

International Legal Aid Group Conference 2013

NATIONAL REPORT

from the

Hong Kong Special Administrative Region of

the People's Republic of China

(2013)

Legal Aid in the Hong Kong Special Administrative Region

1. Type of legal system

1.1 The legal system of Hong Kong differs from that of the Mainland China, and is based on the common law.

1.2 The constitutional framework for the legal system is provided at the international level by the Sino-British Joint Declaration and at the domestic level by the Basic Law, enacted by the National People's Congress of the People's Republic of China under Article 31 of the Chinese Constitution. Both the Joint Declaration and the Basic Law guarantee the continuance of the existing legal system after China resumed the exercise of sovereignty over Hong Kong on 1 July 1997.

2. Population

Hong Kong has a population of about 7 million.

3. Gross domestic product

For 2012 as a whole, Hong Kong's gross domestic product is estimated at HK\$2,040 billion [i.e. US\$262 billion].

4. The administration of legal aid

4.1 Legal aid services in Hong Kong, both civil and criminal, are administered by the Legal Aid Department (LAD) and overseen by the Legal Aid Services Council (LASC).

4.2 The LAD, which is a government department and staffed by civil servants, was set up in 1970. It has about 526 staff and 75 of them are lawyers including the Director of Legal Aid (DLA).

4.3 The LAD is organized into three divisions: Application and Processing Division, Litigation Division, and Policy and Administration Division.

4.4 The Application and Processing Division receives and determines applications for civil legal aid. When legal aid is granted, the case is assigned to lawyers in private practice or to in-house lawyers in the Litigation Division if the case is one concerning personal injury including employees compensation claim or divorce and ancillary matter.

4.5 The Litigation Division comprises a Civil Litigation Section and a Crime Section. The Civil Litigation Section handles personal injuries and divorce cases. It also deals with the processing of applications for legal aid for and the resulting litigation of wages claims from workers of insolvent employers. The Crime Section receives and determines applications for criminal legal aid. When legal aid is granted, the case is either assigned to lawyers in private practice or to in-house lawyers in the Crime Section.

4.6 The Policy and Administration Division supports the operation of LAD and consists of sections such as Accounts and Supplies, Policy and Development, Internal Audit, Information Technology Management and Training.

4.7 The LASC, which is an independent statutory body, was established in 1996 to provide greater direct public participation in legal aid administration and policy formulation. Its membership consists of a Chairman not being a public officer or a lawyer, eight members and the DLA. Of the eight members, there must be two barristers and two solicitors, each holding a practicing certificate issued under the Legal Practitioners Ordinance (Cap 159). The Chief Executive appoints the Chairman and the other members of the LASC except the DLA who is an *ex officio* member. The LASC's operation is funded by the government.

4.8 The LASC serves as the Chief Executive's advisory body on the policy of the government concerning publicly funded legal aid services provided by the LAD and shall advise on the eligibility criteria, scope of services, mode of service delivery, future plans for improvements, funding requirements and future development of legal aid policy. The LASC is also empowered to review the work of the LAD from time to time and as such the LAD is accountable to the LASC for the provision of its services. However legislation constituting the Legal Aid Services Council Ordinance (Cap. 489, Laws of Hong Kong) makes it clear that the LASC does not have power to direct LAD on staff matters or the handling of individual cases.

5. The different legal aid schemes in Hong Kong

5.1 Legal representation in both civil and criminal cases is available in

Hong Kong to any person who has reasonable grounds for pursuing or defending a legal action but who would otherwise be prevented from doing so by lack of means.

5.2 Legal aid for civil proceedings is available under two schemes pursuant to the Legal Aid Ordinance, Cap. 91, Laws of Hong Kong. The Ordinary Legal Aid Scheme (OLAS) is available to any person whose financial resources do not exceed HK\$260,000 [i.e. US\$33,333].

5.3 The Supplementary Legal Aid Scheme (SLAS) is available to any person whose financial resources are in excess of the amount prescribed for OLAS but do not exceed HK\$1,300,000.00 [i.e. US\$166,667]. The scheme is self-financing and funded by contributions paid by aided persons and a percentage deduction from damages recovered on their behalf.

5.4 To qualify for legal aid, applicants must pass a means and merits test. The means test evaluates whether an applicant's financial resources exceed the financial eligibility limit prescribed for OLAS or SLAS. The merits test evaluates whether the applicant has reasonable grounds for bringing or defending civil proceedings and a reasonable prospect of success or of deriving some tangible benefit from being provided with legal representation at public expense.

5.5 Legal aid is available for all types of criminal cases at District Court level and above, for committal proceedings in the Magistrates' Courts, for appeals against decisions of magistrates and for appeals to the Court of Final Appeal. In order to qualify for legal aid in criminal cases, an applicant's financial resources cannot exceed the financial eligibility limit allowed under OLAS. An applicant who passes the means test will be granted legal aid for committals and trials. Legal aid is only available for appeals where there are meritorious grounds.

5.6 Applicants for legal aid whose assessed financial resources exceed HK\$20,000 (US\$2,564) are required to pay a sum by way of contribution upon acceptance of the offer of legal aid. For OLAS and the legal aid scheme for criminal cases, the amount of contribution ranges from HK\$1,000 [i.e. US\$128] to HK\$65,000 [i.e. US\$8,333] depending on the applicant's assessed financial resources. For civil or criminal cases that the DLA exercises discretion and waives the upper financial eligibility limit, the amount of contribution payable ranges from 30% to 67% of the assessed financial resources of the applicant. For SLAS cases, depending on the types of cases, the applicant is required to pay an interim contribution at the maximum level payable under OLAS or 10% of his financial resources, whichever is higher.

6. Legal aid funding

6.1 Legal aid services in Hong Kong are primarily financed by public funds. Funding for civil and criminal legal aid under the OLAS comes from appropriations in the Government budget.

6.2 For the SLAS which is a self-financing scheme, funding comes from application fees, contributions paid by successful applicants and percentage deduction from damages recovered for the aided persons.

6.3 A significant feature of legal aid funding in Hong Kong is that it is non-cash limited. In other words, there is no pre-determined funding cap and supplementary funding can be sought in the event expenses exceed the original estimate. Subject to the monitoring and approval of the LAD on the ground of reasonableness, there is no limit on the expenditure for any particular legally aided case which may involve solicitors, barristers, mediators and both local and overseas experts. Funding for the LASC is however cash limited.

7. Eligibility limits for legal aid

7.1 The financial eligibility limits for the two civil legal aid schemes and the criminal legal aid scheme have been explained in paragraph 5 above. In Hong Kong the financial eligibility limits are reviewed annually to take account of changes in the Consumer Price Index and on a biennial basis to take into account of changes in private litigation costs. There is also a five-yearly review of the criteria for assessing financial eligibility of legal aid applicants.

7.2 The DLA has the discretion to waive the upper limit of financial resources in civil cases which involve a breach of the Hong Kong Bill of Rights Ordinance (Cap.383, Laws of Hong Kong), or where an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue. For Criminal cases, the DLA has the discretion to grant legal aid even if the applicant's financial resources exceed the financial eligibility limit if he is satisfied that it is desirable in the interests of justice to do so, subject to payment of a contribution.

7.3 Applicants who are refused legal aid for civil matters may appeal to the Registrar of the High Court or in Court of Final Appeal cases, to a Review Committee chaired by the Registrar of the High Court and whose decision is final. Applicants who are refused legal aid in criminal cases may apply to a judge for legal aid to be granted to him, provided that he passes the means test.

Applicants charged with or convicted of murder, treason or piracy with violence, may apply to a judge not only for legal aid for the trial and appeal, but also for exemption from the means test or payment of a contribution. Appeals against refusal of legal aid for appeals to the Court of Final Appeal are heard, as in civil cases, by a Review Committee.

8. Scope of the legal aid schemes in Hong Kong

8.1 Legal aid in Hong Kong consists of representation by lawyers of the LAD or legal aid panel lawyers and includes all assistance preliminary or incidental to any proceedings and such assistance is considered necessary to effect a compromise to bring an end to any proceedings.

8.2 OLAS covers civil proceedings in the District Court, the Court of First Instance and the Court of Appeal (both part of the High Court) and the Court of Final Appeal. It is also available for death inquests in the Coroner's Court where the interests of public justice require that legal aid be given and for proceedings in the Mental Health Review Tribunal.

8.3 The types of cases covered by OLAS include:

- matrimonial cases
- traffic accident claims
- landlord and tenant disputes
- claims in respect of industrial accidents
- employees' compensation
- immigration matters
- breach of contract
- professional negligence
- seamen's wage claims
- employees' wages and related employment benefits
- Mental Health Review Tribunal cases
- Coroners inquests involving interests of public justice
- Judicial Review

With effect from 30 November 2012, the OLAS has been expanded to cover monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception is involved in respect of the sale.

8.4 SLAS covers cases involving personal injuries or death, or medical, dental and legal professional negligence, where the claim is likely to exceed HK\$60,000 [i.e. US\$7,692]. It also covers claims brought under the Employees' Compensation Ordinance irrespective of the amount of the claim.

8.5 With effect from 30 November 2012, the SLAS has been expanded to cover the following new types of cases where the claim is likely to exceed \$60,000 [i.e. US\$7,692]:

- professional negligence claims against certified public accountants (practising), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorized land surveyors, registered landscape architects and estate agents;
- negligence claims against insurers or their intermediaries in respect of the taking out of the personal insurance products; and
- monetary claims against vendors in the sale of completed or uncompleted first-hand residential properties.

It also covers representation for employees in appeals against awards made by the Labour Tribunal irrespective of the amount in dispute.

9. Statistics

9.1 Statistics on the number of certificates granted under each legal aid scheme

| | Year 2011 | | Year 2012 | |
|--------------------------------|---------------------------------------|-------------------------------|---------------------------------------|-------------------------------|
| | No. of legal aid certificates granted | No. of legal aid applications | No. of legal aid certificates granted | No. of legal aid applications |
| Ordinary Legal Aid Scheme | 8,193 | 16,319 | 8,028 | 16,332 |
| Supplementary Legal Aid Scheme | 104 | 161 | 143 | 201 |
| Criminal Legal Aid Scheme | 2,795 | 3,888 | 2,521 | 3,684 |

9.2 Distribution of certificates issued for civil legal aid

| | No. of Certificates for Civil Legal Aid | |
|---------------------------|---|-----------|
| | Year 2011 | Year 2012 |
| Personal Injuries Claims | 3,471 | 3,445 |
| Matrimonial Cases | 4,137 | 4,046 |
| Land and Tenancy Disputes | 82 | 92 |
| Employment Disputes | 24 | 82 |
| Immigration Matters | 35 | 55 |
| Wages Claims | 98 | 78 |
| Others* | 450 | 373 |
| Total | 8,297 | 8,171 |

* *Others include miscellaneous cases involving judicial reviews, medical and professional negligence, etc.*

9.3 Distribution of certificates issued for criminal legal aid

| | No. of Certificates for Criminal Legal Aid | |
|----------------------------------|--|-----------|
| | Year 2011 | Year 2012 |
| Committal Proceedings | 480 | 460 |
| District Court Trials | 1,540 | 1,320 |
| Court of First Instance Trials | 487 | 503 |
| Magistrates' Court Appeals | 103 | 83 |
| District Court Appeals | 96 | 71 |
| Court of First Instance Appeals | 68 | 61 |
| Appeals in Court of Final Appeal | 16 | 20 |
| Others* | 5 | 3 |
| Total | 2,795 | 2,521 |

* *Others include such miscellaneous matters as bail applications.*

10. Legal aid expenditure

| | OLAS | CRIME | SLAS |
|-----------|-------------|--------------|-------------|
| | HK\$'000 | HK\$'000 | HK\$'000 |
| Year 2011 | 354,427 | 99,123 | 4,093 |
| Year 2012 | 404,787 | 95,425 | 6,369 |

The above figures do not include the personal emoluments of LAD staff which is in the region of HK\$239 million and LAD departmental expenses of about HK\$15 million. Total legal aid budget for the financial year from 1 April 2011 to 31 March 2012 was HK\$546 million.

Note: the exchange rate being HK\$7.80 = US\$1.00

11. Lawyers and legal aid work

11.1 The LAD currently has 75 lawyers including the DLA most of whom are deployed in the Application and Processing Division. Legally aided representation is therefore mostly provided by lawyers in private practice who are on the legal aid panel. There are about 8,530 practicing lawyers in Hong Kong and nearly 36% of them are on the legal aid panel. Legal aid panel solicitors and barristers are assigned legal aid cases having regard to their level of experience and expertise and the type and complexity of the particular case.

11.2 Cases which are assigned out to panel lawyers are monitored by the professional officers of LAD to ensure that the aided persons' interests are best served and public funds are employed in a cost effective manner.

12. More information

More information on the Legal Aid Services Council and the Legal Aid Department of Hong Kong are available at:

www.lasc.hk

www.lad.gov.hk