

立法會
Legislative Council

LC Paper No. CB(2)2250/03-04
(These minutes have been seen
by the Administration)

Ref : CB2/SS/5/03

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

**Minutes of the second meeting
held on Tuesday, 24 February 2004 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
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

Member absent : Hon Albert HO Chun-yan

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 : Mrs Percy MA
Chief Council Secretary (2)3

Staff in Attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr Paul WOO
Senior Council Secretary (2) 3

Action

Meeting with the Administration

(LC Paper Nos. CB(2)1201/03-04(03) and (04), 1412/03-04(01))

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

Issues raised by members

Changes in litigation costs

2. Referring to the Administration's paper (Annex A of LC Paper No. CB(2)1412/03-04(01)), Director of Administration (D of A) advised members that the Legal Aid Department (LAD) had compiled statistics on changes in median litigation costs of civil legal aid cases in four major types of proceedings, i.e. matrimonial, employees compensation, personal injuries and wage claim in insolvency, after comparing the costs of the cases closed during January to July 2000 with those closed during January to July 2002. These proceedings represented about 90% of civil legal aid cases approved, with matrimonial cases constituting around 53% of cases closed during the survey periods. The weighted average of changes in median litigation costs was -0.16%. That said, the Administration was unable to assume from these legal aid case statistics that they represented the costs of private litigation.

3. Mr LEE Cheuk-yan said that with the exception of matrimonial cases, the median litigation costs of the other three major types of civil legal aid cases had increased. Also, the median litigation costs for criminal legal aid cases handled in the District Court, which represented the vast majority of the total criminal legal aid cases, had increased. He said that the increases in litigation costs had imposed a heavier burden on the litigants and should be taken into account in deciding whether or not the financial eligibility limits should be adjusted.

Action

Unrepresented litigation

4. Ms Audrey EU said that the refusal of LAD to grant legal aid on grounds of means to applicants who could not afford the costs of private litigation had forced more and more applicants to appear in legal proceedings without legal representation. She said that such litigants were placed in a disadvantageous position as compared to the other parties to the proceedings who had the assistance of legal representation.

5. Ms EU queried whether the refusal of LAD to grant legal aid in such cases was consistent with Article 25 of the Basic Law, which stipulated that all Hong Kong residents should be equal before the law. D of A agreed to provide the Administration's legal advice on the issue raised by Ms EU.

Cases in which legal aid offers by LAD had lapsed

6. In relation to the criminal cases (in years 2001 to 2003) in which the Director of Legal Aid had exercised discretion to waive the financial eligibility limit but the legal aid offers were not accepted by the applicants, the Chairman requested the Administration to provide information on -

- (a) the financial resources of the applicants concerned; and
- (b) the amount of contributions which the applicants were required to make as a requirement for grant of legal aid.

The proposed resolution

7. The Subcommittee examined the wording of the proposed resolution.

Way forward

8. Mr LEE Cheuk-yan and Ms Audrey EU said that they did not support the proposed resolution to adjust downward the eligibility limits of the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme.

9. Ms Miriam LAU said that Members belonging to the Liberal Party supported the proposed resolution, and that a comprehensive review on measures to improve the provision of legal aid services should be conducted as a separate exercise.

10. The Subcommittee had no objection to the Administration giving notice to move the proposed resolution at a Council meeting. As members had different views on the proposed resolution, the Chairman said that it would be a matter for individual members to decide whether or not to support the proposed resolution.

Action

11. The Subcommittee agreed that the written response from the Administration on the issues raised at the meeting, when available, would be circulated to members for consideration. The Subcommittee would then make a report to the House Committee.

12. The meeting ended at 3:10 pm.

(Post-meeting note : The Administration's written response to the issues raised at the meeting was issued to the Subcommittee vide LC Paper No. CB(2)1540/03-04(01) on 1 March 2004.)

Council Business Division 2
Legislative Council Secretariat
5 May 2004

Annex

Proceedings of the second meeting of the Subcommittee on proposed resolution under section 7(a) of the Legal Aid Ordinance on Tuesday, 24 February 2004 at 2:30 pm in Conference Room B of the Legislative Council Building

Time Marker	Speaker(s)	Subject(s)	Action required
000012 - 000711	Chairman Admin	Paper prepared by Admin which responded to the issues raised at the meeting on 6 February 2004 (LC Paper No. CB(2)1412/03-04(01)).	
000712 - 001533	Mr LEE Cheuk-yan Chairman Admin	Changes in median litigation costs for major types of civil and criminal legal aid cases.	
001534 - 002115	Ms Audrey EU Admin Chairman	<p>Litigants who were forced to appear in legal proceedings in person because of refusal of Legal Aid Department (LAD) to grant legal aid on grounds of means.</p> <p>Whether refusal of LAD to grant legal aid on grounds of means to an applicant who could not meet the costs of litigation would contravene Article 25 of the Basic Law.</p>	Admin to seek legal advice and provide a written response.
002116 - 003231	Chairman Admin	<p>Criminal cases in years 2001 to 2003 in which the Director of Legal Aid had exercised discretion to waive the financial eligibility limit but the legal aid offers were not accepted by the applicants (Annex F to LC Paper No.CB(2)1412/03-04(01)).</p> <p>Financial resources of such applicants and the contributions they were required to make.</p>	Admin to provide the information (paragraph 6 of the minutes refers).

Time Marker	Speaker(s)	Subject(s)	Action required
003232 - 003714	Ms Audrey EU Admin Chairman	Changes in the number and percentage of households financially eligible for legal aid as a result of the proposed downward adjustment to the eligibility limits (Annex D to LC Paper No. CB(2)1412/03-04(01)). Deductible expenditure for calculating disposable income of legal aid applicants.	
003715 - 003744	Chairman	Individual members to decide whether to support the proposed resolution.	
003745 - 003814	Ms Miriam LAU	A separate exercise to review measures to improve the provision of legal aid services.	
003815 - 004040	Chairman Admin	Wording of the proposed resolution (Annex to LC Paper No. CB(2)1201/03-04(03) and 1201/03-04(04)). Admin to give notice to move the proposed resolution.	