

Report on Bar Free Legal Service Scheme 2009/2010

The Scheme received 244 applications in the 12-month period between 1st December 2009 and 30th November 2010 (the 'report period'). Of the applications, the Scheme managed to review 222. It further reviewed another 24 applications outstanding from the previous years (2 from Dec 2007/Nov 2008, 22 from Dec 2008/Nov 2009). In total, the Scheme reviewed 246 applications during the report period.

Of the 2 applications outstanding from the year 2007/08 that were reviewed, one was rejected on grounds of merits, the applicant in the other (a matrimonial matter) was granted legal aid through efforts of his own.

Of the 22 applications outstanding from the year 2008/09 that were reviewed, representation was granted in two, resulting in one win and one settlement. In respect of the first case, a criminal appeal against sentence, a written advice was first obtained and the case was referred to the Legal Aid Department for reconsideration. When DLA maintained its stance, representation was granted and appeal heard resulting in a reduction in sentence.

At the end of last report period, i.e. November 2009, 5 applications from the report period Dec 2007/Nov 2008 were still pending, 4 were now resolved. Legal aid was granted in an immigration matter; the Civil Court of Appeal affirmed the Court of First Instance's judgment in a Personal Injuries case; and the Court of Final Appeal decided in favour of the wife in a maintenance suit in which both parties were represented by counsel and solicitors assigned by the Scheme.

At the end of last report period, i.e. November 2009, the outcome of 9 matters, 5 criminal and 4 civil, in which representation was granted, was still pending. In the course of the report period, 6 were resolved resulting in 1 win in an appeal against sentence in the Court of Appeal, 1 win in the Court of First Instance from Small Claims Tribunal, 1 loss in the Court of Appeal (criminal), a grant of legal aid in a Magistracy Appeal and eventual withdrawal of application for leave to appeal to the CFA in the last two related cases. In the last two cases, the applicants were visitors who were charged with illegal overstaying. The Scheme assisted them to apply for High Court bail that was unsuccessful. Their intended appeal to the CFA against that refusal of bail was in the event withdrawn with no order as to costs.

Of the 244 applications received in the report period, 139 relate to criminal matters. The Scheme sought DLA's reconsideration in 5 matters with 4 positive results.

Legal representation was granted in 6, they were 3 Magistracy appeals and 3 criminal appeals (CACC). All 3 Magistracy appeals have been finalised with 1 win and 2 losses. On the other hand, all 3 criminal appeals (CACC) are pending hearing/outcome. Legal advice was rendered in 17 matters.

Turning now to civil matters, there are 105 applications. Assistance in one form or another was given in 25 matters. Legal representation was granted in 4. They are 2 Legal Aid Appeals, 1 single judge appeal (foreclosure proceedings) and 1 to resist an application for leave to appeal to the CFA by a defendant in a Personal Injuries claim.

1 Legal Aid Appeal was successful whereby legal aid was granted by the Master to resist a claim for possession of land on grounds of adverse possession. The single judge appeal was however unsuccessful and the assigned counsel is seriously considering whether the matter should go to the Court of Appeal. As for the other two matters, they are still pending hearing. Advice was given in 18 and 4 matters were referred to DLA for reconsideration. Legal aid was granted in 2, and rejected in one. As for the 4th case, DLA has requested for further counsel opinion before a final decision can be made. That is a case concerning a discharged bankrupt's entitlement to, inter alia, the part of his pension contributed to by him and accumulated after the bankruptcy order was discharged. The matter is being taken to the CFA by the Official Receiver. Last but not least, a reviewing counsel has indicated his willingness to pen an advice so that DLA may be approached and persuaded to conduct further investigations in a case involving medical negligence claim, before the Legal Aid Appeal is to be heard.

2 matters call for special mention. The first concerns a Small Claims Tribunal Appeal for which a Panel B member was assigned to assist a Panel A member at a small fee under the Scheme's Panel B Scheme. The appeal was heard and allowed in favour of the assisted person. The Court, upon application by Scheme-assigned counsel, made a costs order in favour of the Scheme in the amount equivalent to the fee payable to the Panel B member. It is beyond dispute that the Court had no jurisdiction to make such an order as the Scheme was not a party and the assisted person was never at risk of having to reimburse the Scheme. The matter was tabled at a meeting of the Bar Council and it was resolved that the Court be informed of the matter and the cheque be returned to the other party. The author would ask that all members have regard to the above and do not seek to make applications for costs in all future court proceedings.

The second matter concerns an applicant who demanded that all information and documents provided by her to the Scheme including the application form be destroyed following rejection of her application as if the application was never made, on the basis that those information and documents were confidential. The matter was referred to the Scheme's Management Committee for discussions and decision. It was unanimously decided that there was no basis for the demand. On the contrary, the HK Bar Association is required by law to keep intact for certain period of time all records and files generated/created in the course of its business.

There are now 143 Panel A members and 109 Panel B members. In the course of the report period, a total of 7 Panel B members have received fees from the Scheme totaling HK\$22,000.00.

The Scheme has continued to work with the Department of Professional Legal Education of the Faculty of Law, Hong Kong University although the person in charge of Clinical Legal Education LLB is now a Mr. Lam who has a full time job as a practising solicitor.

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

A.	1.	Total No. of applications (outstanding from year 2007/08):	7
	2.	No. of cases reviewed:	7
	3.	No. of cases where representation granted:	5
	4.	Outcome of cases where representation granted:	
		Won:	2
		Lost:	1
		Legal Aid granted:	1
		Pending:	1
	5.	No. of cases where advice given and legal aid granted:	1
B.	1.	Total No. of applications (outstanding from year 2008/09):	31
	2.	No. of cases reviewed:	31
	3.	No. of cases where representation granted:	11
	4.	Outcome of cases where representation granted:	
		Won:	3
		Lost:	1
		Settled:	1
		Legal Aid granted:	1
		Application for leave withdrawn:	2
		Pending:	3
	5.	No. of cases where advice given but legal aid nevertheless rejected:	1

Note: The above figures under B have to be read in conjunction with last year's annual report. Therefore, the 31 cases include 22 cases pending review and 11 cases where representation was granted include 9 cases outcome of which was still pending as at the end of November 2009.

C.	1.	Total No. of applications received (December 09 to November 10):	244
	2.	No. of cases reviewed:	222
	3.	No. of cases pending review:	6
	4.	No. of cases pending further information:	16
	5.	No. of cases where representation granted:	10
	a)	Criminal matters: 6 (Won – 1, Lost – 2, pending hearing– 3)	
	b)	Civil matters: 4 (Won – 1, Lost – 1, pending hearing - 2)	

- | | | |
|----|--|--|
| 6. | No. of cases where advice given: | 35 |
| | a) Criminal matters: | 17 |
| | b) Civil matters: | 18 |
| 7. | No. of cases where Director of Legal Aid (DLA) was approached for reconsideration: | 10 |
| | a) Criminal matters: | 5 (Granted – 4) |
| | b) Civil matters: | 5 (Granted – 2, pending further opinion – 1 pending approach to DLA – 1) |

There is now HK\$746,320.84 standing to the credit of the Scheme. A sum of HK\$14.72 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\$ 22,000.00 paid to Panel B members referred to above.

Sze Kin
Co-ordinator

6 December 2010