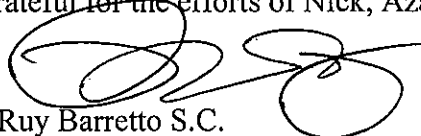


Report for 2018 of Standing Committee on Legal Aid Reform

1. Please refer to the 2017 report to see how slow things are. Work this year has included: Liaison with others on Legal Aid Reform and moving on with basic Reform to the Ordinances; Discussions with the Director of Legal Aid over practical problems: Assisting barristers who have low or overdue payments from the Legal Aid Department; and Discussing with the Judiciary about reducing the number of unrepresented parties appearing in the courts.
2. However we have not yet met with **the LASC** to discuss subjects and a timetable for Legal Aid Reforms. Meetings are needed to enhance supervision of LAD and to choose relevant subjects for mention to the AJLS Panel. Need for an Independent Legal Aid Authority continues.
3. Our submissions to the AJLS Panel for **a timetable** to progress issues such as SLAS expansion and reform, and Financial Eligibility Levels were agreed in principle but with limited outcomes so far. The choice of subjects and levels of discussion can be improved even though the Panel appreciates our efforts. Social issues continue to deteriorate justifying our SLAS reforms, e.g., poorly maintained housing blocks. The Law Society Legal Aid Committee has been supportive of our work in the AJLS Panel hearings. We hope to move on with the 2002 Reform Proposals tabled and Agreed by the AJLS Legco Panel in November 2002 as LAD is willing to discuss expanding the scope of the Ordinance, and to deal with outstanding problems.
4. On **Financial Eligibility Levels**, there has been no further progress. HAB still fails to recognise that the costs of **both sides** of litigation should be added together to assess the threshold for FELS for SLAS and OLAS as laid down in the Scott Report many years ago. Solicitors' Costs have gone up but HAB still does not take increases in rent into account when increasing the Financial Eligibility Limits. The FELs are one of the reasons for the high levels of unrepresented litigants in the courts which demonstrate the rising unmet needs for access to justice.
5. **The ban on counsel who have given favourable Section 9 Opinions and reports of the abuse of the S.9 procedures.** The HAB reply to the Bar of 27th December 2017 asserted the ban was based on the alleged "public perception" that barristers would give favourable S.9 opinions in order to get further work on the case. This argument implies barristers doing LAD work, though suspect, are nevertheless briefed on the assumption that they will act unprofessionally. A further Bar letter requesting the ban be suspended was refused with an HAB letter, 6 months later, which failed to deal with the issues raised. These and other obstacles to justice are being compounded by the new S.9 Ban and will add to the problems faced by litigants with limited means, particularly with pre-certificate work undertaken by barristers. We hope to have the **Barristers Guide** amended to reduce the numbers and categories of cases where the ban will operate. Feedback from the profession would be useful to enable follow up.

6. On **Emergency Certificates**, especially in domestic violence cases, we expressed our concerns by letter and in a meeting. Problems continue while we wait for improvements. No change here.
7. Slow, low or non-payment of **interim/advance fees** in civil cases. **Progress here.** As a result of a the Bar Circular No 55 of 2018 of 30th January 2018 we obtained useful data and case histories which led to a letter from the Bar Chairman of 11th June 2108 to LAD. This had tables of barristers' fees and non-payments for follow up by the Director himself. After useful discussions with the Director, this is having positive results for some barristers but we need to see whether systemic improvements are in place and we need to analyse further the reasons for low or non-payment. Again this is something which could be undertaken by an independent legal aid authority.
8. **Barristers whose Legal Aid Fees are delayed or not paid at all should continue to write to the Bar Secretariat** as we continue to be concerned that slow, low or non-payment of fees coupled with the Section 9 Ban will discourage barristers from taking on difficult or unusual cases. This impacts directly and adversely on the principle of equality of arms in legally aided litigation. It took decades to dispel the perception that Legal Aid was a second-class service. We do not wish an unequal system to lead to a less successful service, poorer outcomes, and more expense to the Government through losing more cases.
9. We are still getting feedback and working on a **Draft report** on reforms, from August 2017, including improving criminal legal aid representation, improved civil legal aid at District Court level, and appeals against refusal of Legal Aid.
10. The Bar Chairman wrote to LASC, and after a positive response we submitted a Note to the Bar Council in July 2018. One result is the likely update of fees (set over 15 years ago) under the Section 26A of Cap 91 scheme for barrister's advice on CFA appeals. We are working on a reform to add a similar provision so that CA appeals are also assisted.
11. Discussions with the Director have also resulted in suggestions for **linking payments made by DLA in various classes of cases to the Master Pay Scale, with automatic adjustments across the board.** We hope set fees can be given for various types of cases across the board, and for these to be adjusted by linkage to the Master Pay Scale.
12. We have agreed to discuss with Court of Appeal Judges widening representation in that Court, with a view to either amending the Legal Aid Ordinance, or altering the Criminal Procedure Rules to enable the filtering out of hopeless appeals and identifying those with a reasonable prospect of success so that judicial time and legal aid resources are better used.

13. We remain cautiously hopeful that the former positive attitude to **Legal Aid as one of the 4 pillars of our justice system** will be re-established. We have tracked the number of un-represented cases before the courts for the last 10 years. The CFA have agreed to give statistics so we will have figures to show the coverage of Legal Aid in most of our court system. We continue to have concerns at the high number of substantive hearings where there is an unrepresented party, at the following levels: Court of Appeal (Criminal 50 %) (Civil 40 % +) Masters' Appeals 60 %, First Instance Cases 40 % + and District Court Civil Cases 50 %. The District Court Civil jurisdiction has just been increased by a factor of 3 times to HK \$3 million, and the levels of un-representation is likely to get worse.
14. On the absence of **legal aid for persons charged with contempt offences before statutory tribunals**: after repeated concerns were raised by members of our Committee and others, the Administration have agreed to expand the remit of the Duty Lawyer Scheme to provide representation for contempt proceedings before the Labour Tribunal and Small Claims Tribunal with effect from 3 December 2018. This is a significant step to improve compliance with Article 11 of the Bill of Rights. The Committee will continue to press the Administration to take similar steps with respect to contempt before the Competition Tribunal.
15. The members of the Committee are Raymond Leung S.C. (Vice Chairman), Neville Sarony S.C., Nicholas Pirie, Martyn Richmond, Azan Marwah, Naresh Daryanani, Mike Lam Ho Yan, and we have co-opted Phil Dykes SC. They have worked hard this year and I am especially grateful for the efforts of Nick, Azan and Phil.



Ruy Barretto S.C.

Chairman of the Standing Committee on Legal Aid Reform

21st November 2018

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