

Chapter 2

Legal Aid Services

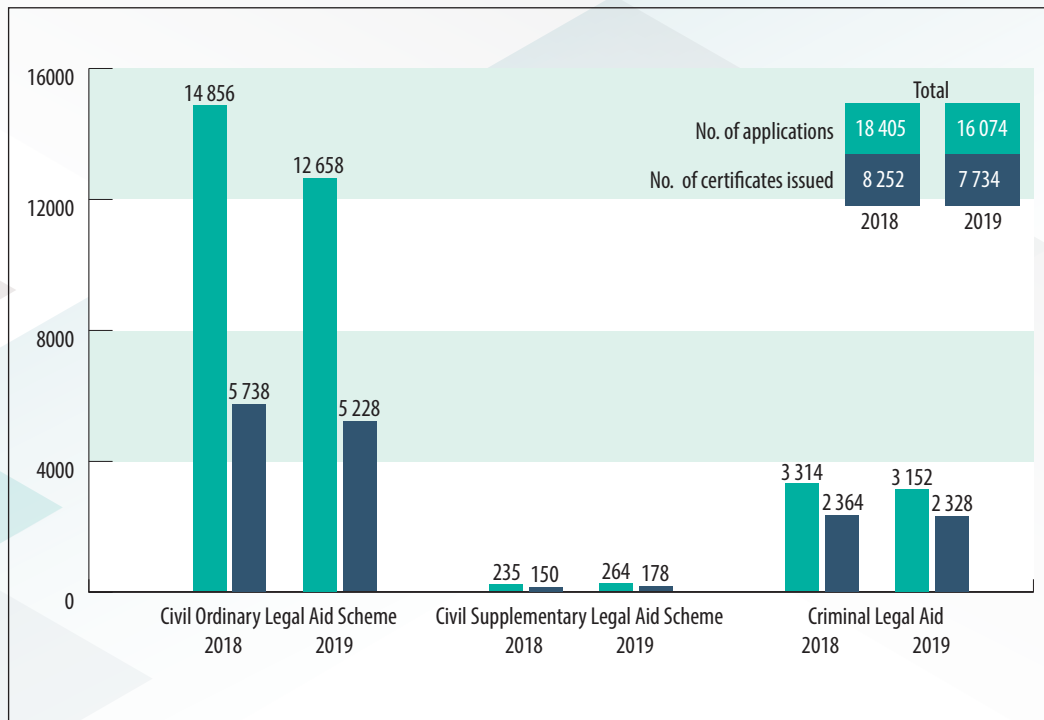


Legal aid business is conducted in the following service areas:

- Receiving and processing of legal aid applications;
- Assignments and monitoring of legal aid cases;
- Litigation services; and
- Related supporting legal services.

Application and Processing Services

In 2019, a total of 16 074 applications for legal aid were received and 7 734 legal aid certificates were issued:



Ms Mo Yuk-wah
Deputy Director of Legal Aid
(Application and Processing)



Legal Aid in Civil Cases

Civil legal aid applications, apart from applications relating to wages claims which are processed by the Insolvency Unit of the Litigation Division, are handled by the Application and Processing Division.

Ordinary Legal Aid Scheme

Applicants whose financial resources are within the statutory limit of \$307,130 may apply for legal aid under the Ordinary Legal Aid Scheme (OLAS). OLAS covers many different types of civil cases which are closely related to the public's daily lives. Types of cases covered include family disputes, employees' compensation claims, personal injury claims, immigration matters and other miscellaneous proceedings in the District Court, the Court of First Instance, the Court of Appeal and the Court of Final Appeal. It also covers applications to the Mental Health Review Tribunal and death inquests if the Director is of the opinion that the interests of public justice require legal aid be given.

In 2019, there were 12 658 OLAS applications and 5 228 legal aid certificates were issued under OLAS.

Supplementary Legal Aid Scheme

Applicants whose financial resources exceed the statutory limit of OLAS of \$307,130 but is below \$1,535,650 may apply for legal aid under the Supplementary Legal Aid Scheme (SLAS). The scope of SLAS covers employees' compensation claims and representation for employees in appeals against awards made by the Labour Tribunal irrespective of the amount of the claim. It also covers the following types of cases where the claim is likely to exceed \$60,000:

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

In 2019, there were 264 SLAS applications and 178 legal aid certificates were issued under SLAS.

SLAS is a self-financing scheme and is funded by contributions paid by the applicants upon acceptance of legal aid and contributions from monies recovered in the aided proceedings. The rates of contribution for personal injuries and employees' compensation claims and the provision of legal representation to employees for appeals against awards made by the Labour Tribunal range from 6% to 10%. For the remaining types of proceedings, the contribution rates range from 15% to 20%.

For the year ended 30 September 2019, a surplus of \$7.7 million was recorded as compared with a surplus of \$5.0 million in the year ended 30 September 2018 in the Supplementary Legal Aid Fund. As at 30 September 2019, the Fund had a balance of \$205.0 million. For details, please refer to [Appendix 1](#).

Distribution of Civil Legal Aid Applications Received in 2018-2019

Case Types	No. of Applications for Civil Legal Aid		
	2018	2019	% Change
Personal Injuries Claims	5 166	4 957	-4%
Matrimonial Cases	6 138	5 373	-12%
Land and Tenancy Disputes	502	480	-4%
Employment Disputes	62	49	-21%
Immigration Matters	139	63	-55%
Wage Claims	31	26	-16%
Others	3 053	1 974	-35%
Total	15 091	12 922	-14%

Distribution of Civil Legal Aid Certificates Issued in 2018-2019

Case Types	No. of Certificates for Civil Legal Aid		
	2018	2019	% Change
Personal Injuries Claims	2 845	2 646	-7%
Matrimonial Cases	2 635	2 385	-9%
Land and Tenancy Disputes	103	110	7%
Employment Disputes	8	5	-38%
Immigration Matters	16	7	-56%
Wage Claims	15	19	27%
Others	266	234	-12%
Total	5 888	5 406	-8%



Ms Tse Sze-fong
Assistant Director of Legal Aid
(Application and Processing)

To facilitate the public to apply for legal aid, the Application and Processing Division provides an information and enquiry service through the Information and Application Services Unit. The Unit deals with enquiries from the public on matters such as the scope of legal aid, financial eligibility limits and application procedures. In 2019, the Unit received a total of 33 679 enquiries.

Eligibility for Legal Aid

Regardless of their nationality or residence, applicants who pass both the means and merits tests will be granted legal aid. They are given the services of solicitors and, if necessary, counsel to represent them in legal proceedings conducted in Hong Kong courts.

Take-up Rate for Civil Legal Aid in 2018-2019

Certificates
 5 888

Take-up Rate
 (as a % of offers)
 94%



Certificates
 5 406

Take-up Rate
 (as a % of offers)
 95%



Legal aid applications for judicial review received and certificates granted by categories

Calendar Year	Government policies and related matters		Immigration matters including non-refoulement claims		Others			
					Government and related Organization decisions		Non-Government related Organization decisions	
	Applications received	Certificates granted	Applications received	Certificates granted	Applications received	Certificates granted	Applications received	Certificates granted
2018	91	18	1 386	39	57	2	13	1
2019	127	13	613	65	52	3	5	0

Miss Ada Wong Yiu-ming
Assistant Principal Legal Aid Counsel /
Application and Processing (1)



Refusal of Legal Aid

An applicant who is refused legal aid in civil matters on either means or merits may appeal to the Registrar of the High Court. In respect of the Court of Final Appeal cases, the applicant may appeal to a Review Committee comprising the Registrar of the High Court, a barrister and a solicitor appointed by the Chairman of the Hong Kong Bar Association and the President of the Law Society of Hong Kong respectively. The decision of the Registrar or the Review Committee is final.

Refusal Rate of Civil Legal Aid Applications in 2018-2019

Refusals
(a) on merits
6 813
Refusal Rate
(as a % of applications)
45%



Refusals
(a) on merits
5 211
Refusal Rate
(as a % of applications)
40%



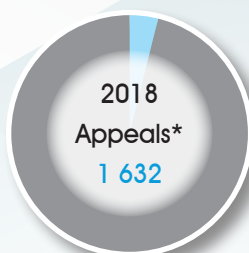
(b) on means
920
Refusal Rate
(as a % of applications)
6%

(b) on means
915
Refusal Rate
(as a % of applications)
7%

Outcome of Civil Legal Aid Appeals in 2018-2019

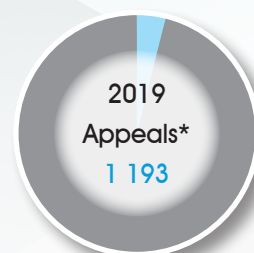
Appeals Allowed
61[@]

Success Rate
(as a % of appeals)
4%



Appeals Allowed
45

Success Rate
(as a % of appeals)
4%



Notes : *The figures do not include appeals withdrawn.
[@]This figure covered connected or related cases.

Civil Legal Aid Applications by Refusals and Outcomes of Legal Aid Appeals

Calendar Year	Civil Legal Aid Applications	Refusal		Legal Aid Appeals	
		on Merits*	on Means*	Heard	Allowed
2017	15 373	5 967	939	937	40 [#]
2018	15 091	6 813	920	1 632	61 [@]
2019	12 922	5 211	915	1 193	45

* Refusal on both Merits and Means is included in Refusal "on Means" as well as Refusal "on Merits".

[#] This figure covered group cases and connected cases.

[@] This figure covered connected or related cases.

Ms Amy Lee Ngar-ling
Assistant Principal Legal Aid Counsel /
Application and Processing (2)



Legal Aid Applications for Judicial Review by Refusals and Outcomes of Legal Aid Appeals

Calendar Year	Applications	Refusal		Legal Aid Appeals	
		on Merits*	on Means*	Heard	Allowed
2017	1 046	848	8	217	4
2018	1 547	1 519	8	763	14
2019	797	802	8	369	5

*Refusal on both Merits and Means is included in Refusal "on Means" as well as Refusal "on Merits".

Note: The statistics in the above tables are year based. A refusal or legal aid appeal may be related to a civil legal aid application made in the previous year. According to section 10(3) of the Legal Aid Ordinance, a person shall not be granted legal aid in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending, opposing or continuing such proceedings or being a party thereto and may also refused legal aid where it appears to the Director of Legal Aid that it is unreasonable to grant legal aid. Regarding the legal merits test, the court does not have to be satisfied that it is more probable than not that the issue of fact will be decided in the legal aid applicant's favour. But it has to be satisfied that the applicant has shown that there is a reasonable, as opposed to a fanciful, chance of the court at the trial deciding that issue of fact in his favour.

Outcome of Civil Cases Closed in 2019

Case Type	Settlement before Issuing Petition	Order for Winding-up/ Bankruptcy	Petition Dismissed upon settlement	Petition Stayed	Petition Dismissed	Referral to PWIFB*	Others	Total
Wage Claims (Winding-up / Bankruptcy)	0% (1%)	76% (89%)	4% (0%)	2% (0%)	0% (1%)	11% (7%)	7% (2%)	100%

* Protection of Wages on Insolvency Fund Board
(2018 figures in bracket)

Case Type	Relief Obtained	Relief Not Obtained	Withdrawn	Total
Matrimonial Cases	81% (83%)	5% (4%)	14% (13%)	100%

(2018 figures in bracket)

Case Types	In Favour	Not In Favour	Discharged / Revoked prior to Proceedings	Discharged at aided person's Request during Proceedings	Discharged / Revoked during Proceedings	Total
Personal Injuries Claims	94% (94%)	2% (2%)	1% (1%)	1% (1%)	2% (2%)	100%
Employees' Compensation Claims	96% (96%)	1% (1%)	1% (1%)	1% (1%)	1% (1%)	100%
Personal Injuries	93% (93%)	2% (2%)	1% (2%)	1% (1%)	3% (2%)	100%
Running Down	93% (93%)	2% (1%)	1% (0%)	2% (2%)	2% (4%)	100%
Medical / Dental / Professional Negligence	68% (76%)	8% (2%)	6% (6%)	6% (4%)	12% (12%)	100%
Miscellaneous	52% (52%)	22% (21%)	12% (14%)	2% (3%)	12% (10%)	100%
Overall	88% (89%)	4% (4%)	2% (3%)	2% (1%)	4% (3%)	100%

(2018 figures in bracket)

Mr Jason Chan Mau-kwan
Assistant Principal Legal Aid Counsel
(Kowloon Branch Office)



Legal Aid in Criminal Cases

Criminal legal aid applications are processed by the Crime Section of the Litigation Division.

Distribution of Criminal Legal Aid Applications Received in 2018-2019

Case Types	No. of Applications for Criminal Legal Aid		
	2018	2019	% Change
Committal Proceedings in the Magistrates' Courts	536	513	-4%
District Court Trials	1 313	1 176	-10%
Court of First Instance Trials	452	478	6%
Magistrates' Court Appeals to the Court of First Instance	352	322	-9%
District Court Appeals to the Court of Appeal	261	269	3%
Court of First Instance Appeals to the Court of Appeal	240	262	9%
Appeals in the Court of Final Appeal	123	101	-18%
Others	37	31	-16%
Total	3 314	3 152	-5%

Applicants whose means exceed the statutory limit may be granted legal aid if the Director of Legal Aid is satisfied that it is desirable in the interests of justice to grant legal aid.

Distribution of Criminal Legal Aid Certificates Issued in 2018-2019

Case Types	No. of Certificates for Criminal Legal Aid		
	2018	2019	% Change
Committal Proceedings in the Magistrates' Courts	504	503	-0.2%
District Court Trials	1 236	1 113	-10%
Court of First Instance Trials	441	476	8%
Magistrates' Court Appeals to the Court of First Instance	35	39	11%
District Court Appeals to the Court of Appeal	53	60	13%
Court of First Instance Appeals to the Court of Appeal	63	101	60%
Appeals in the Court of Final Appeal	24	22	-8%
Others	8	14	75%
Total	2 364	2 328	-2%

Take-up Rate for Criminal Legal Aid in 2018-2019

Certificates
2 364

Take-up Rate
(as a % of offers)
98%



Certificates
2 328

Take-up Rate
(as a % of offers)
98%





Ms Juliana Chan Oi-yung
Deputy Director of Legal Aid
(Litigation)

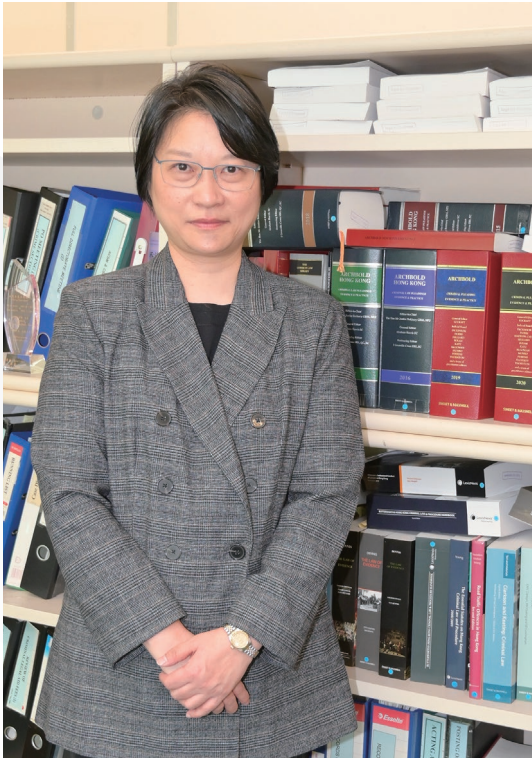


Mr Steve Wong Yiu-fai
Assistant Director of Legal Aid
(Litigation)

Refusal of Criminal Legal Aid

If an applicant is refused criminal legal aid on merits, he can apply to the judge who may grant legal aid on his own initiative provided the applicant is eligible on means.

In 2019, there were 23 refusals on means, all of which were also refusals on merits. 41 applications were refused because the applicants concerned failed to supply the Director with the necessary information to conduct the means test. The Director exercised discretion and granted legal aid in 57 cases even though the means of the applicants exceeded the financial eligibility limit.



Ms Nancy Keung Mei Chuen
*Assistant Principal Legal Aid Counsel
 (Crime)*

For refusal in respect of an appeal to the Court of Final Appeal, the applicant may appeal to a Review Committee chaired by the Registrar of the High Court and comprising a barrister and a solicitor appointed by the Chairman of the Hong Kong Bar Association and by the President of the Law Society of Hong Kong respectively. The decision of the Committee is final. In 2019, no appeal was made to the Review Committee.

Refusal Rate of Criminal Legal Aid Applications in 2018-2019

Refusal on Merits
 745

(Appeal cases)
 (721)

(Other cases)
 (24)

Refusal Rate (as a % of applications)
 22%

Legal aid granted by judges notwithstanding
 the Director of Legal Aid's refusal
 14

Refusal on Means (including refusals where applicants
 failed to provide necessary information on means)
 23 (10)

Refusal Rate (as a % of applications)
 1%



Refusal on Merits
 709

(Appeal cases)
 (694)

(Other cases)
 (15)

Refusal Rate (as a % of applications)
 22%

Legal aid granted by judges notwithstanding
 the Director of Legal Aid's refusal
 11

Refusal on Means (including refusals where applicants
 failed to provide necessary information on means)
 64 (41)

Refusal Rate (as a % of applications)
 2%



Legal Aid Electronic Services Portal

Civil legal aid applicants of the age of 18 and over and all criminal legal aid applicants can access the Legal Aid Electronic Services Portal (LAESP) to submit pre-application information forms online for non-urgent civil or criminal cases as a first step towards making an application for legal aid.

The LAESP also has a means test calculator, which allows members of the public to conduct a preliminary assessment of their eligibility on means if they apply for legal aid. Members of the public can visit the departmental website at www.lad.gov.hk or the mobile phone version to access the means test calculator. In 2019, the means test calculator and its mobile version received 5590 and 6564 hits respectively.

Legal Aid Assignments and Monitoring

Assignments

When assigning legal aid cases, interest of the legally aided persons is the paramount consideration. Hence, legal aid work is not distributed to counsel or solicitors on the Legal Aid Panel equally. Counsel or solicitors are selected having regard to their level of experience and expertise, the nature and complexity of the particular case, with reference to established guidelines and criteria, which include, amongst others, minimum experience requirements, past performance records and the limit on assignments of legal aid work.

Distribution of Civil and Criminal Assignments to Solicitors / Counsel in 2019

No. of Assignments	No. of Counsel			
	*Below 3 Years	*3-5 Years	*6-10 Years	*Over 10 Years
1-4	11	32	50	164
5-15	1	7	16	175
16-30	0	0	2	59
31-50	0	0	0	1
Over 50	0	0	0	0
Total	12	39	68	399

*Years of post-call experience

No. of Assignments	No. of Solicitors			
	*Below 3 Years	*3-5 Years	*6-10 Years	*Over 10 Years
1-4	1	32	70	498
5-15	0	10	23	270
16-30	0	5	14	92
31-50	0	1	3	25
Over 50	0	0	0	2
Total	1	48	110	887

*Years of post-admission experience

The Department set up the Departmental Committee on Monitoring Assignments to Counsel and Solicitors to ensure that cases are assigned in accordance with the established assignment criteria and guidelines. The Committee is chaired by the Director of Legal Aid and comprises directorate officers of the Department. It considers reports on the unsatisfactory performance/conduct of assigned lawyers.

In 2019, on the advice of the Committee, one solicitor was removed from the Legal Aid Panel, one counsel and 18 solicitors were put on the Record of Unsatisfactory Performance/Conduct and advisory letter was issued to one solicitor.

Since the assignment of legal aid cases is based on the experience of Panel lawyers in the past three years, the Department regularly updates Panel lawyers' experience to maintain the integrity of the legal aid assignment system. Panel lawyers are reminded to submit Data Update Form before the expiry of the three-year period so that their personal particulars, experience and expertise can be updated regularly.

Mediation in Legal Aid Cases

Legal aid covers mediators' fees and related expenses incurred by aided persons undergoing mediation in the course of the aided proceedings. In 2019, funding for mediation was approved in 989 assigned out cases, out of which 204 were matrimonial cases.

Litigation Services

In-house Civil Litigation

The Civil Litigation Section (CLS) of the Litigation Division undertakes civil litigation for aided persons whose cases have been assigned in-house.

Ms Juliana Chan Miu-ken
Assistant Principal Legal Aid Counsel
(Civil Litigation 1)



Personal Injury Litigation

In 2019, Civil Litigation (1) of CLS took up 181 personal injuries cases including employees' compensation claims, traffic accident claims and negligence claims. Damages over \$1 million were recovered for aided persons in four cases. The total amount of damages recovered was about \$30 million.

Legal costs recovered for the professional litigation work done by Civil Litigation (1) of CLS were about \$6.5 million.

Family Litigation

In 2019, the Family Unit of the Civil Litigation (2) of CLS took up a total of 733 family cases including divorce, maintenance, custody and property disputes. It also handled enforcement proceedings for the recovery of outstanding maintenance and costs in family cases litigated in-house.



Miss Doreen Chan Dao-kit
Assistant Principal Legal Aid Counsel
(Civil Litigation 2)

Wage Claims

The Insolvency Unit of the Civil Litigation (2) of CLS assists employees referred by the Labour Relations Office of the Labour Department to recover arrears of wages and other employment-related benefits. It also handles the ensuing winding-up or bankruptcy proceedings.

Where there is sufficient evidence to support the presentation of a petition for winding-up or bankruptcy but it is uneconomical or unreasonable in the particular circumstances to institute court proceedings, the Unit will refer the case to the Protection of Wages on Insolvency Fund Board for consideration of ex-gratia payments to the employees.

In 2019, the Insolvency Unit took out 18 winding-up and one bankruptcy petitions. A total of 370 cases were referred to the Protection of Wages on Insolvency Fund Board for ex-gratia payments.

In-house Criminal Litigation

In addition to processing legal aid applications for criminal cases, in-house lawyers in the Crime Section of the Litigation Division also represent legally aided persons at committal proceedings in the Magistrates' Court, plea day hearing in the District Court, listing hearings in the Court of First Instance as well as bail applications at all levels of court. They also act as instructing solicitors in cases in the Court of First Instance, the Court of Appeal and the Court of Final Appeal..

In 2019, 89% of all criminal cases in the District Court in Hong Kong were legally aided, as were 96.6% of criminal cases in the Court of First Instance.

In 2019, the Crime Section handled 1 215 cases in-house:

Court of First Instance of High Court Trials & Appeals
40 (3.3%)

District Court-Plea Days
692 (57.0%)

Committal Proceedings & Others
483 (39.7%)

Total
1 215 (100.0%)
(as a % of total cases handled in-house)

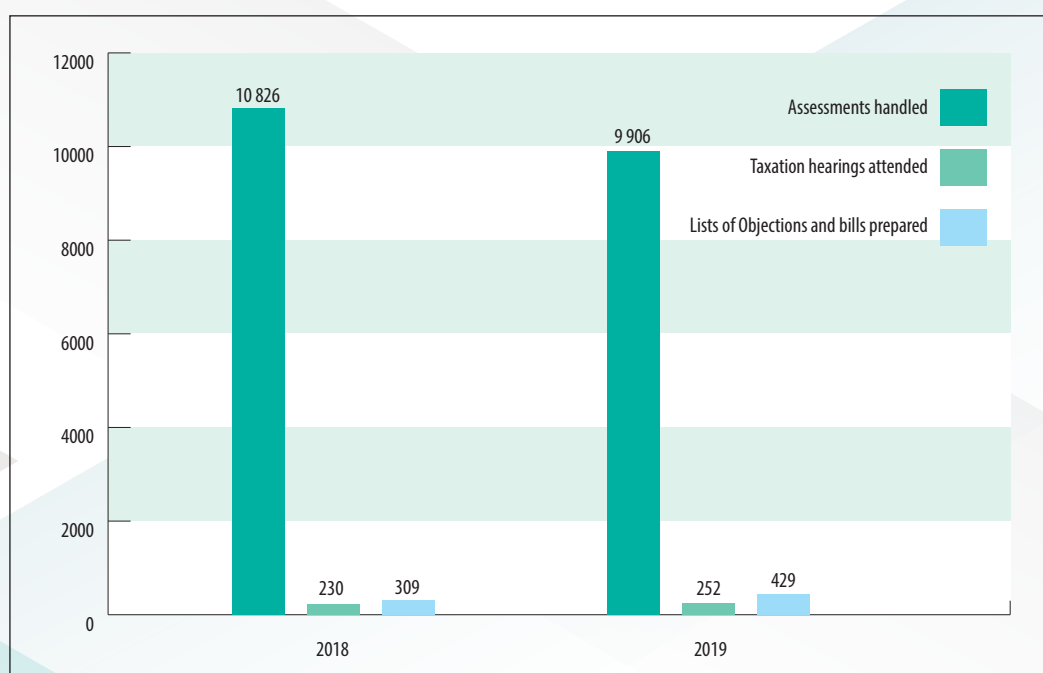


Related Legal Support Services

Costing

The Department's Costing Unit assesses all bills of costs submitted by assigned solicitors and opposite parties, prepares lists of objections and bills and attends taxation hearings.

Cases handled by the Costing Unit in 2018-2019



Ms Christina Hadiwibawa Cheung Ying-man
Assistant Principal Legal Aid Counsel
(Legal and Management Support)

Enforcement

The Department's Enforcement Unit (EU) handles enforcement proceedings for the recovery of judgment debts and costs in legally aided cases. In 2019, a total of 209 cases were assigned to the EU. In 130 cases, enforcement proceedings were instituted. About 38% of the proceedings were instituted within 1 month from the date the cases were assigned to the handling professional officers. The table below shows the length of time taken for enforcement proceedings to be commenced from the date of assignment:

Time taken for the commencement of enforcement proceedings in 2019:

Within 1 month	Within 2 months	Within 3 months	More than 3 months	Total no. of cases
49 (59)	59 (56)	18 (11)	4 (10)	130 (136)
38% (44%)	45% (41%)	14% (8%)	3% (7%)	100% (100%)

(2018 figures in bracket)

Some of these cases were settled prior to the commencement of or during the enforcement proceedings where the judgment debtors undertook, through negotiation and production of supporting documents, to pay the outstanding amount by installments.

The costs and damages recovery ratio for cases with enforcement actions handled by the Department and finalised in 2019 is as shown in the chart below:

Amount recovered

37%

Amount not recovered

63%



Top 20 Solicitors in terms of Civil Case Assignments in 2019 by Case Types and Percentage Shares in the Total Number of Civil Case Assignments to Solicitors

(From 1.1.2019 to 31.12.2019)

Rank by order	No. of Assignments by Case Types#						% Share
	PI-related	JR	MIM	MAT	Others	Total	
1	35	0	0	0	0	35	0.7%
2	23	5	0	5	2	35	0.7%
3	34	0	0	0	0	34	0.7%
4	32	0	0	0	2	34	0.7%
5	33	0	0	0	0	33	0.7%
6	33	0	0	0	0	33	0.7%
7	32	0	0	1	0	33	0.7%
8	31	0	0	2	0	33	0.7%
9	30	0	0	2	0	32	0.6%
10	27	0	0	2	3	32	0.6%
11	22	0	0	10	0	32	0.6%
12	31	0	0	0	0	31	0.6%
13	21	0	0	1	9	31	0.6%
14	31	0	0	0	0	31	0.6%
15	30	0	0	0	0	30	0.6%
16	3	0	0	2	25	30	0.6%
17	30	0	0	0	0	30	0.6%
18	28	0	0	1	0	29	0.6%
19	18	1	0	2	8	29	0.6%
20	29	0	0	0	0	29	0.6%
Subtotal for Top 20	553	6	0	28	49	636	12.9%
Total no. of assignments to solicitors in civil cases	2 757	86	13	1 787	295	4 938	100%

Notes:

The civil assignment limit for panel solicitor is 35 cases within the past 12 months.

Figures may not add up to total due to rounding.

Case types:

PI related – Employees' Compensation, Damages for Assault, Dental Negligence, Medical Negligence, Personal Injuries, Professional Negligence, Traffic Accident, SLAS Employees' Compensation, SLAS Medical Negligence, SLAS Personal Injuries and SLAS Running Down

JR – Judicial Review

MIM – Immigration

MAT – Matrimonial

Others – Miscellaneous and Land or Tenancy Disputes

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