

Report of the Special Committee on Legal Aid Reform

1. The correct merits test for legal aid was restated in the case of *Chung Yuk Ying v Registrar of the High Court*, 2013 HKCU 2449. The merits test requires that Legal Aid shall not be granted to an applicant unless he shows that he has reasonable grounds for taking, defending, opposing or continuing his legal proceedings. The court found that instead of applying this criterion, the Legal Aid Department (LAD) had applied the wrong test and had required that the applicant satisfy a test that he had a more than 50% chance of success in assessing the merits of the plaintiff's case. A Bar Circular was issued on this and this was discussed in a useful meeting with the Director. It is hoped that amendments of the departmental circulars will follow the wording of S.10(3) of the Legal Aid Ordinance, Cap. 91 (the "Ordinance") and remove the source of this misunderstanding.
2. On 24th June 2014 we attended the AJLS Panel Meeting of the Legislative Council and made a submission to inform new members of the background and proposals for reform made in past years.
3. We noted that the Information Paper of the Home Affairs Bureau reinforces a point made by the Bar in its submission of 22nd June 2012 that since LAD now operates with a *de facto* cap on expenditure, the Administration's main reason for rejecting independence in 1998 no longer exists. It is now clear that for years LAD expenditure is *de facto* capped by budget, departmental controls, control by the Financial Secretary, procedures and law. However, the expenses incurred on individual legal aid cases are not capped as the LAD, under the Ordinance, has to pay for the costs of the individual cases for which it grants aid.
4. For the purposes of the discussion about independent legal aid administration and with accountable and sound administration in a future independent authority, a capped budget would afford sufficient safeguards. There is no reason why an authority, with a capped budget, could not responsibly administer legal aid on an independent basis. The structure for controls for an independent authority is explained in the book "Legal Aid in Hong Kong 2006" published by the Legal Aid Services Council (LASC) at pages 236-237. Again we made the point that more independence leads to better legal aid.
5. By a letter dated 24th March 2014, we invited the LASC to respond to the Bar's submission of 2013, which raised specific queries on the reliability and validity of their consultant's report, which was the basis for refusing independence. LASC's reply 26th May 2014 failed to address any of the specific queries. These points were made clear to the AJLS Panel.
6. There being only one AJLS meeting, there is not much to report. Regrettably there has been no meetings with the LASC to discuss expanding the scope of SLAS as proposed by the Bar and others over 10 years or more.

List of Members:

Ruy Barretto SC (Chairman)

Neville Sarony SC

Raymond Leung SC

Nicholas Pirie

Tim Kwok

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Ashok Sakhrani

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29 December 2014