

法律援助服務局
LEGAL AID SERVICES COUNCIL

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26 March 2010

Ms. LUI Kit Yuk, Grace, JP
Deputy Secretary for Home Affairs
Home Affairs Bureau
31st Floor, Southorn Centre
130 Hennessy Road
Wan Chai, Hong Kong

Dear

Grace

**Five-yearly Review of the Criteria for
Assessing the Financial Eligibility of Legal Aid Applicants**

Thank you for briefing the Council on the findings and recommendations of the recently completed Five-yearly Review of the Criteria for Assessing the Financial Eligibility of Legal Aid Applicants.

The Administration's proposals were deliberated at the recent meetings of the Council. Set out below are the views of the Council on the improvements proposed.

Proposal 1 : *Replacing the 35-percentile household expenditure with the median household expenditure as deductible allowance*

In calculating the disposable income of a legal aid applicant, a personal allowance, currently set at a level equivalent to the 35-percentile household expenditure, is deducted to allow the applicant to keep an amount required for other expenses of his/her family. The Council has all along disputed this 35-percentile household expenditure as the appropriate level of deduction. As pointed out in our response to the 2002 Review, a more sensible benchmark should at least be the median household expenditure. The Administration has now proposed that the median monthly household expenditure be used to replace the 35-percentile household expenditure as a

deductible component in calculating disposable income. The Council welcomes the proposed adjustment which will increase the financial eligibility limits for both the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) and provide wider access to legal aid.

Proposal 2 : *Adjustment of the financial eligibility limits*

The Council notes the Administration's proposal to increase the financial eligibility limit for OLAS by 50% from the current \$175,800 to \$260,000. We agree that to some extent, this will enlarge the pool eligible for legal aid. The Council supports the adjustment proposed as it will improve access to legal aid. We cannot, however, comment whether the 50% increase is appropriate or adequate without knowing the policy basis of how the current limit, i.e. \$175,800 is arrived at and the probable population pool covered after the proposed 50% increase. The Council wishes to be advised of the policy on legal aid coverage in Hong Kong which will be useful for any subsequent review on the financial eligibility limits.

The Council also notes the proposed increase of 100% to the financial eligibility limit for SLAS. Again the Council is not entirely sure how the 100% increase was worked out. The Council is of the view that a more practical and realistic approach to financial eligibility limit for SLAS is to look at the costs of SLAS litigation.

Under SLAS, legal aid is available in respect of claims for damages and/or compensation where the party to be sued is likely to satisfy judgment, e.g. where he/she is covered by insurance. Further, the scope is limited to claims for personal injury or death likely to exceed \$60,000 and claims under the Employees' Compensation Ordinance irrespective of the amount. Similar to OLAS, cases under SLAS have to pass both the means test and the merits test. Applicants must also pay a contribution upon acceptance of legal aid. If the proceedings are successful, the aided person pays a percentage of the damages recovered into the SLAS Fund, currently set at 6% or 10% if a brief to counsel has been delivered for attending the trial. Information and data presented to the Council showed the average legal costs of a SLAS case that actually went to trial was \$1.297 million in 2008. The Council, after protracted discussion, accepted that it would be better to adopt \$1.3 million as the appropriate level for the financial

eligibility limit for SLAS, and we recommend this amount for consideration by the Administration.

In the course of our discussion, the Council has examined the level of contribution made under SLAS. When legal aid is granted under this scheme, the Director of Legal Aid shall require the person who is offered legal aid to pay an interim contribution at an amount equivalent to the maximum contribution payable by an aided person under OLAS. The Council notices that the rate of contribution in respect of SLAS is only capped at the maximum financial eligibility limit for OLAS, which is \$175,800. Members were of the view that SLAS should have its own scale of contribution to reflect the nature of the scheme. It was not considered appropriate for SLAS to make reference to OLAS when calculating the amount of interim contribution payable, for after all, the two legal aid schemes are to assist different income groups in the community. We recommend that there should be a separate scale of contribution for SLAS.

The Council notices that because of the selective nature of SLAS cases and the relatively low financial eligibility limit, some victims of personal injury cases who were refused legal aid due to excess of means had subsequently sought assistance from recovery agents to pursue their claims. This has prompted a study on possible expansion of SLAS. The Council has invited our Interest Group on Scope of Legal Aid to advise on the feasibility of setting up a Second-tier SLAS to further improve legal aid services. We shall advise the Administration on the outcome of this study in due course.

Proposal 3 : *Calculation of financial resources for elderly persons*

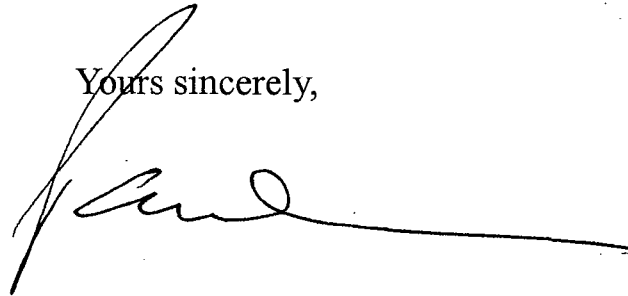
In our meetings with legal aid stakeholders, the special circumstances of elderly persons applying legal aid were often raised. The views of the stakeholders and that of the Council is that it is not uncommon for elderly persons to have some savings to prepare for their retirement. If these savings render them ineligible for legal aid due to excess of means when applying legal aid, justice may be denied. Surely it will not be reasonable to expect an elderly person, or a retiree, to risk all their savings in engaging lawyers privately to fight a case. The Council has, on earlier occasions, invited the Administration to consider exempting part of the savings of elderly persons from the means assessment in recognition of the

difficulties faced by them.

The Council is therefore pleased to receive the Administration's proposal to disregard the same level of the financial eligibility limit for OLAS in the means test with regard to applications for legal aid lodged by elderly persons. However, the Council is of the view that the age requirement, which the Administration suggested to be 65, should be relaxed. According to local customs and culture, it is a common phenomenon that people have saved something for their retirement well before they are 65.

As implementation of the above proposals will provide wider access to justice, we urge that these proposals be put in place as soon as possible.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul M P Chan', with a long horizontal line extending to the right.

Paul M P Chan
Chairman