

Report on Bar Free Legal Service Scheme 2013/2014

The Scheme received a total of 332 applications in the 12-month period between 1st December, 2013 and 30th November, 2014 (the “report period”). Of the applications, the Scheme managed to review 272. It further reviewed another 41 applications, outstanding from the year before (December 2012/November 2013). In total, the Scheme reviewed 313 applications during the report period.

The 41 applications received during the previous report year that remained outstanding as at 30th November, 2013 were pending either review or further information. As indicated above, they were all reviewed in the course of the current report period. Representation was granted in 5 cases, 4 of which were Legal Aid Appeals (civil) and the 5th one was an appeal against conviction and sentence in the Court of Appeal. Of the 4 Legal Aid Appeals, one was heard and won. Legal aid was granted in another but without a hearing, the Legal Aid Department having changed its mind after it had considered legal arguments put forward by the assigned counsel in his written opinion. 2 further Legal Aid Appeals are pending fresh hearing dates. As for the only criminal appeal, it was heard and dismissed on 24th June, 2014. Written legal advice was rendered in 2 matters, one was criminal appeal and the other was in fact the one where representation was initially granted but later withdrawn after legal aid was granted, that is, the 2nd Legal Aid Appeal referred to earlier in this paragraph. Legal Aid was granted in the criminal appeal after the matter was referred to DLA for reconsideration at the reviewing counsel’s direction. As for the remainder, 19 applications were rejected for lack of merits and 16 applications were considered “not proceeded with” and their files were closed as a result.

At the end of last report period, i.e. November, 2013, the outcome of 12 applications (11 criminal and 1 civil received in the last report period) for which representation was granted, was still pending. In the course of the current report period, 9 of them, all criminal matters, were resolved. There was partial win in 3 and complete loss in the remaining 6. In two of the partial win cases, appeal against conviction was dismissed but appeal against sentence allowed. In the 3rd case, an appeal against conviction on 2 charges, it was allowed on 1 charge but dismissed on the other, resulting in the reduction of overall sentence by 6 months from 21 months to 15 months. As for the 6 criminal matters that were lost, they were an application to the Court of Final Appeal for leave and 5 criminal appeals to the Court of Appeal. The two criminal matters that remain pending are an application to the CFA for leave and a Magistracy appeal. As for the only civil matter, an immigration case, assigned counsel has reported that he is considering withdrawing as the applicant has chosen not to accept his advice as to how to further conduct the matter.

The co-ordinator takes this opportunity to correct a mistake that occurred in last annual report concerning the status of a particular application for which legal representation was granted. It was an application received in the last report period (December 2012/ November 2013). The Applicant intended to apply to the CFA for leave to appeal from a Magistracy Appeal. Representation was granted. It was however erroneously included in the category of cases won when in fact it remained pending application to the CFA. Therefore, the number of cases that were still pending outcome of proceedings as at 30th November, 2013 should be 12, and not 11 as reported in the last annual report.

The only matter outstanding from the report period 2008/2009 has not had any progress at all since 12 months ago. This is a right of abode claim. The Immigration Department has yet to make a response to the letter of claim put forward for and on behalf of the applicant.

For the report period 2011/2012, 2 applications were still pending further information whereas the outcome of 6 cases remained pending 12 months ago at end November, 2013. Both applications that were pending further information were subsequently considered “not proceeded with” when it was found out that both cases (one criminal appeal to the Court of Appeal and one Magistracy Appeal) were heard and dismissed in the course of the current report period. As for the 6 applications for which representation was granted but the result remained pending, only 1 matter (a criminal appeal) was heard but unfortunately dismissed, the other 5 matters (all civil), remained stagnant with no progress at all, according to assigned counsel.

Of the 332 applications received in the current report period, 222 relate to criminal matters. The Scheme sought DLA’s reconsideration in 2 of them. Legal aid was granted unconditionally in one (a CACC), the other was pending the decision of DLA as at 30th November, 2014 (an HCMA).

Legal representation was granted in 14 applications. 4 have been heard. Appeal was allowed in 3 (2 CACC and 1 HCMA) and dismissed in 1 (HCMA). A 5th matter was concluded when the Appeal Committee of the CFA dismissed an application for leave to appeal. 3 others are pending hearing; another 3 are pending hearing dates; 2 intended applications to the CFA for leave are pending filing of application; and the last one is pending a decision by the Chief Executive whether to refer the matter to the Court of Appeal. Legal Advice was tendered in 12 matters that include the 2 referrals back to DLA for reconsideration mentioned in the preceding paragraph.

Of the said 14 matters, 3 are applications for leave to the CFA, 5 HCMA appeals, 5 CACC appeals and one Petition to the Chief Executive.

Turning now to civil matters, there are 110 applications. Assistance in one form or another was given in 10 matters. Legal representation was granted in 1 Legal Aid Appeal resulting in the allowing of the appeal and hence granting of Legal Aid. It was a litigation between members of a family relating to the equitable entitlement to a property under the Home Ownership Scheme. In a 2nd matter, also a Legal Aid Appeal, the applicant wished to oppose a summons by the Trustee in Bankruptcy that sought an order for sale of the matrimonial home jointly owned by the applicant wife and her deceased husband who was the discharged Bankrupt. Legal aid was refused seemingly on the strength of a Section 9 opinion. The co-ordinator took the view that DLA staff in charge misunderstood the true effect of the opinion, confirmed her view with the counsel in question, and wrote to DLA to invite reconsideration. Subsequently, legal aid was granted. Legal advice was rendered in 8 other matters.

Over the years, the Scheme has consistently been approached, mainly via email, for free legal advice. Those applicants were advised either (1) to obtain free legal advice from the Free Legal Advice Scheme jointly run by the District Offices (of the Home Affairs Bureau) and the Hong Kong Law Society or (2) to apply for legal aid. Sometime in the course of the current report period, the co-ordinator was contacted by a representative of the Free Legal Advice Scheme on HKU Campus run by the Faculty of Law of the University of Hong Kong who advised that applicants seeking free legal advice may also be referred to their Scheme in future. We have since advised our applicants seeking free legal advice accordingly.

One matter worth a special mention is that the Home Affairs Bureau approached the Scheme in October this year requesting that the Scheme nominate members for an award under its Recognition Scheme for Provision of Pro Bono Legal Services. The basic qualification is that nominees must have provided pro bono services for a minimum of 25 hours within the recognition period of 12 months from 1st October 2014 to 30th September 2015. In collaboration, the Scheme is keeping record of the time spent by our members on Scheme-assigned cases.

On the issue of the security of the staff of the Scheme, the co-ordinator regrets to report that there has been no change of position from 12 months ago.

There are now 219 Panel A members and 51 Panel B members. In the course of the current report period, a total of 10 Panel B members have received fees from the Scheme totaling HK\$31,500.00. In one case, a Panel B member was paid half of the nominated amount because legal aid was granted without the Legal Aid Appeal having to be heard.

The following is a summary of the outcome of the applications: -

A. Statistics relating to Year 2008/09

Outcome of cases where representation granted but
result was still pending as at November 2013: 1
Pending: 1

B. Statistics relating to Year 2011/12

1. Total no. of applications pending further information
as at November 2013: 2
No. of cases considered "not proceeded with": 2

2. Total no. of applications where representation
granted but result was still pending
as at November 2013: 6
Lost: 1
Pending: 5

C. Statistics relating to Year 2012/13

1. Total no. of applications pending review/information
as at Nov. 2013: 41
a. No. of cases rejected: 19
b. No. of cases considered
"not proceeded with": 16
c. No. of cases where representation granted: 5
Outcome of cases where
representation granted:-
Won: 1
Lost: 1
Legal aid granted
without a hearing: 1
Pending: 2
d. No. of cases where advice given: 2
e. No of cases referred to
Legal Aid Department
for Reconsideration: 1
f. No. of cases where Legal Aid granted: 1

2. Outcome of cases where representation granted pending hearing/hearing results as at Nov 2013:	12
Won:	3 (partial win)
Lost:	9 (partial win - 3 Complete loss - 6)
Pending:	3

D. Statistics relating to Year 2013/14 (the current report period)

1. Total No. of applications received:	332
a. No. of cases reviewed:	272
b. No. of cases pending review:	16
c. No. of cases pending information:	18
d. No. of cases ignored:	3
e. No. of cases withdrawn (1 following grant of LA)	2
f. No. of cases considered "not proceeded with":	21
i. Appeal heard and disposed of:	5
ii. Appeal abandoned:	6
iii. Applications not followed up:	10
2. No. of cases where representation granted:	15
a. Criminal matters:	14 (Won - 3 Lost - 2 pending- 9)
b. Civil matters:	1 (Won- 1)
3. No. of cases where advice given:	20
a. Criminal matters:	12
b. Civil matters:	8
4. No. of cases where Director of Legal Aid approached for consideration/reconsideration:	3
a. Criminal matters:	2 (Granted - 1 pending - 1)
b. Civil matters:	1 (Granted - 1)

There is now HK\$746,379.74 standing to the credit of the Scheme. A sum of HK\$14.73 was earned by way of bank interest. The revenue expenditure of the Scheme continues to be met by the general funds of the Bar Association including the HK\$ 31,500.00 paid to Panel B members referred to above.

Sze Kin
Co-ordinator

18 December 2014