# Chapter 2

# Legal Aid Services

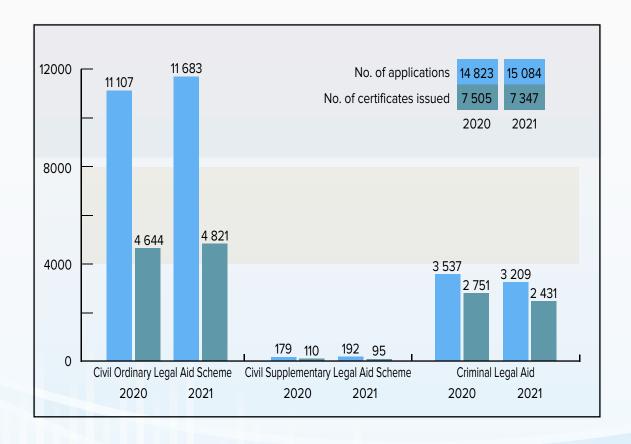


## Legal aid business is conducted in the following service areas:

- 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 2021, a total of 15 084 applications for legal aid were received and 7 347 legal aid certificates were issued:



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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 injuries 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 2021, there were 11 683 OLAS applications and 4 821 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;
- monetary claims against vendors in the sale of completed or uncompleted firsthand 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

2021 法律援助署年報 LEGAL AID DEPARTMENT ANNUAL REPORT

 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 2021, there were 192 SLAS applications and 95 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 2021, a surplus of \$3.3 million was recorded as compared with a surplus of \$8.0 million in the year ended 30 September 2020 in the Supplementary Legal Aid Fund. As at 30 September 2021, the Fund had a balance of \$216.3 million. For details, please refer to Appendix 1.

## Distribution of Civil Legal Aid Applications Received in 2020-2021

	No. of Applications for Civil Legal Aid					
Case Types	2020	2021	% Change			
Personal Injuries Claims	4 602	4 929	7%			
Matrimonial Cases	4 284	4 570	7%			
Land and Tenancy Disputes	394	465	18%			
<b>Employment Disputes</b>	235	57	-76%			
Immigration Matters	89	112	26%			
Wage Claims	42	45	7%			
Others	1 640	1 697	3%			
Total	11 286	11 875	5%			

## Distribution of Civil Legal Aid Certificates Issued in 2020-2021

	No. of Certificates for Civil Legal Aid					
Case Types	2020	2021	% Change			
Personal Injuries Claims	2 359	2 430	3%			
Matrimonial Cases	1832	2 079	13%			
Land and Tenancy Disputes	74	85	15%			
<b>Employment Disputes</b>	209	5	-98%			
Immigration Matters	0	0	-			
Wage Claims	30	30	0%			
Others	250	287	15%			
Total	4 754	4 916	3%			



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 2021, the Unit received a total of 30 551 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 2020-2021



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

			Immigration matters including non- refoulement claims		Others			
Calendar Year	Government related i	policies and natters			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
2020	80	13	231	62	42	7	6	0
2021	71	11	334	70	37	3	8	0

### 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.

Note: \*The figures do not include appeals withdrawn.

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Ms Jenny Leung Ping-ching Assistant Principal Legal Aid Counsel / Application and Processing (1)

#### Refusal Rate of Civil Legal Aid Applications in 2020-2021

Refusals (a) on merits

4 289

Refusal Rate (as a % of applications)

38%

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



Refusals (a) on merits

4 790

Refusal Rate (as a % of applications)

40%

(b) on means **819** 

Refusal Rate (as a % of applications)

7%



#### Outcome of Civil Legal Aid Appeals in 2020-2021



Note:  ${}^*\!\mathsf{The}$  figures do not include appeals withdrawn.

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

Calendar	Calendar Civil Legal Aid		usal	Legal Aid Appeals		
Year	Applications	on Merits*	on Means*	Heard	Allowed	
2019	12 922	5 211	915	1 193	45	
2020	11 286	4 289	780	778	35	
2021	11 875	4 790	819	839	25	

<sup>\*</sup> Refusal on both Merits and Means is included in Refusal "on Means" as well as Refusal "on Merits".



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	Applications	Ref	usal	Legal Aid Appeals		
Year	Applications	on Merits*	on Means*	Heard	Allowed	
2019	797	802	8	369	5	
2020	359	252	8	91	5	
2021	450	313	6	64	1	

<sup>\*</sup> 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.



Miss Ada Wong Yiu-ming Assistant Principal Legal Aid Counsel (Kowloon Branch Office)

### **Outcome of Civil Cases Closed in 2021**

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)	3% (0%)	50% (82%)	0% (0%)	15% (3%)	6% (0%)	0% (9%)	26% (6%)	100%

<sup>\*</sup> Protection of Wages on Insolvency Fund Board (2020 figures in bracket)

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

(2020 figures in bracket)

Case Type	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%)	1% (2%)	1% (1%)	1% (1%)	3% (2%)	100%
Employees' Compensation Claims	95% (96%)	1% (1%)	1% (1%)	1% (1%)	2% (1%)	100%
Personal Injuries	92% (93%)	1% (2%)	1% (1%)	2% (1%)	4% (3%)	100%
Running Down	96% (92%)	0% (2%)	1% (2%)	1% (2%)	2% (2%)	100%
Medical / Dental / Professional Negligence	61% (86%)	9% (12%)	2% (0%)	14% (0%)	14% (2%)	100%
Miscellaneous	60% (70%)	18% (10%)	7% (9%)	2% (2%)	13% (9%)	100%
Overall	89% (90%)	3% (3%)	2% (3%)	2% (1%)	4% (3%)	100%

(2020 figures in bracket)

## **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 2020-2021

	No. of Applications for Criminal Legal Aid			
Case Types	2020	2021	% Change	
Committal Proceedings in the Magistrates' Courts	437	418	-4%	
District Court Trials	1946	1520	-22%	
Court of First Instance Trials	418	317	-24%	
Magistrates' Court Appeals to the Court of First Instance	271	413	52%	
District Court Appeals to the Court of Appeal	183	260	42%	
Court of First Instance Appeals to the Court of Appeal	150	131	-13%	
Appeals in the Court of Final Appeal	82	83	1%	
Others	50	67	34%	
Total	3 537	3 209	-9%	

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 2020-2021

	No. of Certificates for Criminal Legal Aid			
Case Types	2020	2021	% Change	
Committal Proceedings in the Magistrates' Courts	405	412	2%	
District Court Trials	1745	1529	-12%	
Court of First Instance Trials	410	324	-21%	
Magistrates' Court Appeals to the Court of First Instance	35	37	6%	
District Court Appeals to the Court of Appeal	42	45	7%	
Court of First Instance Appeals to the Court of Appeal	60	41	-32%	
Appeals in the Court of Final Appeal	17	12	-29%	
Others	37	31	-16%	
Total	2 751	2 431	-12%	

## Take-up Rate for Criminal Legal Aid in 2020-2021



Take-up Rate (as a % of offers)
99%



Certificates 2 431

Take-up Rate (as a % of offers)

97%





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 2021, there were 15 refusals on means, 12 of which were also refusals on merits. 75 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 81 cases even though the means of the applicants exceeded the financial eligibility limit.

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 2021, no appeal was made to the Review Committee.



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



Ms Nancy Keung Mei-chuen Assistant Principal Legal Aid Counsel (Crime)

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2021

**Applications** 

3 209

#### Refusal Rate of Criminal Legal Aid Applications in 2020-2021



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%

#### Refusal on Merits

689

(Appeal cases)

(657)

(Other cases)

(32)

Refusal Rate (as a % of applications)

21%



-11

**Refusal on Means** (including refusals where applicants failed to provide necessary information on means) 90 (75)

Refusal Rate (as a % of applications) 3%

### **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 <a href="https://www.lad.gov.hk">www.lad.gov.hk</a> or the mobile phone version to access the means test calculator. In 2021, the means test calculator and its mobile version received 7 374 and 8 329 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 2021

	No. of Counsel					
No. of Assignments	*Below 3 Years	*3-5 Years	*6-10 Years	*Over 10 Years		
1-4	8	21	45	152		
5-15	0	5	25	155		
16-30	0	1	3	70		
31-50	0	0	0	1		
Over 50	0	0	0	0		
Total	8	27	73	378		

<sup>\*</sup> 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	0	28	58	539		
5-15	0	15	29	216		
16-30	0	4	20	106		
31-50	0	0	1	18		
Over 50	0	0	0	0		
Total	0	47	108	879		

<sup>\*</sup> Years of post-admission experience

**2021** 法律援助署年報 LEGAL AID DEPARTMENT ANNUAL REPORT

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 2021, on the advice of the Committee, 2 solicitors were removed from the Legal Aid Panel, 5 counsel and 14 solicitors were put on the Record of Unsatisfactory Performance / Conduct and advisory letters were issued to one counsel and 3 solicitors.

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 2021, funding for mediation was approved in 890 assigned out cases, out of which 171 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 2021, Civil Litigation (1) of CLS took up 198 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 ten cases. The total amount of damages recovered was about \$51 million.

Legal costs recovered for the professional litigation work done by Civil Litigation (1) of CLS were about \$8.4 million.

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#### **Family Litigation**

In 2021, the Family Unit of the Civil Litigation (2) of CLS took up a total of 564 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 2021, the Insolvency Unit took out 34 winding-up petitions. A total of 306 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 2021, 89.3% of all criminal cases in the District Court in Hong Kong were legally aided, as were 99.6% of criminal cases in the Court of First Instance.

In 2021, the Crime Section handled 1174 cases in-house:

Court of First Instance of High Court Trials & Appeals 19 (1.6%)

District Court-Plea Days 786 (67.0%)

Committal Proceedings & Others 369 (31.4%)

2021 Criminal in-house case 1 174

Total

1 174 (100.0%) (as a % of total cases handled in-house)

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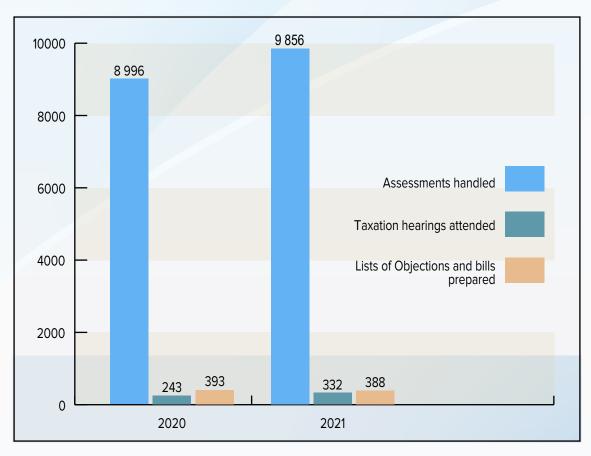
Ms Christina Hadiwibawa Cheung Ying-man Assistant Principal Legal Aid Counsel (Legal and Management Support)

## **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 2020-2021



#### **Enforcement**

The Department's Enforcement Unit (EU) handles enforcement proceedings for the recovery of judgment debts and costs in legally aided cases. Although EU's work in 2021 continued to be affected by the COVID-19 pandemic, a total of 202 cases were assigned to the EU, an increase of 76% from the previous year. In 109 cases, enforcement proceedings were instituted. About 36% 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 time taken for enforcement proceedings to be commenced from the date of assignment:

Time taken for the commencement of enforcement proceedings in 2021:

Within 1 month	Within 2 months	Within 3 months	More than 3 months	Total no. of cases	
39 (30)	40 (28)	17 (5)	13 (2)	109 (65)	
36% (46%)	37% (43%)	15% (8%)	12% (3%)	100% (100%)	

(2020 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 2021 is as shown in the chart below:

Amount recovered 42%

Amount not recovered 58%



# Top 20 Solicitors in terms of Civil Case Assignments in 2021 by Case Types and Percentage Shares in the Total Number of Civil Case Assignments to Solicitors

(From 1.1.2021 to 31.12.2021)

Rank by order	No. of Assignments by Case Types#						
Share	PI-related	JR	MIM	MAT	Others	Total	% Share
1	32	0	0	3	0	35	0.8%
2	31	0	0	2	0	33	0.8%
3	29	0	0	1	2	32	0.7%
4	25	0	0	2	4	31	0.7%
5	23	5	0	3	0	31	0.7%
6	4	24	0	1	1	30	0.7%
7	29	0	0	1	0	30	0.7%
8	21	0	0	8	1	30	0.7%
9	30	0	0	0	0	30	0.7%
10	28	0	0	2	0	30	0.7%
11	29	0	0	0	0	29	0.7%
12	28	0	0	1	0	29	0.7%
13	27	0	0	2	0	29	0.7%
14	28	0	0	0	0	28	0.6%
15	28	0	0	0	0	28	0.6%
16	28	0	0	0	0	28	0.6%
17	27	0	0	0	1	28	0.6%
18	26	0	0	0	2	28	0.6%
19	19	0	0	9	0	28	0.6%
20	27	0	0	0	0	27	0.6%
Subtotal for Top 20	519	29	0	35	11	594	13.5%
Total no. of assignments to solicitors in civil cases	2 470	90	0	1564	268	4 392	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:

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

JR – Judicial Review

 $\mathsf{MIM}-\mathsf{Immigration}$ 

MAT – Matrimonial

 $\label{eq:continuous} Others-Miscellaneous and Land or Tenancy Disputes$ 

Back to top