

Annual Report on Bar Free Legal Service Scheme 2010/2011

The Scheme received 299 applications in the 12-month period between 1st December, 2010 and 30th November, 2011 (the “report period”). Of the applications, the Scheme managed to review 235. It further reviewed another 14 applications outstanding from the previous year (Dec 2009/Nov 2010). In total, the Scheme reviewed 249 applications during the report period.

Of the 14 applications outstanding from the year 2009/10 that were reviewed, representation was granted in two, resulting in one win (Legal Aid Appeal) and one that is pending Court of Appeal’s judgment (criminal appeal against conviction). Written legal advice was rendered in the 3rd matter, a criminal appeal, and DLA was approached on the strength of that advice, resulting in granting of legal aid. Assistance was refused in the remaining 11 cases, 10 on grounds of merits, one on grounds of complexity and length as a result thereof the Scheme was unable to obtain voluntary services from Scheme members – it was a trial matter in the Lands Tribunal.

At the end of last report period, i.e. November 2010, the outcome of 5 matters, 3 criminal and 2 civil, for which representation was granted, was still pending. In the course of this report period, all were resolved. Both civil matters were won (1 Legal Aid Appeal, the other to resist the defendant’s application in the Court of Appeal for leave to appeal to the CFA, both matters related to Personal Injuries claims). The 3rd matter that was won was an appeal against sentence in the Court of Appeal. The two matters that were lost were both criminal appeals in the Court of Appeal.

Also, in one civil matter that was pending approach to DLA for reconsideration at the end of the last report period, representation was granted to assist the Applicant in his appeal against Legal Aid refusal. This was a case where the Applicant wished to sue a certain hospital for mismanagement of his father’s illness, causing unnecessary suffering, anguish and medical expenses. However, a few days before LAA hearing (set for mid-November, 2011) the Applicant notified all parties concerned that he was abandoning the appeal on the grounds that he was finding it too stressful. An under-5-year junior member was all along involved in the matter under the Panel B Scheme. The Scheme paid him the promised fee despite the last minute abandonment.

Of the 3 matters for which representation was granted in the report period 2008/09

and the outcome thereof was still pending at the end of last report period, i.e. November, 2010, 2 were finalized. One was lost (a case of plaintiff resisting defendant's application for security for costs). As for the other, the assigned counsel decided that the case could not possibly proceed as matters presently stood (an Immigration matter involving a person's right to HK Permanent ID card). The 3rd matter is also an Immigration matter, it concerns a father's desire to invite the Director of Immigration to exercise his discretion to grant right of abode to his daughter who was born out of wedlock. The matter is pending the Applicant's collection of necessary evidence in support of his case.

The Co-ordinator is also happy to report that it has come to her notice that a good percentage of cases that managed to obtain legal aid through the Scheme have proved to be meritorious in the courts eventually. A recent decision in the District Court is worth a special note. The applicant asserted adverse possession in respect of the entire length of a rear lane of a building when the Incorporated Owners of that building commenced proceedings against him in the Lands Tribunal claiming possession. He wished to institute proceedings against the Incorporated Owners on grounds of adverse possession in the District Court. His application for legal aid was turned down for lack of merits, so he came to the Scheme for help. Assigned counsel attended the Legal Aid Appeal in October 2010 and the appeal was won. Hence, the applicant was granted legal aid. His claim for a declaration pursuant to Sections 7(2) and 17 of the Limitation Ordinance (Cap. 347) succeeded on facts.

Of the 299 applications received in the report period, 180 relate to criminal matters. The Scheme sought DLA's reconsideration in 5 matters with 4 positive results and 1 pending DLA's decision.

Legal representation was granted in 12, they were 3 Magistracy appeals and 9 criminal appeals (CACC). All 3 Magistracy Appeals have been won; 2 criminal appeals have been lost and the remaining 7 criminal appeals are pending either hearing or hearing dates. Legal advice was rendered in 23 matters.

Turning now to civil matters, there are 119 applications. Assistance in one form or other, or a combination thereof was given in 21 matters. Legal representation was granted in 7. They were 3 Legal Aid Appeals (LAA), 1 CACV appeal (foreclosure proceedings), 1 Guardianship Board hearing (seeking guardianship of an incapacitated husband), 1 FACV (claiming resulting trust in relation to a Home Ownership Scheme property) and 1 District Court matter (Personal Injuries claim, costs issue). 2 LAAs

were won, one was a property dispute, the other was a medical negligence claim. The 3rd LAA, a personal injuries claim, was lost, so were the CACV and the Guardianship proceedings. The FACV is pending hearing. As for the District Court matter, the applicant has since been advised by Scheme-assigned counsel and solicitor to approach DLA, armed with counsel and solicitor's email exchanges on relevant issues. DLA is taking time to consider. Advice was given in 16 matters including three matters for which representation was granted.

In one rather unique matter, the Applicant found herself unable to access her 2/F premises, owing to the demolition by court order an external staircase that was somehow constructed on adjacent land belonging to another, she was referred to a firm of solicitors for assistance on the basis that legal letters would be issued to her lower floors neighbours on pro bono basis, seeking easement of access. If legal proceedings need to be instituted, the solicitors will be prepared to charge a reduced fee.

In last year's annual report, a special mention was made of a Small Claims Tribunal Appeal which was won on behalf of our applicant. The respondent (the Secretary for Justice for the Social Welfare Department) has decided to take the matter to the Court of Appeal and done so. Despite repeated advice, the applicant has steadfastly refused to apply for legal aid and insisted that the Scheme should conduct a number of procedures (including (i) obtaining from the High Court Registry the only original judgment of the Court, refusing to accept a sealed copy given to her by the Court; (ii) forcing the Social Welfare Department to comply with the single judge's order allowing her Small Claims Tribunal Appeal; (iii) insisting that the Scheme should provide to her Chinese translation of all court documents and counsel's Grounds of Appeal and Skeleton Submissions submitted on both sides) for her. She would attend the Scheme's office on a regular basis, she has also written to the Bar Chairman/Bar Council to make formal complaints against the Scheme and the assigned counsel. The Co-ordinator however would like to make it clear that the relevant assigned counsel were not in any way touched by this applicant's unreasonable behaviour. All attempted approaches to assigned counsel were blocked by the Scheme's secretary and the Co-ordinator.

There are now 153 Panel A members and 97 Panel B members. In the course of the report period, a total of 12 Panel B members have received fees from the Scheme totalling HK\$44,000.00, with two of whom involved in two separate cases each.

The Scheme has not been able to continue to work with the Faculty of Law, Hong

Kong University on account of the fact that the relevant Clinical Legal Education course lasts only 3 months and it is not feasible for assigned students to be able to follow any particular case through to its very end. The person in charge, a Mr. Lam who is a practising solicitor, therefore took the view that it would not be of much use to his students.

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 Nov., 2010: 3

Lost:	1
Representation withdrawn after advice:	1
Pending:	1

B. Statistics relating to Year 2009/10

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| 1. Total No. of applications (outstanding as at Nov., 20/10): | 22 |
| 2. No. of cases reviewed: | 14 |
| 3. No. of cases where representation granted:
(including 5 that were pending as at Nov., 2010) | 8 |
| 4. Outcome of cases where representation granted: | |
| Won: | 4 |
| Lost: | 2 |
| Pending: | 1 |
| Abandoned / Withdrawn: | 1 |
| 5. No. of cases where Legal Aid granted after DLA approached: | 1 |

C. Statistics relating to Year 2010/11 (the current report period)

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| 1. Total No. of applications received: | 299 |
| 2. No. of cases reviewed: | 235 |
| 3. No. of cases pending review: | 12 |
| 4. No. of cases pending further information: | 21 |
| 5. No. of cases where application not proceeded with
(in some cases, applications made too late and
appeals heard before applicants could make
a proper application with documents/materials,
or appeals simply abandoned): | 29 |
| 6. No. of cases where application withdrawn
(after LA was granted): | 2 |

