

Chapter 2

Legal Aid Services



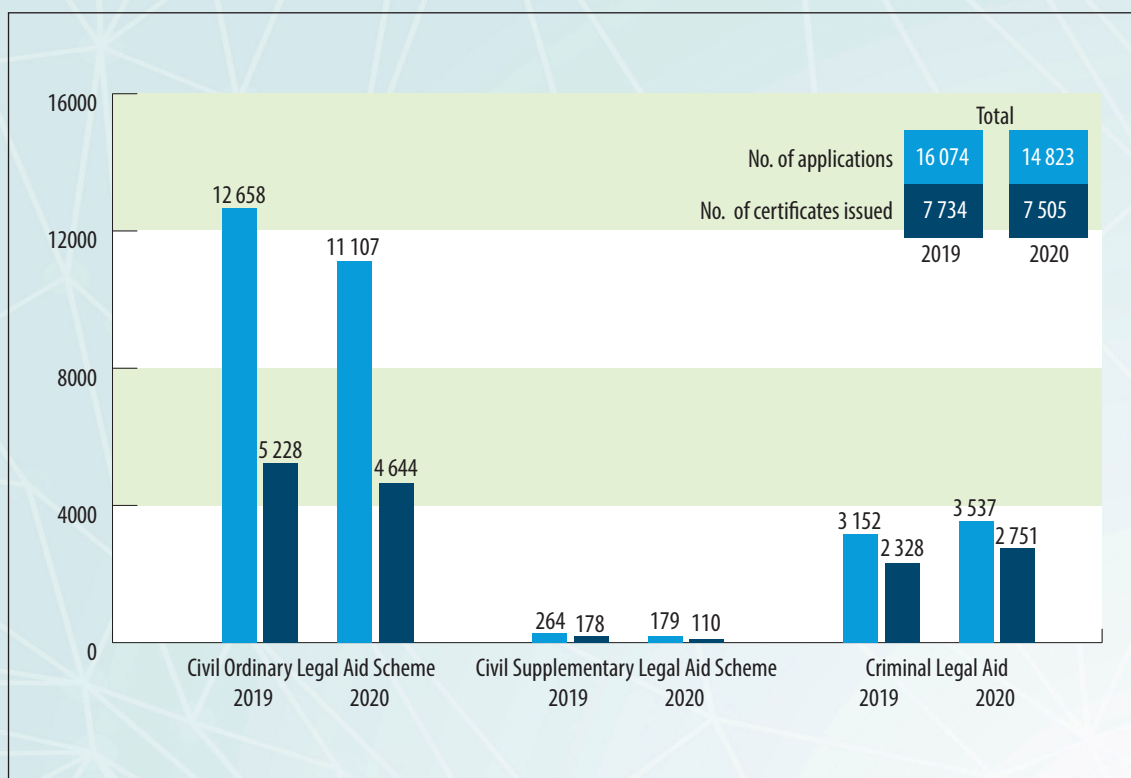
Chapter 2 Legal Aid Services

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 2020, a total of 14 823 applications for legal aid were received and 7 505 legal aid certificates were issued:





Ms Juliana Chan Oi-yung
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 \$420,400 may apply for the 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 2020, there were 11 107 OLAS applications and 4 644 legal aid certificates were issued under OLAS.

Supplementary Legal Aid Scheme

Applicants whose financial resources exceed the statutory limit of OLAS of \$420,400 but are below \$2,102,000 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 \$75,000:

- 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.
- professional negligence claims against financial intermediaries licensed or registered for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities within the meaning of the Securities and Futures Ordinance (Cap.571); and
- monetary claims in respect of derivatives of securities, currency futures or other futures contracts on the basis that the person was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation.

In 2020, there were 179 SLAS applications and 110 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 2020, a surplus of \$8.0 million was recorded as compared with a surplus of \$7.7 million in the year ended 30 September 2019 in the Supplementary Legal Aid Fund. As at 30 September 2020, the Fund had a balance of \$213.0 million. For details, please refer to [Appendix 1](#).

Distribution of Civil Legal Aid Applications Received in 2019-2020

Case Types	No. of Applications for Civil Legal Aid		
	2019	2020	% Change
Personal Injuries Claims	4 957	4 602	-7%
Matrimonial Cases	5 373	4 284	-20%
Land and Tenancy Disputes	480	394	-18%
Employment Disputes	49	235	380%
Immigration Matters	63	89	41%
Wage Claims	26	42	62%
Others	1 974	1 640	-17%
Total	12 922	11 286	-13%

Distribution of Civil Legal Aid Certificates Issued in 2019-2020

Case Types	No. of Certificates for Civil Legal Aid		
	2019	2020	% Change
Personal Injuries Claims	2 646	2 359	-11%
Matrimonial Cases	2 385	1 832	-23%
Land and Tenancy Disputes	110	74	-33%
Employment Disputes	5	209	4080%
Immigration Matters	7	0	-100%
Wage Claims	19	30	58%
Others	234	250	7%
Total	5 406	4 754	-12%



Ms Doris Lui Wai-lan
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 2020, the Unit received a total of 29 375 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 2019-2020

Certificates

5 406

Take-up Rate
 (as a % of offers)

95%



Certificates

4 754

Take-up Rate
 (as a % of offers)

92%



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
2019	127	13	613	65	52	3	5	0
2020	80	13	231	62	42	7	6	0

Ms Jenny Leung Ping-ching
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 2019-2020

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



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

Refusals
(a) on merits
4 289
Refusal Rate
(as a % of applications)
38%



(b) on means
780
Refusal Rate
(as a % of applications)
7%

Outcome of Civil Legal Aid Appeals in 2019-2020

Appeals Allowed
45
Success Rate
(as a % of appeals)
4%



Appeals Allowed
35
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
2018	15 091	6 813	920	1 632	61 [@]
2019	12 922	5 211	915	1 193	45
2020	11 286	4 289	780	778	35

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

@ 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
2018	1 547	1 519	8	763	14
2019	797	802	8	369	5
2020	359	252	8	91	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 2020

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% (0%)	82% (76%)	0% (4%)	3% (2%)	0% (0%)	9% (11%)	6% (7%)	100%

* Protection of Wages on Insolvency Fund Board
(2019 figures in bracket)

Case Type	Relief Obtained	Relief Not Obtained	Withdrawn	Total
Matrimonial Cases	84% (81%)	5% (5%)	11% (14%)	100%

(2019 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% (1%)	1% (1%)	3% (3%)	100%
Running Down	92% (93%)	2% (2%)	2% (1%)	2% (2%)	2% (2%)	100%
Medical / Dental / Professional Negligence	86% (68%)	12% (8%)	0% (6%)	0% (6%)	2% (12%)	100%
Miscellaneous	70% (52%)	10% (22%)	9% (12%)	2% (2%)	9% (12%)	100%
Overall	90% (88%)	3% (4%)	3% (2%)	1% (2%)	3% (4%)	100%

(2019 figures in bracket)

Miss Ada Wong Yiu-ming
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 2019-2020

Case Types	No. of Applications for Criminal Legal Aid		
	2019	2020	% Change
Committal Proceedings in the Magistrates' Courts	513	437	-15%
District Court Trials	1 176	1 946	65%
Court of First Instance Trials	478	418	-13%
Magistrates' Court Appeals to the Court of First Instance	322	271	-16%
District Court Appeals to the Court of Appeal	269	183	-32%
Court of First Instance Appeals to the Court of Appeal	262	150	-43%
Appeals in the Court of Final Appeal	101	82	-19%
Others	31	50	61%
Total	3 152	3 537	12%

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 2019-2020

Case Types	No. of Certificates for Criminal Legal Aid		
	2019	2020	% Change
Committal Proceedings in the Magistrates' Courts	503	405	-19%
District Court Trials	1 113	1 745	57%
Court of First Instance Trials	476	410	-14%
Magistrates' Court Appeals to the Court of First Instance	39	35	-10%
District Court Appeals to the Court of Appeal	60	42	-30%
Court of First Instance Appeals to the Court of Appeal	101	60	-41%
Appeals in the Court of Final Appeal	22	17	-23%
Others	14	37	164%
Total	2 328	2 751	18%

Take-up Rate for Criminal Legal Aid in 2019-2020

Certificates

2 328

Take-up Rate

(as a % of offers)

98%



Certificates

2 751

Take-up Rate

(as a % of offers)

99%



*Ms Mo Yuk-wah
Deputy 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 2020, there were 15 refusals on means, all of which were also refusals on merits. 31 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 80 cases even though the means of the applicants exceeded the financial eligibility limit.



*Mr Ben Li Chi-keung
Assistant Director of Legal Aid
(Litigation)*



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 2020, no appeal was made to the Review Committee.

Refusal Rate of Criminal Legal Aid Applications in 2019-2020

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

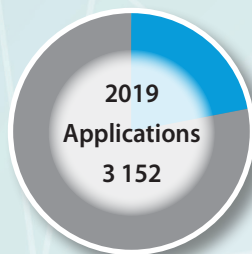
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Refusal on Means (including refusals where applicants failed to provide necessary information on means)

64 (41)

Refusal Rate (as a % of applications)

2%



Refusal on Merits

472

(Appeal cases)

(465)

(Other cases)

(7)

Refusal Rate (as a % of applications)

13%

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)

46 (31)

Refusal Rate (as a % of applications)

1%



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 2020, the means test calculator and its mobile version received 6 387 and 6 723 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 2020

No. of Assignments	No. of Counsel			
	*Below 3 Years	*3-5 Years	*6-10 Years	*Over 10 Years
1-4	9	20	42	164
5-15	0	8	18	144
16-30	0	1	2	63
31-50	0	0	0	7
Over 50	0	0	0	0
Total	9	29	62	378

*Years of post-call experience

	No. of Solicitors			
No. of Assignments	*Below 3 Years	*3-5 Years	*6-10 Years	*Over 10 Years
1-4	1	27	65	501
5-15	0	12	22	256
16-30	0	6	14	98
31-50	0	0	3	17
Over 50	0	0	1	3
Total	1	45	105	875

*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 2020, on the advice of the Committee, 3 solicitors were removed from the Legal Aid Panel, 2 counsel and 9 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 2020, funding for mediation was approved in 826 assigned out cases, out of which 137 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-kuen
Assistant Principal Legal Aid Counsel
(Civil Litigation 1)*



Personal Injury Litigation

In 2020, Civil Litigation (1) of CLS took up 270 personal injuries cases and seamen wages claims. Personal injuries cases including employees' compensation claims, traffic accident claims and negligence claims. Damages over \$1 million were recovered for aided persons in six cases. The total amount of damages recovered was about \$36 million.

Legal costs recovered for the professional litigation work done by Civil Litigation (1) of CLS were about \$6.4 million.

Family Litigation

In 2020, the Family Unit of the Civil Litigation (2) of CLS took up a total of 347 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 2020, the Insolvency Unit took out 24 winding-up petitions. A total of 309 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 2020, 81.4% of all criminal cases in the District Court in Hong Kong were legally aided, as were 91.3% of criminal cases in the Court of First Instance.

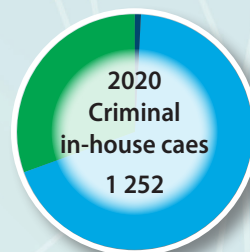
In 2020, the Crime Section handled 1 252 cases in-house:

Court of First Instance of High Court Trials & Appeals
12 (1.0%)

District Court-Plea Days
859 (68.6%)

Committal Proceedings & Others
381 (30.4%)

Total
1 252 (100.0%)
(as a % of total cases handled in-house)





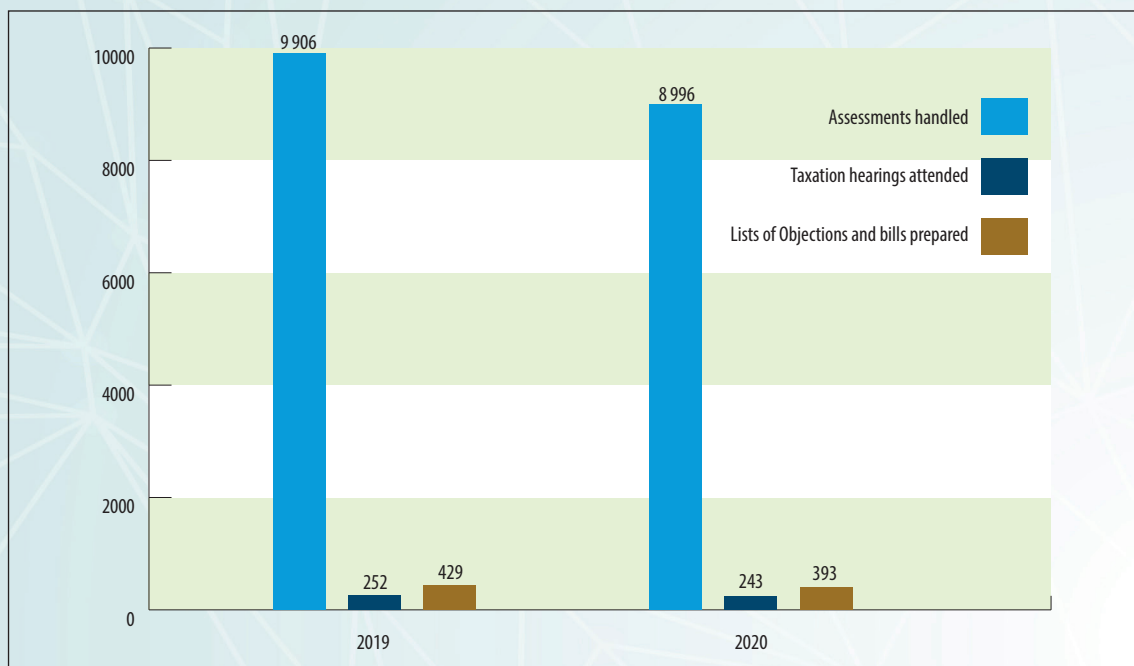
Ms Christina Hadiwibawa Cheung Ying-man
Assistant Principal Legal Aid Counsel
(Legal and Management Support)

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 2019-2020



Enforcement

The Department's Enforcement Unit (EU) handles enforcement proceedings for the recovery of judgment debts and costs in legally aided cases. EU's work in 2020 was affected by the COVID 2019 pandemic and the special work arrangement for the Court and the Department. In 2020, a total of 115 cases were assigned to the EU. In 65 cases, enforcement proceedings were instituted. About 46% 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 2020:

Within 1 month	Within 2 months	Within 3 months	More than 3 months	Total no. of cases
30 (49)	28 (59)	5 (18)	2 (4)	65 (130)
46% (38%)	43% (45%)	8% (14%)	3% (3%)	100% (100%)

(2019 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 2020 is as shown in the chart below:

Amount recovered
54.1%

Amount not recovered
45.9%



Top 20 Solicitors in terms of Civil Case Assignments in 2020 by Case Types and Percentage Shares in the Total Number of Civil Case Assignments to Solicitors

(From 1.1.2020 to 31.12.2020)

Rank by order	No. of Assignments by Case Types#						%
	PI-related	JR	MIM	MAT	Others	Total	Share
1	33	0	0	2	0	35	0.8%
2	23	0	0	10	1	34	0.8%
3	31	0	0	2	1	34	0.8%
4	34	0	0	0	0	34	0.8%
5	31	0	0	2	0	33	0.7%
6	32	0	0	0	0	32	0.7%
7	30	0	0	1	0	31	0.7%
8	30	0	0	1	0	31	0.7%
9	31	0	0	0	0	31	0.7%
10	28	0	0	1	1	30	0.7%
11	30	0	0	0	0	30	0.7%
12	30	0	0	0	0	30	0.7%
13	0	0	0	30	0	30	0.7%
14	27	0	0	2	1	30	0.7%
15	22	0	0	7	0	29	0.7%
16	16	0	0	7	6	29	0.7%
17	25	0	0	2	2	29	0.7%
18	28	0	0	1	0	29	0.7%
19	29	0	0	0	0	29	0.7%
20	6	0	0	22	0	28	0.6%
Subtotal for Top 20	516	0	0	90	12	618	13.9%
Total no. of assignments to solicitors in civil cases	2 554	88	0	1 615	196	4 453	100.0%

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, Medical Negligence, Personal Injuries, Professional Negligence, Traffic Accident, SLAS Employees' Compensation, 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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