



THE HONG KONG INSTITUTE OF  
**SURVEYORS**

Your Ref.: LRC/TOP/43

**BY FAX AND BY POST**

**#2865 2902**

9 December 2005

The Secretary  
The Conditional Fees Sub-Committee  
The Law Reform Commission  
20<sup>th</sup> Floor, Harcourt House  
39 Gloucester Road  
Wanchai  
Hong Kong

Dear Sir/Madam,

**Comments on the Consultation Paper: Conditional Fees**

We refer to your letter dated 14 September 2005. Thank you for inviting our Institute to present our comments on the Law Reform Commission Sub-committee's consultation paper on Conditional Fees.

Having studied the consultation paper, we would like to set out our brief comments below:-

**1. Potential conflict of interest**

We cannot rule out the possibility that in some situations, solicitors may try to convince their client to settle a case based on their own interests, rather than in the best interests of their client. For instance, a solicitor may try to push his client to settle at a lesser sum because he needs to get paid as quickly as possible for his own reason.

The precise arrangement for conditional fee is complicated. It might lead to disputes between the client and the solicitors especially when the outcome of the case is not as expected. This might lead to more litigations which is not beneficial to the society as a whole.

**2. Standard of the legal profession/Choice of Lawyers**

We are concerned that there might be a significant drop in the standard of legal services.

It is possible that many junior solicitors would try to take on as many cases (whether meritorious or not) as they can in order to survive. On the other hand, they may not wish to spend too much time on those cases because they are overloaded or hope that those cases would be settled before trial.

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For experienced solicitors, there is no reason for them to gamble on their efforts. They might only wish to take on sure-win cases. For difficult cases, the client's choice of solicitors would then become limited to those with less experience who may not be able to achieve the standard of service which the public is expecting from lawyers.

In the long run, it will impair the public's confidence in the quality of legal service.

### 3. Questionable claims

In commercial disputes, the merits of a case are often difficult to assess. More questionable professional negligence claims may be brought against professionals because plaintiff/claimants would have no or limited costs liability even if they lose their case. However if they win, they would win a fortune.

It might create more law suits to our members which would not have been commenced but for the availability of conditional fee arrangement. That may also affect their professional indemnity insurance in terms of additional premiums and some members might not be able to obtain suitable insurance.

### 4. Better Option

If the basis of the proposed change is the assumption that the middle class cannot afford legal services, we would believe that a better and sensible option is to extend legal aid services to the middle class individuals and companies.

### 5. Conclusion

Given the significant potential problems as explained above, we believe that the conditional fee regime is not suitable to Hong Kong.

Thanks very much for your kind attention.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'T T Cheung', is written over a faint, larger version of the same signature.

T T Cheung

President (2004-2005)

c.c.: Hon. Patrick Lau