

香港記者協會
HONG KONG JOURNALISTS ASSOCIATION

The HKJA position

High litigation costs threaten to put justice out of the reach of many Hong Kong residents. Legal aid provides some relief. Yet it doesn't extend to defamation actions, and that is having the unintended consequence of undermining the freedom of expression and leading to double standards of justice. The Hong Kong Journalists Association strongly supports the principle of offering legal aid to individuals pursuing defamation cases, with caveats. Such aid should be available to all who pass suitable means testing. Also, fair and transparent procedures should be adopted to weed out frivolous applications.

The status quo is hard to defend

Defamation cases, particularly those involving the media requires lengthy proceedings and highly experienced counsel. That makes journalists wary about their coverage of deep-pocketed companies or the super wealthy, with the consequence of shutting out some worthy topics that belong in the public arena. The availability of legal aid for the defense in defamation lawsuits thus would be in the public interest and a great stride toward safeguarding freedom of expression.

At the same time, consideration should be given to legal aid for the plaintiffs in certain defamation actions. This is because ordinary individuals, unlike major

香港記者協會
HONG KONG JOURNALISTS ASSOCIATION

companies and tycoons, have little recourse when inaccurate media coverage seriously injures their reputations and perhaps livelihood. Unfortunately, that sometimes leads to a double standard: Some news media organizations may take less care reporting about ordinary individuals than about the wealthy and powerful. Here, legal aid for deserving plaintiffs would greatly reinforce the notion of equal justice for all.

Overcoming resistance to change

Skepticism does exist as to whether legal aid should apply to defamation. The administration has expressed worries, for instance, that the complex nature of defamation would make it difficult to determine which cases are worthy of aid. Media organizations, for their part, fear the availability of legal aid for defamation would open the floodgate to frivolous lawsuits. Indeed, some cases could be tricky, as when an individual alleges defamation by a journalist, and both seek legal aid. The concerns could be addressed by the establishment of screening criteria. Our courts, after all, are capable of delivering sound judgments in defamation cases. There is no reason why legal aid administrators couldn't also form defensible judgments for the purpose of separating out more-deserving applicants from the rest.

香港記者協會
HONG KONG JOURNALISTS ASSOCIATION

New stresses, new thinking

Overall, there is a growing recognition that new thinking is needed to help society cope with the new demands and stresses of our information age. One striking example of new thinking in the practice of defamation law is Paul Tse Wai-chun vs. Albert Cheng King-hon and Peter Lam Yuk-wah, a case in which the Court of Final Appeal allowed far greater protection for fair comment than has in the past been possible. We believe broadening the scope of legal aid to include defamation actions, likewise, would be a significant advance on the same front. It would eliminate the need for proposals such as that of the Hong Kong Press Council, which is seeking special exemption from defamation lawsuits so that it could comment more pungently on news coverage. Far better that our system delivers the same protection to all than to attempt smaller, piecemeal actions that would create special privileges of uncertain benefit for the larger community.

* * *

HKJA contacts for this paper: Mak Yinting, chairperson; Jesse Wong, executive committee member.