

**HELPING THE LESS PRIVILEGED GAIN ACCESS
TO JUSTICE—THE ROLE OF THE LEGAL AID
BUREAU IN GIVING EFFECT TO THE
WOMEN’S CHARTER¹**

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This article traces the development of the legal aid scheme and the work of the Legal Aid Bureau, which was set up pursuant to the passing of the *Legal Aid and Advice Act* in 1958, about 3 years before the advent of the *Women’s Charter*. Since its inception, the Legal Aid Bureau has helped thousands of less privileged applicants from Singapore society enforce or defend their rights under the *Women’s Charter*. Matters under the *Women’s Charter* have formed the bulk of the Bureau’s caseload over the past 5 decades. The number of cases handled by the Bureau each year has been rising steadily in the past few years. Going forward, the Bureau expects to continue its work of helping the less privileged get access to justice—particularly in the field of matrimonial matters—for an ever increasing number of applicants.

**I. GIVING THE LESS PRIVILEGED ACCESS TO JUSTICE—THE CREATION
OF THE LEGAL AID BUREAU**

The Legal Aid Bureau began its operations on 1 July 1958, pursuant to the passing of the *Legal Aid and Advice (Amendment) Bill* on 11 June 1958.² The *Ordinance* later became the *Legal Aid and Advice Act*³. Thus, the legal aid scheme had started to

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¹ Material from Colin Cheong & Lim Hui Min, *Access to Justice: 50 Years of Legal Aid* (Singapore: Legal Aid Bureau, 2008) [*Access to Justice*] has been used for the sections on the means test, the merits test, the privileges and responsibilities of an aided person, and the aid application process.

² The *Legal Aid and Advice Ordinance* (No. 19 of 1956, Sing.) [the *Ordinance*] was passed at a meeting of the Legislative Assembly on 6 June 1956 and assented to by His Excellency the Governor Sir Robert Black on 12 June 1956. Part I of the *Ordinance*, which dealt with the appointment of Legal Aid Bureau Officers, came into operation on 1 July 1957. After this, feedback was sought from the Singapore Bar Committee on the *Ordinance*. The *Ordinance* was amended to take into account some of the feedback given. It was decided by the government of the day that Parts III, IV and V of the *Ordinance* would not come into force until the amending Bill (*i.e.* the *Legal Aid and Advice (Amendment) Bill*) had been enacted, the regulations under the *Ordinance* had been approved, and the legal aid department was ready to function. (Parts III and IV provided for legal representation in civil actions and legal advice, while Part V was a supplementary section which dealt with matters such as the penalties for giving false information for the purposes of obtaining aid.)

³ *Legal Aid and Advice Act* (Cap. 160, 1996 Rev. Ed. Sing.) [the *Act*].

function about 3 years before the advent of the *Women's Charter*⁴, which was passed on 24 May 1961.

The purpose of the *Act* is to ensure that less privileged members of Singapore society, who cannot afford to pay for private legal advice and court representation out of their own pockets, will nevertheless be able to obtain them. This is because just laws are of little use to the litigant if the system of justice itself is not easily accessible:

[A]ll citizens should enjoy equality before the law ... [T]here should be no necessity for a golden key to unlock the door to the courtroom. The ideal of fairness to rich and poor alike means that no man should suffer in the prosecution or defence of his legal rights for want of professional assistance and advice.

... It is of little comfort to the poorer citizen that the laws of his country are fair and just and that the Courts are impartial if, in practice, he is debarred from access to the Courts through [his] lack of funds.⁵

The key constituents that the government of the day had in mind when passing the *Legal Aid and Advice Bill* were women and their dependent children:

Part III [of the *Legal Aid and Advice Bill*], Sir, provides for legal representation in civil actions in the Supreme Court and District Courts, and in the Magistrates' Courts in maintenance cases under the *Married Women and Children (Maintenance) Ordinance*, 1949. While legal aid is not extended to the Magistrates' Courts, an exception is made in respect of maintenance cases in those Courts as there is a very real need for legal representation in certain at least of the cases where wives claim maintenance from their husbands for themselves and for their children or where claims are made in respect of illegitimate children. Questions of marriage or paternity may be relevant and are often difficult to prove. The present position is that husbands frequently have solicitors whom they can better afford to retain appearing on their behalf, while wives invariably attempt to conduct their own cases, much to their disadvantage. Under the Bill, legal aid will, of course, be available to either party in maintenance proceedings. There is little doubt, Sir, that more wives than husbands will avail themselves of this service.⁶

Thus, when the *Charter* came into force, there was already in place a legal aid framework and organisation to help less privileged women gain access to their rights under the *Charter*. Indeed, it was the less privileged women whom the creators of the *Charter* intended as the main beneficiaries of the *Charter*:

When [members on the Government benches] talk about women, they do not think in terms of women who play mahjong, or who give charity balls or who do occasional social work in order to justify their existence. We are thinking of women in poor families in the slums, in families where the sons are given education in preference to daughters, where the old force of the patriarchal family still remains[.]⁷

⁴ *Women's Charter* (Cap. 353, 2009 Rev. Ed. Sing.) [the *Charter*].

⁵ Sing., *Parliamentary Debates*, vol. 1, col. 1957 at 1957-1958 (6 June 1956) (Lim Yew Hock) [Legal Aid and Advice Bill Debate].

⁶ *Ibid.* at 1961-1962.

⁷ Sing., *Parliamentary Debates*, vol. 14, col. 1197 at 1213-1214 (22 March 1961) (Dr. Goh Keng Swee).

The *Charter* was a “protective framework”⁸ for women, to give them rights that they did not have previously. However, it required the Legal Aid Bureau to help many of these women stand up for their rights, and enforce them. Proceedings under the *Charter* are specifically listed in paragraph 5 of the First Schedule of the *Act*, which describes all the civil proceedings for which legal aid may be given.⁹

The aspirations of the drafters of the *Act* and the *Charter* to help the less privileged, particularly impoverished women, were fulfilled as thousands of applicants flocked to the Legal Aid Bureau over the decades. In this way, the Legal Aid Bureau has played a key role in fulfilling the vision behind the *Charter*:

[T]he activities of the Legal Aid Bureau have spread to all the branches of the civil law, including ... helping widows and dependants claim their dues from deceaseds’ estates. They have also been most active and helpful to wives who have been deserted and left without means of support. It is in matrimonial cases that the Legal Aid Bureau at present provides the most appreciated form of assistance.¹⁰

In 1958, the Bureau only registered 854 applicants in its first financial year. However, the number of new applicants registered quickly grew. There were 3,075 new applications in 1959 and 3,259 in 1960. By the mid-1970s, the number of new applications had passed the 6,000 mark. The number continued to rise steadily to a high of 9,675 applications in 1985. The applications dropped to 6,000-7,000 in the 1990s, and then continued to rise again, crossing the 8,000 mark after 2005. The number of applicants has risen steadily in the past few years, from 9,747 in financial year 2006, to 9,835 in financial year 2007, and 10,082 in financial year 2008. In financial year 2009, there were 10,365 applicants.¹¹

These are applicants for the three services provided by the Bureau, namely, legal aid, legal advice and legal assistance. Legal aid deals with representation in court. This includes the drafting, filing, and service of court documents, as well as advocacy in court. Legal advice consists of oral advice given by a Legal Officer. Legal assistance involves the drafting of simple documents such as deeds of separation.

A. The Bureau’s Cases

Over the years, the majority of the Bureau’s cases have tended to involve matrimonial matters. This is true even today, as can be seen from the pie chart below.¹²

“Matrimonial matters” in the pie chart include divorce and ancillary matters, maintenance and custody of children, as well as family violence. “Claims” include claims in contract and tort, such as actions in industrial and road accidents, wrongful dismissal and other employment disputes, as well as interpleader summonses. “Others”

⁸ *Ibid.* at 1213.

⁹ The other proceedings under the First Schedule of the *Act* include proceedings in the High Court and the Court of Appeal, proceedings in District Courts and Magistrates’ Courts, proceedings before any person to whom a case is referred in whole or in part by the Supreme Court or a District Court, and proceedings before the Syariah Court.

¹⁰ Sing., *Parliamentary Debates*, vol. 36, col. 304 at 340-341 (22 February 1977) (Othman Bin Wok).

¹¹ See *Access to Justice*, *supra* note 1 at 24, 48, 63 for 1958 to 2007, and thereafter from the Legal Aid Bureau’s internal records.

¹² From the Legal Aid Bureau’s internal records.

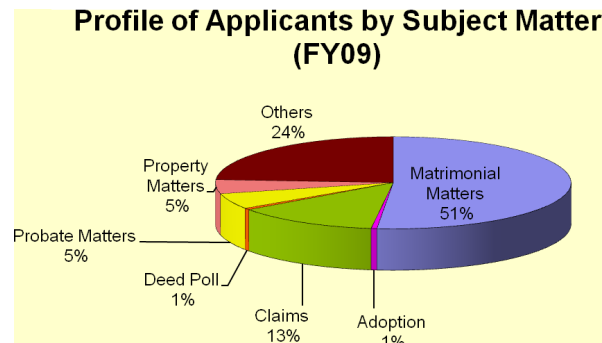


Figure 1.

include matters such as appeals, enforcement actions, presumption of death cases, and mental capacity cases.

B. Profile of the Bureau's Applicants

The Bureau has always had more women applicants than men. This is still the case today. The Bureau's female to male ratio is higher than the national female to male ratio by about 6%. Also, as can be expected, the Bureau's applicants tend to be less educated. The proportion of applicants without secondary education is 34%, compared to the national average of 8.3%.¹³ The following two graphs illustrate these points.¹⁴

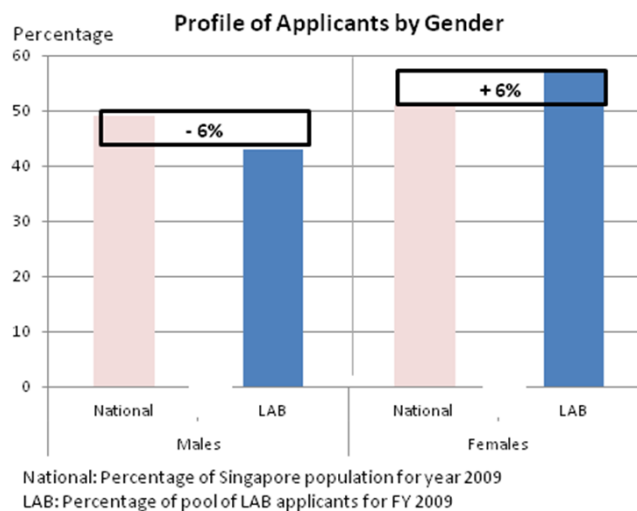


Figure 2.

¹³ See Sing., Department of Statistics, "Statistics Singapore—Key Annual Indicators", online: <<http://www.singstat.gov.sg/stats/keyind.html#keyind>> for information on gender distribution and educational levels of the Singapore population.

¹⁴ From the Legal Aid Bureau's internal records.

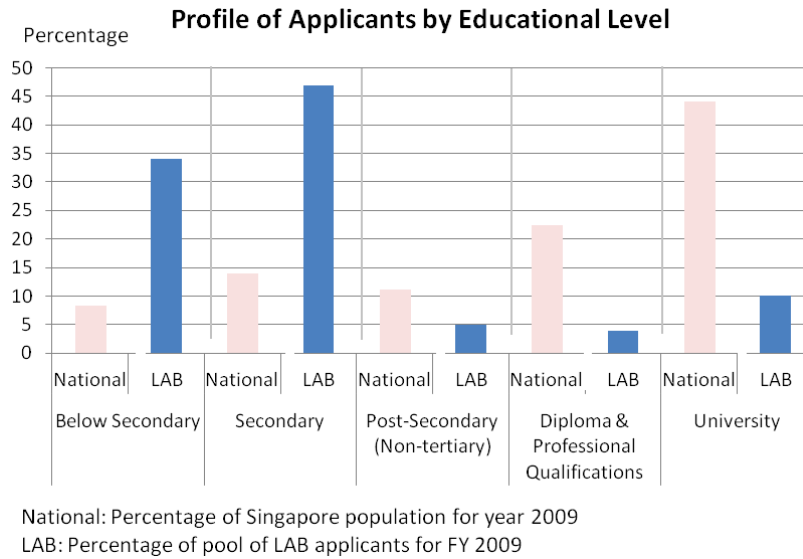


Figure 3.

Given the higher numbers of women applying for legal aid generally, it can be presumed that most of the people seeking help in matrimonial matters are women. For financial year 2009, about 60% of the applicants for matrimonial cases alone were women.¹⁵

Most of the Bureau’s applicants belong to the group aged above 40 years old, as seen below.¹⁶

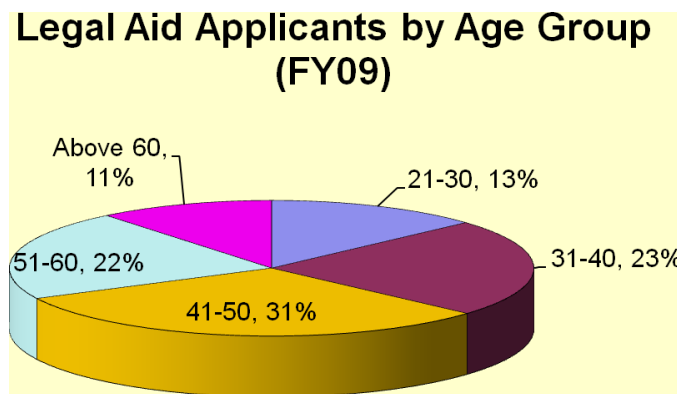


Figure 4.

¹⁵ From the Legal Aid Bureau’s internal records.

¹⁶ *Ibid.*

C. *The Bureau's Lawyers*

The applicants are helped by the Bureau's in-house lawyers, as well as solicitors from private practice. The Bureau's in-house lawyers consist of the Director of Legal Aid ("the Director"), Deputy Directors and Assistant Directors of Legal Aid ("Legal Officers"), the appointments of whom are provided for in the *Act*. These persons are legally qualified¹⁷ public servants who have the right to appear in court.¹⁸

The *Act* further provides that the Director may maintain panels of solicitors to help in legal aid and legal advice work.¹⁹ These panel solicitors are volunteers drawn from the ranks of private practitioners. The panel solicitors may assist by taking on case files assigned to them by the Bureau ("Assigned Solicitors"), or by sitting on the Legal Aid Board with the Director, to decide whether cases should be granted aid.²⁰ Panel solicitors sitting on the Legal Aid Board get paid \$50 for each Board meeting. Assigned Solicitors may bill the Bureau for each case file that they take on. If the bill does not exceed \$750, the Director may approve the payment of the bill without taxation, *i.e.* without a court hearing to assess the amount of the bill. If the bill exceeds \$750, then the Assigned Solicitor would have to tax the bill, *i.e.* apply for a court hearing where the court will assess the bill. The Assigned Solicitor will be entitled to the full amount for his disbursements, and to 50% of the amount of costs assessed by the court at the taxation hearing.²¹ The time-cost to an Assigned Solicitor of working on a legal aid file usually far exceeds the payment made to him.

The Legal Officers and Assigned Solicitors both act as lawyers for the less privileged, giving them legal advice, and helping them with their court cases. The Legal Officers and Assigned Solicitors have served more than 300,000 legal aid and legal advice applicants since the Legal Aid Bureau started operations.

II. DECIDING WHO TO HELP

A. *The Current Means Test*

Any legal aid scheme requires a means test in order to ensure that limited resources are expended only on those who are truly deserving of help (*i.e.* the less privileged). Currently, any Singapore citizen or Permanent Resident being 21 years old and above, and present in Singapore, may apply for legal aid if they satisfy the means test.²² Those who are below 21 years old have to apply for legal aid through a guardian.²³

¹⁷ They must be qualified persons as defined in s. 2 of the *Legal Profession Act* (Cap. 161, 2009 Rev. Ed. Sing.).

¹⁸ *Ibid.*, s. 3.

¹⁹ *Ibid.*, s. 4.

²⁰ See Part II.C. of this article on "The Merits Test" below.

²¹ *Legal Aid and Advice Regulations* (S. 309/2007 Sing.), reg. 15.

²² Non-Singapore citizens who are not Permanent Residents can only apply for legal aid if their cases come under the *International Child Abduction Act 2010* (No. 27 of 2010, Sing.). This Act was passed on 16 September 2010, to operationalise the *Hague Convention on Civil Aspects of International Child Abduction*, 19 I.L.M. 1501 (entered into force 1 March 2011, accession by Singapore 28 December 2010).

²³ The *Act*, *supra* note 3, s. 6(2).

The means test has been revised over the years to reflect the increasing cost of living, and of litigating a case. The latest revision of the means test took effect on 1 July 2007.

The current means test²⁴ consists of two parts: the “income test” and the “capital test”. Both parts must be satisfied before an applicant can pass the means test.²⁵

1. *Income test*

An applicant’s (and his spouse’s) disposable income for the past 12 months must not exceed \$10,000 after deducting from the gross income Central Provident Fund (“CPF”) contributions, personal relief (\$4,500) and relief for dependants (\$3,500 per dependant).²⁶ An additional relief not exceeding \$1,000 per annum for rent is also deductible.

The Director has the discretion to disregard the applicant’s spouse’s income in appropriate cases,²⁷ such as divorce cases. Thus, an applicant wife in a divorce case who earns \$2,200 a month (before CPF deductions), and supports two children, can qualify for aid.

Table 1.

1ST TIER MEANS TEST (12 MONTHS MEANS TEST) INDICATIVE INCOME LEVELS OF PERSONS WHO COULD QUALIFY FOR LEGAL AID (without deduction for rental)					
Means Test	Applicant with No Dependant	Applicant with 1 Dependant	Applicant with 2 Dependants	Applicant with 3 Dependants	Applicant with 4 Dependants
Gross Income per annum	18,125.00	22,500.00	26,875.00	31,250.00	35,625.00
Less					
CPF (20%)	3,625.00	4,500.00	5,375.00	6,250.00	7,125.00
Personal Relief	4,500.00	4,500.00	4,500.00	4,500.00	4,500.00
Rental	-	-	-	-	-
Deduction for Dependant	-	3,500.00	7,000.00	10,500.00	14,000.00
Disposable Income	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00
Gross Income per Month	1,510.42	1,875.00	2,239.58	2,604.17	2,968.75

²⁴ *Ibid.*, Second Schedule.

²⁵ *Ibid.*, s. 8(2)(b). Read with ss. 6(3) and 6(4) of the *Act*, the means of the minor applicant and the guardian will both be taken into account in assessing the minor’s eligibility for aid if the minor is unmarried and the guardian is his parent (or if the minor is illegitimate, his mother). If the minor is married, then only the minor’s means will be taken into account.

²⁶ *Ibid.*, Second Schedule, s. 4.

²⁷ *Ibid.*, Second Schedule, s. 5.

2. Capital test

An applicant's disposable capital, *i.e.* cash assets or other property which may be sold, must not exceed \$10,000.²⁸ Disposable capital includes land, houses, other buildings, mortgages where the applicant is the mortgagee, money in hand or in banks, building societies or other financial institutions, monies loaned to or held by any other person, monies due from any estate or any interest not yet payable under any will or trust settlement, the present value of any life or other assurance policy, shares in any company, bonds of any kind, vehicles, and goods or chattels of any kind.

An applicant's Housing and Development Board ("HDB") flat, if owned exclusively by the applicant and his family as their home, is excluded from the means test, while private homes with annual values of \$7,800 and above are included. The quantum stated as the annual value of the property is the amount the Inland Revenue Authority of Singapore considers as fair annual rental value for the property. Other items excluded from the means test are CPF monies, the subject matter of the proceedings, the clothing of the applicants, their tools of trade and the household furniture in their homes. For an applicant aged 60 and above, savings of up to \$30,000 are also excluded. This means that such an applicant could have up to \$40,000 worth of capital assets and still pass the means test, provided that she passes the income portion of the test.

3. Director's discretion on means

In addition, the Director has the discretion to extend aid to certain applicants who do not satisfy the means test in certain circumstances.

- (a) *Sudden physical or mental disability*: If an applicant has suffered a sudden physical or mental disability that permanently and severely restricts her capacity to earn an income, and it appears to the Director in his absolute discretion to be reasonable to do so to relieve hardship, up to \$30,000 of savings from the applicant's disposable capital may be excluded from the means test. Another \$2,000 may be deducted from her disposable income.²⁹
- (b) *Sudden loss of income*: If an applicant has suffered a sudden loss of income and urgently requires legal aid, and it appears to the Director in his absolute discretion to be reasonable to do so to relieve hardship, then the applicant's disposable income can be measured over the past 6 months rather than the past year. However, this measured amount must not exceed \$5,000. Disposable income is calculated by taking the applicant's and her spouse's income (unless the Director has exercised his discretion to disregard the spouse's income), after deducting an amount of \$2,250 for the applicant, \$1,750 for each dependant, and up to \$500 for yearly rent.³⁰

²⁸ *Ibid.*, Second Schedule, ss. 1, 4.

²⁹ *Ibid.*, Second Schedule, s. 6.

³⁰ *Ibid.*, Second Schedule, s. 7.

B. Means Test Revisions Through the Years

The means test has been revised more frequently in recent years to ensure that those who truly need help would qualify for aid.

1. 1958-1995

When legal aid commenced in 1958, only persons with a disposable capital of not more than \$500 and a disposable income of not more than \$1,000 per annum were entitled to such aid.³¹ However, the Director had the discretion to grant legal aid to those with a disposable capital of between \$500 and \$3,500 and a disposable income between \$1,000 and \$3,000 per annum.³² Disposable capital did not include the subject matter of the proceedings, the applicant's clothing, tools of trade, the household furniture used by the applicant in his house, and the dwelling house owned and exclusively used by the applicant and her family as a home. Disposable income was calculated based on the income of the applicant and her spouse (where appropriate).³³ Deductions of \$1,000 were allowed for the applicant's personal relief, and \$200 per annum for each person partially or totally dependent on the applicant or spouse, and \$360 per annum for rent.

Although the means limits were not revised till 1995, it appeared that the majority of people applying for help at the Bureau satisfied the means test given at the registration counter³⁴ ("the registration means test") even in the early 1990s. In 1990, about 80% of those applying for help in that year satisfied the registration means test.³⁵ However this figure fell to about 60% in 1994.³⁶

2. 1995-2001

In 1995, the disposable income limit was raised to \$7,000 per annum and the disposable capital limit was raised to \$7,000.³⁷ The personal deductions allowed when calculating disposable income were raised to \$2,000 for the applicant and \$1,000 for each dependant. More deductions were also permitted when calculating disposable capital. For example, a HDB flat owned by the applicant and exclusively used by her and her family as a home, or any other dwelling house with an annual value of not more than \$7,710 were excluded. Savings of up to \$30,000 if the applicant was aged 60 and above, as well as the applicant's CPF monies, were also excluded. The disposable capital and disposable income limits of persons who did not have to make any contribution payments to the Bureau were changed to \$2,000 for each case.

³¹ See *Access to Justice*, *supra* note 1 at 16.

³² *Ibid.* at 16.

³³ *Ibid.*

³⁴ An applicant for aid is given a preliminary means test at the counter by one of the Bureau's registration officers when he first approaches the Bureau to apply for aid. If a legal aid file is opened for him, he is given an appointment with a Commissioner for Oaths, where he is given a more detailed means test and is asked to provide documents showing his assets and income. See Part III on "Applying for Aid" below for more information on the application process for aid.

³⁵ Sing., *Parliamentary Debates*, vol. 55, col. 491 at 539 (20 March 1990) (Professor S. Jayakumar).

³⁶ Sing., *Parliamentary Debates*, vol. 62, col. 693 at 706 (9 March 1994) (Professor S. Jayakumar).

³⁷ See *Access to Justice*, *supra* note 1 at 16.

Previously, an applicant could be required to make a contribution if his disposable capital was more than \$500, or his disposable income was more than \$1,000.³⁸

In 1996 and 1997, the percentage of those who applied for aid who satisfied the registration means test rose to about 80%, though it dipped to about 65% in 1998 and 1999.³⁹

3. 2001-2007

The means limits were revised once again in April 2001, to \$7,000 for disposable capital and \$10,000 for disposable income.⁴⁰ Allowed deductions were increased to \$3,000 for the applicant and \$2,000 for each dependant. After this, about 80% of those who applied for aid satisfied the registration means test in the financial year 2001.⁴¹ The number of applicants satisfying the registration means test continued to rise. In the financial year 2004, 92% of applicants satisfied the registration means test, up from 90% in the financial year 2003.⁴² About 90% or more of applicants continued to satisfy the registration means test for the next few years.⁴³

4. 2007-present

In 2007, the means test was revised yet again. This is the current means test, detailed above. The objective of this latest revision was to increase the coverage of legal aid. The percentage of applicants satisfying the registration means test in financial year 2008 was about 92.9% of all the fresh applicants for that year.⁴⁴ For financial year 2009, the percentage remained steady at 92.8%.⁴⁵

Thus, it is safe to say that a large majority of those applying for aid over the years have satisfied the means test.

C. The Merits Test

After passing the means test, however, an applicant who wants legal aid for court proceedings has to also pass a merits test. That is, the applicant must have reasonable grounds for taking up, continuing or defending the court action for which he has applied for aid.⁴⁶ Since taxpayers' monies are being used to fund an applicant's litigation, such monies should be spent on deserving cases, and not on those which

³⁸ The contribution amount could be no more than the amount by which the applicant's disposable capital exceeded \$500, and no more than half the amount by which the applicant's disposable income exceeded \$1,000. (See s. 14 of the *Legal Aid and Advice Act* (Cap. 160, 1985 Rev. Ed. Sing.).)

³⁹ Sing., *Parliamentary Debates*, vol. 71, col. 1419 at 1464 (8 March 2000) (Professor S. Jayakumar).

⁴⁰ See *Access to Justice*, *supra* note 1 at 16.

⁴¹ Sing., *Parliamentary Debates*, vol. 76, col. 558 at 707-708 (13 March 2003) (Associate Professor Ho Peng Kee).

⁴² Sing., *Parliamentary Debates*, vol. 80, col. 1653 at 1653 (18 October 2005) (Professor S. Jayakumar).

⁴³ Sing., *Parliamentary Debates*, vol. 81, col. 484 at 619 (1 March 2006) (Professor S. Jayakumar); Sing., *Parliamentary Debates*, vol. 82, col. 2248 at 2439-2440 (2 March 2007) (Professor S. Jayakumar).

⁴⁴ From the Legal Aid Bureau's internal records.

⁴⁵ *Ibid.*

⁴⁶ See the *Act*, *supra* note 3, s. 8(2)(a).

are frivolous, or which have a low probability of success. The purpose of the merits test is to weed out such ‘undeserving’ cases.

The Legal Aid Board, comprising the Director and at least two solicitors from private practice drawn from the Bureau’s panel of solicitors, will decide whether a case has sufficient merits for aid to be granted. The Legal Officer or Assigned Solicitor handling the applicant’s file will write an opinion on the case and place it before the Board (which meets fortnightly) for their consideration on whether to grant the applicant aid. The Board has to balance various factors in deciding if a case has merits, including that of giving the applicant the opportunity to have his day in court, and the likelihood of him being able to succeed in his case. For the past 3 years, most applicants (more than 90%) whose cases have surfaced before the Board have passed the merits test. This is perhaps a testament to the fact that most applicants for aid do not come for help on a whim or for frivolous matters, but come instead for help on serious problems that need to be solved.

D. Director’s Ultimate Discretion

However, the Director has the discretion to refuse legal aid even if the applicant has passed both the means and merits tests, if it appears unreasonable that the applicant should receive aid in the particular circumstances of the case.⁴⁷ This is to ensure that the legal aid scheme is not abused. For example, aid has been refused to applicants who have been uncooperative with the Bureau after applying for legal aid, such as by not attending appointments and/or being uncontactable. Such behaviour has caused the Bureau to expend resources, which could have been better spent on helping other applicants, in trying to contact them and re-fix their appointments.

E. Privileges and Responsibilities of a Legal Aid Applicant

An applicant who is granted aid has various privileges. She is not liable for court fees, fees of process servers and sheriff’s fees. She is also entitled to be supplied with a copy of the judge’s notes of evidence free of charge.⁴⁸ She is not liable to pay costs to any other party except in certain limited circumstances, *i.e.* if the court finds that she managed to obtain legal aid by fraud or misrepresentation, or that she has acted improperly in bringing or defending or conducting her legal proceedings.⁴⁹ It is for this last reason in particular that the merits test is important. This is because if a case has no merits and the applicant loses, the opponent would generally not be able to recover his costs. If the applicant is successful in her case, however, the court may award costs to the Director.⁵⁰

Certain responsibilities come with the privileges of being a legal aid applicant. The applicant may be required to pay a contribution to the Bureau for the work done on her case, if her disposable capital exceeds \$2,000 or her disposable income exceeds

⁴⁷ *Ibid.*, s. 8(3).

⁴⁸ *Ibid.*, s. 12(4).

⁴⁹ *Ibid.*, ss. 14(1), 14(3).

⁵⁰ *Ibid.*, s. 16(1).

\$2,000 per annum.⁵¹ The amount of contribution payable is calibrated according to the amount of capital and income she has. The applicant may also need to pay a deposit for out-of-pocket expenses incurred on her behalf,⁵² and to reimburse the Director for any costs incurred on her behalf when money or property has been recovered for her.⁵³

The contributions paid by applicants go into the Legal Aid Fund,⁵⁴ which is used to pay the fees of the Assigned Solicitors.⁵⁵ This helps to manage the cost of funding legal aid, and also imposes a certain discipline on those applicants who can afford to contribute, to ensure that they do not use the legal aid scheme unless it is absolutely necessary. However, the contribution amount charged for a typical matrimonial case would usually be far less than what a private law firm would charge. From anecdotal evidence, the charges for a simple divorce case handled by a private lawyer would be in the range of \$2,000 to \$6,000.⁵⁶ However, a legal aid applicant would seldom be charged more than \$750 for a typical divorce case. Some applicants would pay even less than that, depending on their assets and income.

III. APPLYING FOR AID

A legal aid framework must be complemented by a straightforward application process in order to ensure that the less privileged get the help they need. If the application process is too complex or intimidating, then a potential applicant may well be discouraged from applying for aid at all. Also, a person in need of legal help would need to know that there is such an organisation as the Legal Aid Bureau in the first place, in order to apply for aid. How do those in need of help know where to go?

There are various avenues of information. For those who have Internet access, there is the Legal Aid Bureau website at <<http://www.lab.gov.sg>>, which gives information on the Bureau and the legal aid scheme. The Bureau also has pamphlets in all the official languages giving basic information on legal aid, including the means test, which can be obtained by members of the public at the premises of the Bureau's partners such as the Subordinate Courts and the Law Society of Singapore. However, not all applicants are connected to the Internet, or even literate.

In the 1960s, the Bureau was even featured on radio and television to raise awareness amongst the people of its existence. However, this 'mass publicity' approach has now evolved into one of targeted outreach, whereby the Bureau engages in dialogue sessions with, and gives talks on legal aid to, those organisations which are likely to have the less privileged as their clients, such as the five Community Development Councils. In the past few years, the Bureau has conducted dialogue sessions

⁵¹ *Ibid.*, s. 9.

⁵² *Ibid.*, s. 13.

⁵³ *Ibid.*, s. 16(2).

⁵⁴ The Legal Aid Fund was created on 2 June 1978. Costs awarded to the Director, as well as contributions, are paid into the Fund. The fees of the Assigned Solicitors are paid out of this Fund.

⁵⁵ See Part I.C. of this article on "The Bureau's Lawyers" above for more information on assigned solicitors' fees.

⁵⁶ See the discussions on the forum boards of *ExpatsSingapore*, online: <<http://www.expatsingapore.com/forum/>> and *SingaporeBrides*, "Topics—A Singapore Wedding Discussion Forum—SingaporeBrides.com", online: <<http://singaporebrides.com/cgi-bin/forumboard/discus.cgi>>.

and learning journeys with a range of partners, including the Subordinate Courts, the Syariah Court, the CPF Board, the HDB and the Community Mediation Centre. This targeted approach ensures that those who are most in need of help are identified and referred to the Bureau.

Once an applicant approaches the Legal Aid Bureau's office to apply for legal aid or legal advice, she will be provided with assistance by the Bureau in making her application. Those applicants who do not speak English are not disadvantaged. The Bureau has Commissioners for Oaths fluent in the different official languages (and various Chinese dialects) whose job scope includes interpreting for applicants during interviews. Between them, the counter staff also speak the four official languages and some Chinese dialects.

A preliminary means test is conducted by the registration officer (a counter staff), who will ask the applicant questions about her income and assets. (There is even a pictorial version of the means test, which the staff may use in explaining the means test requirements to illiterate applicants.) The applicant will also be asked to briefly describe what her case is about. If the applicant passes the preliminary means test, then depending on whether she requires legal aid or legal advice, she will be directed to either see the Duty Officer for legal advice, or to open a legal aid file. She will have to pay \$1 to register her application for legal advice or to open a legal aid file.

If she opens a legal aid file, she will be given an appointment within 2 weeks for a Commissioner for Oaths to record a statement regarding her case. She will be asked to bring all the supporting documents for her case for this meeting, as well as documents relating to her means, such as bank statements and payslips. At the appointment, she will be asked more detailed questions on her means as well as the facts of her case. Her statement will be written out for her by the Commissioner for Oaths, if she is unable to do so personally. After the statement is taken, the file will be sent to the Legal Officer in-charge to review the matter.

The Legal Officer will write an opinion on the merits of the case, or assign the case out to an Assigned Solicitor, who will furnish the opinion on the merits. Cases are assigned out when there is a potential conflict of interest—this will occur where both parties have applied for legal aid, which is a common occurrence, particularly in matrimonial cases.⁵⁷ The opinion is considered by the Legal Aid Board, which then makes a decision on whether to grant aid in the matter. Once aid is granted, the Legal Officer or Assigned Solicitor will proceed to deal with the matter. The applicant may be charged a contribution amount at this stage.

IV. SERVICES PROVIDED BY THE LEGAL AID BUREAU

The Bureau provides legal aid, (oral) legal advice and legal assistance—all the services required to allow an applicant to enforce or defend her rights under the *Charter*.

⁵⁷ Cases are also assigned out if special expertise is required, such as for Syariah Court matters or medical negligence.

A. *Legal Aid*

As stated earlier, legal aid takes the form of representation in court proceedings, and work connected with the bringing and conduct of court proceedings such as the drafting of court documents.

B. *Legal Assistance*

Legal assistance involves the drafting of simple documents which are closely connected with the subject matter of civil proceedings in which aid is or would be granted. For example, applicants may wish to enter into a deed of separation to evidence their separation before filing for divorce. The Bureau would help in the drafting of the deed of separation. Another example would be a situation where the Bureau may have helped a legal aid applicant obtain a court order for the disposal of a HDB flat in divorce proceedings which includes a provision empowering the Registrar of the Subordinate Courts/Supreme Court/Syariah Court to sign the relevant sale or transfer documents on behalf of the defaulting party, for the disposal of a HDB flat in divorce proceedings. If the defaulting party eventually refuses to sign the relevant documents, the person who sought aid for the divorce proceedings may inform the Bureau of the situation, and the Bureau will prepare the necessary court documents (*i.e.* a cover letter explaining the applicant's request, and, if needed, an affidavit explaining that the other party has failed to sign the sale documents) for her to appear before the relevant duty Registrar to request him to sign the sale documents.

C. *Legal Advice*

The legal advice service is provided daily at the Bureau. The Legal Officers are rostered weekly, taking turns to be the Duty Officer of the day. The Duty Officer attends to all the applicants who walk in and ask for legal advice during office hours. No prior appointment is required. The purpose of the legal advice service is to enable applicants to get a quick consultation on their legal rights and liabilities from a Legal Officer. In the words of the then Minister for Labour and Welfare, Mr. Lim Yew Hock:

[W]hile injustice may arise as a result of a poor man being unable to contest a case in Court, he may also be at a disadvantage when he wishes to ascertain his legal position and obtain advice and assistance short of Court proceedings. The provision of facilities for legal advice is one way of removing any sense of grievance and injustice which may rankle in the mind of a person who, because of his limited means, is unable to ascertain what his rights are[.]⁵⁸

The legal advice service acts as a filter and a triage. Those applicants who, in the Duty Officer's view, have cases which reveal a cause of action, and some grounds for prosecuting the same, or some form of defence to an action, will be advised to

⁵⁸ Legal Aid and Advice Bill Debate, *supra* note 5 at 1964.

open a legal aid file. Those who do not will be given referrals to other appropriate sources of help for their problems. A Duty Officer may deal with as many as 15 to 20 advice cases a day.

Legal advice queries are often divorce-related. Some applicants are interested in whether they will be able to get custody, care and control of their children after the divorce. Others are interested in how their matrimonial assets will be divided. Women will often ask about their chances of getting maintenance. The questions asked are sometimes not on legal matters. Some applicants may even ask the Duty Officer whether he thinks they should get a divorce in the first place. There are also many practical matters which arise, for example, whether the applicant can rent a HDB flat after the divorce. A sudden family crisis may have arisen—for example, the husband has suddenly left the matrimonial home, taking the children with him, or the parties may have had a quarrel, and the husband chased the wife out of the matrimonial home, or abruptly stopped paying any housekeeping money to the wife. In such cases, the applicant wants practical advice on how to ameliorate her present difficulties, and also advice on the long-term solutions available to her. Queries on whether the applicant can apply for divorce before 3 years have lapsed from the date of marriage⁵⁹ are also quite common. The Duty Officer will provide legal advice, and also referrals to the appropriate agencies to assist in the applicant's non-legal issues.⁶⁰

D. Beyond Legal Advice—Social and Emotional Needs

The staff of the Bureau are trained in counselling and communication techniques to help them deal with distressed applicants. Some applicants, particularly in matrimonial cases, are emotionally fragile. Many are in difficult financial circumstances and find the legal process bewildering. Applicants with financial difficulties, or who have social and emotional issues will be referred to a Community Development Council, or a Family Service Centre for the appropriate help. If they are emotionally distraught or depressed, they can also, if they are agreeable, see the Bureau's in-house counsellor under the Give Another Lifeline ("GAL") programme.

1. Give Another Lifeline

The GAL programme was launched on 5 February 2002 to provide counselling to legal aid applicants contemplating divorce. Those who wish to explore reconciliation with their spouse will be invited to attend the counselling session jointly with him or her. Under the programme, supported by the National Council of Social Service, counsellors from the Tanjong Pagar Family Service Centre, a charity under the Thye Hua Kwan Moral Society, are stationed at the Bureau during office hours from Mondays to Fridays, to provide help to the Bureau's applicants. Applicants

⁵⁹ S. 94(1) of the *Charter*, *supra* note 4, states that "[n]o writ for divorce shall be filed in the court unless at the date of the filing of the writ 3 years have passed since the date of the marriage". However, s. 94(2) of the *Charter* provides that exceptions may be made for cases of exceptional depravity and exceptional hardship.

⁶⁰ See Part IV.D of this article on "Beyond Legal Advice—Social and Emotional Needs" below.

are given emotional support and professional guidance in areas and issues which the Bureau's own officers are not trained to cope with. The counsellors can also refer applicants to appropriate organisations, such as a Family Service Centre, for long-term counselling, or financial and other help. The programme has helped more than 13,000 applicants since it started.⁶¹ In financial year 2009 alone, 1,320 applicants underwent GAL counselling.⁶² The availability of such counselling services, particularly for those who wish to explore reconciliation, is in the spirit of section 49 of the *Charter*, which directs the divorce court to consider the possibility of a reconciliation of the parties.

2. Mediation and counselling

Section 50 of the *Charter* states, *inter alia*:

- (1) A court before which any proceedings under this Act (other than proceedings under section 104⁶³) are being heard may give consideration to the possibility of a harmonious resolution of the matter and for this purpose may, with the consent of the parties, refer the parties for mediation by such person as the parties may agree or, failing such agreement, as the court may appoint.
- (2) A court before which any proceedings under this Act (other than proceedings under sections 65 or 66) are being heard may, if it considers that it is in the interests of the parties or their children to do so, at any stage in the proceedings direct or advise either or both of the parties or their children to attend counselling provided by such person as the Minister may approve or as the court may direct.

Section 50(1) is the section which enables the court to send parties for mediation, if both parties agree to it. Section 50(2) enables the court to send parties and/or their children for counselling. The rationale for these sections is, in the words of then Minister for Community Development Mr. Abdullah Tarmugi, at the Third Reading of the *Women's Charter (Amendment) Bill* in 1996, to emphasise the "harmonious resolution and healing in the aftermath of family discord" and to give the courts the "ability to gently guide [the parties] back on the path of recovery if there is hope".⁶⁴

In the spirit of the *Charter*, the Bureau is strongly supportive of court mediation. In appropriate cases (aside from those cases where there has been severe family violence, or the other party is mentally incapacitated, or uncontactable), where the applicant and the other party are unable to settle their matter privately, the Bureau will encourage the applicant to attend court mediation, if the other party is also willing to do so. Many of the Bureau's matrimonial cases are amicably settled through court mediation.

Many of the Bureau's cases are also settled between the parties even before the matter goes before the court. This is because it is the Bureau's policy, particularly for

⁶¹ From the Legal Aid Bureau's internal records.

⁶² *Ibid.*

⁶³ S. 104 of the *Charter*, *supra* note 4, states that "[a]ny husband or wife may file a writ claiming for a judgment of nullity in respect of his or her marriage".

⁶⁴ Sing., *Parliamentary Debates*, vol. 66, col. 520 at 528 (27 August 1996) (Abdullah Tarmugi).

matrimonial matters, to write to the other party and invite him to attend a discussion with the applicant on the matters at issue between them. The discussion will be facilitated by a legal executive⁶⁵ of the Bureau. To put the other party at ease, he will be informed that there is no pressure to settle, and that he is at liberty to seek his own legal advice at any time. Through such facilitated discussions, cases which would otherwise have been contentious are often amicably resolved, with draft consent orders signed even before the divorce writ is filed. Sometimes, the parties do not wish to meet face-to-face. In such cases, the Bureau may meet each party separately, and relay each party's proposals to the other. A significant number of cases are also settled in this manner.

The Bureau is also a strong advocate of counselling to resolve custody and access disputes, as well as contentious divorces, and will encourage applicants involved in these matters to go for court counselling in the matter, with the other party and the children, where appropriate. For access disputes, before any court proceedings are taken out, the Bureau will encourage parties to attend assisted access, assisted transfer and parenting programmes at specialist organisations such as the Centre for Family Harmony.⁶⁶ This is in recognition of the fact that court proceedings by themselves will not resolve problems in the parties' and children's relationships, or enhance communication within the broken family. In advocating that the parties settle their custody and access differences through counselling where possible, the Bureau's first consideration is the welfare of any child caught in the cross-fire of the dispute between his parents.

V. CASES UNDER THE *CHARTER*—A SNAPSHOT

In financial year 2009, divorce cases under the *Charter* made up slightly more than 75% of the Bureau's total pool of matrimonial cases.⁶⁷ The Bureau also did custody, maintenance and family violence cases, as well as variation of ancillary matters orders. More unusual applications include applications such as that under section 13(3) of the *Charter*, for permission for a minor to marry.⁶⁸

This section gives a snapshot of a few *Charter* cases dealt with by the Legal Aid Bureau over the years. The cases are similar to what would be handled by any private law firm helping the man in the street, but have raised some interesting legal points along the way.

A. *Court as Parens Patriae—Consent to Marriage by a Minor*

Under section 13(1) of the *Charter*, minors under 21 years old need the consent of a relevant person (as defined under the Second Schedule of the *Charter*) to marry.

⁶⁵ The core duty of a legal executive is to assist the legal officer in drafting standard court documents as well as interviewing and taking instructions from applicants.

⁶⁶ See Thyee Hua Kwan Moral Society, online: <<http://www.thkms.org.sg/counselling.html>>. The Centre for Family Harmony, a specialised centre for separated and divorced families, started operations on 1 July 2006. It provides supervised access and transfer, therapy, counselling, and group programmes for families facing custody and access issues.

⁶⁷ From the Legal Aid Bureau's internal records.

⁶⁸ See Part V.A of this article below on the "Court as Parens Patriae—Consent to Marriage by a Minor".

Where the minor is legitimate and both parents are living together, then both parents must consent to the marriage. In one case handled by the Bureau,⁶⁹ of which judgment was not reported, a teenage girl gave birth to a son, fathered by her boyfriend of 2 years. They had met when she was a 17-year-old salesgirl in a shop. The father was 25 years old, and ran his own delivery services firm. After the child was born, they wanted to get married, buy a HDB flat and settle down. However, the girl's parents refused to give their consent to her marriage. Hence, an application to the High Court under section 13(3) for the court's consent to the marriage was required. As the girl was a minor, she required a guardian to assist her in the application for legal aid, in order to take out this application. The boyfriend's mother became the girl's guardian for this purpose. The application itself was taken out on the girl's behalf by the boyfriend's mother, as her litigation representative. The High Court, after hearing the matter, consented to the marriage.

Although not unprecedented for the Bureau, such cases are relatively rare, since most parents would usually consent to the minors marrying. Should any family disputes arise, or the couple require marriage counselling, the Bureau would be able to send the parties to see the Bureau's in-house counsellor under the GAL programme.⁷⁰ This counsellor can also refer the parties to a family service centre counsellor if necessary.

B. *No Ousting of Court's Jurisdiction*

In the case of *Tan Kai Mee v. Lim Soei Jin*,⁷¹ the magistrate had varied the wife's maintenance order from \$200 to \$400 a month. It was argued on appeal that the magistrate should have given effect to a clause in the deed of separation which provided that the respondent wife (who was legally aided) should not at any time apply to the courts to vary the maintenance order. It was held by the High Court, in dismissing the appeal, that the clause was bad in law because it was not within the province of the parties to contract out of the *Charter*. It was also bad in law because such a clause would be contrary to public policy, as the parties should not be able to oust the jurisdiction of the courts by private agreement between themselves.

This was a decision that decided that the balance between giving parties the freedom to come to their own agreement, and protecting the interests of the parties, should come down in favour of the latter. It is submitted that this is in line with the spirit of the *Charter*, to ensure that the intention behind the law, *i.e.* to protect the rights of vulnerable family members, particularly women, will not be defeated by such vulnerable family members being persuaded to give up those rights, through duress or ignorance.

The same thinking is evident in the much later case of *TY v. TZ*,⁷² in which both parties were legally aided. In this District Court case, the parties had signed a deed of separation on 27 August 2004 which provided, *inter alia*, that "The Wife agrees that she will not make a claim on the sale proceeds from the sale of the Matrimonial Flat

⁶⁹ See K.C. Vijayan, "Please judge, can we get married?" *The Straits Times* (20 October 2008).

⁷⁰ See Part IV.D.1 of this article above on the "Give Another Lifeline" programme.

⁷¹ [1979-1980] S.L.R.(R.) 656.

⁷² [2007] SGDC 195.

in the event that the same is sold by the Husband, either now or in the future.” The court stated, “Presumably, the wife had signed the Deed without the benefit of legal advice, and it would not be just and equitable to deny her any interest in the flat.” It therefore did not hold the wife to the agreement that she had signed. Taking into account various factors, including the length of the marriage and the wife’s indirect contributions, the court awarded the wife \$18,000 as her share of the matrimonial flat, which amounted to about 15% of the value of the flat, less the outstanding housing loan. The husband appealed, but his appeal was dismissed by the High Court.

The court’s concern that it retains the ultimate power to decide what would be, and to ensure, a just and equitable result for the parties was emphasised in the recent case of *TQ v. TR and another appeal*⁷³ (where parties were not legally aided). In this case the Court of Appeal held that insofar as prenuptial agreements relating to the division of matrimonial assets are concerned, the governing provision is section 112 of the *Charter*, and that the ultimate power resides in the court to order the division of matrimonial assets “in such proportions as the court thinks just and equitable”, having regard to all circumstances of the case. Thus, though a prenuptial agreement may be used to aid the court in exercising its power pursuant to section 112 of the *Charter*, it cannot be directly enforced, in the way an ordinary contract could be enforced, for example. What weight (if any) the prenuptial agreement will be given would depend on the precise facts and circumstances of the case.

C. Upholding Wife’s Right to Maintenance

As far as possible, the Bureau tries to assist and encourage its applicants to arrive at an amicable settlement of the matter. However, this is not possible when the other party refuses to make a reasonable offer, as in the following case.

In the case of *Kalutara Achriage Dharshani Chrishanthi Herbert v. P. L. B. Sarath Manukularatne*,⁷⁴ a maintenance case, the legally aided complainant requested for \$800 per month as wife maintenance. The respondent husband refused to make any maintenance offer. The District Court noted that it was a short, childless marriage, and that the parties had started to live apart 11 months after their marriage. However, the court noted that the wife only came to Singapore because she married the husband. She was originally from Sri Lanka, and had worked there as a secretary for about 6 years before arriving in Singapore. The court felt that she might face some obstacles in seeking employment as she was a foreigner without professional qualifications, but in spite of that she did have earning capacity, and could sustain herself to a considerable extent. The court therefore decided to make an order for nominal maintenance, following the approach in *Sengol v. De Witt*,⁷⁵ *i.e.* that in short, childless marriages where the wife is capable of earning her own living, the court would usually make an award of nominal maintenance for a specified period to enable the wife to adjust to her situation and to achieve a clean break thereafter. This is because the wife would usually be in a weaker financial position than the husband. The court in this case further held that nominal maintenance was not equivalent to *no* maintenance,

⁷³ [2009] 2 S.L.R.(R.) 961 at paras. 73, 75, 77, 80, 86, 103.

⁷⁴ [2003] SGDC 78.

⁷⁵ [1985-1986] S.L.R.(R.) 809.

and that a nominal sum for a wife whose husband earns a very substantial income cannot be the same as a nominal sum for a wife whose husband earns only a few hundred dollars a month. In this case the husband was earning a net salary of \$5,300 a month. The court awarded the wife \$400 maintenance a month (payable from 1 December 2002), which was less than 8% of the husband's net monthly salary. No cap was placed on the duration of the maintenance, as the parties' marriage had not been dissolved. The court observed that the husband acted unreasonably and in total disregard of his obligations to maintain his wife when he refused to make any offer of maintenance throughout the trial, and thus awarded costs of \$1,000 to the Director.

On appeal,⁷⁶ the High Court ordered the maintenance payment of \$400 a month to cease with effect from 1 September 2003. However, the High Court also ordered that the question of whether any maintenance should be payable could be considered by the trial judge hearing the divorce matter (as the husband had filed for nullity proceedings against the wife). The court stated that by that time, it would be clear what efforts the wife made to obtain employment at a salary commensurate with her qualifications. The decree *nisi* was granted on 14 October 2003. By consent, the decree *nisi* included an order that the wife should receive the sum of \$10,000 as her share of the matrimonial assets, maintenance, and costs.

D. Recognition of Foreign Divorce

In line with the rapidly globalising world, the Legal Aid Bureau increasingly has to deal with cross-border marriage and divorce situations.

In the case of *Boong Peng Keong v. Lim Su Lee*,⁷⁷ the parties solemnised and registered their marriage in Singapore at the Singapore Marriage Registry on 28 July 1993, and subsequently registered their marriage at the Marriage Registry in Johor Bahru, Johor, Malaysia on 30 August 1995. They had obtained a decree *nisi* and a certificate making the decree *nisi* absolute in Malaysia, dissolving their Malaysian marriage. Both court documents specifically stated that the marriage being dissolved was the "marriage registered on 30 August 1995 at the Marriage Registry in Johor Bahru, Johor". The issue which the husband applicant (a Singapore citizen) wanted resolved was whether the Malaysian divorce dissolved the Singapore marriage. To get a judicial pronouncement on this issue, the Bureau assisted the husband in filing a writ for divorce in Singapore to dissolve the marriage. The wife did not contest the proceedings. The Bureau set the matter down for an uncontested divorce hearing, but invited the court to make no order in the matter, on the ground that the Singapore marriage had already been dissolved by the Malaysian decree *nisi*. The court decided that although the parties' marriage was registered in two places and the decree *nisi* in Malaysia specifically referred to the marriage registered in Malaysia, it should be taken as a single marital relationship. Hence, it should follow that the decree *nisi* granted by the Malaysian Court effectively dissolved the marriage registered in Singapore because both marriages involved the same relationship. The court also noted that if the marriage registered in Singapore was not dissolved by the Malaysian decree, the Family Court would need to re-adjudicate on divorce and

⁷⁶ D.A. 2/2003; there was no written judgment for this case, only an order of court dated 11 August 2003.

⁷⁷ [2009] SGDC 319.

ancillary matters, and it would be a duplication of effort to adjudicate on the same matter which a court of competent jurisdiction had already dealt with. The court therefore did not grant an interim judgment (formerly known as a decree *nisi*) on the husband's divorce application.

E. *Limitation Issues and the Charter*

The case of *Teh Siew Hua v. Tan Kim Chiong*⁷⁸ raised a novel point about the applicability of the *Limitation Act*⁷⁹ to *Charter* cases. In this case, the petitioner made an application under section 112(4) of the *Charter* to vary an order made by the High Court in a decree *nisi* granted on 30 January 1992 (“the variation application”), some 19 years before the variation application. The decree *nisi* included an order that the respondent transfer his interest in the matrimonial flat to the petitioner, without stipulating any time frame. The respondent did not do so, and the petitioner took no steps to compel him to do so, as she was busy with work and raising her children. As she was getting on in years, however, she finally decided to take steps to regularise the situation, to ensure that her beneficiaries, *i.e.* her children, would not face difficulties posed by the respondent, should she pass away. In November 2009, she requested the respondent to comply with the court order. The respondent refused and asked for the matrimonial flat to be sold and the proceeds divided equally. The petitioner then sought the help of the Legal Aid Bureau to vary the decree *nisi* to include an order that the respondent should sign all the necessary documents to effect the transfer of the matrimonial flat within 7 days of the service of the court order on him by ordinary post, and an order that should he fail to do so, then the Registrar of the Supreme Court would be empowered to sign all the transfer documents on his behalf. The court queried (i) whether the variation application was time-barred under section 6(3)⁸⁰ and s. 9(1)⁸¹ of the *Limitation Act*; (ii) whether it required the leave of court under O. 46, r. 2(1)(a)⁸² of the *Rules of Court*; and (iii) whether it was defeated by acquiescence, laches or delay.

The court eventually held that the petitioner's variation application was not “an action upon any judgment” within section 6(3) of the *Limitation Act* as it was not a “fresh action” brought on a judgment in order to obtain a second judgment, and consequently was not barred after the lapse of 12 (or more) years. The variation application also did not fall foul of section 9(1) of the *Limitation Act* as s. 9 is concerned with an action by a person with legal title to land against an adverse possessor, and there was no question of adverse possession in this case, as the petitioner had

⁷⁸ [2010] 4 S.L.R. 123.

⁷⁹ *Limitation Act* (Cap. 163, 1996 Rev. Ed. Sing.) [*Limitation Act*].

⁸⁰ *Ibid.*, s. 6(3) states: “An action upon any judgment shall not be brought after the expiration of 12 years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 years from the date on which the interest became due.”

⁸¹ *Ibid.*, s. 9(1) states: “No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person.”

⁸² *Rules of Court* (Cap. 322, O. 46, 2006 Rev. Ed. Sing.), r. 2(1) provides: (1) “A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases: (a) where 6 years or more have lapsed since the date of the judgment or order...”

continually been in possession of the matrimonial property to the exclusion of the respondent, even prior to the date of the decree *nisi*. There was no need to seek the court's leave under O. 46, r. 2(1)(a) because the petitioner's application, if granted, would not result in the issuance of a writ of execution within the meaning of O. 46, r. 1 (*i.e.* a writ of possession, a writ of seizure and sale, or a writ of delivery). Finally, the variation application was not defeated by acquiescence, laches or delay, as firstly, these defences only operated against claims for equitable relief, and the petitioner was seeking a statutory remedy under section 112(4) of the *Charter*; secondly, s. 112(4) of the *Charter* expressly contemplates that the power it confers may be exercised by the court "at any time it thinks fit"; thirdly, the operation of the defences of acquiescence and laches is generally contingent on the defendant being unjustly prejudiced by the plaintiff's dilatoriness. In this case, no prejudice would have been caused to the respondent by granting the application, given that he had 19 years to comply with the order in the decree *nisi*, and there was no evidence that during that time, he had relied to his detriment on the petitioner's failure to enforce the judgment, since he had not resided in the matrimonial flat for those 19 years. The court therefore granted the petitioner the orders that she sought in her variation application. The respondent husband did not appeal.

VI. LOOKING AHEAD

Half a century of matrimonial cases later, both the *Charter* and the Bureau are still going strong.

The Bureau currently has a staff strength of about 60, including 14 Legal Officers. It has about 200 active Assigned Solicitors, who take on about a third of the Bureau's legal aid cases. However, attracting and retaining diligent, capable and compassionate full-time staff and volunteers is a continual challenge for the Bureau.

In particular, finding the next generation of Legal Aid and *pro bono* lawyers, especially those interested to do matrimonial work, is a critical area.

A. Inspiring the Next Generation of Family Lawyers

It is a lot easier to persuade lawyers to practise in areas which advance justice and help them to make good money at the same time. Far harder is the task of persuading good lawyers to practise in an area where the satisfaction of promoting justice and serving others may be the main rewards.

...

Family practice attracts clients who call at unearthly hours because a spouse has not returned a child after access time ... Family lawyers are expected to communicate with and advise clients clouded by a host of emotions. Family practice goes a step further than other areas of law. It may not only promote 'justice', it also promotes 'welfare'. It may be argued that the law should focus on justice and not be too involved in issues of welfare. But the reality is that much more than justice is demanded of family lawyers[.]⁸³

⁸³ Debbie Ong Siew Ling, "Family Lawyering 'Justice'" *Singapore Law Gazette* (July 2008), online: <<http://www.lawgazette.com.sg/2008-7/default.htm>>.

Matrimonial cases can be extremely time-consuming and emotionally draining. However, they can also be very rewarding for those who have an interest in serving the common man. The Bureau plays a significant role in encouraging the next generation of family lawyers through its internship schemes. It has a suite of internship schemes to cater to aspiring lawyers of different age-groups and educational levels, from junior college to law students, and which cover term-time as well as vacation periods. It has also collaborated with the National University of Singapore (“NUS”) to start a Clinical Legal Education (“CLE”) programme in which law students can take on legal aid files for course credit, under the supervision of NUS tutors and Legal Officers from the Bureau. Many of the cases which the Bureau’s interns and CLE students have worked, and will work, on would be matrimonial cases, since such cases form the bulk of the Bureau’s work. The Bureau favours giving interns a hands-on experience with cases by letting them draft court documents and letters, and communicating directly with the applicants. In this way, the interns get real-life exposure to matrimonial cases, and acquire practical knowledge on family practice and laws.

The Bureau has helped thousands of people to enforce or defend their rights under the *Charter* over the past 50 years. As both the Bureau and the *Charter* journey into the next half-century, the Bureau’s mission will remain the same—to provide quality legal aid and advice to the less privileged, with passion and compassion. In striving to fulfil its own mission, the Bureau gives force to the vision behind the *Charter* by helping the vulnerable to protect themselves, and to ensure, as far as possible, that their marriage becomes a partnership of equals.