

**THE LAW SOCIETY'S SUBMISSIONS ON COMPUTER PROGRAM
FOR CALCULATION OF INTEREST AND SURCHARGE ON
ARREARS OF MAINTENANCE**

Members of the Law Society's Family Law Committee had the benefit of reviewing the software program developed by the Home Affairs Bureau in January 2004. The Family Law Committee has the following observations:

Accessibility

(a) Concern was expressed on the ability of many of the payees making claims under the Ordinance to have access to computers and also the level of sophistication to use the program.

(b) In order to use it the payee must have complete records of:

- Date of Payment
- Exact amount of Payment

It is an unrealistic expectation that all of the potential applicants will maintain adequate records of the payments from the payer.

Publicity Drive

HAB must conduct a publicity drive and provide detailed pamphlets on the Ordinance and the software program. The pamphlet should provide a step by step explanation of the procedures. It should also indicate that payees who wish to make an application under this Ordinance can have access to the internet in the various libraries etc. provided by the Government.

Resource Implications

It was indicated that it would take approximately 15 minutes to complete the calculations with the assistance of the program. This will have a significant impact on the resources of those agencies dealing with the lower income claimants e.g. Social Welfare Department, Legal Aid Department, the Family Registry. We express particular concern on the resource implications for the Family Registry which currently deals with a huge number of litigants in person

Implementation of the Program

In order to ensure the calculations generated by the program will be recognised by the Judiciary it would be sensible to have the program recognised either by the Ordinance itself, or by a Practice Direction issued by the Judiciary. This will ensure use of the program and will prevent unnecessary challenges to its validity during court proceedings.

Support facilities

As the program is web based and many agreements are reached by the parties "at the door of the court", it will be necessary for the Family Judges and practitioners to have access to the program in the Family court; unfortunately, the Family Court currently does not have internet access.

As the Ordinance requires the payee to calculate **the latest amount of interest and maintenance in arrears before the hearing**, the Family Courts should therefore have both wireless LAN and wired capabilities to enable the Judges and practitioners to have access to the program in the Court as well as all consultation rooms, **otherwise the requirements in the Ordinance cannot be met**, given the "settlement at the door of the court" scenario. The Law Society believes the Panel must address this concern and should ensure adequate resources are provided to ensure the program can be used in the Court and by practitioners.

Policy implications

It appears that for many cases the cost of making an application for payment of interest on arrears and the surcharge **will not be cost effective**. The interest calculation cited in the sample calculation was 8% which generated only \$4 for 1 month. The other sums were also negligible in relation to the total costs of preparing an application, even with the assistance of the software program.

The Law Society notes HAB is responsible for introducing and implementing policy for maintenance payments however the Bureau should review the root cause of the problem: the failure of existing enforcement procedures. The Bureau should conduct a thorough policy review and put forward proposals to improve enforcement measures. The adoption and implementation of this Ordinance has been an expensive detour from tackling the real problems and may well be an ineffectual use of scarce resources.

**The Law Society of Hong Kong
Family Law Committee
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