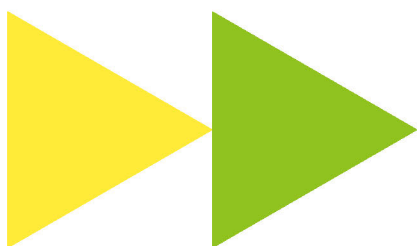


# Chairman's Review

I am pleased to present the 2016-2017 Annual Report, the fifth during my term as Chairman of the Legal Aid Services Council.

Legal aid services form an integral part of the legal system and play an important role in contributing towards upholding the rule of law in Hong Kong. The purpose of legal aid is to ensure that all those who have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice because of a lack of means. To qualify for legal aid, a person is required to satisfy both the means test and merits test as provided by the Legal Aid Ordinance (LAO).

In recent years, the numbers of challenges against the Government's policies and decisions through judicial review (JR) as well as applications for legal aid to lodge JRs have been on the rise. Some of the controversial cases have drawn much public attention and have been widely reported. The Council is glad that a monitoring mechanism is in place to ensure that the processing of legal aid applications is reasonable and to safeguard against abuse of legal aid. It is also pleased to see the value



of legal aid in JRs. Without legal aid, some of the JR cases may not be able to reach the Court of Final Appeal, the decision of which would help to clarify the law, for instance, the two leading legal aid test cases concerning the eligibility for right of abode, one of which involved persons born in Mainland China and adopted by Hong Kong permanent residents, and the other involved foreign domestic helpers who had lived in Hong Kong for more than 7 years. Based on the Court's rulings in these two cases, immigration policies on the matters were either established or reaffirmed.

2016-2017 was another year that marked the continuous and concerted efforts in enhancing legal aid services to the community.

The Supplementary Legal Aid Scheme (SLAS) is a self-financing scheme. It aims at providing legal assistance to people whose financial resources exceed the upper limit allowed under the Ordinary Legal Aid Scheme (OLAS) but are below a ceiling amount. In July 2016, the Council made a submission on the expansion of SLAS to the Chief Executive. In April 2017, the Council was glad to know that the Government

has accepted all of the Council's recommendations except that the age-related exemption of assets for means test for OLAS and SLAS was maintained at the age of 60.

The Legal Aid Department (LAD) engages counsel and solicitors in private practice to undertake litigation work in respect of criminal legal aid cases. The scale of fees payable to these lawyers as well as the fees assessment mechanism are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules under the Criminal Procedure Ordinance (Cap. 221). In the last Annual Report we mentioned that a review was conducted by the Government to revisit the revised rates of criminal legal aid fees after the enhanced payment structure of the criminal legal aid fees system had been implemented for two years, and as a result of the review, the Government proposed a package of increases. In November 2016, the Council was informed that the new fees had come into effect on 14 November.

Apart from the above-said review, the criminal legal aid fees are subject to regular review which is conducted on a biennial basis. In conducting the biennial review, the Government

takes into account mainly general price movement during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors. Noting that the Consumer Price Index (C) for the period from July 2014 to July 2016 has increased by 4%, in December 2016 the Government proposed to adjust the criminal legal aid fees upward by 4% accordingly. According to HAB, a resolution would be moved in LegCo to effect the legislative changes and the commencement date would be appointed as soon as possible upon LegCo's approval. The Council hopes that the adjustment would be made at an early date.

Legal aid work is not distributed to counsel or solicitors on the Legal Aid Panel equally regardless of merits. The legally aided persons' interests are the paramount consideration. Counsel or solicitors on the Panel are selected by Legal Aid Counsel having regard to the type and complexity of the particular case, and the level of experience and expertise of the legal practitioners in the area concerned. In general, counsel or solicitors are selected in accordance with the established criteria, one of which is whether the counsel or solicitor being considered has exceeded the limits

set on the number of assignments handled and, where applicable, the cumulative amount of legal aid fees payable to a lawyer.

As there have been concerns over the assignment of legal aid cases to a specifically small number of solicitors, LAD has since the end of 2013 tightened up enforcement of the assignment limits for lawyers. LAD has also conducted a review on the assignment limits. As a result of the review, LAD proposed to adjust the civil case assignment limits for solicitors from 45 to 35 and from 25 to 20 for counsel. For criminal cases, the case limit for both counsel and solicitors was proposed to be revised from 30 to 25. Since the rates of fees payable to lawyers handling criminal legal aid cases has increased

quite substantially, the fees limit for solicitors was proposed to be adjusted from \$600,000 to \$750,000 and from \$1.2 million to \$1.5 million for counsel, whichever occurs first. Furthermore, in order to widen the pool of counsel for the provision of section 9 opinion, LAD proposed that a counsel who has earlier given a favourable section 9 opinion would not be assigned to handle the case if legal aid is subsequently granted.

The Council welcomes LAD's proposals and appreciates its effort to address the public concerns over the assignment of legal aid cases.

In September 2016, we saw the departure of our member Mr Albert IP Yuk Keung and Mr Joseph LI Chiu Wah, and the appointment of Mrs Ayesha LAU. The Council is very grateful to Mr IP and Mr LI for their unfailing support to its work and their invaluable contribution to enhancing its supervisory function and formulating effective legal aid policies. We believe that Mrs LAU, with her expertise in a different profession, will bring new perspectives and momentum to the Council in improving legal aid services to meet the rising expectations of the community.