

ANNEX B

REPORT OF THE COMMITTEE TO STUDY COMMUNITY LEGAL SERVICES INITIATIVES

Background

The first consultation paper

1 The concept of Community Legal Services (“CLS”) was first raised in a consultation paper (“the first consultation paper”) which was circulated on 31 October 2012. In the first consultation paper, the stated objective of CLS was to encourage lawyers of the Singapore Bar to provide legal assistance to low-income Singaporeans who might not be able to gain access to legal services. In so doing, CLS had three primary desired outcomes. First, to benefit the community by narrowing the justice gap through providing manpower to facilitate access to justice for those otherwise unable to obtain legal assistance. Secondly, to cultivate an ethos of service as well as a shared responsibility and remind lawyers that the profession is a reputable one with much to contribute to society. Thirdly, to strengthen the bonds within the legal community as well as its bonds with the wider community.

2 It was proposed that lawyers who hold a practising certificate (“PC”) should come within CLS and be required to fulfil at least 16 hours of pro bono work each year. Lawyers could fulfil their CLS obligations in four broad areas: (1) criminal legal aid, (2) civil legal aid, (3) community mediation, legal clinics and various other voluntary services in the Subordinate Courts, and (4) legal advisory work to approved institutions and charities which provide assistance to the community. It was also considered that lawyers could choose to give contributions-in-lieu if they could not fulfil their CLS requirements, at rates that would be calculated according to pre-determined hourly rates. The revenue from these contributions would then be channelled back into the operational costs of CLS. In addition, the possibility of rewarding lawyers with honorariums for pro bono work done under CLS in excess of the proposed 16 hours was also raised.

3 The public and the legal profession were invited to comment on the framework for CLS provided in the first consultation paper. The responses received were studied and incorporated in a second consultation paper, which was released on 2 April 2013 (“the second consultation paper”).

The second consultation paper

4 The second consultation paper contained a revised proposal of CLS and suggested that it be implemented in two discrete stages: (i) an aspirational target of pro bono hours and mandatory reporting of the number of pro bono hours completed each year; and (ii) a mandatory minimum number of pro bono hours to be completed each year.

5 Under the first stage, lawyers shall annually report the pro bono work that they had undertaken in the past year through a reporting form. As it was the *reporting* that was mandatory, rather than the *completion of pro bono hours*, reporting zero hours would not attract a sanction. A failure to report the requisite information would merit sanction.

6 The scope of CLS at the second stage would be dependent in a large part on the data obtained from the mandatory reporting stage. Prior to the implementation of the second stage, further consultations would be carried out.

7 In addition, the second consultation paper also reiterated the main objectives of CLS as highlighted in the first consultation paper and elaborated on how each was to be attained through the revised proposal. Briefly, the aims of CLS continued to be for the benefit of the community (through closing the justice gap and providing the needed manpower to facilitate access to justice) as well as to provide lawyers with the opportunities to develop their skills outside their specialties.

8 The feedback was studied and the Committee now presents its final report on CLS.

Summary of feedback

9 A review of the feedback received under the second round of consultations showed that some respondents still remained concerned about the *mandatory* nature of CLS. For some, this concern stemmed from the view that the State was in the best position to help lower-income Singaporeans and that the responsibility should rest with the Legal Aid Bureau. Others felt that there would be a compromise on the essence of volunteerism and that the ethos of service should be cultivated by encouragement and education instead of compulsion. There was also concern that this would reduce the emotional well-being from the giver's point of view, and breed a sense of entitlement on the part of the recipients. It was also

observed that cultivating a culture of pro bono must begin with senior lawyers within the firms.

10 The second consultation paper posed four questions, the feedback to each of which will be gone through in turn.

(1) The concept of mandatory reporting

11 The support for the concept of mandatory reporting, while largely present, was tentative, with many respondents expressly qualifying their support in one way or another. However, on balance, the support for mandatory reporting outweighed the reservations expressed. Among those who disagreed with the concept of mandatory reporting, some felt that it imposed a moral sanction on those whose contributions fell below the aspirational target of pro bono hours. Another respondent felt that the idea of reporting would involve unnecessary complexity and expense, and would end up disincentivising pro bono work, rather than incentivising it.

(2) Whether reporting should extend beyond the scope suggested by the second consultation paper

12 The scope of reporting was thought appropriate. One respondent, however, felt that to ensure that the data collected accurately represents the contribution of each firm over the year, the number of lawyers in the firm, pro bono matters worked on, different pro bono clients and dollar value of pro bono work done should also be reported. Still others felt that *all* forms of community work, legal or not, should be reported.

(3) What the aspirational target should be

13 Some respondents were of the view that the Law Society of Singapore's current aspirational target of 25 hours was a good target, while others felt that it was either too low or too high. One respondent felt that since it was "aspirational", lawyers should be free to set their own targets without pressure.

(4) The scope of CLS

14 A significant number of respondents felt that the proposed definition of pro bono was too narrow. It was noted that a focus on family and criminal law suffered from the drawback

that not all lawyers would have the requisite familiarity with these areas to properly discharge their duties. If the focus was on litigation, this would mean that a significant proportion of lawyers who do not have the requisite skills might end up doing their clients more harm than good. Others felt that expecting lawyers to gain legal expertise in fields other than their specialties for the purposes of pro bono work was simply unrealistic, and would expose them to professional negligence and reputational risks. Some resisted confining the definition to legal work, as they felt that lawyers should be encouraged to contribute in whatever ways they could. Yet others suggested including voluntary and unpaid legal consultation work for statutory boards, government bodies, the Law Society of Singapore and the Singapore Academy of Law.

Other areas brought up in the feedback

15 There were suggestions for implementation on a firm-by-firm basis as opposed to a focus on individual lawyers to meet resource allocation constraints within firms. This would recognise the reality that lawyers are able to do more pro bono work at certain points during the course of their careers than at other times. However, others voiced that this might lead to the same few lawyers being made to clock the hours in order to fulfil the firm's CLS requirements. It was also felt that publishing hours undertaken on a firm wide basis would be incongruent with the objective of holding lawyers to be individually accountable.

Committee's overall recommendation

16 Having taken into consideration all the feedback received, the Committee recommends implementing CLS in the form of mandatory reporting. There is a justice gap that can be plugged by providing the community with additional means of obtaining legal advice and representation. To this end, CLS pays formal recognition to the notion that the legal community has wider responsibilities to those who otherwise may not be able to gain access to legal services. Mandatory reporting will have the salutary benefit of reminding lawyers of these wider responsibilities.

17 The Committee notes that variations of CLS have been implemented in several other jurisdictions. There has been a perceptible trend in recent years for bar associations, and even the courts, to institute pro bono requirements for the legal profession. Aspirational targets for pro bono have been adopted in Australia and the USA, and are seriously being considered in

the United Kingdom. In the USA, the American Bar Association Model Rules of Professional Conduct states that every lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. Several states have some form of pro bono reporting policies, where lawyers are obliged to make annual reports on pro bono work done each year. In addition, New York has made the completion of 50 hours of pro bono work a pre-requisite to being called to the Bar, with New Jersey considering the same. In South Korea, lawyers registered with the Seoul Bar Association are required to do at least 20 hours of pro bono service each year or to make an equivalent monetary donation to the Seoul Bar Association. In Japan, the local bar associations in 9 of the 52 jurisdictions, including Tokyo, have adopted rules requiring their members to perform mandatory public interest service. Based on the experiences of other jurisdictions, the implementation of CLS will not dilute the intrinsic value of pro bono, but will incentivise a larger section of the profession to perform pro bono services. This is a way forward for the legal profession to be more involved in the wider community which may have a positive effect on the public's perception of the profession.

18 Lastly, the decision to proceed with the requirement of mandatory reporting will generate currently unavailable information that will in future permit a more holistic appraisal of the pro bono landscape.

(I) Participants

19 CLS will cover all advocates and solicitors who hold a PC.

(II) Operationalisation

20 The Committee is currently studying the form for reporting, in consultation with stakeholders. When the draft form is ready, practitioners will be invited to give their views on the form.

21 Reporting will be done on an individual basis, though firms who wish to declare on a firm-wide basis are not precluded from taking this additional step.

22 The requirement of mandatory reporting will take effect as of 2015. The report will consist of the pro bono work undertaken during the course of 2014.

(III) The definition of pro bono

23 The aim of mandatory reporting is data-collection to allow for a better understanding of the pro bono landscape. As such, the definition of pro bono will be as inclusive as possible while keeping within the objectives of CLS.

24 Pro bono will comprise:

- (i) legal advisory/representation work for legal organisations and societies; and
- (ii) other law-related work (e.g. committee work for the Law Society of Singapore, the Singapore Academy of Law, the Singapore Mediation Centre, the Singapore Institute of Legal Education, any Ministry in a law reform project and sitting as a member of a Disciplinary Committee).

25 Work will be considered pro bono if (i) no remuneration is received, or (ii) an honorarium is received.¹ The first category will be declared separately from the second category.

(IV) The aspirational target of hours

26 The Law Society of Singapore will, in consultation with the profession, determine the aspirational target for CLS.

(V) The sanction for failure to comply

27 No sanctions or adverse consequences will follow if a report of zero pro bono hours is made. The sanction to be imposed for a failure to report is still being studied.

(VI) Confidentiality

28 The information collected will be anonymised and used for information/statistical purposes. There will be no individual assessment based on pro bono hours rendered.

¹ E.g. work done with the Legal Aid Bureau.

(VII) Amendments to legislation

29 The Ministry of Law is looking into legislative amendments to effect mandatory reporting. These amendments will be implemented in 2014, ahead of the implementation of CLS in 2015.

(VI) Mandatory pro bono

30 After three to five years of mandatory reporting, there will be a re-evaluation to consider if there is a need for mandatory CLS.

The Committee to Study Community Legal Services Initiatives

26 November 2013