

Public Defender's Office timely and necessary

The public defender scheme strengthens access to justice and trust and confidence in the administration of criminal justice, and will enhance commitment to the rule of law in Singapore



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Whether an accused person pleads guilty or claims trial to the charges against him, the criminal justice process must be fair and seen to be fair. This, in turn, depends on the accused having access to sound legal advice and proper legal representation.

An accused person is not just the sum of his alleged transgressions. Before a person is lawfully deprived of his liberty or life, the criminal justice process requires a court's careful examination of the alleged offence and holds the law enforcement agencies and prosecutors accountable by scrutinising their actions.

It is with this fundamental tenet in mind that the Public Defender's Office (PDO) will be established under the Ministry of Law by the year's end to directly provide criminal legal aid to eligible accused persons.

The PDO can help reduce the "inequality of arms" in the criminal justice system by offering high-quality legal representation to accused persons who are citizens or permanent residents and who cannot afford a lawyer to defend them.

The PDO's establishment comes amid other changes that will

enable more individuals to qualify for criminal legal aid. In addition to the proposed widening of the list of offences eligible for legal aid, the Government has also proposed to raise the income threshold eligibility from the 25th percentile to the 35th percentile of resident households. By strengthening access to justice in Singapore, trust and confidence in the administration of criminal justice and the commitment to the rule of law will be enhanced.

RELEVANT AND ESSENTIAL

Given that there are existing pro bono legal services, two questions arise: why the need for the PDO; and what exactly are the functions of this new outfit?

The PDO will serve vulnerable accused persons in all types of offences except for regulatory offences such as traffic summonses and departmental charges, as well as offences for legislation on illegal gambling and betting, organised and syndicated crime, and terrorism. These excepted categories relate to offences whose primary purpose is to deter specific behaviours that bring about significant negative externalities to society.

However, the PDO should have the discretionary power to grant criminal legal aid in these excepted categories where it is in the public interest to do so – for example, where a person was coerced into organised crime.

Today, criminal legal aid is primarily provided by pro bono lawyers acting under the Criminal Legal Aid Scheme (Clas) of the Law Society. Clas covers accused persons, including non-citizens,

for non-death penalty offences found in 17 pieces of legislation, including the Penal Code and the Misuse of Drugs Act. (The Legal Assistance Scheme for Capital Offences provides free legal aid for accused persons, regardless of nationality, charged with death penalty offences.)

The Government has indicated that Clas will be sustained even with the PDO's establishment. From 2007, the Government had indirectly funded the then Pro Bono Services Office, now known as Law Society Pro Bono Services. Direct government funding of Clas started in 2015.

Such a hybrid, complementary model of criminal legal aid provision is to be commended, although Clas and the PDO must work closely to avoid unnecessary duplication of legal services.

Although the pro bono commitment has grown over the last two decades, adequate access to justice cannot rely on the goodwill of pro bono lawyers alone. Moreover, demand for pro bono work is likely to increase with more people eligible for criminal legal aid. In financial year

Having a robust criminal legal aid system that is affordable, accessible and of a high quality is vital to effective administration of criminal justice. Without meaningful access to the legal system, laws are likely to become a dead letter.

2020, Clas handled 712 cases that were directly funded by the Government.

It is estimated that this number will increase by more than half with the expansion in criminal legal aid.

The pro bono spirit, manifested in lawyers contributing their time and expertise in helping the vulnerable in our society, must be kept alive. There is also the imperative to raise the quality of legal representation of accused persons. Thus, the Bar must rise to the challenge of renewing its commitment to pro bono work even with the establishment of the PDO.

MAINTAINING LEGITIMACY

In announcing the PDO's establishment in Parliament in April, Minister for Law K. Shanmugam raised the issue of possible outrage over legal aid being given to unmeritorious applicants. The experience of other jurisdictions with a public defender scheme tells us of unsustainable rising costs and abuse by rich defendants who received criminal legal aid. This has often led to sudden, drastic cuts in criminal legal aid services and underpaid and overworked public defenders.

To keep costs in check, the eligibility requirements of accused persons receiving the PDO's representation will have to be robust. Safeguards are needed to ensure accountability and to prevent abuse. The PDO must be exemplary in its handling of cases, including avoiding "excessive" defence of "hopeless" cases and unnecessary procedural challenges. Public education is

also essential to the public's proper understanding of the public defender's role and work, and the fundamental precepts that undergird our administration of criminal justice.

These foundational rules include that one is innocent of a crime until proven otherwise, the prosecution must prove its case beyond reasonable doubt, and the right to a fair trial.

That the PDO will be involved in controversial cases is to be expected as an accused person must have his day in court.

For the public to prejudge a case and to allow outrage to determine whether criminal legal aid ought to be provided is to pander to mob justice and must be resisted.

Inherent in public defending is the proper balancing of an individual's and society's rights, interests and responsibilities.

The PDO must have a nuanced understanding of public sentiments on controversial cases but that must not stop the public defenders from carrying out their duties without fear or favour.

Although the PDO is a government body, its legitimacy and standing hinge on it being seen to be independent of the executive branch of government, especially in matters such as who gets criminal legal aid and how the defence of an accused person is conducted.

Any interference in how the PDO goes about its functions will undermine its credibility and autonomy and severely derogate from the furtherance of criminal justice and the rule of law.

Thus, in the proposed PDO legislation, the chief public defender should have security of tenure for the term appointed and can be removed only for misconduct, bankruptcy, or ill health that prevents him from carrying out his duties.

Ultimately, the PDO's decisions and actions must withstand intense scrutiny while also ensuring that an accused person is properly defended.

BROADER BENEFITS

When the predecessor to today's Legal Aid and Advice Act was first enacted in 1956, it had contemplated both civil and criminal legal aid. However, the provisions relating to criminal legal aid were held in abeyance

before being repealed altogether.

The rationale was that the state had already invested effort and public resources in investigating and prosecuting accused persons, and it would be incongruous and inconsistent to use public funds to defend them as well.

The creation of the PDO signifies a significant philosophical change for the Government where criminal legal aid is concerned.

Despite the expected public spending increase, sustained and adequate support of criminal legal aid will be put on a much firmer footing.

This important reform will institutionalise public defending in our criminal justice system and better balance the interests of society and accused persons, while also boosting the development of criminal law expertise and enhancing our criminal law jurisprudence.

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Without meaningful access to the legal system, laws are likely to become a dead letter.

Similarly, Parliament's work in enacting laws that promote the common good would be rendered nugatory – a rebuke to a system that seeks to be defined by the rule of law.

Access to justice, with legal aid being an integral part of it, has broadened significantly over the course of independent

Singapore's history, especially since the late 2000s. Access to justice is fundamentally about ensuring that justice is not the exclusive preserve of a privileged few, but available to all in Singapore.

The public defender scheme is a significantly important step forward and much will be expected of it in the years ahead.

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