

Report of the Standing Committee on Legal Aid Reform 2021

1. Much has happened this year.
2. In the first half of this year, the Bar Association (BA) met with the Director and Deputy Director (Criminal Legal Aid) of the Legal Aid Department (LAD) to discuss assignment of Counsel, payment of counsel's fees and other related matters.
3. **Assignment of Counsel.** Some Members, particularly in the junior end, had sought assistance from the BA about assignment of Counsel by the LAD in criminal trials. The BA understand that the LAD will consider the extent of involvement of a second junior counsel in a case in deciding whether the second junior has sufficient experience in handling District Court/Court of First Instance criminal trials as sole assigned counsel. Members are encouraged to update their number of cases handled in the past 3 years by filling in the LAD's Data Update Form for Counsel to assist their assessment.
4. **Late Payment of Counsel Fees.** Another issue which appears to be rather long-standing and widespread is late payment from the LAD. The BA expressed concern about levels of interim fees and the lengthy period which sometimes occurs before receipt of final payments, especially in civil cases. The BA encourages members to submit copies of long overdue outstanding fee notes in legally aided cases so that the BA can collate the data and pursue the issue further with the LAD.
5. **Biennial Review of Criminal Legal Aid Fees.** The LAD had adjusted the Criminal Legal Aid Fees, Prosecution Fees and Duty Lawyer Fees upwards by 2.7% at the Biennial Review of Criminal Legal Aid Fees to reflect the accumulated change in the Consumer Price Index (C) (CPI) recorded between July 2018 and July 2020. Members' fee increases are still linked to CPI. CPI reflects the impact of consumer price change on the household sector as a whole. There appears to be no logical reason for linking CPI with members' practises, which does not include rental increases as an element.
6. In stark contrast with the discussion between the BA and LAD in the first half of 2021, the Chief Secretary for Administration's Office and the LAD jointly released a paper titled "Proposed Enhancement Measures to the Legal Aid System in Hong Kong" (LC Paper No.CB(4) 1677/20-21(01)) (the Proposal) on 22 October 2021. The Proposal involves *inter alia* (i) introduction of an annual cap on the number of "JR-related" cases allocated to any one counsel or solicitor, (ii) no longer allow defendants in criminal cases to nominate their own preferred counsel (save in exceptional circumstances, and (iii) no longer allow pro bono legal assistance for legally aided persons without the LAD's prior agreement.
7. **Position paper on "Proposed Enhancement Measures to the Legal Aid System in Hong Kong".** Given that no legislative amendment was intended by the Government, the LAD's intention to implement the measures "as soon as possible", and the potential ramifications of the proposed measures upon the due administration of justice as well as the profession at large, the Bar Council sought members views on the Proposal on an urgent basis for preparation of written response paper.

8. Urgent work was done to draft, discuss and settle the Position Paper of the Hong Kong BA on the Proposal which was endorsed at the Bar Council Meeting held on 2 December 2021. The Position Paper has since been submitted to the Chief Secretary for Administration, the Director of Legal Aid and the Panel on Administration of Justice and Legal Services. It is hoped that the LAD will consider the BA's Position Paper and address the aspects of the Proposal which raise concerns.
9. On the other hand, on the Ordinary Legal Aid Scheme and Supplementary Legal Aid Scheme, the Government has yet to answer the Committee's long term campaign for widening the net to cover Mental Health cases, Competition cases, Incorporated Owners for property damage and claims for Land Compensation under the Land (Compulsory Sale for Re-development) Ordinance (Cap.545). The Committee will continue to advocate for the financial eligibility limit to be linked with the costs of the provision of legal services generally.
10. During the year, the following members served on this Committee:
 - Jeffrey Tam (Chairman)
 - Ruy Barretto SC (Vice-Chairman)
 - Nicholas Pirie
 - David Ma
 - Lawrence Hui
 - Joe Chan
 - William Hui
 - Jeffrey Li
 - Adgie Chan
 - Azan Marwah
 - Anthony Ko
 - Ivan Suen
 - Albert Wan
 - Adrian Lo
 - Christopher Lau
 - Abigail Liu
 - Joshua Baker
 - Ernie Tung.
11. I take this opportunity to thank members of the Committee for their support. In particular, I would record my appreciation to Ruy Barretto SC, Nicholas Pirie, Lawrence Hui, Azan Marwah, Albert Wan, Adrian Lo and Ernie Tung who devoted enormous time in serving this committee in this turbulent year.

Jeffrey Tam
Chairman
Standing Committee on Legal Aid Reform

22 December 2021