

CHAPTER 7

Legal Aid Department

Recovery of legal costs by the Legal Aid Department

**Audit Commission
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This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 45 of the Director of Audit contains 9 Chapters which are available on our website at <http://www.aud.gov.hk>.

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RECOVERY OF LEGAL COSTS BY THE LEGAL AID DEPARTMENT

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PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines its objectives and scope.

Background

1.2 The Legal Aid Department (LAD) provides, under the Legal Aid Ordinance (Cap. 91), legal representation to eligible applicants by a solicitor and, if necessary, a barrister in civil or criminal proceedings. Legal aid is available, among other things, to cases in the District Court, the Court of First Instance, the Court of Appeal, and the Court of Final Appeal. It is also available for committal proceedings in the Magistrates' Courts. Any person, whether or not resident in Hong Kong, who is involved in any of the above court proceedings may apply for legal aid. Legal aid will be granted if the applicant is able to satisfy the statutory criteria as to the financial eligibility and the merits for taking or defending the legal proceedings. In 2004 (calendar year), the LAD received 22,206 applications for legal aid and granted 12,045 legal aid certificates (see Appendix A).

1.3 There are two legal aid schemes, namely:

- (a) Ordinary Legal Aid Scheme (OLAS – see paras. 1.4 to 1.6); and
- (b) Supplementary Legal Aid Scheme (SLAS – see para. 1.7).

Ordinary Legal Aid Scheme

1.4 The OLAS is mainly financed by public fund. It provides legal aid services in civil cases (see para. 1.5) and criminal cases (see para. 1.6).

1.5 ***Civil cases under the OLAS.*** The OLAS covers most civil proceedings in courts, certain coroners inquests, and applications to the Mental Health Review Tribunal (Note 1).

Note 1: *The OLAS covers cases relating to matrimonial matters, traffic accident claims, landlord and tenant disputes, claims in respect of industrial accidents, employees' compensation, immigration matters, breaches of contract, professional negligence, seamen's wage claims, employees' wages and severance pay, the Mental Health Review Tribunal, and coroners inquests involving interests of public justice.*

To qualify for legal aid under the OLAS, the financial resources (Note 2) of an applicant should not exceed the upper financial eligibility limit (the current limit is \$155,800 – Note 3).

1.6 ***Criminal cases under the OLAS.*** The OLAS provides the services of a solicitor and, if necessary, a barrister to represent an accused person in committal proceedings in a Magistrates' Court, trials in the District Court or the Court of First Instance, and appeals to appeal courts. The financial resources of the applicant should not exceed the upper financial eligibility limit (the current limit is \$155,800 – Note 4).

Supplementary Legal Aid Scheme

1.7 The SLAS is self-financing and is operated under the Supplementary Legal Aid Fund (Note 5). It provides legal assistance to people whose financial resources exceed the upper limit allowed under the OLAS, but not exceeding the upper financial eligibility limit set for this scheme (the current limit is \$432,900). The SLAS is funded by application fees and contributions paid by applicants upon acceptance of offer of legal aid, and contributions deducted from damages or compensation recovered in the proceedings with the help of legal aid. In its financial year 2003-04 (i.e. 1 October 2003 to 30 September 2004), the Supplementary Legal Aid Fund had a surplus of \$4.7 million (see Appendix B).

In-house and assigned-out cases

1.8 Upon granting a legal aid certificate to an applicant, the Director of Legal Aid will decide either to act for the aided person (**in-house case**) or to assign a lawyer on the Legal Aid Panel to act for him (**assigned-out case**). In 2004, of the 11,934 legal aid cases

Note 2: *Financial resources refer to an applicant's annual disposable income plus his disposable capital.*

Note 3: *The Director of Legal Aid may waive the upper financial eligibility limit in meritorious cases where a breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue.*

Note 4: *The Director of Legal Aid may waive the upper financial eligibility limit if he is satisfied that it is desirable in the interest of justice to do so. An applicant charged with murder, treason or piracy with violence can apply to a judge for exemption from the means test.*

Note 5: *The SLAS covers claims involving personal injury and death, and medical, dental or legal professional negligence, where the claim for damages exceeds or is likely to exceed \$60,000. It also covers claims under the Employees' Compensation Ordinance (Cap. 282), irrespective of the amount claimed.*

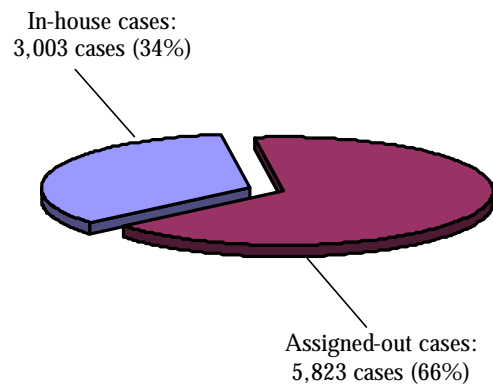
recorded by the LAD's system (Note 6), 3,686 (31%) were in-house cases and the remaining 8,248 (69%) were assigned-out cases. An analysis of these cases is at Figure 1.

Figure 1

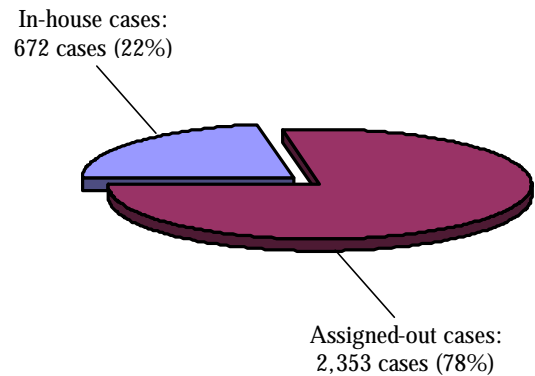
**Analysis of 11,934 legal aid cases
(2004)**

(A) OLAS

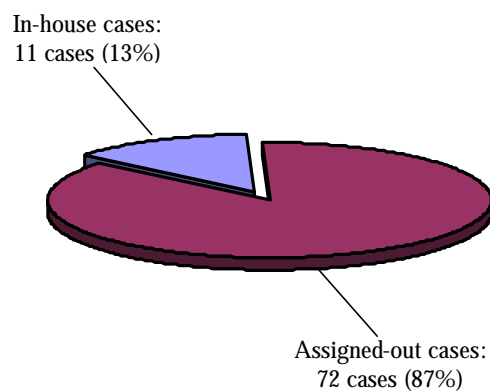
(i) Civil cases



(ii) Criminal cases



(B) SLAS



Source: LAD records

Note 6: In 2004, the LAD granted 12,045 legal aid certificates. The LAD informed the Audit Commission that its system only recorded 11,934 cases for 2004, and that the remaining 111 cases were classified as cases for the other years.

Legal costs

1.9 A person receiving legal aid may be required to contribute towards the costs and expenses incurred by the LAD out of his financial resources and, in a civil legal aid case, out of the moneys and/or property recovered or preserved on his behalf (see paras. 2.2 and 2.4). Furthermore, the LAD may recover from the opposite party the legal costs incurred (see para. 2.5). In 2004-05 (i.e. 1 April 2004 to 31 March 2005), the LAD incurred \$627.3 million in the provision of legal aid services (see Appendix C) and recovered \$195.5 million from aided persons and opposite parties (see Appendix D).

Legal Aid Services Council

1.10 In 1996, the Legal Aid Services Council was incorporated under the Legal Aid Services Council Ordinance (Cap. 489). The Council is responsible for overseeing the administration of legal aid services provided by the LAD and advising the Government on legal aid policy and funding requirements. The Council does not have the power to direct the LAD on staff matters and the handling of individual cases.

Director of Audit's Report on the provision of legal aid services in 2001

1.11 In Chapter 9 of the Director of Audit's Report No. 37 issued in October 2001, the Audit Commission (Audit) reported its findings on "Provision of legal aid services". The report focused on the deficit (legal costs less costs recovered) of the OLAS, the proportion of matrimonial cases among legal aid cases, and room for improvement in conducting means testing and merits testing procedures.

1.12 In Chapter 10 of its Report No. 37 issued in February 2002, the Public Accounts Committee (PAC) of the Legislative Council regretted that the LAD had only been able to obtain the consent of the aided persons in 82 cases for examination by Audit of the means testing procedures. The PAC also expressed concern that:

- (a) the LAD only paid cursory home visits on a selective basis to verify the financial resources of legal aid applicants;
- (b) the LAD did not take further steps to verify the income of applicants who were unable to produce proof of income or substantive evidence to support their applications;
- (c) there were no detailed records showing how the merits tests were conducted in civil cases;

- (d) the LAD's performance indicators were largely focused on reporting operational activities and output; and
- (e) the LAD did not have an overarching strategic plan to determine how the legal aid objectives could best be achieved.

1.13 In the Government Minute of May 2002, the Administration stated that the LAD:

- (a) had, since March 2002, put in place a standing arrangement for seeking consent from legal aid applicants at the time of application, to permit access to their case files by Audit for the purpose of conducting value for money studies;
- (b) had issued guidelines and checklists on means testing and merits testing procedures; and
- (c) aimed to publish its strategic plan and develop a number of new efficiency and effectiveness performance indicators.

Audit review

1.14 Audit has recently conducted a review to examine the recovery of legal costs by the LAD. The audit focused on the following areas:

- (a) cost recovery of the legal aid schemes (PART 2);
- (b) planning and monitoring of the recovery of legal costs (PART 3);
- (c) enforcement proceedings against judgment debtors (PART 4);
- (d) administration of outstanding and irrecoverable legal costs (PART 5); and
- (e) the Audit Commission's access to legal aid case files (PART 6).

1.15 Audit has found that there are areas where improvement can be made.

General response from the Administration

1.16 The **Director of Legal Aid** thanks Audit for its thorough study. He has said that the LAD:

- (a) is committed to ensuring that no one who qualifies for legal aid is denied access to justice because of a lack of means, and to maintaining the highest standards of professional excellence and ethic; and
- (b) will continue to make its best endeavours to ensure that the system of recovery of legal costs would remain effective and efficient.

1.17 The **Director of Administration** thanks Audit for its effort and observations. He notes the Director of Legal Aid's comments on the audit report.

Acknowledgement

1.18 Audit would like to acknowledge with gratitude the full cooperation of the staff of the LAD during the course of the audit review.

PART 2: COST RECOVERY OF THE LEGAL AID SCHEMES

2.1 This PART examines the LAD's reporting of the cost recovery of the OLAS and SLAS and suggests improvement measures.

Financial contributions from the aided person

Contributions upon acceptance of the offer of legal aid

2.2 Upon an applicant's acceptance of the offer of legal aid, the LAD issues a legal aid certificate to him certifying that he is entitled to legal aid. The certificate states the purpose for which legal aid is granted, the name of the lawyer assigned to act for the applicant, and the amount of contribution, if any, required from him. The financial contributions to be paid by an applicant under the two legal aid schemes are as follows:

- (a) **OLAS.** An applicant whose financial resources are assessed to be between \$20,001 and \$155,800 is required to pay a contribution ranging from \$1,000 to \$38,950 to cover the legal costs. If the Director of Legal Aid exercises his discretion to grant legal aid even though the applicant's financial resources exceed the statutory limit of \$155,800, the contribution that the applicant is required to pay will be a percentage, ranging from 30% to 67%, of his assessed financial resources; and
- (b) **SLAS.** An applicant is required to pay a non-refundable application fee of \$1,000. In addition, he is required to pay a contribution of \$38,950 to cover the legal costs.

Financial contributions after court judgment

2.3 For civil cases under the two legal aid schemes, if the proceedings for which legal aid is granted are unsuccessful, the contribution paid by the aided person will be applied towards the payment of legal costs incurred in the proceedings and will not be refunded unless there is a surplus after payment of such costs.

2.4 If the aided person wins his case and is successful in recovering damages or preserving property involved in the proceedings, the Director of Legal Aid has a right to recover from such damages and property all or part of the costs and expenses incurred and paid on behalf of the aided person. This right is called the **Director of Legal Aid's first charge**. In addition, if legal aid is granted under the SLAS, the aided person needs to

contribute a further 12% (Note 7) of the damages recovered to the Supplementary Legal Aid Fund.

Legal costs recoverable from the opposite party

2.5 In the event that the court judgment is in favour of the aided person, the aided person, through an officer of the LAD acting on his behalf or his assigned lawyer, may apply to the court for an order for costs against the opposite party. This is known as **party and party costs** (Note 8). If the costs are not recovered from the opposite party, the LAD may recover such costs from the contribution paid or moneys and/or property recovered or preserved on behalf of the aided person in the proceedings.

Audit observations

LAD's reporting of cost recovery of the two legal aid schemes

2.6 **SLAS.** The SLAS is a self-financing scheme operated under the Supplementary Legal Aid Fund. The Fund maintains its own bank accounts for receipts and payments. In accordance with section 31(1) of the Legal Aid Ordinance, financial statements of the Fund are prepared every year and are audited by the Director of Audit. The accrual-based accounting principle is adopted in compiling the financial statements. An income and expenditure statement of the Fund mainly shows the total income and expenditure of cases finalised in a financial year under the SLAS. In its financial year ended 30 September 2004, the Fund had a surplus of \$4.7 million (see Appendix B).

2.7 **OLAS.** Receipts and payments under the OLAS are accounted for in the Government's General Revenue Account, which adopts the cash-based accounting principle. In 2004-05, the LAD's revenue was \$200.3 million (see Appendix D) and its expenditure was \$627.3 million (see Table 1 and Appendix C).

Note 7: *If the case is settled before a counsel is briefed to attend a trial, this percentage will be reduced by half to 6%.*

Note 8: *These are costs which the court orders one party to the proceedings to pay to the other. These costs are proper and necessary for the latter to incur in bringing proceedings, or enforcing or defending its rights. These costs may be agreed between the two parties or, in default of agreement, taxed by the court.*

Table 1
Expenditure on the LAD's programmes of activities
(2004-05)

Programme	(\$ million)
Processing of legal aid applications	73.6
Litigation services	518.0
Support services	28.9
Official Solicitor's Office (Note)	6.8
Total	627.3

Source: LAD records

Note: This Office provides representation to persons under a legal disability, and discharges the Official Solicitor's duties as prescribed by the Official Solicitor Ordinance (Cap. 416) and by other enactments.

2.8 Audit considers that the financial statements of the SLAS reflect more clearly its financial performance (including the extent to which legal costs incurred in legal aid cases have been recovered) than the financial information published in the Estimates and the LAD's annual reports for the OLAS for the following reasons:

- (a) **Matching revenue with expenditure.** The income and expenditure statements of the SLAS mainly show the total income and expenditure of cases finalised in a financial year under the scheme. These statements effectively show the overall financial performance of the cases finalised in a financial year. For the OLAS, due to the adoption of the cash-based accounting principle (under the General Revenue Account), the amounts paid during a financial year are recorded as expenditure, which cover cases finalised in different years. Therefore, the financial statements prepared for the SLAS comply with a key accounting principle of matching revenue with expenditure, and better reflect the financial performance of the scheme; and
- (b) **Inclusion of staff and administration costs in expenditure.** For SLAS cases, the LAD's staff and administration costs incurred in handling the cases are included in SLAS financial statements. This practice reflects more clearly the full costs incurred in handling cases under the SLAS. For the OLAS, the staff

cost is not separately shown. Instead, the LAD's staff costs incurred are shown in aggregate in the Estimates (i.e. total personal emoluments, personnel related expenses, and departmental expenses).

2.9 In September 2005, in response to Audit's observations in paragraph 2.8, the LAD stated that:

- (a) the annual income and expenditure statements of the Supplementary Legal Aid Fund in a financial year set out the Fund's surplus or deficit in the year; and
- (b) in addition to the income and expenditure of SLAS cases finalised in a financial year, the statements also included (Note 9):
 - (i) interest earned (2% of total income in the year ended 30 September 2004);
 - (ii) application fees retained from unsuccessful applications (less than 1% of total income in the year ended 30 September 2004);
 - (iii) administration cost of processing applications (7% of total expenditure in the year ended 30 September 2004); and
 - (iv) bank charges (less than 1% of total expenditure in the year ended 30 September 2004).

2.10 **Audit considers that, in order to gauge the income and expenditure of SLAS cases finalised in a financial year, the LAD can exclude the unrelated items and disclose the pertinent surplus or deficit of these cases in its annual reports and website.**

2.11 Audit has found that the income of the following two types of OLAS cases has little relationship with their expenditure:

- (a) criminal cases (because in most cases, the LAD does not seek costs from the opposite party, who is the Secretary for Justice); and
- (b) civil cases without an order for costs and damages awarded to the aided person.

Note 9: *Information in brackets is provided by Audit based on information in Appendix B.*

2.12 **In order to disclose to the public the extent to which legal costs of pertinent cases (civil cases under the OLAS where the court has awarded an order for costs and damages to the aided person) have been recovered, Audit considers that the LAD should prepare relevant financial information, in the form of income and expenditure statements similar to those for the SLAS, for these OLAS cases.**

Performance indicators on recovery of legal costs

2.13 In its 1995-96 Controlling Officer's Report, the LAD reported (under Programme 3: Support Services, and in respect of cases where enforcement actions had to be taken) the "amount of damages, maintenance and costs recovered as % of total amount due to department and aided persons". The percentages were 31.4% in 1993, 53.9% in 1994 and 40% in 1995. Since then, the LAD has not provided similar statistics in its Controlling Officer's Reports (Note 10). Based on the income and expenditure information of civil cases finalised in a year under the OLAS where the court has awarded an order for costs and damages to the aided person (see para. 2.12), the LAD can calculate the cost recovery rates of these cases.

2.14 **Audit considers that the LAD should disclose such cost recovery rates because they provide useful information for enhancing public accountability of the LAD's legal aid services. In addition, in order to enhance public accountability of its legal aid services, the LAD should explore ways and means to compile and disclose relevant and useful performance indicators. These indicators will help stakeholders evaluate the performance of the LAD's legal aid services.**

Legal costs paid by the LAD to the opposite party

2.15 In the event that the aided person is liable to pay costs to the opposite party, the LAD, in addition to paying the costs and expenses incurred by the LAD on his behalf, will pay those costs of the opposite party. The LAD paid \$16.9 million in 2003-04 and \$22.2 million in 2004-05 by way of legal costs to the opposite party in respect of cases where judgment was in his favour (see Table 2).

Note 10: *Audit could not find records documenting the reasons why the LAD has not continued to provide the statistics in its Controlling Officer's Reports.*

Table 2

**Legal costs paid by the LAD to the opposite party
(2003-04 and 2004-05)**

Scheme	1.4.03 to 31.3.04		1.4.04 to 31.3.05	
	No. of cases	Amount (\$ million)	No. of cases	Amount (\$ million)
OLAS	126	15.4	123	21.6
SLAS	10	1.5	4	0.6
Total	136	16.9	127	22.2

Source: LAD records

2.16 **For transparency and public accountability purposes, Audit considers that the LAD should disclose the information shown in Table 2 in its annual reports and website.**

LAD's comments on disclosure of information

2.17 In September 2005, in response to Audit's observations in paragraphs 2.6 to 2.8 and 2.10 to 2.16, the LAD stated that:

- (a) as the SLAS was a self-financing scheme, it was of utmost importance that its Fund was able to generate sufficient income to meet expenditure. The financial statements were therefore specially designed to monitor the Fund's financial position;
- (b) the OLAS was a publicly funded service to ensure that appropriate financial and legal assistance was given to eligible aided persons. It derived income from the Government and incurred government expenditure. The current cash-based presentation of financial information followed the established practice of government departments/bureaux providing public services with government

funds. The income and expenditure of the OLAS was recorded on a rolling basis and was shown in the Estimates, which was part and parcel of the Government's General Revenue Account. The LAD considered the current arrangement appropriate and effective for monitoring the financial aspects of the OLAS, given the nature of its operation;

- (c) the LAD agreed that it would be ideal for it to include full staff and overhead costs in respect of cases finalised in a year in the financial statements of the OLAS. However, as staff and overhead costs of the LAD covered a range of services in addition to litigation service, the LAD needed to arbitrarily apportion these costs for each case. This would necessitate a substantial overhaul of the LAD's existing accounting system and involve significant staff resources. In the light of resource constraints and practical consideration, the LAD had difficulty in adopting this practice;
- (d) the financial performance of the OLAS was affected by many factors beyond the control of the LAD. These factors included:
 - (i) under the Legal Aid Ordinance, the LAD was required to grant legal aid to cases where the applicants showed that they had a reasonable case for taking or defending a claim. The threshold was prescribed by statute. The LAD could not raise the threshold unilaterally by granting legal aid only to those applications that had, for instance, a cast-iron case. Furthermore, there was no certainty in the outcome of a court case, even with the best professional assessment one might make beforehand;
 - (ii) case nature could affect the financial performance of the OLAS. For example, for successful claims, experience showed that full recovery of damages and costs was more likely to happen in personal-injuries related cases than in other cases. For matrimonial cases, the court was unlikely to make an order for costs in ancillary matters;
 - (iii) recovery of costs would be affected by the financial circumstances or employment status of the opposite party. Sudden influx of long and complicated cases, especially those affecting a large number of people (such as the Right of Abode cases, the Vietnamese Boat People cases, and judicial review matters), which had important public interest concerns, would adversely affect the financial performance of the OLAS in a particular year;
 - (iv) for criminal cases under the OLAS where legal aid was granted in the interest of justice, costs incurred were not recovered in the majority of cases even where the applicant was acquitted; and

- (v) the degree of complexity and difficulty differed significantly from case to case;
- (e) given that the policy objective of the OLAS was to ensure that appropriate financial and legal assistance was given to eligible aided persons, and with the extenuating factors which might affect the scheme's financial position that were beyond its control, the LAD considered that the financial information proposed in paragraphs 2.12, 2.14 and 2.16 would unlikely serve as useful performance indicators. It had reservations about spending additional resources to introduce and maintain a separate accounting arrangement for the OLAS in parallel with the existing arrangement. There was no direct relationship between the performance of the LAD and the damages/cost recovery ratio or legal costs paid to the opposite party;
- (f) the LAD considered that the success of the OLAS should not be measured by its financial performance. Rather, its performance should be measured by the extent to which it fulfilled the policy objective for legal aid within the LAD's financial allocation; and
- (g) legal aid expenditure had been contained over the past few years as a result of cost-control measures of the LAD, through stringent monitoring of high-cost cases, the introduction of fixed costs in matrimonial cases, and wider use of limited legal aid certificates. The LAD considered that undue emphasis on the financial performance of the OLAS might give the public the unhelpful impression that, insofar as legal aid services were concerned, the provision of the OLAS was premised upon its financial performance. This was not the case. The policy objective of providing legal aid and the OLAS in particular was to ensure the right of access to justice for people of limited means.

2.18 Audit considers that, in order to enhance the transparency and public accountability of the LAD's recovery of legal costs after the delivery of legal aid services, and its payment of legal costs to the opposite party, there are merits for the LAD to compile and disclose the information proposed in paragraphs 2.12, 2.14 and 2.16. Stakeholders including members of the public can make use of the information proposed in paragraph 2.14 to compare the cost recovery rates of the pertinent cases (civil cases under the OLAS where the court has awarded an order for costs and damages to the aided person) among different time periods. In the event of significant variance among the rates in different time periods, the LAD may provide explanations for the variance.

LAD's staff costs incurred in legal aid cases

2.19 For cases conducted by the LAD's in-house lawyers, the LAD prepares cost estimates including staff time costs (hours spent by professional officers and law clerks multiplied by the corresponding hourly rates published by the Law Society of Hong Kong), costs of preparing, filing and serving legal documents, and disbursements. These cost estimates are prepared manually using a standard form, recording the hours spent by the LAD's staff in conducting the litigation. These estimates are prepared mainly for the purpose of agreeing the amount of legal costs with the opposite party, who has been ordered to pay the costs.

2.20 **Audit considers that there is room for improvement in the LAD's system of recording staff costs incurred in each legal aid case.** Professional firms usually adopt a computerised staff time-charging system. Under the system, each staff member is required to report the time he spends on each job, usually on a daily basis. Nowadays, most systems allow staff to input the staff-time data online. The following are some of the advantages of this system:

- (a) the staff time and staff costs incurred in each legal aid case can be accurately recorded and readily made available; and
- (b) the management can make use of the system to:
 - (i) monitor and assess the performance of staff; and
 - (ii) ensure a better distribution of work among staff.

Audit recommendations

2.21 **In order to enhance the transparency and public accountability of the LAD's legal aid services, Audit has recommended that the Director of Legal Aid should:**

- (a) **explore ways and means to compile and disclose relevant and useful performance indicators for evaluating the efficiency and effectiveness of legal aid services (see para. 2.14); and**
- (b) **introduce a computerised staff time-charging system for recording the staff time and staff costs incurred in each legal aid case (see para. 2.20).**

Response from the Administration

2.22 The **Director of Legal Aid** agrees with Audit that the transparency and public accountability of the legal aid services to the public should be enhanced where appropriate, with a view to facilitating the monitoring of the LAD's performance. He has said that:

- (a) the LAD will give favourable consideration to implementing Audit's recommendation mentioned in paragraph 2.21(a) and identifying indicators in addition to those already in place for evaluating the efficiency and effectiveness of legal aid services; and
- (b) the LAD fully appreciates and agrees that there is a need to monitor and assess the performance of its staff and ensure a reasonable distribution of work among staff. For those in-house litigation cases which are chargeable on hourly rates as opposed to fixed costs (as with insolvency and matrimonial fixed-cost cases), the LAD is capturing the time spent by its staff involved through its time costing programme, for the purpose of estimating costs and preparing bills of costs. For the work of the Application and Processing Division, the costs are not recoverable. Accordingly, the use of time/monies spent by a staff member as an indicator to measure the effectiveness and efficiency of his performance may not be appropriate. The LAD has put in place appropriate performance indicators or measures to monitor staff performance, including performance pledges on processing time and payments. The distribution of work among staff depends on both the time spent on cases and other factors, such as existing caseload, post-admission experience and seniority of the officers concerned.

PART 3: PLANNING AND MONITORING OF THE RECOVERY OF LEGAL COSTS

3.1 This PART examines the LAD's strategic planning for the recovery of legal costs and monitoring of the actions taken to recover these costs.

Legal Aid Department's computer system

3.2 Since September 2002, the LAD has implemented a Case Management and Case Accounting System (hereinafter referred to as the Case System) which helps the LAD manage its major workflow for the provision of legal aid services to the public. The system supports about 500 users in handling a series of business processes, including processing applications, assigning cases to the LAD's officers and external service providers, monitoring the progress of in-house and assigned-out cases, preparing bills of costs, monitoring the accounts of legal aid cases, and paying aided persons and assigned lawyers.

Strategic planning for recovery of legal costs

3.3 In its Report No. 37 of February 2002, the PAC recommended that the Director of Legal Aid should, in consultation with the Director of Administration, develop an overarching strategic plan to better achieve the objectives of the LAD. Subsequently, the LAD has compiled a strategic plan which aims to provide a rational basis on which priorities are determined, and to ensure that resources are well targeted and used efficiently. The LAD has uploaded on its website its strategic plan which sets out its vision, mission, values, long-term aims and objectives, and priority areas (see Appendix E).

Legal Aid Department's guidelines on seeking costs from the opposite party

3.4 For cases under the OLAS and SLAS, if the court judgment is in favour of the aided person, subject to the law, the aided person may, through an officer of the LAD acting on his behalf or his assigned lawyer, ask the court to order the opposite party to pay the costs incurred in bringing proceedings or in enforcing or defending the rights of the aided person. The amount of the costs to be paid by the opposite party may be agreed between the two parties or, in default of agreement, taxed by the court.

3.5 In its Guidance Notes to Solicitors Handling Civil Legal Aid Cases, the LAD states that, throughout the course of the proceedings:

- (a) assigned lawyers must seek costs in favour of the aided person, where appropriate; and

- (b) any settlement which does not specifically provide for costs to the aided person to be paid by the opposite party can be entered into only with the written consent of the aided person signifying his understanding that such costs will be met out of his contribution and/or property recovered or preserved, if any, and with the written approval of the Director of Legal Aid.

3.6 In its guidelines to its staff handling in-house cases, the LAD states that, in matrimonial proceedings, the LAD's responsible officers must obtain an Assistant Principal Legal Aid Counsel's prior approval if they intend not to seek costs from the opposite party, except in the following circumstances (Note 11):

- (a) the petition is based on "one year separation with consent" and the opposite party agrees to give his consent only if he is not required to pay any costs;
- (b) the opposite party agrees not to defend the petition on the condition that the aided person will not seek costs from him;
- (c) the aided person agrees to pay the costs out of the contribution, lump sum recovered, or property preserved/recovered; or
- (d) the opposite party is unable to make payment because he is:
 - (i) a Comprehensive Social Security Assistance (CSSA) allowance recipient unless there is evidence that he owns assets; or
 - (ii) bankrupt.

Audit observations

LAD's officers/assigned lawyers did not seek costs in some cases

3.7 Of the total 173 case files (all were civil cases) examined by Audit, 143 (83%) were cases where the court judgment was in favour of the aided persons. Of these 143 cases, Audit noted that in 27 cases where the LAD's responsible officers/assigned lawyers did not take action to seek costs from the opposite party, they did not:

- (a) document the reasons;
- (b) obtain written consent of the aided persons; or
- (c) obtain written approval of a senior officer of the LAD (see Table 3).

Note 11: *Under the LAD's guidelines, some applications in relation to custody, access and ancillary relief matters which are disposed of by consent do not need approval.*

Table 3

27 cases examined by Audit where no action was taken to seek costs from the opposite party

	In-house cases (13 cases)		Assigned-out cases (14 cases)	
	Number	Percentage	Number	Percentage
Cases without documented reasons	11	85%	11	79%
Cases without written consent of aided persons	13	100%	14	100%
Cases without written approval of a senior officer of the LAD	12	92%	12	86%

Source: LAD records

3.8 In late June 2005, in response to Audit's enquiry, the LAD stated that:

- (a) for both in-house and assigned-out cases, there were cases where, by law, the LAD could not claim costs from the opposite party;
- (b) in such cases, in-house and assigned lawyers did not need to seek approval for not claiming costs; and
- (c) these cases included:
 - (i) divorce cases on the grounds of separation for two years or more;
 - (ii) cases where the opposite party was legally aided; and
 - (iii) cases where the aided person gave instructions not to claim costs against the opposite party and he agreed to pay the same out of his contributions and/or damages recovered.

3.9 **Audit considers that both the LAD's professional officers and assigned lawyers should document the justifications for not seeking costs from the opposite party. This provides trails for subsequent reviews to ensure that there are valid**

reasons for the decisions. They should also, as far as possible, adopt the procedures mentioned in paragraph 3.5 because:

- (a) **written consent from the aided person ensures that he understands his rights and agrees to his obligations; and**
- (b) **approval from the senior officer of the LAD ensures that the reasons given are acceptable and the laid-down procedures have been complied with.**

Audit recommendations

3.10 **Audit has recommended that the Director of Legal Aid should, in respect of a case where the law allows but it is not justifiable to seek costs from the opposite party, require the LAD's responsible professional officer/assigned lawyer to:**

- (a) **clearly document the reasons; and**
- (b) **where appropriate, seek the written consent of the aided person concerned and/or the approval of a senior officer of the LAD (see para. 3.9).**

Response from the Administration

3.11 The **Director of Legal Aid** welcomes Audit's recommendation mentioned in paragraph 3.10(a). He has said that:

- (a) the LAD will actively consider the use of a checklist for documenting the reasons for not seeking costs in cases where exercise of discretion is involved. For cases where, by law, costs will not be ordered against the opposite party, it will not be necessary for the LAD to document the reasons for not seeking costs; and
- (b) regarding Audit's recommendation in paragraph 3.10(b), it is the LAD's practice to seek written consent of the aided person, where appropriate and/or the approval of a designated officer of the LAD when a decision not to seek costs against the opposite party involves the exercise of discretion. The LAD will continue to adopt this practice. It is a matter of professional judgment whether to seek costs in a case. The award of costs is a matter left to the discretion of the court.

PART 4: ENFORCEMENT PROCEEDINGS AGAINST JUDGMENT DEBTORS

4.1 This PART examines the enforcement proceedings taken by the LAD against judgment debtors for recovery of judgment debts.

Enforcement proceedings in legal aid cases

4.2 Enforcement proceedings taken by the LAD refer to steps or court proceedings taken against the opposite party who fails to make payment in respect of periodic payments, judgment debts and costs in legal aid cases.

4.3 In an assigned-out case, if the judgment debtor defaults payment, the assigned lawyer will forward the case to the LAD's Application and Processing Division, which will consider whether there are merits for taking enforcement proceedings. If it considers so, it will take action to locate the judgment debtor and issue demand letters to him. If the judgment debtor does not make payment, the Application and Processing Division will either write off the outstanding legal costs if it considers that such costs are irrecoverable, or will forward the case to the LAD's Enforcement Unit for further action. In addition to taking enforcement actions against judgment debtors of assigned-out cases, the Enforcement Unit is responsible for handling new legal aid cases involving enforcement of judgment debts. In 2004, the Enforcement Unit took action against 956 individuals/companies in respect of outstanding judgment debts and recovered \$34 million from them. Regarding in-house cases, the LAD's Civil Litigation Unit is responsible for enforcement actions against judgment debtors.

4.4 The bulk of cases involving debt recovery action are related to the recovery of arrears of maintenance and party and party costs (see Note 8 to para. 2.5) in matrimonial cases.

Legal Aid Department's guidelines

4.5 In its Departmental Circular No. 12/96, the LAD has provided a checklist for consideration by officers handling cases involving default judgment debtors, before taking enforcement proceedings. The points for consideration are:

- (a) whether the judgment debtor can be located;

- (b) procedural problems in the proceedings, e.g. substituted service (service of the documents relating to the proceedings is effected through a notice posted on newspapers, instead of them being delivered to the defendant/respondent due to lack of address);
- (c) the judgment debtor's financial circumstances, with particular reference to drug, alcohol, loans, employment, public assistance, and the position of the custody of children;
- (d) amount of costs to be recovered in proportion to the likely costs of enforcement proceedings;
- (e) the effect on the aided person's contribution under the legal aid certificate if no cost-recovery action is taken;
- (f) the existence or otherwise of property preserved or recovered in the proceedings; and
- (g) other circumstances which may be considered relevant in the matter.

4.6 The LAD's Departmental Circular No. 12/96 states that, having considered the points mentioned in paragraph 4.5, if the LAD's responsible officer considers that taking enforcement proceedings against a default judgment debtor is not appropriate, he needs to seek the approval of an Assistant Principal Legal Aid Counsel or above for writing off the debt.

4.7 The LAD's Departmental Circular No. 12/96 states that, when recommending that the claim for costs against the opposite party be written off in a legal aid case:

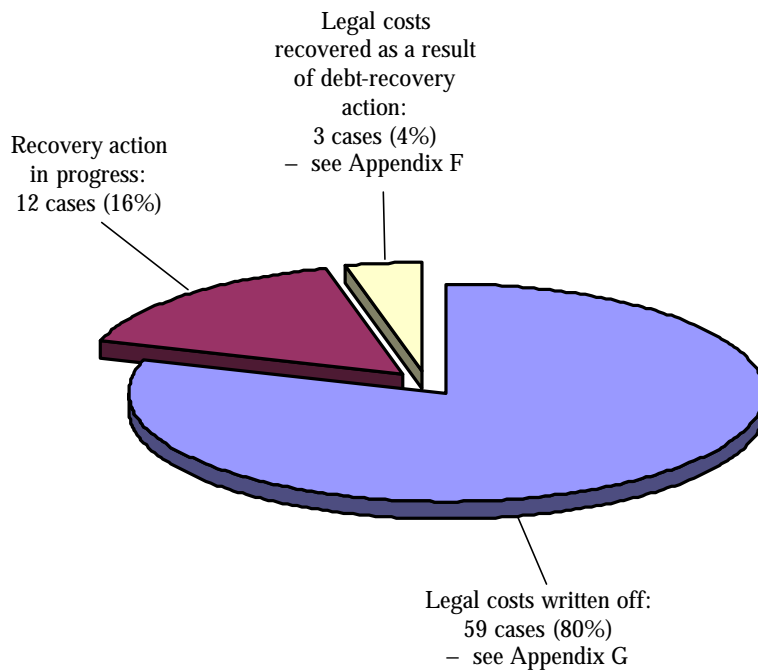
- (a) it is not necessary for the responsible officer to list out the points for consideration mentioned in paragraph 4.5; and
- (b) unless there are strong reasons to do so, cases involving sums less than \$5,000 should not be referred to the Enforcement Unit for taking enforcement proceedings. Instead, the case should be referred to the section head to consider write-off action.

Audit examination

4.8 Of the 173 civil cases examined by Audit, the LAD's responsible officers/assigned lawyers obtained court orders for costs in favour of the aided persons in 111 cases (64%). Of these 111 cases, the judgment debtors in 37 cases (33%) made

payment in response to the LAD's demand letters without the need for it to take further action. The position of the remaining 74 cases as at 31 July 2005 is shown in Figure 2.

Figure 2
Position of 74 cases with outstanding legal costs
(31 July 2005)



Source: LAD records

Audit observations

Finding judgment debtors' addresses

4.9 Subsequent to the fixing of the amount of costs to be paid by the opposite party in a legal aid case (either by agreement or by taxation of the court), the LAD will issue a demand letter to the opposite party (judgment debtor). If the LAD does not have the judgment debtor's address, it will seek assistance from some government departments. The LAD's training manual for enforcement proceedings against judgment debtors has listed out

the following government departments which the LAD may approach and request them to provide it with judgment debtors' addresses (Note 12):

- (a) **the Land Registry**, which maintains a register of all land ownership and encumbrances in Hong Kong;
- (b) **the Companies Registry**, which keeps records of all companies registered under the Companies Ordinance (Cap. 32);
- (c) **the Business Registration Office** of the Inland Revenue Department, which keeps records of business registration of all companies;
- (d) **the Official Receiver's Office**, which keeps records of all bankruptcy and winding-up petitions filed;
- (e) **the Transport Department**, which keeps records of all vehicle owners and holders of driving licences;
- (f) **the Housing Department**, which keeps records of registered tenants and occupants of all public housing units; and
- (g) **Registration of Persons Office** of the Immigration Department, which keeps records of the reported addresses and telephone numbers of all Hong Kong residents.

4.10 Audit's examination of the 59 write-off cases (see Appendix G) revealed that the LAD's responsible officers conducted address searches in 18 cases. However, in conducting the searches, they did not approach some government departments mentioned in paragraph 4.9 for judgment debtors' addresses. Audit's examination revealed that:

- (a) for all these 18 cases where the judgment debtors' addresses were unknown, the LAD's responsible officers did not approach the Land Registry, Companies Registry, Business Registration Office and Official Receiver's Office for their addresses;

Note 12: *In the LAD's letters to government departments requesting them to provide it with the addresses of judgment debtors, it is always stated that the LAD is claiming exemption from the provisions of data protection principle 3 pursuant to section 58(2) of the Personal Data (Privacy) Ordinance (Cap. 486), namely that the use of the data is for the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct or dishonesty by the named person and the application of data protection principle 3 in relation to such use would be likely to prejudice any of the matters referred to in section 58(1) of the Ordinance.*

- (b) for Cases 4 to 8 where the judgment debtors' addresses were unknown, the LAD's responsible officers did not conduct address searches at any government department; and
- (c) in the address searches, the LAD approached some parties which were not included in the LAD's training manual. For example, for Cases 15, 20, 26 and 28, the Hospital Authority was approached, and for Cases 15 and 28, the Social Welfare Department (SWD) was approached.

4.11 For judgment debtors whose whereabouts are unknown, Audit considers that the LAD should approach all relevant government departments and the Hospital Authority which may have information about the judgment debtors' addresses.

4.12 Audit considers that there is room for improvement in the LAD's approach to writing to each government department to seek the address information about judgment debtors. **The LAD should coordinate the requests and send them periodically (say, monthly) to all relevant government departments and the Hospital Authority which may have information about judgment debtors' addresses. To facilitate the searching process, the LAD should send the requests in computer-readable form. In this connection, the LAD should issue departmental guidelines to ensure a consistent approach to searching judgment debtors' addresses.**

4.13 In September 2005, in response to Audit's observations in paragraphs 4.9 to 4.12, the LAD stated that:

- (a) the list of government departments and agencies in the LAD's training manual served as reference only. This list was not exhaustive and did not impose a mandatory requirement for the LAD's officers to contact all the organisations on the list. In making reference to the list, the LAD's professional officer should apply his professional judgment based on the information available in a case when deciding to which government departments or agencies he should direct his enquiries. For example, if the information available in a case indicated that the opposite party was not a CSSA recipient, there was no need to write to the SWD to confirm a piece of known information. Also, if the facts of the case indicated that the opposite party did not own any property, it would not be necessary to spend time for a search at the Land Registry;
- (b) if the LAD insisted on making enquiries in spite of the available or known information, this would be contrary to the interests of the aided person where he had an interest in the outcome of the proceedings. The LAD would be acting unprofessionally, as the costs of making the enquiries might be borne by the aided person. Even if the aided person did not have any interest in the outcome,

the LAD had to be mindful of the need to ensure the cost-effectiveness of using public resources not only of the LAD but also that of the departments and agencies at the receiving end of the enquiries; and

- (c) if there was information that the opposite party had received medical treatment from one of the public hospitals, it was prudent to approach the Hospital Authority for information, even if the Hospital Authority was not on the list. The cases mentioned in paragraph 4.10(a) to (c) should be seen in the light of the above background. For cases mentioned in paragraph 4.10(b), they were cases where the court had granted an order for substituted service of the relevant court documents. This meant that the court was satisfied that the opposite party involved could not be located for personal service.

4.14 **Audit considers that:**

- (a) **as shown in Appendix H, sometimes the information available in a case was provided by the aided person and might not be exhaustive;**
- (b) **if the LAD's requests are sent to relevant government departments and agencies in computer-readable form periodically (see para. 4.12), the costs incurred by the LAD and the receiving organisations for conducting the address searches will not be substantial. This is because the receiving organisations will conduct the searches by computer and notify the LAD of the results by email; and**
- (c) **based on the information of a judgment debtor, if the LAD's responsible officer considers that it is highly unlikely that some government departments and agencies will have his address information, the officer may decide not to seek address information from these organisations. In making the decision, the officer needs to document his reasons.**

Room for improvement in taking enforcement actions

4.15 ***Cases with sufficient and clear reasons for write-off.*** Audit's examination of the 59 write-off cases (see Appendix G) revealed that, in some cases, the reasons given by the LAD's responsible officers for writing off the debts without taking further enforcement actions were sufficient and clear. Examples include:

- (a) the opposite party had been declared bankrupt and the Official Receiver had declared no dividend (Cases 45 to 62); and
- (b) the opposite party was in receipt of CSSA allowance (Cases 9, 30 to 32 and 41 to 44).

4.16 In August 2005, in response to Audit's observations in Appendix G, the LAD provided additional information relating to the write-off of some cases (see Appendix H).

4.17 **Cases other than those with sufficient and clear reasons for write-off.** For cases other than those with sufficient and clear reasons for write-off, in Audit's view, the LAD's responsible officers should consider:

- (a) applying for prohibition orders unless there are reasons not to do so (which should be documented). Nowadays, many people make frequent trips to the Mainland. A prohibition order is an effective means of compelling judgment debtors to pay their debts if they need to travel outside Hong Kong. Audit noted that, of the 59 write-off cases (see Appendix G), the LAD applied for prohibition orders in two cases only (Cases 23 and 29). In Cases 1 and 3 (see Appendix F), the judgment debtors made payment of the debts as a result of the prohibition orders served on them; and
- (b) conducting searches for assets and income of judgment debtors at the following government departments:
 - (i) the Land Registry, to ascertain if they have any properties;
 - (ii) the Companies Registry, to ascertain if their names (together with identity card numbers and addresses) appear in companies' returns to the Registry (the returns will show the identity of company directors and secretaries, indicating that they may have income);
 - (iii) the Business Registration Office, to ascertain if their names (together with identity card numbers and addresses) appear in companies' returns to the Office; and
 - (iv) the Transport Department, to ascertain if they are vehicle owners.

4.18 In September 2005, in response to Audit's observations in paragraph 4.17, the LAD stated that:

- (a) whether prohibition order was an effective means depended on the particular circumstances of the case. Prohibition orders were not effective against those judgment debtors who were not frequent travellers outside Hong Kong or who remained in Hong Kong until the expiry of the orders;
- (b) prohibition orders were valid only for short duration and could be extended only for short duration each time and for limited occasions. They could not be issued against debtors unless the court was satisfied, among other things, that the

judgment debtor was a frequent traveller. There must be evidence to prove that the enforcement of the judgment would be impeded in some significant ways if no prohibition orders were made. To use prohibition orders without sufficient grounds as a threat to debtors for non-payment of debt would amount to an abuse of the court's process; and

- (c) prohibition orders could only be issued for the service of judgment summons or if there was evidence to show that the debtor would not return to Hong Kong. As this was a costly exercise, the LAD, the aided person and the court must exercise care in deciding whether a prohibition order and/or judgment summons should be pursued.

4.19 ***Enforcement proceedings taken.*** In its training manual, the LAD has laid down the following procedures for taking enforcement proceedings against judgment debtors if they do not respond to demand letters (see Appendix I):

- (a) application for a judgment summons;
- (b) taking garnishee proceedings;
- (c) application for a charging order;
- (d) application for a prohibition order;
- (e) application for an attachment of income order;
- (f) application for an order for examination of debtor; and
- (g) application for a writ of Fieri Facias.

4.20 Audit's examination of the 59 write-off cases (see Appendix G) revealed that, of the seven enforcement procedures available, the LAD applied for judgment summons and/or prohibition orders in three cases only (Cases 23, 29 and 32).

4.21 In September 2005, in response to Audit's observations in paragraph 4.20, the LAD stated that:

- (a) while there were various means of enforcement proceedings available, the LAD's professional officers were in the best position to determine which mode of proceedings should be adopted upon consideration of the following factors:
 - (i) the circumstances of the case;

- (ii) whether the course of action to be taken was appropriate;
 - (iii) whether the course chosen was cost-effective; and
 - (iv) the prospect of success; and
- (b) adopting a uniform set of approaches in deciding the mode of recovery action for the professional officers to follow would not be appropriate as cases differed greatly in their circumstances and nature.

4.22 **In order to ensure that the LAD's responsible officers have pursued all the applicable enforcement actions mentioned in paragraph 4.19 before writing off the debts, Audit considers that the LAD should prepare a checklist of enforcement actions to help them document the actions taken (together with the results) and the reasons for not pursuing certain courses of action.**

Need to timely update the LAD's Case System

4.23 Audit's examination revealed that there was room for improvement in the LAD's procedures for handling judgment-debtor cases, as reflected in the following two cases (see Appendix F):

- (a) in Case 1, in April 2004, an Assistant Principal Legal Aid Counsel rejected a proposal to write off the debt and asked for further actions. In September 2004, the judgment debtor approached the LAD and signed an undertaking to pay the outstanding debt. He subsequently made payments, as promised. However, on 29 October 2004, the LAD included this case in its half-yearly return on write-off covering the period 1 April 2004 to 30 September 2004 to the Financial Services and the Treasury Bureau (FSTB). **This indicates that the LAD's officers did not update in a timely manner payments received and actions taken in the LAD's Case System before compiling returns to the FSTB; and**
- (b) in Case 2, on 21 March 2005, the judgment debtor made full payment of the debt. However, on 7 April 2005, the LAD applied to the court for a judgment summons and a prohibition order, which were subsequently granted by the court. **This indicates that the LAD's officers did not update in a timely manner payments received in the LAD's Case System or did not closely monitor the progress of debt recovery before taking further enforcement actions.**

Audit recommendations

4.24 **Audit has recommended that the Director of Legal Aid should:**

- (a) **for judgment debtors whose whereabouts are unknown, request relevant government departments and the Hospital Authority to provide their addresses by sending periodic requests to the government departments concerned and the Hospital Authority by electronic means (see paras. 4.11 and 4.12);**
- (b) **for judgment debts without sufficient and clear reasons for write-off:**
 - (i) **subject to the law, consider applying for prohibition orders on the judgment debtors, where appropriate; and**
 - (ii) **consider conducting searches for assets and income of the judgment debtors at the Land Registry, Companies Registry, Business Registration Office and Transport Department (see para. 4.17);**
- (c) **update in a timely manner payments received and actions taken in the LAD's Case System (see para. 4.23(a));**
- (d) **advise the FSTB about the error made in the LAD's half-yearly return on write-off for the period 1 April 2004 to 30 September 2004, with reference to Case 1 mentioned in paragraph 4.23(a); and**
- (e) **closely monitor the progress of debt recovery before applying to the court for a judgment summons or a prohibition order (see para. 4.23(b)).**

Response from the Administration

4.25 The **Director of Legal Aid** has said that:

- (a) the LAD shares Audit's views on the importance of locating judgment debtors' addresses as far as possible for the purpose of recovery proceedings. The LAD's professional officers will continue to apply professional judgment in considering whether or not to make enquires with a government department and to conduct relevant and appropriate searches, as determined by the circumstances and facts of individual cases. As regards sending requests in computer-readable form, the LAD is using electronic forms and templates for this purpose, whenever possible. The LAD will continue to adopt this practice;
- (b) the LAD will continue to make use of prohibition order as a tool for enforcement, where appropriate. For all cases that have reached the stage of write-off, the LAD would have considered all factors relevant to the recovery, including the judgment debtors' ability to pay and the viability of various enforcement actions including prohibition orders. If there is information

showing that the judgment debtor owns a company, business or assets, a search will be conducted. The LAD will continue to conduct appropriate searches, as determined by the facts of the case;

- (c) the two cases cited in paragraph 4.23 are isolated cases only. The LAD hopes that these two isolated cases will not be taken as a general indication that the LAD's officers do not update the Case System and do not closely monitor the progress of debt recovery. The LAD has taken steps to remind its staff of the importance of updating the information in its systems and monitoring closely the debt-recovery status;
- (d) the LAD has notified the FSTB of the incident mentioned in paragraph 4.23(a); and
- (e) the LAD fully agrees that it has to update its Case System in a timely manner and closely monitor the status of debt recovery before applying to the court for a judgment summons and a prohibition order. The LAD has made such an endeavour and will continue to do so.

4.26 The **Secretary for Financial Services and the Treasury** has said that the FSTB would monitor the LAD's rectification of the error in its half-yearly return on write-off in respect of the case identified in paragraph 4.23(a).

**PART 5: ADMINISTRATION OF OUTSTANDING
AND IRRECOVERABLE LEGAL COSTS**

5.1 This PART examines the follow-up actions taken by the LAD in respect of outstanding and irrecoverable legal costs and its compliance with the pertinent government financial and accounting regulations.

Half-yearly returns on write-off

5.2 In accordance with Standing Accounting Instruction (SAI) 205, the LAD submits half-yearly returns showing the amounts of irrecoverable legal costs written off. The amounts written off in the past five years 2000-01 to 2004-05 are shown in Table 4.

Table 4

**Irrecoverable legal costs written off
(2000-01 to 2004-05)**

Financial year	Number of cases involved	Total amount written off (\$ million)
2000-01	1,465	28.5
2001-02	1,229	26.4
2002-03	1,726	41.0
2003-04	2,237	48.8
2004-05	2,673	62.6
Total	<u>9,330</u>	<u>207.3</u>

Source: LAD records

Audit observations

LAD's compliance with government requirements on outstanding debts

5.3 It is stated in SAI 1020 that:

- (a) Controlling Officers are required to produce each year a statement of all debts and charges which were due but were not paid by 31 March;
- (b) the statement should also show which of these debts and charges were still outstanding by 30 June;
- (c) the statement should include:
 - (i) all demand notes which have been input to the General Demand Note System;
 - (ii) all other demand notes raised but not included in the General Demand Note System; and
 - (iii) other debts and charges not covered by any demand notes;
- (d) if it has been agreed that a debt or charge may be collected by instalments, each instalment should be considered as a debt falling due on the date that the instalment is due to be paid;
- (e) in all other cases, a debt or charge is normally due as it arises, even though it has not been formalised by way of a demand note; and
- (f) accounts under dispute should be regarded as in arrears but shown separately in the return.

5.4 The arrears of revenue in the annual returns of the LAD for the five years 2000-01 to 2004-05 are shown in Table 5.

Table 5

**Arrears of revenue in the LAD's annual returns
(2000-01 to 2004-05)**

Financial year	Number of cases	Amount of arrears (\\$)	Remarks
2000-01	1	1,140	Recovery of salary overpaid
2001-02	1	1,140	Recovery of salary overpaid
2002-03	Nil	Nil	Not applicable
2003-04	Nil	Nil	Not applicable
2004-05	Nil	Nil	Not applicable

Source: LAD records

5.5 In response to Audit's enquiry, in June 2005, the LAD stated that cases with outstanding legal costs to be recovered included those where:

- (a) there were outstanding contributions from the aided person; and
- (b) there was an order for costs, and the costs payable by the judgment debtor to the LAD had been ascertained (e.g. by taxation) but had not been satisfied.

5.6 **Audit considers that the following debts due by 31 March are debts which are required to be included in the LAD's annual returns of arrears of revenue under SAI 1020:**

- (a) **outstanding contributions due from the aided person. Under section 18(2) of the Legal Aid Ordinance, any contribution payable by the aided person to the LAD shall be a debt due to it;**
- (b) **costs incurred by the LAD in a case where:**

- (i) **there is an order for the opposite party to pay the costs incurred by the aided person;**
 - (ii) **the costs payable by the opposite party have been ascertained (either by agreement or by taxation); and**
 - (iii) **the opposite party has not fully paid the amounts due; and**
- (c) **costs incurred by the LAD in a case which are recoverable from moneys and/or property recovered or preserved on behalf of the aided person in the proceedings, but have not yet been recovered (see para. 2.4).**

5.7 In its Departmental Circular (Administration) No. 55/2000, the LAD states that the Department of Justice has advised it that a loss or deficiency of public moneys will arise if the costs awarded to the aided person are not recovered from the opposite party, unless such costs can be fully recouped from the aided person's contribution and/or the amount of the property recovered or preserved.

5.8 In August and September 2005, in response to Audit's observations in paragraphs 5.3 to 5.7, the LAD stated that outstanding legal costs due to the aided person pursuant to orders for costs were not and could not be treated as arrears of revenue for the following reasons:

- (a) they were moneys due and payable to the aided person;
- (b) by virtue of the relationship in law between the Director of Legal Aid and the aided person in legally-aided proceedings, the Director was merely funding the legal representation required by the aided person to pursue or defend the proceedings. If costs were awarded by the court, the order was in favour of the aided person as a party to the proceedings. Hence, only the aided person would be entitled to claim costs against the opposite party;
- (c) the Director of Legal Aid's entitlement to legal costs that were recovered by the aided person in legally-aided proceedings was a separate issue;
- (d) when there was an order for costs in favour of the aided person, the order would normally be drawn up showing that the non-aided party was liable to pay the costs of the aided person incurred in the legally-aided proceedings. The clause in the court order requiring the non-aided party to pay the costs of the aided person was proof that costs were due and payable to the aided person. In other words, it was the aided person who had the right to demand payment of costs from the non-aided party. If payment was effected pursuant to a court order in the aided person's favour, all costs due and payable to the aided person should

be paid to the Director of Legal Aid. The Director's entitlement to be paid as opposed to having a right to payment of the moneys pursuant to a court order in favour of the aided person was statutory as section 19A of the Legal Aid Ordinance provided that all moneys due to the aided person which included costs paid pursuant to an order of the court were to be paid to the Director of Legal Aid; and

- (e) legal advice from the Department of Justice was unequivocal that legal costs awarded to the aided person which were outstanding could not be treated as debt due by the defendant to the Government although such costs were to be paid to the Director of Legal Aid.

5.9 In view of the LAD's views on outstanding legal costs awarded to the aided person (see para. 5.8) vis-à-vis the definitions of debts and charges due under SAI 1020 (see para. 5.3), in August 2005, Audit requested the Director of Accounting Services (Note 13) to express her views on the issue, taking into account the following factors:

- (a) the objectives of SAI 1020 are to help enhance:
 - (i) public accountability of outstanding debts and charges due to the Government; and
 - (ii) monitoring of their recovery;
- (b) the LAD's write-off of irrecoverable legal costs in the past years (see para. 5.2), which is in accordance with the Department of Justice's advice that a loss or deficiency of public moneys will arise if the costs awarded to the aided person are not recovered from the opposite party (see para. 5.7); and
- (c) legal interpretation of outstanding legal costs due to the aided person may not affect the accounting treatment of debts indirectly due to the Government.

5.10 In September 2005, in response to Audit's request in paragraph 5.9, **the Director of Accounting Services agreed with Audit that outstanding legal costs awarded**

Note 13: *As stated in the Introduction of the SAIs:*

- (a) *Government regulations are regulations made by or with the authority of the Chief Executive. The sole authority for their interpretation and application is the Chief Executive or those to whom he has delegated such authority; and*
- (b) *the Director of Accounting Services has been authorised to amend, supplement, apply, interpret and make exceptions to the SAIs.*

to the aided person were, in substance, government revenue and therefore should be included in the annual return of arrears of revenue as laid down in SAI 1020. She said that Controlling Officers could include remarks or footnotes to highlight any special characteristics of the revenue items covered in the said return.

Room for improvement in monitoring outstanding legal costs

5.11 In May 2005, Audit requested the LAD to provide it with a list of legal aid cases with outstanding legal costs to be recovered. In response, the LAD provided Audit with a list of cases where there were outstanding instalment payments due to the LAD (see Table 6).

Table 6
Cases with outstanding instalment payments
(31 March 2005)

Amount per case	Number of cases	Total amount (\$' 000)
Below \$10,000	866	4,998
\$10,001 to \$50,000	728	13,725
\$50,001 to \$100,000	69	4,883
\$100,001 to \$200,000	16	2,272
\$200,001 to \$500,000	7	2,038
Above \$500,000	1	522
Total	<u>1,687</u>	<u>28,438</u>

Source: LAD records

5.12 It appears that the LAD's computer system was not capable of producing a list of legal aid cases with outstanding legal costs to be recovered. **In this connection, Audit**

considers that the LAD should make enhancements to its Case System to the effect that it will produce:

- (a) **reports on overdue demand letters for follow-up action; and**
- (b) **reports on outstanding legal costs to be recovered at year end.**

5.13 As required by SAI 1025, Controlling Officers should conduct periodic reviews of the arrears of revenue for their departments. **Irrespective of whether outstanding legal costs should be treated as arrears of revenue, as a good management practice, Audit considers it necessary for the LAD to make use of the reports on outstanding legal costs to be recovered (see para. 5.12(b)) to conduct periodic reviews.**

5.14 As prescribed in the standard form for annual return of arrears of revenue, Controlling Officers are required to provide an aging analysis of arrears as at 31 March. **Again, as a good management practice, Audit considers that the LAD should make enhancement to its Case System such that it can produce aging analysis reports of outstanding legal costs to be recovered. These reports would facilitate effective monitoring by the LAD's management on outstanding debts.**

Audit recommendations

5.15 **Audit has recommended that the Director of Legal Aid should:**

- (a) **in compliance with the requirements under SAI 1020, include in the LAD's annual returns of arrears of revenue the following items:**
 - (i) **outstanding contributions due from the aided person;**
 - (ii) **outstanding legal costs awarded to the aided person and due from the opposite party; and**
 - (iii) **outstanding legal costs recoverable from moneys and/or property recovered or preserved on behalf of the aided person (see para. 5.6);**
- (b) **enhance the LAD's Case System to the effect that it will produce:**
 - (i) **reports on overdue demand letters for follow-up action;**
 - (ii) **periodic reports on outstanding legal costs to be recovered; and**
 - (iii) **periodic aging analysis reports of outstanding legal costs to be recovered (see paras. 5.12 and 5.14); and**

- (c) **make use of the reports on outstanding legal costs to be recovered to conduct periodic reviews of the arrears of revenue of the LAD (see para. 5.13).**

Response from the Administration

5.16 The **Director of Legal Aid** agrees with Audit's recommendation mentioned in paragraph 5.15(a)(i) to include in the LAD's annual returns of arrears of revenue information about outstanding contributions due from the aided person. He has said that:

- (a) regarding Audit's recommendations mentioned in paragraph 5.15(a)(ii) and (iii), as costs owed by the opposite party in legally-aided proceedings pursuant to a court order are debts due to the aided person and not to the Government, such costs do not fall within the ambit of SAI 1020 and should not be included in the annual returns of arrears of revenue;
- (b) the Case System in place has, among other functions, bring-up functions designed to assist with the recovery of costs and on-line enquiry function for monitoring the payments of overdue costs. The LAD also prepares half-yearly review reports on overdue legal costs. The LAD will give consideration to enhancing its existing cost-recovery monitoring system through the use of periodic reports that are tailored to meet its operational needs; and
- (c) the LAD will continue to devise appropriate cost-recovery reports for periodic review and will consider the feasibility of using aging analysis to facilitate monitoring of recovery of overdue legal costs.

5.17 The **Secretary for Financial Services and the Treasury** considers that, from the financial management and revenue protection point of view, the Director of Legal Aid, being both the lawyer/agent acting on behalf of the aided person and the Controlling Officer of the relevant revenue subhead, should ensure that proper and sufficient control measures are in place to facilitate efficient and effective recovery of costs, either on behalf of the aided person or for the Government. He has said that, if the LAD considers it confusing to include such overdue amounts, which may not be legally regarded as government revenue at that point in time, in its annual returns of arrears of revenue, it may consider:

- (a) stating in the annual returns the nature of such outstanding amounts and the possible consequences to government revenue if they cannot be recovered so as to alert the readers of the returns the unique nature of these amounts; or
- (b) including the amounts in other suitably formatted reports, if there is no such report already in place to facilitate the recovery of such amounts.

PART 6: THE AUDIT COMMISSION'S ACCESS TO LEGAL AID CASE FILES

6.1 This PART examines the actions taken by the LAD in response to the PAC's concern on the small number of aided persons giving consent to the LAD to permit access to their case files by the Director of Audit for conducting audits on legal aid services.

Privacy of information

6.2 As stated in section 24(4)(c) of the Legal Aid Ordinance, a person shall not disclose information given for the purpose of this ordinance concerning a person seeking or receiving advice, assistance or representation otherwise than:

- (a) to enable the proper performance by a person of a function under this ordinance;
- (b) to advise on, institute and pursue criminal proceedings or an offence arising out of the operation of this ordinance; or
- (c) with the consent of the person concerned.

Public Accounts Committee's concern

6.3 In Chapter 10 of its Report No. 37 of February 2002, the PAC:

- (a) regretted that the LAD had only been able to obtain the consent of the aided persons in 82 cases for examination by Audit of the means testing procedures; and
- (b) acknowledged that the Administration had undertaken to put in place a standing arrangement to seek, at the time applications for legal aid were made, the consent of applicants to disclose their case details to the Director of Audit or his representatives, for purposes connected with the conduct of audits on legal aid services.

**Administration's response to the
Public Accounts Committee's concern**

- 6.4 In the Government Minute of May 2002, the Administration stated that:
- (a) it appreciated the importance of facilitating access by Audit to legal aid cases for conducting value for money studies; and
 - (b) the LAD had, since March 2002, put in place a standing arrangement for seeking consent from legal aid applicants at the time of application, to permit access to their case files by Audit for the purpose of conducting value for money studies.

Audit observations

Consent given by legal aid applicants

6.5 Since March 2002, the LAD has introduced an arrangement under which each legal aid applicant is requested to sign on a form to indicate whether or not he consents to Audit's access to his case file. Subsequently, 8,749 (81%) of 10,773 successful legal aid applicants in 2003 and 10,308 (86%) of 12,045 successful legal aid applicants in 2004 gave consent (see Table 7).

Table 7

**Consent given by successful legal aid applicants
to Audit's access to case files
(2003 and 2004)**

Scheme	No. of applicants giving consent	No. of applicants not giving consent	No. of applicants not signing/returning the consent form	Total
	(a)	(b)	(c)	(d) = (a) + (b) + (c)
(A) 2003				
OLAS				
<i>Civil cases</i>	8,674 (81%)	1,535	485	10,694
<i>Criminal cases</i>	(Note)	N/A	N/A	N/A
SLAS	75 (95%)	3	1	79
Total	<u>8,749 (81%)</u>	<u>1,538</u>	<u>486</u>	<u>10,773</u>
(B) 2004				
OLAS				
<i>Civil cases</i>	7,318 (82%)	993	616	8,927
<i>Criminal cases</i>	2,917 (96%)	101	15	3,033
SLAS	73 (86%)	10	2	85
Total	<u>10,308 (86%)</u>	<u>1,104</u>	<u>633</u>	<u>12,045</u>

Source: LAD records

Note: Data for criminal legal aid cases granted under the OLAS in 2003 were not available. The LAD informed Audit that its Crime Section had not captured such data in the computerised Case System until late 2003.

6.6 In September 2005, in response to Audit's observations in paragraph 6.5, the LAD stated that:

- (a) the aided person could not be compelled to give consent and his rights should be respected; and
- (b) for this audit, Audit had requested to review 127 legal aid files (30 cases + 97 cases – see Figure 3 in para. 6.8) where the aided persons had applied for and were granted legal aid since the introduction on 28 March 2002 of the standing arrangement under which all applicants for legal aid were asked to consider giving written consent to Audit's access to their legal aid files, for the purpose of conducting any value for money audit. The result was that Audit was able to gain access to 97 files, representing 76% of the files requested. It could be seen that the standing arrangement had been very effective in ensuring Audit's access to the relevant legal aid files without encroaching in an oppressive manner the privacy rights of the legal aid applicant/aided person.

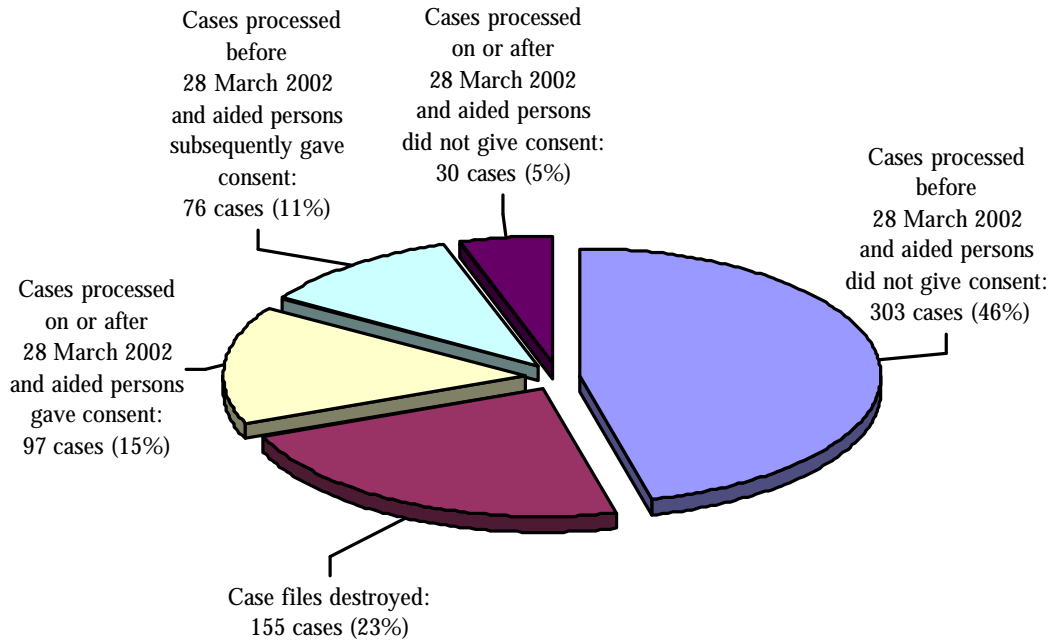
6.7 **Audit considers that the arrangement introduced by the LAD to request legal aid applicants to give consent to Audit's access to their case files on a voluntary basis is not entirely satisfactory. The fact that 19% of successful legal aid applicants in 2003 and 14% of such applicants in 2004 did not give consent has affected Audit in conducting a complete and thorough review of the LAD's services. It is undesirable that only the case files of those aided persons who gave consent would be examined by Audit, whereas the case files of those who refused to give consent would not.**

Audit's access to case files in this audit

6.8 For this audit, the LAD informed Audit that it needed to obtain the consent of the aided persons concerned before releasing the related case files to Audit for examination. Audit selected randomly 661 case files for examination. These files covered legal aid cases approved in 1994, 1999 and 2003 and cases with outstanding amounts written off in 2004. Of these case files, the LAD advised that 155 (23%) files had been destroyed because the cases had been closed for a period of time. Regarding the cases processed before 28 March 2002, because the aided persons had not been requested to give consent, in May/June 2005, the LAD approached these persons by letters requesting them to sign on a form to indicate whether they would give the consent. An analysis of the LAD's provision of case files for Audit's examination is shown in Figure 3.

Figure 3

Availability of 661 case files selected by Audit for examination



Source: LAD records

Remarks: Some aided persons could not be contacted and some of them refused to respond to the LAD's request. For simplicity, all these persons are classified as those who did not give consent.

6.9 Regarding those aided persons who did not give consent to Audit's access to their case files, in February 2005, the LAD discussed with Audit the possibility of providing Audit with photocopies of the case files selected by Audit with the personal data concealed. In late May 2005, the LAD informed Audit that the production of such photocopied case files involved photocopying voluminous files and efforts of the LAD's staff, including professional officers who needed to go through the files to ensure that there was no inadvertent disclosure of personal data.

6.10 As a result, Audit could only examine 173 case files, i.e. 26% of the 661 case files selected by Audit. Regarding the 333 case files (which have not been destroyed) where the aided persons did not give consent, Audit could not examine them. **Audit considers that the LAD should appoint a team of LAD staff independent of those**

handling the cases to conduct an examination of these case files with a view to identifying non-compliance with the LAD's guidelines and areas for improvement.

Audit recommendation

6.11 **Audit has recommended that the Director of Legal Aid should appoint a team of independent staff to conduct an examination of the case files selected, but which could not be examined by Audit.**

Response from the Administration

6.12 The **Director of Legal Aid** has said that the LAD will consider setting up an independent team of its staff to conduct examination of case files selected by Audit where consent of the aided persons has not been given.

6.13 With reference to the problem of Audit's access to LAD case files (see paras. 6.8 and 6.9), the **Director of Legal Aid** has said that about 85% of the legal aid applicants now give consent to Audit, enabling it to have access to their files. In the event of future request for files by Audit, in deference to the need to protect and to respect the fundamental right of privacy of those aided persons who have not given the consent, he considers that making photocopies of the files requested by Audit with the personal data obliterated would strike the balance and present an appropriate way forward.

Legal aid certificates granted
(2004)

Nature of cases	Number of applications	Number of legal aid certificates granted
(A) Under the Ordinary Legal Aid Scheme:		
<i>Civil cases</i>		
personal injuries claims (Note)	3,478	1,998
matrimonial matters	10,685	5,905
landlord and tenant disputes	436	25
employment disputes	201	48
immigration matters	126	20
wage claims	972	691
others	1,711	240
	Sub-total	8,927
	17,609	3,033
<i>Criminal cases</i>		
committal proceedings	396	389
District Court trials	1,858	1,830
Court of First Instance trials	457	455
Magistrates' Courts appeals	808	123
District Court appeals	537	107
Court of First Instance appeals	178	66
Court of Final Appeal trials	158	23
others	85	40
	Sub-total	3,033
	4,477	3,033
(B) Under the Supplementary Legal Aid Scheme:		
personal injuries claims (Note)	112	82
medical negligence	6	1
dental negligence	1	1
legal professional negligence	1	1
	Sub-total	85
	120	85
	Total	12,045
	22,206	12,045

Source: LAD records

Note: These include cases relating to employees' compensation, traffic accident claims, pneumoconiosis compensation, and miscellaneous personal injuries.

**Supplementary Legal Aid Fund
 Income and expenditure account
 (for the year ended 30 September 2004)**

	(\$'000)
Income	
Application fee	66
Legal costs and expenses recovered from aided persons	2,855
Percentage contribution	6,912
Costs recovered from opposite parties	11,353
Interest income	523
	<u>21,709</u>
Expenditure (Note)	
Administration fee	1,196
Legal costs and expenses paid for	
Successful litigation	14,693
Unsuccessful legal aid applications	81
Unsuccessful litigation	1,052
	<u>17,022</u>
Surplus for the year	<u><u>4,687</u></u>

Source: LAD records

Note: For simplicity, the small amount of bank charges is not shown.

**Expenditure of the LAD
(2004-05)**

	(\$ million)
Personal emoluments	211.0
Personnel related expenses	0.1
Departmental expenses	14.8
	<hr/>
Sub-total	225.9
Legal costs	
Civil cases	308.4
Criminal cases	93.0
	<hr/>
Sub-total	401.4
	<hr/>
Total	<u>627.3</u>

Source: LAD records

**Revenue of the LAD
(2004-05)**

(\$ million)

Legal costs recovered

Civil cases	
In-house	51.6
Assigned-out	139.6
Criminal cases	4.3
	<hr/>
Sub-total	195.5

Other revenue

Official Solicitor' s Office	0.5
Reimbursement from the SLAS	
Legal costs	3.1
Administration fee	1.2
	<hr/>
Sub-total	4.8

Total 200.3

Source: LAD records

LAD's strategic plan

Vision

1. To be a cornerstone of the rule of law in Hong Kong by delivering quality legal aid services.

Mission

2. The LAD is committed to:
 - ensuring that no one who qualifies for legal aid is denied access to justice because of lack of means;
 - maintaining the highest standards of professional excellence and ethics;
 - developing and maintaining a highly-motivated, dynamic, well-trained and committed workforce;
 - working in partnership with the legal profession to attain its vision; and
 - anticipating and meeting the ever-changing needs of society.

Values

3. These include:
 - independence;
 - commitment;
 - efficiency and effectiveness;
 - professionalism;
 - teamwork; and
 - caring and responsive services.

Long-term aims and objectives

4. The LAD aims to:
- operate an independent, efficient and cost-effective legal aid service;
 - ensure that no one with reasonable grounds for taking or defending proceedings is prevented from doing so because of lack of means;
 - ensure that in the interests of justice, no one charged with a criminal offence or with meritorious grounds of appeals is deprived of legal representation because of lack of means; and
 - improve the quality and accessibility of legal aid services to the public while achieving maximum cost-effectiveness.

Priority areas

Processing of legal aid applications

5. The LAD will continue to look for ways to enhance the efficiency, speed and transparency in processing legal aid applications while ensuring that decisions in granting or refusing legal aid are reasonable and consistent.

Assignment

6. The LAD will select suitable counsels or solicitors on the Legal Aid Panel or in-house lawyers to act for aided persons in the absence of suitable nomination by the aided persons, having regard to the paramount interests of the aided persons, and the type and complexity of the case in question.

Monitoring of assigned-out cases

7. The LAD will ensure that assigned-out cases are conducted effectively and satisfactorily in terms of costs and progress and that continuance of legal aid in these cases is fully justified.

In-house litigation

8. The LAD will ensure that its litigation service is delivered in an efficient, highly professional and cost-effective manner.

Customer service

9. The LAD attaches great importance to customer service, and will continue to nurture a customer-focused approach in the delivery of its service and provide staff with adequate training to enhance their customer service skills.

Information system

10. The LAD will keep abreast of developments in information technology and look for ways to enhance the efficiency of its operation and the quality of its services through the use of advanced information technology.

Publicity

11. The LAD will continue to enhance public awareness and understanding of legal aid services, and to increase transparency of its operation.

Staff

12. The LAD will continue to develop and maintain a highly-motivated, dynamic, well-trained and committed workforce with the highest standards of professional excellence and ethics.

Source: LAD records

Cases with outstanding debts recovered

(A) Case 1: A divorce case where the judgment debtor's address was unknown

Date	Particulars
10 November 2003	The court ordered that the opposite party (judgment debtor) should pay the aided person the costs of the proceedings.
16 December 2003	The court fixed the amount of costs at \$14,967.
12 January 2004	The LAD requested the Immigration Department, Transport Department and Housing Department to provide the address of the judgment debtor. The three departments did not have his updated address.
6 April 2004	The aided person advised the LAD that the judgment debtor was in the Mainland most of the time.
27 April 2004	A Legal Aid Counsel responsible for the case put up a proposal to write off the judgment debt because the judgment debtor could not be located. However, an Assistant Principal Legal Aid Counsel did not approve the write-off on the grounds that the judgment debtor appeared to have some connection in the Mainland.
31 May 2004	The LAD requested the movement records of the judgment debtor from the Immigration Department. The records showed that he was a frequent traveller.
22 July 2004	The court granted a prohibition order to the LAD upon application.
7 September 2004	The judgment debtor approached the LAD and signed an undertaking to pay the outstanding debt by 52 monthly instalments. Subsequently, he made payments, as promised.
29 October 2004	The LAD included the case in its half-yearly return on write-off (covering the period 1 April 2004 to 30 September 2004) to the FSTB.

(B) Case 2: A divorce case where the judgment debtor's address was known

Date	Particulars
16 January 2004	The court ordered that the opposite party (judgment debtor) should pay the aided person the costs of the proceedings.
28 April 2004	The court fixed the amount of costs at \$10,836.
18 May and 3 June 2004	The LAD sent demand letters to the judgment debtor.
21 September 2004	The LAD requested the Immigration Department, Transport Department, Housing Department and Hospital Authority to provide the address of the judgment debtor. The Transport Department and Hospital Authority provided new addresses to the LAD.
19 November and 10 December 2004	A Legal Aid Assistant visited the new addresses but could not find the judgment debtor.
4 and 20 January 2005	The opposite party informed the LAD by phone his address in the Mainland, and promised to settle the debt by 31 January 2005.
10 March 2005	The LAD sent another demand letter to the judgment debtor.
21 March 2005	The judgment debtor made full payment of the debt.
7 April 2005	The LAD applied to the court for a judgment summons and a prohibition order on the judgment debtor.
11 April 2005	The court granted a prohibition order to the LAD.
15 April 2005	The court issued a judgment summons to the LAD.
21 April 2005	The LAD wrote to the Immigration Department to discharge the prohibition order.
21 April 2005	The LAD applied to the court to withdraw the judgment summons.
28 April 2005	The court granted approval to the LAD to withdraw the judgment summons.

(C) Case 3: A divorce case where the judgment debtor's address was known

Date	Particulars
12 July 2004	The court ordered that the opposite party (judgment debtor) should pay the aided person the costs of the proceedings.
21 September 2004	The court fixed the amount of costs at \$10,536.
15 October 2004	The LAD sent a demand letter to the judgment debtor.
20 November and 17 December 2004	The LAD requested the Immigration Department to provide the address and movement records of the judgment debtor.
11 January 2005	The Immigration Department provided the movement records of the judgment debtor to the LAD. The records showed that the judgment debtor was a frequent traveller.
18 January 2005	The Immigration Department provided a new address to the LAD.
18 February 2005	The LAD sent a demand letter to the new address of the judgment debtor.
7 April 2005	The LAD applied to the court for a judgment summons and a prohibition order on the judgment debtor.
16 April 2005	The court granted a prohibition order to the LAD.
27 April 2005	The judgment debtor made full payment of the debt.

Source: LAD records

Appendix G
 (paras. 4.8, 4.10, 4.15, 4.16,
 4.17(a) and 4.20 refer)

LAD's reasons for writing off judgment debts

Case	Reasons (see Notes)										Other reasons
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	
4	✓										
5	✓										
6	✓					✓					
7	✓					✓					
8	✓					✓					The opposite party was a gambler / in debt.
9	✓					✓				✓	
10		✓									
11		✓									
12		✓									
13		✓									
14			✓								
15			✓								
16			✓		✓						
17			✓								
18			✓	✓							
19			✓	✓							
20			✓	✓	✓						
21			✓	✓	✓						
22			✓	✓	✓	✓					The opposite party was a gambler.
23			✓	✓	✓		✓	✓			
24			✓	✓		✓					The opposite party was a person with low means.
25			✓			✓					
26			✓			✓					The opposite party was a gambler / in debt.
27			✓			✓					
28			✓			✓					The opposite party was a gambler / in debt.

Appendix G
 (Cont' d)
 (paras. 4.8, 4.10, 4.15, 4.16,
 4.17(a) and 4.20 refer)

Case	Reasons (see Notes)										Other reasons
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	
29			✓		✓		✓				
30			✓			✓				✓	
31						✓				✓	
32			✓			✓		✓		✓	
33						✓					Bankruptcy order / winding-up order was adjudicated against the opposite party.
34						✓					Bankruptcy order / winding-up order was adjudicated against the opposite party.
35						✓					Bankruptcy order / winding-up order was adjudicated against the opposite party.
36						✓					The opposite party was unemployed and a gambler / in debt.
37						✓					The opposite party was a drug addict and unemployed.
38						✓					The opposite party was unemployed and required long-term medical treatment.
39						✓					The opposite party was in serious illness.
40						✓					The opposite party was in prison.
41						✓				✓	
42						✓				✓	
43						✓				✓	
44						✓				✓	
45									✓		
46									✓		
47									✓		
48									✓		
49									✓		
50									✓		
51									✓		

Appendix G
 (Cont' d)
 (paras. 4.8, 4.10, 4.15, 4.16,
 4.17(a) and 4.20 refer)

Case	Reasons (see Notes)										Other reasons
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	
52									✓		
53									✓		
54									✓		
55									✓		
56									✓		
57									✓		
58									✓		
59									✓		
60									✓		
61									✓		
62									✓		

Source: LAD records

- Notes:
- (a) The opposite party could not be located.
 - (b) The opposite party was living outside Hong Kong / in the Mainland.
 - (c) Unsuccessful address searches for the opposite party.
 - (d) The aided person provided no address of the opposite party.
 - (e) Unsuccessful visit by a Legal Aid Assistant.
 - (f) The opposite party had no property in Hong Kong or no means to pay.
 - (g) Unsuccessful enforcement action by a prohibition order.
 - (h) Unsuccessful enforcement action by a judgment summons.
 - (i) The opposite party had been declared bankrupt and the Official Receiver had declared no dividend.
 - (j) The opposite party was a CSSA allowance recipient.

LAD's response to audit observations on write-off cases

Case	The LAD's response
4	According to the petition, the opposite party had large debts.
6	The opposite party was a lazy person and did not have regular employment. The family had to rely on public assistance.
7	The opposite party was an inveterate gambler and did not support his family. He owed debts to a finance company.
9	The opposite party was unemployed.
14	There was no indication from the information provided by the aided person that the opposite party would travel outside Hong Kong frequently. The opposite party did not maintain his family.
16	The opposite party was a habitual drunkard with criminal record.
17	The opposite party was unemployed.
18	The opposite party was a heavy gambler and did not maintain his family. He owed debts exceeding \$100,000. There was no indication from the information provided by the aided person that the opposite party would travel outside Hong Kong frequently.
19	The opposite party was a heavy gambler and owed money to loan sharks from time to time.
27	The opposite party was a heavy gambler. He owed debts amounting to \$300,000.
29	The opposite party was a heavy gambler and owed a lot of debts.
34	The opposite party was a casual transportation worker with no asset and little income. His whereabouts were unknown. The aided person could only contact him by phone.
36	The opposite party was a habitual drunkard and did not maintain his family. He had threatened to cause trouble to the aided person after having been served with the petition for divorce.
37	The opposite party was a drug addict and had been imprisoned for four years for drug trafficking.
39	The opposite party was a cancer patient. Medical expenses were waived on the grounds of hardship.
40	The opposite party was arrested for smuggling in the Mainland in July 1999 and was still under detention up to the date of the recommendation to write off the debt. There was no indication that he would be released in the near future.

Source: LAD records

Enforcement proceedings against judgment debtors

Proceeding	Particulars
(a) Application for judgment summons	This is appropriate for enforcement of debts pertaining to matrimonial cases, including arrears of maintenance, periodical payments, lump sum payments, and taxed costs in matrimonial proceedings. The ultimate sanction for non-payment is imprisonment.
(b) Taking garnishee proceedings	This is appropriate for enforcement of judgment debts in civil cases when it has been made known to the judgment creditor that the judgment debtor is a creditor of an identified third party (e.g. the debtor's bank account or his employer). The effect of a garnishee order is to attach the debt which the third party owes to the judgment debtor and direct the former to pay the same to the judgment creditor instead.
(c) Application for charging order	This is appropriate for enforcement of all kinds of judgment debts including arrears of maintenance, lump sum payments, and taxed/fixed party and party costs. The judgment debtor has to be a registered owner of land property, stocks or shares. A charging order provides the creditor with security. It can be enforced in the same manner as an equitable charge. A creditor may apply for a court order to realise the property.
(d) Application for prohibition order	This is frequently used in enforcement of orders made in matrimonial proceedings when it is known that the debtor is a frequent traveller to and from Hong Kong. The effect is to prohibit the judgment debtor from leaving Hong Kong so as to facilitate the enforcement of the orders.
(e) Application for attachment of income order	This applies to periodical payments and lump sum payments in matrimonial cases only. The effect is to attach the monthly income of the judgment debtor for payment of maintenance to the aided person.
(f) Application for an order for examination of debtor	It is possible to apply to the court for an order to examine an individual debtor or the directors of a debtor company on his/the company's income, assets and liabilities with a view to determining the best means of enforcement of the order.
(g) Application for writ of Fieri Facias	This is a method of execution to be used when it is believed that the judgment debtor has personal property, e.g. machinery, motor vehicle, furniture, computer and other office equipment, or work of art which can be sold to raise money to pay the judgment debt. This can be used to enforce payment of a specified amount of money or an order for costs.

Source: LAD records

Acronyms and abbreviations

Audit	Audit Commission
CSSA	Comprehensive Social Security Assistance
FSTB	Financial Services and the Treasury Bureau
LAD	Legal Aid Department
OLAS	Ordinary Legal Aid Scheme
PAC	Public Accounts Committee
SAI	Standing Accounting Instruction
SLAS	Supplementary Legal Aid Scheme
SWD	Social Welfare Department