

立法會 *Legislative Council*

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Panel on Administration of Justice and Legal Services

Background brief prepared by the Legislative Council Secretariat for the meeting on 29 March 2010

Free legal advice service

Purpose

This paper provides background information and summarizes the past discussions of the Panel on Administration of Justice and Legal Services (the Panel) on the provision of free legal advice service.

Background

Free Legal Advice Scheme

2. The Free Legal Advice Scheme, one of three legal assistance schemes under the Duty Lawyer Service (DLS), provides members of the public with free preliminary legal advice. DLS is managed by the two legal professional bodies through a governing council. Legal advice service under the Scheme is provided by the legal profession on a pro bono basis. The Government provides the venue and referral services to enable members of the public to meet with volunteer lawyers by appointment without any means testing. The one-off advice given is of a general nature which aims at helping clients understand the nature of their problems. The Scheme does not offer any follow up or legal representation services.

3. Services under the Scheme are provided through nine Legal Advice Centres, each of which is situated in a District Office. With the exception of the Wanchai Centre which operates twice a week, all centres operate once a week in the evening. At the time of making the appointment, staff of the District Office will take down the detailed background of the client's case. Suitable cases will be sent to volunteer lawyers for preparation to give advice on the day of appointment. Each lawyer conducts interviews for five cases each evening, and each interview is allocated about 20 to 30 minutes.

4. The total number of cases handled under the Scheme in 2007, 2008 and 2009 are 6 429, 6 652 and 6 635 respectively. In the 2007-2008 and 2008-2009 financial years, the Administration has allocated some \$500,000 and \$560,000 respectively to the Scheme. The provision is used mainly for overtime payments to staff in the District Offices manning the Legal Advice Centres.

Other free legal advice service

5. Apart from the Free Legal Advice Scheme, a number of non-governmental organizations (NGOs) and Legislative/District Council Members, also provide legal and related services, including free legal advice service, to the general public.

Relevant discussions of the Panel

6. Issues relating to the provision of publicly funded legal advice service had been raised during the Panel's past discussions on legal aid. The major views/concerns raised by members during these discussions are summarized in the ensuing paragraphs.

Extension of the scope of legal aid to cover legal advice

7. Members were of the view that consideration should be given to extending the scope of legal aid from litigation to legal advice. Members noted from the research report on "Legal aid systems in selected places" (RP01/08-09) prepared by the Research and Library Services Division of the Legislative Council (LegCo) Secretariat (RLSD) that unlike Hong Kong, the legal aid services in all the three selected places (United Kingdom, the Province of Ontario of Canada and the State of New South Wales of Australia (NSW)) included legal advice with the requirement of a means test (the provision of legal advice in NSW did not require a means test). Members considered the existing Free Legal Advice Scheme inadequate as it only provided preliminary legal advice but not detailed analysis of the merits of individual cases and their prospects of winning. Members also considered that with the increasing number of Hong Kong people working and living on the Mainland, they should be provided with legal advice service under legal aid if involved in legal proceedings on the Mainland.

Review of Free Legal Advice Scheme

8. When the Panel received a progress report on the Administration's consideration of the Reports on the Consultancy Study on Demand for and Supply of Legal and Related Services at its meeting on 22 June 2009, members expressed strong dissatisfaction that the Administration had not put forth any proposal for reviewing the effectiveness and adequacy of the Free Legal Advice Scheme, notwithstanding that the Consultancy Study Reports had clearly pointed to an unmet demand for legal advice service in the community, as evidenced by the findings on the considerable amount of difficult-to-solve problems faced by individuals who were not getting help from the legal services currently provided. Members considered that the Administration should not continue to rely on the legal profession providing legal advice service on a pro bono basis and should establish a properly-funded professional legal advice system. The Administration undertook to work out and report to the Panel on concrete proposals for improving the existing operation of and support to the existing free legal advice service in consultation with the Department of Justice, the Judiciary, the two legal professional bodies and relevant NGOs.

9. Members may wish to note that issues relating to the Free Legal Advice Scheme had been raised at a number of special meetings of the Finance Committee to examine the Estimates of Expenditure. To improve the operation of the Scheme, Members had suggested setting up additional service centres in other venues such as community centres to make the service more readily available, and making arrangements for clients to meet the volunteer lawyers directly instead of requiring them to first meet with staff in the Legal Advice Centres.

Community legal aid services and provision of legal advice to detainees in police stations

10. During the discussion on the research report on "Legal aid systems in selected places" prepared by RLSD at the Panel meeting on 25 January 2010, members noted that the legal aid systems in all the three selected places provided funding to NGOs for provision of legal aid services, including legal advice, at the community level. A comparison table setting out the availability of legal aid services at the community level in Hong Kong and the three selected places as extracted from the research report is in **Appendix I**. Members also noted that the Legal Aid Services Council was looking into ways to enhance legal aid services at the community level, including a proposal for provision of publicly-funded legal advice service to persons detained in police stations. The Administration had undertaken to report to the Panel at the forthcoming meeting on 29 March 2010 its views on proposals to enhance community legal aid services, including the proposal on provision of legal advice to detainees.

Assistance to unrepresented litigants

11. During their discussions on the operation of the Judiciary's Resource Centre for Unrepresented Litigants (the Resource Centre) at the Panel meeting on 13 January 2009, members noted that the Resource Centre could only provide unrepresented litigants with information on court rules and procedural matters, and considered it important to enhance assistance to unrepresented litigants by providing them with free legal advice service. The Administration was requested to consider members' suggestion of setting up a free legal advice service, similar to that under DLS, with volunteer lawyers giving free preliminary legal advice to unrepresented litigants at an office located near the Resource Centre. The office accommodation would be provided by the Judiciary while the costs of operating such service, which involved mainly the hiring of a few administrative staff, would be borne by the Administration.

12. Upon the Panel's enquiry, the Administration advised that it would need to examine carefully the details of the suggestion and its implications in consultation with the Judiciary. The Home Affairs Bureau would revert to the Panel once it was in a position to do so.

Relevant motion moved/question raised at Council meetings

13. At the Council meeting of 17 December 2008, Dr Hon Margaret NG raised an oral question on "Free Legal Advice Scheme and Duty Lawyer Service".

14. In relation to a motion moved by Dr Hon Priscilla LEUNG on "Relaxing the eligibility criteria for legal aid" for debate at the Council meeting of 11 February 2009, Dr Hon Margaret NG moved an amendment to the motion urging for a review of the existing free legal advice service and the setting up of community legal advice centres. The motion to amend moved by Dr Hon Margaret NG was negatived.

Relevant papers

15. A list of the relevant papers which are available on LegCo website (<http://www.legco.gov.hk>) is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
24 March 2010

Appendix I

Comparison table of major features of the legal aid systems in the three selected places and Hong Kong

	Hong Kong	England and Wales	Ontario of Canada	New South Wales of Australia
Whether legal aid services are available at the community level	LAD does not fund non-profit organizations to provide legal aid services at the community level.	Yes, the Community Legal Service is a network of LSC-funded organizations, which funds and provides civil legal advice and representation.	Yes, LAO funds non-profit community legal clinics to provide free clinic law services to low-income individuals or disadvantaged communities.	Yes, LAC administers the Community Legal Services Programme (CLSP), and the Women's Domestic Violence Court Assistance Programme (WDVCAP). CLSP funds non-government and non-profit Community Legal Centres to provide free legal services to disadvantaged people. WDVCAP assists victims of domestic violence in obtaining legal protection and accessing other support services.

Free legal advice service

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Finance Committee (Special meeting)	23 March 2001	Minutes of meeting (page 132) http://www.legco.gov.hk/yr00-01/english/fc/fc/minutes/chap19.pdf
	26 March 2003	Minutes of meeting (paragraphs 21.1 to 21.3 of Chapter XXI) http://www.legco.gov.hk/yr02-03/english/fc/fc/minutes/cso-min-e.pdf
	19 to 22 March 2007	Report on the examination of the Estimates of Expenditure 2007-2008 (page 51) http://www.legco.gov.hk/yr06-07/english/fc/fc/minutes/sfc_rpt.pdf
Legislative Council	17 December 2008	Official Record of Proceedings of the Council on an oral question raised by Dr Hon Margaret NG on "Free Legal Advice Scheme and Duty Lawyer Service" http://www.legco.gov.hk/yr08-09/english/counmtg/hansard/cm1217-translate-e.pdf
Panel on Administration of Justice and Legal Services	13 January 2009	Minutes of meeting (paragraphs 10 to 20) [LC Paper No. CB(2)1063/08-09] http://www.legco.gov.hk/yr08-09/english/panels/ajls/minutes/aj20090113.pdf
Legislative Council	11 February 2009	Official Record of Proceedings of the Council on the motion moved by Dr Hon Priscilla LEUNG Mei-fun on "Relaxing the eligibility criteria for legal aid" http://www.legco.gov.hk/yr08-09/english/counmtg/hansard/cm0211-translate-e.pdf

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Finance Committee (Special meeting)	23 to 27 March 2009	Report on the examination of the Estimates of Expenditure 2009-2010 (pages 141 to 142) http://www.legco.gov.hk/yr08-09/english/fc/fc/minutes/sfc_rpt.pdf
Panel on Administration of Justice and Legal Services	30 March 2009	Minutes of meeting (paragraphs 25 to 26) [LC Paper No. CB(2)1603/08-09] http://www.legco.gov.hk/yr08-09/english/panels/ajls/minutes/aj20090330.pdf
	22 June 2009	Administration's paper on "Demand for and supply of legal and related services" [LC Paper No. CB(2)1904/08-09(05)] http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0622cb2-1904-5-e.pdf Minutes of meeting (paragraphs 27 to 35) [LC Paper No. CB(2)2341/08-09] http://www.legco.gov.hk/yr08-09/english/panels/ajls/minutes/aj20090622.pdf
	25 January 2010	Minutes of meeting (paragraphs 14 to 15) [LC Paper No. CB(2)1096/09-10]

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