid applicants to engage in private litigation*

6. The Chairman and Ms Audrey EU said that under the present financial eligibility limits, many applicants, including litigants involved in complicated cases, had been refused legal aid on grounds of means, despite that they could not in practice afford the costs of private litigation. They considered that the existing eligibility limits were set at unreasonably low levels which did not realistically reflect the financial viability to engage in private litigation. They were concerned that further reductions in the eligibility limits would deprive more people from the grant of legal aid.

7. Ms Audrey EU and Mr Albert HO pointed out that the number of unrepresented litigants had been on the increase. The situation had created problems for the due administration of justice and increased the costs to the courts and the other parties to the litigation.

8. D of A said that as legal aid was funded by the public coffer, there had to be an in-built mechanism to determine priorities for legal aid and to regulate and limit the cost. Under the existing system, there were additional flexible measures for the provision of legal aid, including -

- (a) the Director of Legal Aid (DLA) might exercise the discretion provided under section 5AA of the Legal Aid Ordinance to waive the financial eligibility limits, in civil cases where human rights issues were involved, subject to a contribution payable by the legally aided person in

Action

accordance with the scale stipulated in Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations;

- (b) DLA might exercise the discretion provided under Rule 15(2) of the Legal Aid in Criminal Cases Rules to waive the financial eligibility limits, in criminal cases where DLA was satisfied that it was desirable to do so in the interests of justice, subject to a contribution payable by the legally aided person; and
- (c) legal aid applicants who were initially refused legal aid on means could apply for legal aid again at subsequent stages of the proceedings, and legal aid might be granted to them if they then satisfy the means test and the merit test.

9. The Chairman, Ms Audrey EU and Mr Albert HO remarked that it was unrealistic to expect applicants to take the risk of using a large part of their resources to engage in private litigation, without any certainty that they would receive legal aid later.

10. Mr LEE Cheuk-yan said that he understood that there were cases where workers retrenched as a result of insolvency of their employers had to give up their claims because their applications for legal aid in filing petitions to the court for winding up of their employers were refused on means.

11. DLA informed members that in 2003, out of a total of 1 256 applications for legal aid by employees in filing winding-up petition or bankruptcy order against the employers, only 16 applications had been refused on means.

12. Regarding unrepresented litigation, D of A understood that the Working Party on Civil Justice Reform appointed by the Chief Justice was currently studying the issue. Moreover, the Department of Justice was undertaking a review on the demand for and supply of legal services in Hong Kong. It was expected that useful conclusions and recommendations could be drawn from such reviews.

*Assessment of disposal income of legal aid applicants*

13. Mr LEE Cheuk-yan said that he was in favour of using the median household expenditure as the standard personal allowance deductible in assessing the disposal income of legal aid applicants.

14. D of A responded that the adoption of the "35-percentile household expenditure" was intended to reflect realistically the expenditure level of the target

Action

group for legal aid, i.e. households in the lower middle class and below. This method had enabled more people to be financially eligible for legal aid as compared with the previous practice of pegging the deductibles at the Comprehensive Social Security Assistance rates.

Follow-up actions required of the Administration

15. The Administration was requested to provide written response/information in relation to the following issues -

- (a) how was the last biennial review on changes in litigation costs conducted, the findings of the review and the basis for the conclusion drawn by the Administration;
- (b) the financial eligibility limits of legal aid applicants and changes in CPI(C) in the past five years;
- (c) the number of aided persons under the two legal aid schemes in the past three years who would have been refused on means had the financial eligibility limits been adjusted downward in full accordance with the reductions in CPI(C) recorded during the reference periods;
- (d) changes in the number and percentage of households financially eligible for legal aid as a result of the proposed adjustment to the financial eligibility limits in accordance with the changes in CPI(C) from July 2000 to July 2003;
- (e) how adjustment to the financial eligibility limits would affect the contributions payable by legally aided persons;
- (f) the number of cases in which DLA had exercised discretion to waive the financial eligibility limits, and the number of cases where the legal aid offers were accepted and not accepted in the past three years; and
- (g) the progress of discussion between LAD and the Labour Department on measures to assist workers involved in insolvency of employers and to streamline the procedure for applying for relief payments from the Protection of Wages on Insolvency Fund.

(*Post-meeting note* : The Administration's written response was issued to the Subcommittee vide LC Paper No. CB(2)1412/03-04(01) on 19 February 2004))

Action

**III. Date of next meeting**

16. The next meeting was scheduled for 24 February 2004 at 2:30 pm.
17. The meeting ended at 10:30 am.

Council Business Division 2  
Legislative Council Secretariat  
30 March 2004

**Proceedings of the first meeting of the Subcommittee on  
proposed resolution under section 7(a) of the Legal Aid Ordinance  
on Friday, 6 February 2004 at 8:30 am  
in Conference Room B of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
000900 - 000926	Miss Margaret NG Ms Miriam LAU	Election of Chairman of Subcommittee.	
000927 - 001109	Chairman Clerk	Proposed resolution moved by the Chief Secretary for Administration under section 7(a) of the Legal Aid Ordinance (LAO).	
001110 - 001900	Admin Chairman	Introduction on the paper provided by the Admin (LC Paper No. CB(2)1201/03-04(03)) on the proposed resolution to adjust downward the financial eligibility limits of legal aid applicants in line with the reduction in consumer prices.	
001901 - 004233	Ms LI Fung-ying Admin Chairman Ms Miriam LAU	Findings of previous reviews of financial eligibility limits to take account of changes in consumer prices and litigation costs.	Admin to provide the information (paragraph 15 (a) of minutes refers).
004234 - 004501	Mr Jasper TSANG	Flexibility in deferring adjustment of financial eligibility limits in line with consumer price changes, pending a further review.	
004502 - 005511	Admin Mr Jasper TSANG	Existing review mechanism established since the Legal Aid Policy Review 1997.	
005512 - 010948	Ms Audrey EU Admin Chairman	Provision of legal aid services to fulfil the objective of legal aid policy.  Financial eligibility limits to reflect realistically the financial viability of legal aid applicants to engage in private litigation.  Unrepresented litigants who are refused legal aid on grounds of means.	
010949 - 012353	Mr LEE Cheuk-yan Chairman Admin	Assistance to employees involved in employer insolvency cases.	Admin to provide the information (paragraph 15(g) of minutes refers).

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
		Assessment of disposal income of legal aid applicants to take account of deductible household expenditure.	
012354 - 013449	Mr Albert HO Admin Chairman	Problems created by unrepresented litigation.  Setting of financial eligibility limits at realistic levels.	
013450 - 013652	Mr Jasper TSANG	Legally aided persons in the past three years who would have been refused legal aid had the eligibility limits been reduced in line with consumer price changes.	Admin to provide the information.
013653 - 014203	Ms Miriam LAU Chairman Admin	Scope of the proposed resolution under section 7(a) of LAO.  Follow up on other issues relating to a general review of legal aid services.	
014204 - 014334	Mr LEE Cheuk-yan Admin	Impact of adjustment to financial eligibility limits on contributions payable by legally aided persons.	Admin to respond in writing.
014335 - 015500	Chairman Admin Mr Albert HO	Changes in the number of households eligible for legal aid as a result of the proposed downward adjustment to the eligibility limits.  Cases in which the Director of Legal Aid had exercised discretion to waive the eligibility limits, and cases where the legal aid offers were accepted and not accepted.  Means test and merits test for legal aid applications.	Admin to provide the information (paragraphs 15(d) and 15(f) of minutes refer).
015501 - 015517	Mr Jasper TSANG	The financial eligibility limits of legal aid applicants and changes in consumer prices in the past five years.	Admin to provide the information.
015518 - 015706	Chairman	Date of next meeting.	