

LCQ5: Legal aid applications

Following is a question by the Hon Jeffrey Lam Kin-fung and a reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (October 19):

Question:

It has been reported that after the Court of Appeal had allowed the Director of Environmental Protection's appeal in respect of the judicial review (JR) on the Environmental Impact Assessment reports for the Hong Kong-Zhuhai-Macao Bridge, the plaintiff told the media that someone had asked her to file the lawsuit; it has also been reported that the plaintiff was granted legal aid for this JR case and specify which lawyer to represent her. In this connection, will the Government inform this Council:

- (a) whether the Police will investigate if the aforesaid case involved champerty; of the number of prosecutions instituted by the Police against cases involving champerty in the past five years and the number of convicted persons;
- (b) how the Legal Aid Department (LAD), when vetting and approving legal aid applications, ensures that the applicants have sufficient understanding of their litigation cases; and ensures that legal aid services will not be abused; and
- (c) among the legal aid applications approved by LAD in the past five years, of the number of cases where the aided persons were represented by the solicitors or counsel specified by them in court proceedings; the details of such cases (including the names of the solicitors or counsel, particulars of the cases and the amounts of the legal aid involved)?

Reply:

President,

Thank you the Hon Lam for your question. My reply is as follows:

- (a) Generally speaking, the Police will assess if there are reasonable doubts to

believe that criminal elements are involved in the case having regard to whether reports from informants are received, whether reliable intelligence is available, etc., so as to decide whether investigation should be conducted. As regards the incident raised in the question, that is, the litigation concerning the Hong Kong-Zhuhai-Macao Bridge, what I know is that, the Police have received no reports from informants, nor have they commenced any investigation. Anyone who wishes to provide information or report a case may contact the Police direct, and the Police will take follow-up actions as appropriate. In the past five years, the Police instituted prosecution against one case involving champerty and two persons were convicted.

(b) Anyone who wishes to apply for legal aid is required to complete the application form and questionnaire relating to the type of proceedings and provide relevant information and documents to support his/her application. In accordance with normal procedure, the LAD will interview the applicant to get an in-depth knowledge of his/her application and the applicant has to undergo means and merits tests. In assessing the merits of the application, LAD will consider the background of the case, evidence provided and the legal principles applicable to the case to determine whether there are reasonable grounds to grant legal aid.

All citizens are supported by the Legal Aid Ordinance (LAO) to apply for legal aid. According to the professional guide of the Law Society of Hong Kong, a solicitor is under a duty, both at the commencement of a retainer and during the retainer, where circumstances so warrant, to explain to a client about the legal aid service and the ways to obtain the service.

Under the LAO, it is the duty of the Director of Legal Aid (Director) to grant legal aid to cases with reasonable grounds.

To ensure that only those with reasonable grounds for taking the proceedings are granted legal aid, all applications are processed by in house lawyers who are legally qualified. If the application is refused, the applicant may appeal against the Director's decision to the Registrar of the High Court. The decision of the Registrar is final.

A mechanism is in place in the Legal Aid Regulations to safeguard against abuse of legal aid services. If anyone has repeatedly applied for legal aid after being refused, the Director may order that no consideration shall be given to any future application by that person for three years if it appears to the Director that his/her

conduct has amounted to an abuse of the facilities provided by the LAO. I understand that this may not be the abuse referred to by the Hon Lam in his question.

(c) The number of civil cases where legal aid was granted and the number of cases where the assigned solicitors were nominated by the aided persons in the past five years are set out as follows:

Year	Number of civil cases where legal aid was granted	Number of cases where the assigned solicitors were nominated by the aided persons
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2006	9 356	4 047
2007	7 937	3 423
2008	7 513	3 401
2009	9 031	4 287
2010	8 263	4 320

For barristers, LAD does not keep record on the number of cases where the assigned counsel are solely nominated by the aided persons. It only keeps record on the number of cases where the assigned counsel are nominated by the assigned solicitors or the aided persons:

Year	Number of cases where the assigned counsel are nominated by the assigned solicitors or the aided persons
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2006	1 041
2007	924
2008	902
2009	1 012
2010	651

Pursuant to the Personal Data (Privacy) Ordinance and Section 24 of the LAO, LAD is not at liberty to disclose the names of the assigned solicitors/counsel nominated and details of the cases involved. LAD does not keep record on the amounts of legal costs incurred in cases handled by the solicitors and counsel nominated by the aided persons.

Thank you President.
Ends/Wednesday, October 19, 2011

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