

2009年2月11日(星期三)舉行的立法會會議
“放寬法律援助申請資格”議案辯論

1. 梁美芬議員的原議案

鑒於香港的訴訟費用高昂，非一般中產人士可以支付，尤其是一些可能要上訴至終審法院的案件，訟費更往往是天文數字，中產一族因為打官司而破產的案例屢見不鮮，因此，提供適切的法律援助(“法援”)服務對這批中產人士而言十分重要；然而，根據現行的《法律援助條例》(第91章)第5條，申請法援的資產上限為不超過165,700元，該水平遠遠低於現實需要，令大部分中產人士被排除於法援保護網之外；遇上訴訟情況，中產們既無能力自行支付昂貴的律師費用，又不合資格申請法援，以致無法獲得司法公義；另一方面，現時的法援服務只涵蓋本港訴訟案件，而在過去二十年，大量香港永久性居民在內地工作及居住，他們很大機會在生活、營商或工作上遇到法律訴訟情況，卻求助無門，無法獲得任何法律協助；就此，本會促請政府：

- (一) 全面檢討現時的法律援助制度；
- (二) 放寬申請法援的資產上限至合理水平(包括法律援助輔助計劃)，令更多有需要人士符合資格申請法援；及
- (三) 擴大現有法援服務的受理範圍，以涵蓋涉及身處內地的香港永久性居民的內地訴訟案件。

2. 經吳靄儀議員修正的議案

要維護法治，便必須確保無人會因缺乏經濟能力而無法行使合法權利；鑒於香港的訴訟費用高昂，非一般中產人士可以支付，尤其是一些可能要上訴至終審法院的案件，訟費更往往是天文數字，中產一族因為打官司而破產的案例屢見不鮮，因此，提供適切的法律援助(“法援”)服務對這批中產人士而言十分重要；然而，根據現行的《法律援助條例》(第91章)第5條，申請法援的資產上限為不超過165,700元，該水平遠遠低於現實需要，令大部分中產人士被排除於法援保護網之外；遇上訴訟情況，中產們既無能力自行支付昂貴的律師費用，又不合資格申請法援，以致無法獲得司法公義；另一方面，現時的法援服務只涵蓋本港訴訟案件，而在過去二十年，大量香港永久性居民在內地工作及居住，他們很大機會在生活、營商或工

作上遇到法律訴訟情況，卻求助無門，無法獲得任何法律協助；就此，本會促請政府：

- (一) 全面檢討現時的法律援助制度；
- (二) 放寬申請法援的資產上限至合理水平(包括法律援助輔助計劃)，**並擴大援助範圍**，令更多有需要人士符合資格申請法援；及
- (三) 擴大現有法援服務的受理範圍，以涵蓋涉及身處內地的香港永久性居民的內地訴訟案件；
- (四) **研究落實法律改革委員會於2007年7月發表的《按條件收費報告書》所載的建議**；
- (五) **檢討現時的免費法律諮詢服務，設立社區法律服務中心**；及
- (六) **制訂就刑事法援釐定律師費的原則，以建立更專業的刑事法援制度。**

註： 吳靄儀議員的修正案以**粗斜字體**或刪除線標示。

3. 經何俊仁議員修正的議案

鑒於香港的訴訟費用高昂，非一般中產人士可以支付，尤其是一些可能要上訴至終審法院的案件，訟費更往往是天文數字，中產一族因為打官司而破產的案例屢見不鮮，因此，提供適切的法律援助(“法援”)服務對這批中產人士而言十分重要；然而，根據現行的《法律援助條例》(第91章)第5條，申請法援的資產上限為不超過165,700元，該水平遠遠低於現實需要，令大部分中產人士被排除於法援保護網之外；遇上訴訟情況，中產們既無能力自行支付昂貴的律師費用，又不合資格申請法援，以致無法獲得司法公義；另一方面，現時的法援服務只涵蓋本港訴訟案件，而在過去二十年，大量香港永久性居民在內地工作及居住，他們很大機會在生活、營商或工作上遇到法律訴訟情況，卻求助無門，無法獲得任何法律協助；就此，本會促請政府：

- (一) 全面檢討現時的法律援助制度，**設立獨立的審批法援機構**；
- (二) 放寬申請法援的資產上限至合理水平(包括法律援助輔助計劃)，令更多有需要人士符合資格申請法援；及

- (三) 擴大現有法援服務的受理範圍，以涵蓋涉及身處內地的香港永久性居民的內地訴訟案件；及
- (四) **研究修例，讓法援署署長除了可就涉及人權的訴訟個案免除申請法援的資產上限外，亦可就涉及憲制或重大公眾利益的訴訟個案免除申請法援的資產上限。**

註： 何俊仁議員的修正案以**粗斜字體**或刪除線標示。

4. 經劉秀成議員修正的議案

鑒於香港的訴訟費用高昂，非一般中產人士可以支付，尤其是一些可能要上訴至終審法院的案件，訟費更往往是天文數字，中產一族因為打官司而破產的案例屢見不鮮，因此，提供適切的法律援助(“法援”)服務對這批中產人士而言十分重要；然而，根據現行的《法律援助條例》(第91章)第5條，申請法援的資產上限為不超過165,700元，該水平遠遠低於現實需要，令大部分中產人士被排除於法援保護網之外；遇上訴訟情況，中產們既無能力自行支付昂貴的律師費用，又不合資格申請法援，以致無法獲得司法公義；另一方面，現時的法援服務只涵蓋本港訴訟案件，而在過去二十年，大量香港永久性居民在內地工作及居住，他們很大機會在生活、營商或工作上遇到法律訴訟情況，卻求助無門，無法獲得任何法律協助；就此，本會促請政府：

- (一) 全面檢討現時的法律援助制度；
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- ~~(三) 擴大現有法援服務的受理範圍，以涵蓋涉及身處內地的香港永久性居民的內地訴訟案件。~~

註： 劉秀成議員的修正案以刪除線標示。

(Translation)

**Motion debate on
“Relaxing the eligibility criteria for legal aid”
to be held at the Legislative Council meeting
of Wednesday, 11 February 2009**

1. Dr Hon Priscilla LEUNG Mei-fun’s original motion

That, as the high litigation fees in Hong Kong are beyond the means of the middle class in general, in particular cases for which appeals may be lodged to the Court of Final Appeal where the litigation fees incurred are often astronomical, it is not uncommon that middle-class people go bankrupt because of their involvement in legal proceedings, hence the provision of appropriate legal aid services to such middle-class people is very important; however, under section 5 of the existing Legal Aid Ordinance (Cap. 91), the asset limit for legal aid applicants is \$165,700, which is far below the actual need, rendering the majority of the middle class being excluded from the protection net of legal aid; if involved in litigation, the middle-class people are neither able to pay the high lawyer fees on their own nor eligible to apply for legal aid, they are therefore deprived of judiciary justice; on the other hand, the existing legal aid services only cover litigation cases in Hong Kong, and over the past two decades, a large number of Hong Kong permanent residents have been working and living in the Mainland, and it is very likely that they may get involved in legal proceedings in their daily lives, business operation or work, but they have nowhere to turn to for any legal assistance; in this connection, this Council urges the Government to:

- (a) conduct a comprehensive review on the existing legal aid system;
- (b) relax the asset limit for legal aid applicants (including that for the Supplementary Legal Aid Scheme) to a reasonable level so that more people in need are eligible to apply for legal aid; and
- (c) extend the scope of the existing legal aid services to cover litigation cases in the Mainland involving Hong Kong permanent residents who are in the Mainland.

2. Motion as amended by Dr Hon Margaret NG

That, *to uphold the rule of law, it is necessary to ensure that no one is unable to exercise his or her rights under the law for want of financial means, and* as the high litigation fees in Hong Kong are beyond the means of the middle class in general, in particular cases for which appeals may be lodged to the Court of Final Appeal where the litigation fees incurred are often astronomical, it is not uncommon that middle-class people go bankrupt because of their involvement in legal proceedings, hence the provision of appropriate legal aid services to such middle-class people is

very important; however, under section 5 of the existing Legal Aid Ordinance (Cap. 91), the asset limit for legal aid applicants is \$165,700, which is far below the actual need, rendering the majority of the middle class being excluded from the protection net of legal aid; if involved in litigation, the middle-class people are neither able to pay the high lawyer fees on their own nor eligible to apply for legal aid, they are therefore deprived of judiciary justice; on the other hand, the existing legal aid services only cover litigation cases in Hong Kong, and over the past two decades, a large number of Hong Kong permanent residents have been working and living in the Mainland, and it is very likely that they may get involved in legal proceedings in their daily lives, business operation or work, but they have nowhere to turn to for any legal assistance; in this connection, this Council urges the Government to:

- (a) conduct a comprehensive review on the existing legal aid system;
- (b) relax the asset limit for legal aid applicants (including that for the Supplementary Legal Aid Scheme) to a reasonable level ***and extend the scope of assistance*** so that more people in need are eligible to apply for legal aid; ~~and~~
- (c) extend the scope of the existing legal aid services to cover litigation cases in the Mainland involving Hong Kong permanent residents who are in the Mainland;
- (d) ***consider implementing the recommendations set out in the Report on Conditional Fees published by the Law Reform Commission in July 2007;***
- (e) ***review the existing free legal advice service and set up community legal service centres; and***
- (f) ***formulate principles for determining legal fees for criminal legal aid so as to establish a more professional criminal legal aid system.***

Note: Dr Hon Margaret NG's amendment is marked in ***bold and italic type*** or with deletion line.

3. Motion as amended by Hon Albert HO Chun-yan

That, as the high litigation fees in Hong Kong are beyond the means of the middle class in general, in particular cases for which appeals may be lodged to the Court of Final Appeal where the litigation fees incurred are often astronomical, it is not uncommon that middle-class people go bankrupt because of their involvement in legal proceedings, hence the provision of appropriate legal aid services to such middle-class people is very important; however, under section 5 of the existing Legal Aid Ordinance (Cap. 91), the asset limit for legal aid applicants is \$165,700, which is far below the actual need, rendering the majority of the middle class being excluded from the protection net of legal aid; if involved in litigation, the middle-class people are neither able to pay the high lawyer fees on their own nor eligible to apply for legal aid, they are therefore deprived of judiciary justice; on the other hand, the existing legal

aid services only cover litigation cases in Hong Kong, and over the past two decades, a large number of Hong Kong permanent residents have been working and living in the Mainland, and it is very likely that they may get involved in legal proceedings in their daily lives, business operation or work, but they have nowhere to turn to for any legal assistance; in this connection, this Council urges the Government to:

- (a) conduct a comprehensive review on the existing legal aid system ***and establish an independent body for assessing and approving applications for legal aid;***
- (b) relax the asset limit for legal aid applicants (including that for the Supplementary Legal Aid Scheme) to a reasonable level so that more people in need are eligible to apply for legal aid; ~~and~~
- (c) extend the scope of the existing legal aid services to cover litigation cases in the Mainland involving Hong Kong permanent residents who are in the Mainland; ***and***
- (d) ***consider amending the law to enable the Director of Legal Aid to waive the asset limit for application of legal aid in respect of litigation cases involving constitutional issues or significant public interest, in addition to that for litigation cases involving human rights issues.***

Note: Hon Albert HO Chun-yan's amendment is marked in ***bold and italic type*** or with deletion line.

4. Motion as amended by Prof Hon Patrick LAU Sau-shing

That, as the high litigation fees in Hong Kong are beyond the means of the middle class in general, in particular cases for which appeals may be lodged to the Court of Final Appeal where the litigation fees incurred are often astronomical, it is not uncommon that middle-class people go bankrupt because of their involvement in legal proceedings, hence the provision of appropriate legal aid services to such middle-class people is very important; however, under section 5 of the existing Legal Aid Ordinance (Cap. 91), the asset limit for legal aid applicants is \$165,700, which is far below the actual need, rendering the majority of the middle class being excluded from the protection net of legal aid; if involved in litigation, the middle-class people are neither able to pay the high lawyer fees on their own nor eligible to apply for legal aid, they are therefore deprived of judiciary justice; on the other hand, the existing legal aid services only cover litigation cases in Hong Kong, and over the past two decades, a large number of Hong Kong permanent residents have been working and living in the Mainland, and it is very likely that they may get involved in legal proceedings in their daily lives, business operation or work, but they have nowhere to turn to for any legal assistance; in this connection, this Council urges the Government to:

- (a) conduct a comprehensive review on the existing legal aid system;

- (b) relax the asset limit for legal aid applicants (including that for the Supplementary Legal Aid Scheme) to a reasonable level so that more people in need are eligible to apply for legal aid; and
- ~~(c) extend the scope of the existing legal aid services to cover litigation cases in the Mainland involving Hong Kong permanent residents who are in the Mainland.~~

Note: Prof Hon Patrick LAU Sau-shing's amendment is marked with deletion line.