

(Extract from Draft Report of the Standing Committee of Legal Aid Reform of HKBA)

8.01 Old Age Exemption Provisions - contribution exemptions to persons aged 55 or above

- (a) Paragraphs 14 & 15 of the Bar Paper – **Appendix I** set out why the Exemption Age should be reduced to 55.
- (b) **LASC should stand by their earlier decisions**, and come to the same view; at a time when current evidence strongly supports the LASC position made many years ago based on expert advice.
- (c) The Commission on Poverty and the Census + Statistics Department have been continually producing data to show the disparity between rich and poor in Hong Kong is getting worse. LASC and the LAD should be assisting those with meritorious claims (or defences). This reform better conforms with Government Policy on helping the poor, and trying to reduce the Gini Effect. **One Division of HAB is obviously not talking and listening to the other Division of HAB that has to deal with the elderly and the poor.**

FINANCIAL ELIGIBILITY LEVELS (“FELs”)

9.01 Other necessary factors are relevant to increasing FELs in addition to inflation. HAB ought to consider other factors including

- (a) increasing un-represented cases, and declining grants,
- (b) the Scott Report which required both sides costs to be a measure of the costs of litigation, not just the LAD side, and
- (c) relevant society needs and circumstances.
- (d) Our aging population and the poverty levels are such circumstances, as expert advice to LASC revealed years ago.

9.01.1 Large drop in the grants of Civil Legal Aid. This shows FELs are becoming out of date which neither HAB nor LASC seem to have noticed.

- (a) In 2010 there were 16,124 applications; with grants 8,914.
- (b) In 2016 there were 14,733 applications, (a **11.6% drop in 6 years**)
- (c) **In 2016 there only 7,370 grants , a 17.33% drop when compared with 2010**

This is a huge drop percentage wise.

9.012.1 Criminal Legal Aid in 2010 in 2010 there were 3,907 applications and 2740 grants.

9.012.2 In 2016 here were 3,567 applications, **8.7% drop; and 2,641 grants **a 3.6% drop**.**

9.02 **Looking at the Court Statistics**, it is plain that many litigants are currently not eligible for Legal Aid because of means. Yet they are worried about the high costs of litigating in Hong Kong. **So they go to court unrepresented.**

- (a) The consistent figure of 25 – 37 % unrepresented in Civil Appeals, the steady rise in unrepresented Civil Trials in the High Court 30 – 40 %,
- (b) the District Court range of 47 % to as high as 64 % of cases in 2012- demonstrate that there is a need for a much higher FEL threshold for Legal Aid;
- (c) The Court of Criminal Appeal 47 to currently 53 %.

Neither HAB nor LASC have asked for, nor looked at these figures, so how can they possibly make appropriate representations on FELs as matters stand.

9.02.2 In 2016 there were 520 Applications for Criminal appeals, from the District Court and the High Court, but only 136 Granted, i.e. 24 % only. In 2010 there were 600 Applications, but only 128 granted i.e. 21 % only. **This is a very low percentage.**

9.03 **The statistics show continuing Under-Representation in the courts hence less access to justice.**

- (a) access to justice is meaningless if litigants cannot afford it;
- (b) this is inefficient and slows down hearings;
- (c) spawns more appeals;
- (d) produces less just results and less satisfaction in the legal process in Hong Kong.
- (e) **Having a good legal system is supposed to be Hong Kong's 2nd best feature after a good and stable financial system. It cannot be "good" if ordinary Hong Kong people cannot have access to it.**

9.04 **Therefore HAB should not be using only the measure of inflation as the main tool to adjust FELs – this is ill informed and inappropriate;-**

9.05 FELS were originally based on the costs of 2 sides to a case – The Scott Report made it quite clear that the thresholds should relate 2 both sides costs put together. HAB are only using 1 side's costs as a reference.

9.07 Hong Kong is a High Cost City- and so all professional services cost more than they did 10 years ago –and these costs have gone up above the rates of inflation.

9.08 Whereas professional lawyers expect to work pro bono to help individual or special cases, they do not expect to work extensively pro bono where a well-financed Government has a Legal Aid system which is across the board defective and not meeting the needs of society. **It is wrong for HAB to use ad hoc schemes and pro**

+852 2523 2042

This is a summary chart from the Judiciary Administrator provided to the HKBA in 2017.

Statistics on Appeals/Trials/Substantive Hearings
involving Unrepresented Litigants*
in the High Court and District Court (2007-2016)

Year		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Court of Appeal, High Court	Civil Appeals	30%	35%	35%	37%	23%	24%	23%	20%	32%	25%
	Criminal Appeals	50%	47%	51%	51%	50%	52%	49%	48%	52%	53%
Court of First Instance, High Court	Civil Trials/Substantive Hearings	30%	30%	35%	32%	29%	27%	33%	33%	33%	40%
	Tribunal and Master Appeals	52%	65%	55%	63%	51%	67%	60%	61%	66%	57%
	Criminal Trials	1%	0%	1%	1%	1%	3%	1%	7%	3%	1%
	Appeals from Magistrates' Courts	57%	58%	61%	59%	58%	64%	60%	56%	61%	62%
District Court	Civil Trials/Substantive Hearings	47%	51%	55%	53%	51%	64%	51%	58%	53%	46%
	Criminal Trials	3%	3%	2%	2%	2%	2%	4%	4%	3%	4%

*Appeals/Trials/Substantive Hearings involving unrepresented litigants refer to those appeals/trials/substantive hearings in which at least one of the parties is unrepresented.