

**For discussion on
26 November 2018**

**Legislative Council
Panel on Administration of Justice and Legal Services**

Community Legal Assistance in Hong Kong

PURPOSE

This paper provides an overview of the legal aid and free legal advice services provided to the public.

VISION

2. Legal aid services form an integral part of the legal system in Hong Kong. We strive to ensure the accessibility of legal aid and free legal advice services to the public to contribute towards upholding the value of everyone being equal before the law.

LEGAL AID

3. The policy objective of legal aid is to ensure that all those who meet the criteria set out in the Legal Aid Ordinance (LAO) (Cap. 91) and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice due to a lack of means. Legal aid is available for representation in committal proceedings in the Magistrates' Courts (MC), civil and criminal proceedings in the District Court (DC) or courts at levels above in accordance with the LAO and the Legal Aid in Criminal Cases Rules (Cap. 221D). In 2017, the Legal Aid Department (LAD) received a total of 18 844 legal aid applications (including 15 373 civil legal aid applications and 3 471 criminal legal aid applications) and granted 8 809 legal aid certificates (including 6 340 civil legal aid certificates and 2 469 criminal legal aid certificates). Matrimonial (accounting for 42.7% of the total number of applications), personal injury (21.7%) and employees' compensation (14.0%) were the top three categories of civil legal aid applications received in 2017. In 2018-19, \$797 million has been earmarked for the provision of legal aid service.

4. To qualify for legal aid, a person, irrespective of residence and nationality, is required to satisfy both the means test and merits test as provided by the LAO. At present, a person whose financial resources¹ do not exceed \$302,000 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS) which covers civil proceedings in the DC or higher courts and criminal legal aid. Those with financial resources exceeding the statutory limit of OLAS but are below \$1,509,980 may apply for legal aid under the self-financing Supplementary Legal Aid Scheme.

5. For civil cases, it is stipulated in section 5AA of the LAO that the Director of Legal Aid (DLA) may waive the financial eligibility limit imposed where he is satisfied that a person should be granted legal aid in proceedings in which a breach of the Hong Kong Bill of Rights or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue. As for criminal cases, pursuant to rule 15(2) of the Legal Aid in Criminal Cases Rules (Cap. 221D), DLA may exercise his discretion to grant a legal aid certificate or an appeal aid certificate to an applicant (notwithstanding that his financial resources exceed the relevant financial eligibility limit) if he is satisfied that it is desirable in the interests of justice to do so.

FREE LEGAL ASSISTANCE AND ADVICE SERVICES

Duty Lawyer Service

6. To complement the legal aid services provided by LAD, the Duty Lawyer Service² (DLS) implements three legal assistance schemes subvented by the Chief Secretary for Administration's Office³, namely the Duty Lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law

¹ "Financial resources" means the aggregate of an applicant's yearly disposable income and disposable capital. A person's disposable income is his/her gross income minus deductible items as allowed under the Legal Aid (Assessment of Resources and Contributions) Regulations ("the Regulations") (Cap. 91B). A person's disposable capital consists of all assets of a capital nature, such as the sum of his/her credit balance, money due to him/her, the value of the person's interest in non-money resources, the value of business or share in a company etc., unless such items should be excluded from calculation under the Regulations.

² DLS is a non-statutory organisation subvented by the Government. It is independently managed and administered jointly by the Hong Kong Bar Association (Bar Association) and the Law Society of Hong Kong (Law Society) through the Council of DLS. The DLS Council consists of four members nominated by Bar Association, four members nominated by Law Society, three lay members who are not in the legal profession and the Administrator of DLS.

³ DLS also receives Government subvention to run the Legal Assistance Scheme for Convention Against Torture and Non-Refoulement Claims which is under the purview of the Security Bureau.

Scheme. In 2018-19, the total subvention to DLS for implementing the three schemes amounts to \$142.6 million.

(a) *Duty Lawyer Scheme*

7. The Duty Lawyer Scheme provides legal representation to any defendant in the MC (except committal proceedings) where the interests of justice require, and without payment by the defendant in any such case if he/she does not have sufficient means to pay for it. The Scheme also provides, either with the agreement or at the request of the Government, other forms of legal assistance and advice, including assigning lawyers to advise and represent defendants facing extradition and persons who are at risk of criminal prosecution as a result of giving incriminating evidence in Coroner's inquest.

8. The Duty Lawyer Scheme initially only provided free legal representation to defendants charged with six scheduled offences in three MCs and its scope has been gradually expanded over the years. At present, duty lawyer representation is offered to defendants charged with the Standard List of Offences, which covers some 300 statutory and common law offences, on their first day of court appearance without any means testing. Defendants who wish to have legal representation for subsequent appearance are subject to a means test and the financial eligibility limit is currently set at a gross annual income of \$197,040. After passing the means test, applicants are required to pay one fixed handling charge of \$570 which is the only charge any defendant has to pay no matter how long the trial lasts. In 2017, a total of 23 742 persons received legal representation provided by 1 122 duty lawyers under the Duty Lawyer Scheme⁴. Theft (under section 9 of the Theft Ordinance (Cap. 210)) (accounting for 26.3% of the total number of defendants represented), breach of condition of stay (under section 41 of the Immigration Ordinance (Cap. 115)) (10.8%) and possession of dangerous drugs (under section 8 of the Dangerous Drugs Ordinance (Cap. 134)) (6.7%) were the top three categories of offences committed by defendants who received legal representation under the Scheme in 2017.

⁴ There are three categories of duty lawyer fees, namely whole-day fee, half-day fee and pre-trial preparation fee, which are payable to duty lawyers under the Duty Lawyer Scheme. The current levels of whole-day fee, half-day fee and pre-trial preparation fee are \$7,300, \$3,630 and \$880 per hour respectively. As reported to this Panel on 29 October 2018, the Government has completed a review of duty lawyer fees. The Government proposes to adjust duty lawyer fees upwards, with a view to ensuring that neither DLS nor LAD would have an unfair advantage in competing for the same pool of lawyers in the provision of their services. The Government will brief this Panel on the outcome of the duty lawyer fees review in January 2019, with a view to implementing the proposed adjustments in 2019-20.

(b) *Free Legal Advice Scheme*

9. The Free Legal Advice Scheme provides free preliminary legal advice to members of the public without means testing at nine District Offices⁵ (DOs) of the Home Affairs Department (HAD). A person who wishes to seek legal advice under the Scheme may attend any referral agency of DLS (28 in total with 153 branches) to make an appointment to meet a volunteer lawyer. Publicity information is available at relevant court registries, offices, non-governmental organisations and on the internet. At present, there are over 1 000 volunteer lawyers participating in the Scheme, handling around 6 400 cases per year. A total of 242 law students participated in the Observer/Interviewer Programmes in the DOs as student volunteers in 2017. In 2017, commercial and property disputes (accounting for 19.5% of the total number of cases), matrimonial (15.5%) and employment (10.7%) were the top three categories of cases handled under the Scheme.

10. The Government has, in collaboration with DLS, taken on board the suggestions discussed at this Panel and implemented various enhancements to the Scheme over the years, including –

- (a) providing additional resources to HAD for engaging dedicated staff in the DOs responsible for appointment making and recording of case details for the persons seeking service;
- (b) arranging more training opportunities for dedicated staff of the DOs with a view to improving the support for volunteer lawyers;
- (c) enhancing the handbook/manual which is provided in all Legal Advice Centres for use by volunteer lawyers attending legal advice sessions in the evening in order to equip them with updated information and facilitate their communication with users; and
- (d) providing an allowance of \$300 to reimburse travelling expenses and as a token of gratitude to each volunteer lawyer attending a free legal advice session of about 2.5 hours with effect from April 2011.

⁵ The nine DOs are Central and Western, Wan Chai, Eastern, Kwun Tong, Wong Tai Sin, Yau Tsim Mong, Shatin, Tsuen Wan, and Islands District Offices. Apart from the Wan Chai and Central and Western DOs where services are available on three and two weekdays per week respectively, DLS provides free preliminary legal advice under the scheme on one weekday per week at other DOs.

11. Moreover, DLS has also kept under view and tightened the appointment arrangement for the Scheme so as to improve the situation of cancellation or change of appointment with short notice or absence without notice for enhanced efficiency of the Scheme⁶ and prudent use of public resources. The Government will continue to work with DLS and the two legal professional bodies to implement enhancements, step up promotion and encourage more lawyers to participate in the Scheme.

(c) *Tel-Law Scheme*

12. The Tel-Law Scheme is a 24-hour free telephone enquiry service which provides members of the public with basic information on the legal aspects of everyday problems, such as matrimonial, employment and criminal law issues. There are 80 legal topics available under the Tel-Law Scheme, divided into eight broad categories of law. In 2017, over 584 000 calls and website hits were received under the Tel-Law Scheme.

Legal Advice Scheme for Unrepresented Litigants on Civil Procedures

13. The Legal Advice Scheme for Unrepresented Litigants on Civil Procedures (Procedural Advice Scheme) was first launched as a pilot scheme in March 2013 and became a regular Government programme in April 2016 to provide free legal advice on civil procedural matters for unrepresented litigants who satisfy the income eligibility limit⁷ and have not engaged lawyers nor been granted legal aid. At present, the Scheme covers litigants who are parties to civil legal proceedings (including commencement of proceedings) in the Lands Tribunal, Family Court (FC), DC or the courts above. The Scheme office is located in the High Court Building.

14. During the period from 18 March 2013 to 30 September 2018, the Procedural Advice Scheme conducted a total of over 12 100 advice sessions for some 3 900 eligible litigants. In 2017, among the cases where proceedings had already commenced and assisted by the Scheme,

⁶ The overall average waiting time across all advice centres was 46.6 days between January and September 2018, representing a decrease of 21.8% compared to the same period of 2017 (i.e. an average of 59.6 days). For cases seeking urgent legal advice (with relevant supporting documents), DLS may expedite the processing of these cases and arrange an advice session for the applicant as soon as practicable if circumstances permit.

⁷ The income eligibility limit of the Procedural Advice Scheme is currently set at a monthly income of \$50,000 or an annual income of \$600,000.

43.7% were High Court cases (mostly civil actions, miscellaneous proceedings, bankruptcy proceedings and personal injuries), 32.2% were District Court cases (mostly civil actions and miscellaneous proceedings) and 16.9% were FC cases. Feedback from users was positive as over 98% of the survey respondents were satisfied with the service provided. As at 30 September 2018, 99 lawyers and 28 law students enrolled as community lawyers and student volunteers respectively. The operating expenditure of the existing Scheme office is around \$5 million in 2018-19.

15. The Government has decided to set up an additional office for the Procedural Advice Scheme in Wanchai Tower to meet the increasing service needs and provide more accessible service to litigants involved in DC and FC cases. The preparation work for setting up the office (including fitting-out works and staff recruitment) is underway and the new office is expected to commence operation in the first quarter of 2019.

Other free legal advice services

16. In addition to the various legal assistance and advice services set out in paragraphs 6 to 15 above, there are also other free legal advice services available to the public as provided by other Government departments, the two legal professional bodies and other organisations. They include the Free Legal Advice Service on Building Management run by HAD in collaboration with Law Society, the Bar Free Legal Service Scheme of Bar Association, the Free Legal Helpline of Law Society and the Community Legal Information Centre which is a website maintained by the University of Hong Kong and guiding the general public to find relevant legal information.

Recognition Scheme for Provision of Pro Bono Legal Services

17. As an initiative to encourage more members of the legal profession to volunteer to provide free legal services to the public, the Government has been organising the Recognition Scheme for Provision of Pro Bono Legal Services (Recognition Scheme) on a biennial basis since 2011. For the 2016/17 Recognition Scheme, a total of 232 legal professionals⁸ and 32 law firms were recognised at the award presentation ceremony held on 17 April 2018. Riding on the success of

⁸ The 232 legal professionals received Individual Awards for having provided pro bono legal services for not less than 30 hours between 1 January 2016 and 31 December 31 2017. Among them, 143 were presented with Special Awards as they performed pro bono legal services of not less than 50 hours within the two-year period.

the Recognition Scheme, we have just launched the fourth exercise to continue to give recognition to members of the legal profession providing pro bono legal services.

ADVICE SOUGHT

18. Members are invited to note the legal aid and free legal advice services provided to the public as set out above.

**Chief Secretary for Administration's Office
Legal Aid Department
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