

Bar Free Legal Service Scheme

The Scheme received 248 applications in the 12-month period between 1st December 2008 and 30th November 2009 (the 'report period'). Of the applications, the Scheme managed to review 226. It further reviewed another 19 applications out of the 21 outstanding from the previous year (Dec 2007/Nov 2008). In total, the Scheme reviewed 245 applications during the report period.

Of the 19 applications outstanding from the year 2007/08 that were reviewed, written advice on merits of a criminal appeal was given in 2. Following the written advice, representation was granted in one (appeal against sentence) that was subsequently heard and allowed. In the other case, an appeal against conviction, the matter was referred to the Director of Legal Aid (DLA) for reconsideration, as per the reviewing member's suggestion, and legal aid was in the event granted.

As for the two remaining applications, the reviewing members are taking a long time to come to a decision. The Scheme's secretarial support for some reason failed to issue regular reminders. This is an aspect that calls for immediate remedial action.

At the end of last report period, i.e. November 2008, the outcome of 9 matters, in which representation was granted, was still pending, only 4 matters have been resolved, the remaining 5, all civil, are still pending. Of the 4 resolved matters, 1 was criminal appeal against conviction in the Court of Appeal. At the first hearing, the matter was adjourned and legal aid was re-granted following recommendations by the bench. The other 3 were all civil, legal aid was granted in 1 after the Scheme's intervention, and before the hearing of the Legal Aid appeal; a settlement was achieved in the 2nd and the 3rd matter, an Employees' Compensation Case, was lost after trial.

Of the 248 applications received in the report period, 154 relate to criminal matters. The Scheme sought DLA's reconsideration in 8 matters with 7 positive results. The last one is still pending DLA's response. Legal representation was granted in another 8, they were 3 magistracy appeals, 2 criminal appeals (CACC), 2 High Court bail applications and 1 Petition to the Chief Executive under Section 83P, Criminal Proceedings Ordinance, Cap.221. 2 Magistracy appeals have been finalised, the results were 1 win 1 loss. The Petition to the Chief Executive is successful and legal aid has since been granted in respect of the appeal proper. The rest are all pending hearing dates. Legal advice was rendered in 22 other matters.

Turning now to civil matters, there are 94 applications. Assistance in one form or another was given in 32 matters. Legal representation was granted in 6. They are 1 Labour Tribunal Appeal that was heard and won, 3 immigration matters one of which was an application in the Court of First Instance for an injunction to prevent the Director of Immigration from removing the applicant from Hong Kong that was heard and lost, 1 Small Claims Tribunal Appeal that was referred to the Scheme by the presiding judge after leave to appeal had been granted and when DLA maintained his position in refusing aid, and 1 security for costs application in the Court of First Instance that was referred to the Scheme by the Office of Audrey Eu, Legislative Councillor. Further, there was 1 Employees' Compensation Case that was referred to counsel and solicitor on reduced fee basis and a second Employees' Compensation

Case that was referred to a solicitor on pro bono basis. The solicitor ceased pro bono representation in the second E.C.C. when the applicant (the Respondent in the E.C.C.) was declared bankrupt. 1 matter, relating to Immigration/Judicial Review is pending reviewing counsel's written advice that is intended to be forwarded to DLA for reconsideration. Advice was given in 24 matters, one of which resulted in legal aid being granted to pursue judicial review application against Dental Council.

There are now 131 Panel A members and 113 Panel B members. Given the fact that not many applicants have been granted free representation, the writer regrets to report that only a few members from Panel B have been assigned. In the course of the report period, 2 Panel B members have received fees from the Scheme following conclusion of their involvement.

Recently, the Scheme was approached by an Assistant Professor of the Department of Professional Legal Education of the Faculty of Law, Hong Kong University, a Mr. Cheung who is in charge of Clinical Legal Education LLB that is offered to law students in their 3rd/4th year. Mr. Cheung sought an opportunity to work with the Scheme, hoping to instill in his students a "pro bono culture". The writer offered and Mr. Cheung was happy to accept that the Scheme try to involve his students in cases where free legal representation has been granted provided assigned counsel is willing to carry law students.

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

A.	1.	Total No. of applications (outstanding from year 2007/08):	30
	2.	No. of cases reviewed:	28
	3.	No. of cases where representation granted:	10
	4.	Outcome of cases where representation granted:	
		Won:	1
		Lost:	1
		Settled:	1
		Legal Aid granted:	2
		Pending hearing date/hearing:	5
	5.	No. of cases where advice given and legal aid granted:	1

Note: The above figures have to be read in conjunction with last year's annual report. Therefore, 30 cases include 21 cases pending review and 10 cases where representation was granted include 9 cases outcome of which was still pending as at the end of November 2008.

B. 1.	Total No. of applications received (December 08 to November 09):	248
2.	No. of cases reviewed:	226
3.	No. of cases pending review:	5
4.	No. of cases pending further information:	17
5.	No. of cases where representation granted:	14
a)	Criminal matters: 8 (Won – 1, Lost – 1, pending hearing– 5, Petition granted – 1)	
b)	Civil matters: 6 (Won – 1, Lost – 1, pending hearing - 4)	
6.	No. of cases where advice given:	46
a)	Criminal matters: 22	
b)	Civil matters: 24	
7.	No. of cases where Director of Legal Aid (DLA) was approached for reconsideration:	9
a)	Criminal matters: 8 (Granted – 7, pending – 1)	
b)	Civil matters: 1 (Pending approach to DLA)	
8.	No. of cases successfully referred to counsel/solicitors on fee-paying basis:	1
9.	No. of cases referred to solicitors on pro bono basis (representation ceased upon bankruptcy of applicant):	1

There is now HK\$746,306.12 standing to the credit of the Scheme. The increase of HK\$58.18 from last year's HK\$746,247.94 was by way of bank 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

3 December 2009