

International Legal Aid Group Conference 2011

NATIONAL REPORT

from the

Hong Kong Special Administrative Region of

the People's Republic of China

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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 2010 as a whole, Hong Kong's GDP is estimated at HK\$1,748.1 billion [i.e. US\$ 224.1 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 516 staff, 73 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 and a Crime Section. The Civil Litigation Section handles personal injuries and divorce cases. It also deals with the processing 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, two must be barristers and two solicitors. 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 on areas such as eligibility criteria, scope of service, funding requirements. 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 are 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\$175,800 [i.e. US\$22,538] (to be increased to 260,000.00 [i.e. US\$33,333] by May 2011).

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\$488,400 [i.e. US\$62,615] (to be increased to 1,300,000.00 [i.e. US\$166,667] by May 2011). 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.

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 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 referred to 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 as may be 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 Legal aid is not available for certain proceedings such as defamation (except defending a counter-claim alleging defamation), relator actions, Small Claims Tribunal matters, Labour Tribunal matters, partnership disputes, money claims in derivatives of securities, currency futures or futures contracts, election petitions except those involving a possible breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong.

8.4 SLAS covers cases involving personal injuries or death and medical, dental and legal professional negligence where the claim for damages exceeds or is likely to exceed HK\$60,000.00 [i.e. US\$7,692]. It also covers claims brought under the Employees' Compensation Ordinance irrespective of the amount.

9. Statistics

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

	2009		2010	
	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	8,910	17,187	8,157	15,981
Supplementary Legal Aid Scheme	121	170	106	143
Criminal Legal Aid Scheme	2,800	3,816	2,740	3,907

9.2 Distribution on the number of certificates issued for Civil Legal Aid

	No. of Certificates for Civil Legal Aid	
	2009	2010
Personal Injuries Claims	2,856	2,905
Matrimonial Cases	5,213	4,580
Land and Tenancy Disputes	41	83
Employment Disputes	8	39
Immigration Matters	17	34
Wages Claims	279	159
Others*	617	463
Total	9,031	8,263

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

9.3 Distribution on the number of certificates issued for Criminal Legal Aid

	No. of Certificates for Criminal Legal Aid	
	2009	2010
Committal Proceedings	426	474
District Court Trials	1,602	1,534
Court of First Instance Trials	453	481
Magistrate's Court Appeals	122	96
District Court Appeals	110	70
Court of First Instance Appeals	59	58
Appeals in Court of Final Appeal	21	16
Others*	7	11
Total	2,800	2,740

* Others include such miscellaneous matters as bail applications

10. Legal Aid Expenditure

	OLAS	CRIME	SLAS
	HK\$'000	HK\$'000	HK\$'000
2009	369,836	103,006	5,564
2010	395,648	118,079	2,622

The above figures do not include the personal emoluments of LAD staff which is in the region of HK\$215 million and LAD departmental expenses of about HK\$15 million. Total legal aid budget for the financial year from 1st April 2009 to 31st March 2010 was HK\$516 million.

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

11. Lawyers and Legal Aid Work

11.1 The LAD currently has 73 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 7,900 practicing lawyers in Hong Kong and nearly 40% 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 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