

Annual Report on Bar Free Legal Service Scheme 2018/2019

The Scheme received a total of 241 applications in the 12-month period between 1st December, 2018 and 30th November, 2019 (the “report period”). Of the applications, the Scheme managed to review 199. It further reviewed another 33 applications which were pending review/information as at 30th November, 2018. In total, the Scheme reviewed 232 applications during the report period.

The 33 applications referred to in the preceding paragraph were part of a total of 45 cases outstanding from the applications received during the previous report year (December 2017/November 2018). 9 were cases for which representation was granted but the outcome was still pending as at 30th November, 2018 and the remaining 3 were cases where Legal Aid Department was approached for reconsideration. Of the said 33 applications, 11 were rejected for lack of merits, 15 were considered Not Proceeded With, advice was given in 3 and representation was granted in 2. The Co-ordinator is pleased to report that the applicant in one of the 3 matters where advice was given was able to obtain legal aid when he took steps as advised. As for the remaining 2, application was withdrawn by the applicant by letter in 1 and Legal Aid was granted in the other, without the Scheme’s intervention.

Of the said 9 matters for which representation was granted in 2017/2018, 5 were criminal and 4 were civil. All but one were concluded one way or another in the past 12 months even though the one that remains pending, an HCMA, had already been heard. The only matter that remains outstanding is the handing down of the judgment. Of the other 4 criminal matters, 2 CACCs and 2 HCMAs, appeal against conviction was allowed in one HCMA, the rest were all dismissed. On the civil side, the results are slightly more encouraging. There were a total of 3 Legal Aid Appeals. In one, Legal Aid was granted after the Department considered assigned counsel’s submissions and the hearing was vacated; in the second, Legal Aid Appeal was dismissed and in the third, assigned counsel withdrew their assistance after the Department updated its expert report. However, the 4th matter, an Equal Opportunities Claim in the District Court, was settled at mediation stage. The Scheme was therefore able to yield a positive result in 2 out of 4 matters.

As for the 3 matters in respect of which the Legal Aid Department was approached for reconsideration, legal aid was granted in all. They were all CACC appeals against conviction. But the Co-ordinator regrets to report that all 3 appeals were heard and dismissed.

For the report period 2011/2012, 2 matters remained outstanding for many years, not for lack of action on the part of the Scheme. These 2 related to immigration issue concerning a mother and her son. In view of the fact that the assigned counsel has not seen fit to respond to the Scheme's repeated enquiries as to the status of the cases, and the fact that the applicants have not approached the Scheme in any form in all those years, the Scheme has decided to close the case files. The matters are now considered Closed.

For the report period 2012/2013, the only remaining matter outstanding from the previous years is an immigration case concerning a mother and her two children. The position has remained stagnant from 12 months ago when it was reported that the Immigration Department was not taking any steps to remove the mother and the applicant was happy to maintain the status quo. Assigned counsel is happy to leave the matter at that pending future developments. Therefore, the file remains open and is considered Pending.

For the report period 2015/2016, there was only 1 matter that remained outstanding 12 months ago. The Co-ordinator is pleased to report that a Petition to the Chief Executive under Section 83P Criminal Procedure Ordinance was finally presented in March 2019 but the Chief Executive's decision remains pending.

For the report period 2016/2017, only 1 matter remained pending 12 months ago. Unfortunately, no progress has been made and the matter has yet to be resolved. The assigned counsel still awaits further steps to be taken by the applicant.

Of the 241 applications received in the current report period, 123 relate to criminal matters. Representation was granted in 2: 1 CACC and 1 HCMA, both appeal against conviction only. Appeal hearing remains pending in both. The Scheme sought DLA's reconsideration in 3 cases. Legal aid was granted in 1, rejected in the second and a decision is still pending in the third. In the second case, reviewing counsel has had a change of opinion after he was given further information regarding the alleged possible grounds of appeal. In the circumstances, representation was ultimately declined. Legal advice was rendered in 20 matters including 9 where representation was not applied for and 8 where representation was applied for but refused on merits and the 3 referrals to DLA for reconsideration mentioned above.

Turning now to civil matters, there are 118 applications. Representation was granted in 6: 4 Legal Aid Appeals, 1 CACV on appeal from an HCAL and 1 HCAL. 2 LAAs were related, both concerning immigration rights of a South East Asian in similar factual situations, and were heard and dismissed together. As for the other 2 LAAs, they are also related but in a different way. Representation was first granted to the husband who

passed away in the course of last 12 months before the matter could be heard and determined. The wife has now taken over the litigation and stepped into the shoes of her deceased husband in respect of the Legal Aid Appeal. As for the 2 non LAA cases, both concerned yet again the immigration rights of a South East Asian. There is no suggestion that there are similarities in the factual circumstances however. Both cases were referred to the Scheme by the Hong Kong Justice Centre. One is pending a hearing date and the other is pending hearing as at 30th November, 2019. Legal advice was rendered in 14 cases. In addition, legal advice was rendered in another 22 matters upon refusal of legal representation sought.

There are now 256 Panel A members and 91 Panel B members. In the course of the current report period, a total of 10 Panel B members received fees from the Scheme totaling HK\$36,000.00.

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

A. Statistics relating to Year 2011/12

Total no. of applications where representation granted but result was still pending as at November 2018:	2
Considered closed:	2

B. Statistics relating to Year 2012/13

Total no. of applications where representation granted but result was still pending as at November 2018:	1
Partly resolved:	1

C. Statistics relating to Year 2015/16

Total no. of applications where representation granted pending counsel's action as at November 2018:	1
Pending CE's decision:	1

D. Statistics relating to Year 2016/17

Total no. of applications where representation granted pending resolution as at November 2018:	1
No further progress:	1

E. Statistics relating to Year 2017/18

I. Total no. of applications pending review/information as at Nov. 2018	33
a. No. of cases rejected:	11
b. No. of cases considered "Not Proceeded With":	15

- c. No. of cases where representation granted: 2
Appeal dismissed: 2
- d. No. of cases where advice given: 2
- e. No. of cases where advice given upon refusal of legal representation: 1
- f. No. of cases withdrawn: 2
(1 where LA was granted without Scheme's intervention)

II. Total no. of applications where representation granted pending hearing/hearing results as at November 2018: 9

- a. Criminal
 - Won: 1 (HCMA, indecent assault)
 - Lost: 3
 - Pending: 1 (judgment only)
- b. Civil
 - Won: 1 (LAA)
 - Lost: 1 (LAA)
 - Settled: 1(DCEO)
 - Assistance withdrawn: 1 (LAA)

III. Total no. of cases where written advice given and referral to DLA for reconsideration pending DLA's decision as at 30th November 2018: 3
LA granted: 3 (all criminal)

F. Statistics relating to Year 2018/19 (the current report period)

Total No. of applications received:		241
I. No. of cases REVIEWED		199
a. No. of cases rejected:		164
b. No. of cases ignored:		3
c. No. of cases where representation granted:		8
i. Criminal:	2	
pending hearing		
/date:	2	

ii. Civil:	6	
pending hearing		
/date:	2	
Lost:	2	
Pending applicant's		
further action:	1	
Applicant deceased:	1	
d. No. of cases where advice only given:		23
i. Criminal:	9	
ii. Civil:	14	
e. No. of cases where Director of Legal Aid		
Approached for reconsideration:		3
Criminal:	3	
Granted:	1	
Rejected:	1	
Pending:	1	

Note: Of the 3 referrals, 1 ended up being rejected by the Scheme after DLA's rejection and the one pending DLA's decision will receive Scheme's representation in any event if DLA rejects. There are therefore 2 cases that are counted under 2 different categories.

f. No. of cases where legal advice rendered upon		
Refusal of representation:		30
i. Criminal:	8	
ii. Civil:	22	

Note: The 30 matters under f. above were included in cases REJECTED.

II. No. of cases NOT REVIEWED		42
a. No. of cases pending review:		6
b. No. of cases pending information:		13
c. No. of cases withdrawn:		1
d. No. of cases considered "Not Proceeded With"		22
i. Appeal heard and		
dismissed:	5	

- ii. Appeal Abandoned: 1
- iii. Application not followed up: 11
- iv. Legal aid granted: 1
- v. Private repr: 2
- vi. Re-application to DLA: 2

There is now HK\$746,455.51 standing to the credit of the Scheme. A sum of HK\$357.58 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\$36,000.00 paid to Panel B members referred to above.

Sze Kin
Co-ordinator

6 December 2019