

## **Report of the Bar Free Legal Service Scheme**

The Scheme received 267 applications in the 12-month period between 1<sup>st</sup> December 2007 and 30<sup>th</sup> November 2008 (the 'report period'). Of the applications, the Scheme managed to review 255. It further reviewed another 25 applications out of the 26 outstanding from the previous year (Dec 2006/Nov 2007). In total, the Scheme reviewed 280 applications during the report period.

Of the 25 applications outstanding from the year 2006/07 that were reviewed, written advice on merits of a criminal appeal was given in 1. The last matter i.e. the remaining matter awaits outcome of a review, the prolonged delay being caused by the need to obtain lost appeal bundle and further transcripts of trial.

At the end of last report period, i.e. November 2007, the outcome of 6 matters, in which representation was granted, was still pending. Of those, an appeal against sentence in the Court of Appeal was successful; legal aid was successfully obtained in 2, i.e. 1 personal injuries claim and 1 immigration matter. However, a Review of Sentence (to resist) and an appeal against sentence, both in the Court of Appeal, were lost. The 6<sup>th</sup> matter, a Petition to the Chief Executive under Section 83(P) of the Criminal Procedure Ordinance for reference to the Court of Appeal for leave to appeal against sentence, is still pending its outcome.

Of the 267 applications received in the report period, 187 relate to criminal matters. The Scheme sought DLA's reconsideration in 4 matters with 3 positive and 1 negative results. Other forms of assistance were given in 8 matters including legal representation in 5 appeals and 1 Magistrates Court mitigation and 2 Petitions to the Chief Executive under Section 113A, Magistrates Ordinance for reference to the Court of First Instance for 1 appeal against sentence and the other against conviction. Legal advice was rendered in 18 matters that included the aforementioned 4 referrals to the DLA.

Of the 5 appeals, 1 (a Magistracy Appeal against conviction) was won, 2 (Court of Appeal) were lost, legal representation was withdrawn in the 4<sup>th</sup> matter, an application to the CFA for leave from a Magistracy Appeal, when DLA had a re-think of its own initiative and decided to grant legal aid, and the 5<sup>th</sup> one is still pending hearing in the Court of Appeal. The 2 said Petitions were both successful and legal aid was re-applied for and subsequently granted.

Turning now to civil matters, there are 90 applications, and assistance in one form or another was given in 27 matters. Legal representation was granted in 12 including 4 Legal Aid Appeals; 2 matters, 1 family and 1 Labour Tribunal Appeal, were referred to counsel and solicitor on reduced fee basis; advice was given in 13 matters including 2 that were successfully referred back to DLA for reconsideration.

Of the 12 legal representation granted, 2 were lost, 1 was settled, 1 was withdrawn and 8 remain pending. The 2 that were lost in fact related to a single matter, the first hearing being an unsuccessful Legal Aid Appeal and the second hearing being the subsequent actual hearing of the substantive dispute between the parties. The one that was settled was a maintenance matter, involving an applicant from New Zealand and the one that was withdrawn was an immigration matter upon legal aid being granted.

It is felt that a special mention ought to be made of a Pilot Scheme that went into operation in May/June 2008. Under the Pilot Scheme, Panel Members are placed under 2 panels: Panels A and B, with those having under 5 years full practice being placed under Panel B. The idea is for one Panel B member to be assigned to assist each Panel A member who is undertaking pro bono work for the Bar Free Legal Service Scheme. Whereas Panel A members continue to render work pro bono Panel B members are offered a fee ranging between HK\$3,000 and HK\$5,000. The main purpose of the Pilot Scheme is to offer junior members with less than 5 years' actual experiences an opportunity to work with and learn from a senior member and at the same time obtain some form of financial reward. 66 members with less than 5 years' full practice have since joined the Scheme swelling Panel B to 81 members. The writer is pleased to report that a number of Panel B members have since been paired with members assigned from Panel A. A simple Magistracy Appeal was the first case under the Pilot Scheme that went to court with a positive result. The Panel A member was particularly happy with the assistance he obtained from the junior counsel in relation to the preparation of paper work.

It is anticipated that a Panel B member conversant with the Chinese language may prove to be helpful in situations where the Panel A members assigned may lack the necessary language skills.

There is one other case that merits special mention—a matrimonial case concerning maintenance dispute that will be heard in the Court of Final Appeal.

Neither parties were represented in the Court of Appeal but an Amicus Curae was appointed. Again the parties originally acted in person in the CFA, the DLA having steadfastly refused to intervene despite having been invited repeatedly to do so by the CFA Registrar. The husband's initial application to the Scheme was unsuccessful on ground of lack of merits. Subsequently, the Chairman of the Hong Kong Family Law Association Mr. Hotten approached the Scheme, indicating his interest and that of many members of his Association in the outcome of the case as it apparently involves ground-breaking issues never before argued and family law practitioners found it unthinkable that the case should be argued without the benefit of legal representation on either side. In the event, the Scheme, with very active assistance from Mr. Hotten, managed to assemble 2 teams of highly experienced family law practitioners comprising a senior counsel, a senior-junior and a solicitor to represent the husband and the wife respectively. A Panel B member was also successfully assigned to assist the team acting for the husband. The team acting for the wife has unfortunately declined our offer of a Panel B member.

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

A.	1.	Total No. of applications (outstanding from year 2006/07):	32
	2.	No. of cases reviewed:	25
	3.	No. of cases where representation granted:	6
	4.	Outcome of cases where representation granted:	
		Won:	1
		Lost:	2
		Legal Aid granted:	2
		Pending Chief Executive's decision for referral:	1
	5.	No. of cases where advice given:	1

Note: The above figures have to be read in conjunction with last year's annual report. Therefore, 32 cases include 26 cases pending review and 6 cases where representation was granted but the outcome was still pending as at Nov., 2007.

B.	1.	Total No. of applications received (December 07 to November 08):	267
	2.	No. of cases reviewed:	255
	3.	No. of cases pending review:	9
	4.	No. of cases pending further information:	3
	5.	No. of cases where representation granted:	20

a)	Criminal matters:	8 (Won – 1, Lost – 2, Withdrawn – 1, Legal Aid granted – 2, Pending – 1 and Mitigation done - 1)	
b)	Civil matters:	12 (Lost – 2, Withdrawn – 1, Settled – 1, Pending - 8)	
c)	Legal Aid Appeals:	4 (Lost – 1, Withdrawn – 1, Pending – 2)	
6.	No. of cases where advice given:		31
a)	Criminal matters:	18	
b)	Civil matters:	13	
7.	No. of cases where Director of Legal Aid (DLA) was approached for reconsideration:		6
a)	Criminal matters:	4 (Granted – 3, Rejected – 1)	
b)	Civil matters:	2 (Both granted)	
8.	No. of cases successfully referred to firms of solicitors:		8

There is now HK\$746,247.94 standing to the credit of the Scheme, with neither donations received nor expenditure incurred. HK\$9,980.11 was earned by way of interest. The revenue expenditure of the Scheme continues to be met by the general funds of the Bar Association including fees payable to Panel B members under the Pilot Scheme.

Sze Kin  
Co-ordinator

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