

2014 International Forum on Legal Aid

Taipei, Taiwan

25 October 2014

The following information is meant to be an outline of the Hong Kong legal aid system. There are two institutional legal aid services, independent of each other, in operation in Hong Kong, namely, the Legal Aid Department and the Duty Lawyer Service.

Legal Aid Department

1 . Legal Aid Department (LAD) was established in 1970. There are currently about 2000+ private legal practitioners (i.e. barristers and solicitors) enrolled into the legal aid panels.

2 . (a) LAD is a government department. Currently it is under the Home Affairs Bureau.

(b) LAD is also subject to the supervision of the Legal Aid Services Council (LASC), which is a statutory body established by law. LASC cannot interfere with the day- to- day running of LAD and neither can it direct LAD in individual cases. It, however, has the statutory power to formulate policies for LAD and to advise CE on the policies and budget of LAD. One of the statutory duties of LASC is to advise the CE on the desirability and viability of the independence of legal aid. The members of LASC are comprised of lawyers from the 2 legal professional bodies and non-lawyer. The chairman is appointed by CE. Director of Legal Aid (DLA) is also a member.

3 . (a) There are 4 Divisions: Application and Processing Division, Litigations Division, Crime Division and Administration Division. There are 538 employees comprising 74 lawyers and 169 law clerks. The rest are supporting staff. They are civil servants.

(b) In 2013, among the 15,691 civil legal aid applications, 7,386 were granted aid. Among the 3,797 criminal legal aid applications, 2,785 were granted criminal legal aid.

(c) In civil legal aid, 100% of the wage claims (i.e. unpaid salary claims) were conducted by in-house legal aid lawyers. 82 % of the matrimonial cases were assigned out. 18% were conducted in-house. For the others, 94% cases were assigned out whereas 6% were conducted in-house. For public law cases, all were assigned out. In the criminal legal aided cases, all District Court cases were assigned out. Some of the High Court cases were conducted in-house in the role of instructing solicitors. All advocacy works were assigned out.

4. (a) The legal aid fund is part of the annual fiscal budget of the government. The budget for legal aid is fixed, but if that is not sufficient then LAD can apply to the Legislative

Council (“Legco”) for additional fund.

(b) The legal aid fund has remained relatively stable in recent years. There was cut in staff size in the financial crisis in 2000+. LAD was then reduced from a force of 700+ to the present size. To remedy the staff cut, computerization and streamlining of processes were introduced to enhance productivity.

(c) The annual budget for 2013/2014 is HK\$ 842m (i.e. just over US\$100 million). Over HK\$ 570million (i.e. US\$73 million) were legal aid expenses. HK\$ 253million (i.e. US\$32 million) were remuneration for staff. There was also income from contribution and costs for that year in the sum of HK\$ 22.5million (i.e. US\$3 million).

(d) All costs incidental to the aided proceedings were covered by the legal aid fund.

5. Questionnaires were sent out to aided persons at the end of the proceedings to gauge the satisfactory level of the aided persons towards the services provided by the assigned solicitors and LAD. Complaint procedures are available to investigate complaints from applicants and aided person. Records of the complaints will be periodically reviewed by the management.

6 . (a) Please see answers at 3(c).

(b) Lawyers in private practice can join the legal aid panels on voluntary basis.

(c) Issue certificate with scope and deliver papers as set out in the Legal Aid Ordinance.

(d) The basis of the assigned lawyers' fee are by taxation, fixed costs and by agreement with reference to taxation .

7 . In criminal cases, all cases from District Court to the Court of Final Appeal and the committal proceedings in the Magistracy. As to the other cases in the Magistracy, they were covered, in so far as they are imprisonable cases, by the Duty Lawyer Service. In the civil legal aid, all cases as referred to in Part 1 of schedule 2 of the Legal Aid Ordinance but excluding the excepted proceedings as referred to in Part 2 in Schedule 2.

8 . Applicants passing the means and merits tests are eligible for legal aid.

9 . (a) Employees and aged are more advantageous under the current legal aid system. otherwise all applicants and aided persons are equal.

(b) No. All cases are allocated resources in accordance to its need.

10. See answers at 5 above.

11. Legal aid service in HK is well known to the community. Pamphlets of legal aid

service in minorities' languages are available in places frequented by the minorities and their communities. There are also standing arrangement with the Correctional Services for prisoner/ detained persons to apply for both criminal and civil legal aid.

12. Once legal aid granted in litigation, mediations, as part of the proceedings, are covered by legal aid. LAD, together with the other government departments, is consulted in relevant law reform. Officers from LAD are available for giving talks to the public and to some officials from Mainland China.

13. To enhance the information technology used in LAD.

14. Touting activities in employment compensation claims and personal injury cases are the current challenge to the legal aid system as those touting agents would use the nomination arrangement to direct the legal aid cases to be assigned to those law firms collaborating with them. With the endorsement from LASC, assignment quota are fixed so that the number of cases a firm can obtain in a given period of time will be monitored.

15. No.

16. No.

Duty Lawyers Service

With very few exceptions, the magistrates court deals with criminal cases. Statistically, over 90% of the criminal cases are dealt with and disposed of in the magistracy.

The Duty Lawyers Service provides criminal legal aid service solely in the magistrates courts (There are now 8 court buildings). Private legal practitioners can voluntarily enroll in the Service and they will be assigned to attend one of those 8 magistrates courts every now and then, from 9 a.m. to 1 p.m., and if necessary also 2.30 p.m. to 4.30 p.m. on the court's sitting session, to assist and represent the public attending the court.

The defendants subject to a personal means test will be offered free legal service in the magistrates court proceedings.

Every day a varied number of lawyers (from at least 2 to 3, to often up to 7 to 8 in each magistrates court) will be assigned to attend the magistrates court, in which they will handle, advise and represent those members of the public who attend the court proceedings on the day and seek legal service.

Each assigned lawyer will be remunerated according to a fixed scale. Currently, HK\$3,000 (US\$385) for half day (i.e. 9 a.m. to 1 p.m.), and HK\$6,000 for their service for the whole day.

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死因庭	Coroner's Court
勞資審裁處	Labour Tribunal
土地審裁處	Lands Tribunal
小額錢債處	Small Claims Tribunal