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法律援助资讯的传递

Dissemination of Legal Aid Information

专责小组的成立

本局于2014年中成立了一个关于改善法律援助资讯传递的专责小组，其工作目标是检视持分者对法律援助署（「法援署」）所提供的法援服务的关注；找出引发这些关注的资讯差距，尤其在统计数据方面；以及向本局建议是否需要发放其他统计数据或工作表现指标，以提高法援署的运作透明度。专责小组的职权范围如下：

- (a) 检视持分者对法援署所提供的法援服务的关注；
- (b) 审视目前向公众发放的法援资讯是否足够，包括但不限于法援申请数字、外委法援案件数字、法援开支统计数据等；
- (c) 明确指出资讯差距所在和需要改进的地方；及
- (d) 建议如何改善不足之处

专责小组由法援局主席带领。由于小组的工作严谨仔细，亦需要不同范畴的专业知识，本局难以独力承担。因此，小组的成员应包括：

- (i) 两名分别由大律师公会及香港律师会提名加入本局的成员，从业内人士的角度提供意见；
- (ii) 两名熟悉财务资讯传递及数据处理的人员，协助准备需要传递的资讯；
- (iii) 两名资讯科技专家，就如何从法援署的电脑系统整合所需资料，以及所需的电脑系统配备作出建议；及

Establishment of a Task Force

A task force on the dissemination of legal aid information was established under the Council in mid 2014. It was tasked to look at the concerns of stakeholders on the legal aid services provided by the Legal Aid Department (LAD); to identify the information gaps leading to the concerns particularly in respect of the statistical information; and to make recommendations to the Council on the statistics or performance indicators required to increase the transparency of the operation of LAD. The Task Force's terms of reference are as follows:

- (a) to look at the concerns of stakeholders on the legal aid services provided by LAD;
- (b) to examine whether or not the legal aid information currently disseminated to the public, including but not limited to application data, assignment data, and statistics on legal aid costs, is adequate;
- (c) to identify the information gaps that need to be addressed, and the possible areas of improvement; and
- (d) to make recommendations to address the deficiencies.

The Task Force is led by the Council chairman. As its work is meticulous and requires certain expertise that could not be supported by the Council alone, it was agreed that the composition of the Task Force should include:

- i) two members from the Council with one each from the Bar Association and the Law Society to advise on the requirements of statistical information from the user point of view;
- ii) two members who are trained with figures and are familiar with financial information dissemination to assist in the preparation of the information to be disseminated;

- (iv) 一名统计师，负责就法援署的统计数据提供意见。

除了应本局主席邀请加入外，亦欢迎有兴趣的本局成员加入专责小组。目前，小组成员包括本局成员叶毓强先生、梁宏正先生及潘素安女士，前本局成员洪为民博士、马华润先生，以及非本局成员叶超然先生、龚永德先生、李荣光先生及伍尚匡先生。法援署副署长(政务)亦应邀代表法援署加入专责小组，使有关法援署公布统计资讯的讨论更切实有效。

法援署资讯传递的检讨

专责小组于2014年6月16日的第一次会议中指出，有些对法援署的法援服务所作出的批评可以透过改善资讯传递来解决。相关议题包括：

- a) 法援案件的外判情况；
- b) 法援的财政预算；以及
- c) 审批法援申请的独立性，尤其涉及向政府提出索偿的申请个案

直至目前为止，专责小组已完成研究首两项议题的统计数据。专责小组将继续研究，并与法援署商讨是否需要为其主要工作表现指标加入新项目，以便更确切反映其实际表现。

- iii) two IT experts to advise on how the required information, if not yet readily available, could be generated from LAD's computer system and the system requirements to achieve the purpose if necessary; and
- iv) one statistician to give advice on the statistical data produced by LAD.

Apart from invitation by the Council chairman, Council members who have interest in the subject may also join the Task Force. At present, members of the Task Force comprise Council members Mr Albert IP, Mr Clarence LEUNG and Ms Josephine PINTO, ex-Council members Dr Witman HUNG and Mr Billy MA, as well as non-Council members Mr Eddie IP, Mr Peter KUNG, Mr Alvin LI and Mr Jason WU. To enable an effective discussion of the statistical information disseminated by LAD, upon invitation, the Deputy Director of Legal Aid (Policy and Administration) sits on the Task Force as representative of LAD.

Review of the Information Disseminated by LAD

At its first meeting held on 16 June 2014, the Task Force identified the criticisms against the legal aid services provided by LAD that could be addressed by improving the dissemination of information. The issues concerned include:

- a) the assignment of legal aid cases;
- b) the legal aid budget; and
- c) the independence of granting legal aid particularly to applicants who pursue claims against the Government

法律援助案件的外判情况

持分者的关注及相关跟进工作

早前法庭就两宗广为人知的司法复核案件作出裁决后，法律援助署按照受助人的提名委派律师处理案件的安排一直备受关注。在立法会司法及法律事务委员会于2012年1月举行的会议中，谭耀宗议员曾建议法律援助署推行一个申报制度，在委派律师前，要求申请人申报其提名律师的决定并非受到兜揽生意活动或其他不当行为所影响。同年，谭议员亦再次在特别财务委员会的提问中带出这个议题。

在2012年4月，交通事务委员会和财经事务委员会辖下联合小组委员会的会议中讨论到，《法律援助条例》赋予法律援助申请人选择其代表律师的权利，可能是导致承保的士和公共小巴的保险公司因作出大额赔偿而出现亏损的其中一个因素。法律援助署获邀回应小组委员会对法律援助案件可能涉及包揽诉讼的关注。

法律援助署明白有关忧虑。为确保受助人有胜任的律师代表，而选择该名律师是出自其意愿，并非受该名大律师或律师的不当行为所影响，在考虑两个法律专业团体的意见后，「申报制度」于2013年9月正式推行。在新制度下，如获提名律师未能确认自己并不涉及任何不当兜揽生意行为，便不得接受相关委派，

Up till now, the Task Force has completed studying the statistics relating to the first two issues. It would continue the study and discuss with LAD on its key performance indicators (KPIs) to see whether new items could be added to better demonstrate its actual performance.

Assignment of Legal Aid Cases

Concerns of Stakeholders and Follow-up Actions Taken

There have been concerns over the assignment of lawyers by LAD in judicial review cases based on the aided persons' nomination following the court's rulings in two high profile judicial review cases. At the meeting of the Administration of Justice and Legal Services (AJLS) Panel of the Legislative Council (LegCo) held in January 2012, the Honourable Tam Yiu Chung suggested LAD considering the implementation of a declaration system requiring the applicant, before case assignment, to declare that his/her choice of lawyers had not been affected by touting or other improper conduct on the part of the lawyers nominated. The issue was brought up again in the form of a Special Finance Committee question raised by Mr Tam in the same year.

In a joint sub-committee meeting of the Panel on Transport and on Financial Affairs in April 2012, there was also discussion that the right of an applicant for legal aid to select his/her own solicitor under the Legal Aid Ordinance (LAO) might be a contributing factor to the losses in underwriting insurance for taxi and public light bus as a result of substantial claims being made. LAD was invited to address the sub-committee's concern over possible champerty in some legal aid cases.

并须把个案文件交还法援署。此外，自2013年年底起，法援署严格根据外判案件数量的准则来委派律师跟进人身伤害申索及相关案件。在2015年2月，法援署进一步加紧对外判案件安排的监管，除司法复核案件外，所有类别案件的外判安排均须严格按照上述准则处理。

除上述之外，法援署也采取了不少措施，以打击律师妨碍受助人自由选择律师的不当兜揽生意活动。法援署在法援通讯刊登有关索偿代理的文章、在其办事处内展示宣传海报，以及制作短片提醒公众在进行金钱申索时切勿向索偿代理寻求协助。法援署亦禁止律师行代理在署方办事处派名片，此外，该署于17间公立医院的急症室内张贴海报，提醒公众小心提防索偿代理。法援署将加强力度，物色更多合适的场所宣传提防索偿代理的讯息。

外判法援案件的统计数据

目前，法援署透过其网站和年报或通过政府的开支预算案来发放资讯/统计数据，并向本局提交季度报告。

为了解目前发放的资讯是否足以展示法援案件委派的实际情况，以及外判案件没有受不当兜揽生意活动所影响，专责小组研究了以下的统计数据：



LAD noted the concerns. To ensure that aided persons will be represented by competent lawyers and their choice of lawyer is entirely out of their own free will and is not the result of any improper conduct on the part of the solicitor or counsel nominated, a “Declaration System” was put in place in September 2013 after taking into account the views of the two legal professional bodies. Under the new system, the nominated lawyers are required to return the case papers to LAD if they are unable to confirm that they are not involved in any improper touting activities. Besides, since late 2013, strict adherence to the assignment criteria on the number of cases has been adopted for personal injury and related cases. In February 2015, LAD further extended the strict adherence to assignment criteria to cover all types of cases except judicial review cases.

Apart from the above, LAD has taken a number of measures to combat improper touting activities by solicitors designed to curb the freedom of aided persons over their choice of lawyer. LAD has published articles on recovery agent in LAD News, displayed posters at its office premises and produced video documentary warning the public against seeking help from recovery agents to assist them in their monetary claims. LAD has also chased away



- i) 外判案件予大律师的分布情况；
- ii) 外判案件予律师的分布情况；
- iii) 拥有超过10年执业经验及处理外判案件数量达16至30宗或5至15宗的大律师；
- iv) 获委派最多民事案件的20位律师；
- v) 外判给指定律师的民事案件统计数据；
- vi) 2013-14年度获委派最多案件的20位律师于该年度及2009年至2014年期间获委派的民事案件数目；
- vii) 2009-10年度至2013-14年期间获委派最多案件的20位律师于该年度获委派的民事案件数目

agents of law firms giving out name cards at its office. In addition, LAD has arranged displaying posters at the Accident & Emergency Department of 17 public hospitals warning the public against recovery agents. They will step up the effort by identifying more places at which they could alert the public about the recovery agents.

Statistics on Assignment of Legal Aid Cases

Currently, LAD disseminates its information/statistics through its website and annual departmental report or via the Government's estimates of expenditure. It was also provided in a quarterly report to the Council.

To understand whether the information currently disseminated is adequate to demonstrate the actual situation of legal aid cases allocation and that the assignment of legal aid cases has not been affected by improper touting activities, the Task Force has studied the following statistics:

- i) distribution of assignments to counsel;
- ii) distribution of assignments to solicitors;
- iii) counsel with over 10 years of experience in assignment categories 16 - 30 and 5 - 15;
- iv) top 20 solicitors in terms of number of assignments for civil cases;
- v) statistics on assignments to selected solicitors in civil cases;
- vi) number of civil cases assigned to top 20 solicitors in 2013-14 and their respective assignments from 2009 to 2014; and
- vii) number of civil cases assigned to each of the top 20 solicitors, 2009-10 to 2013-14.

总结及建议

在检讨法援署提供的统计数据及补充资料后，专责小组认为总体来说，外判予律师的案件数量属合理水平，而一些例外情况的解释亦可接纳。专责小组相信，若此等统计数据可定期发放的话，应可以减少外界对法援案件外判安排的不必要批评或怀疑，因为这些数据不但展示了外判案件的分布情况，也可显示个别律师获委派的案件数量是否超出上限。长远来说，该等统计数据可作为一个追查记录，同时对利用外判制度而得益的律师起了显著的阻吓作用，进而协助打击不当兜揽生意活动。另一方面，法律专业团体亦可以根据这些统计数据来监察其会员获委派法援工作的情况。因此，专责小组建议法援署于其网站及/或年报列出获委派最多外判案件的律师所处理的案件详细分项。

法援署的回应

为提升其运作透明度，法援署原则上同意改善电脑系统，以便整理外判案件的统计数据，及把相关数据在年报内刊出，而年报亦会上载至网站。

Conclusion and Recommendations

Having reviewed the statistics and the supplementary information provided by LAD, the Task Force considered that on the whole the number of assignments to lawyers was at a reasonable level and the explanations given to the exceptions were acceptable. The Task Force believed that if the statistics were provided on a regular basis, it could help reduce the unnecessary criticism/suspicion on the allocation of legal aid work. It was because the statistics not only demonstrated the distribution of assignments but also showed if the number of assignments to a particular lawyer had exceeded the assignment limit. In the long run, the statistics could form a track record and serve as a strong deterrent for the lawyers who took advantage of the assignment system which consequently could help combating the improper touting activities. On the other hand, the legal professional bodies could base on the statistics to monitor the assignment of legal aid work to their members. Therefore, the Task Force suggested LAD publishing the breakdown of assignments to the top lawyers through its website and/or annual report.

Response of LAD

LAD in principle agreed to compile the relevant statistics on assignment to promote transparency by enhancing their computer system and publishing the same in LAD's Annual Report, which will be uploaded to LAD's website.

法律援助财政预算

持分者的关注及相关跟进工作

在司法及法律事务委员会于2013年6月25日举行的会议中，大律师公会在讨论成立独立的法律援助管理局时，提出其对法律援助财政预算的意见。大律师公会认为「法援预算不设上限」只是虚言，因为法援署从未申请追加拨款，而且每年的相关开支亦一直保持平稳。因此，大律师公会认为法援预算实际上设有上限。因应这个议题，行政当局在同一会议上向委员会委员简介了香港法律援助拨款制度。为回应委员会的要求，行政当局在2013年9月提交了文件，说明法律援助经费预算的厘定，并确认政府为法援服务一直提供足够的拨款。

法律援助经费预算的厘定

如行政当局所解释，法援申请由需求主导，法定的经济审查和案情审查是审批法援申请的唯一准则。因此，任何已通过经济审查及案情审查的法援申请，均不会因法援拨款不足而被拒。换言之，法援署的财政状况不会影响任何寻求司法公义的人士。

如其他政府部门，法援署每年的法援经费预算均经过全面考虑过去的实际开支和来年的预计开支而厘定。基于行政理由，行政当局会在

Legal Aid Budget

Concerns of Stakeholders and Follow-up Actions Taken

At the meeting of the AJLS Panel held on 25 June 2013, the Bar Association made a comment on the budget of legal aid in the discussion of the issue of the establishment of an independent legal aid authority. It opined that the “uncapped budget” was a myth in that LAD had never sought supplementary provision and had maintained a stable trend in expenditure. The Bar Association considered that there was a de facto capped budget for LAD. On this matter, the Administration briefed Panel members on Hong Kong’s legal aid funding mechanism at the same meeting. In response to the Panel’s request, the Administration also made a submission in September 2013 explaining the budgeting of legal aid costs and confirming that the Government had been making sufficient provision in the Estimates of Expenditure for the legal aid services all along.

Budgeting of Legal Aid Costs

As explained by the Administration, legal aid applications are demand-driven. The statutory means and merits tests are the only criteria in assessing legal aid applications. Therefore, an application for legal aid that has passed both the means and merits tests will not be refused due to insufficient legal aid funding. In other words, a person’s access to justice will not be hindered by LAD’s fiscal position.

LAD’s annual estimates on legal aid costs, like other government expenditure, are drawn up holistically taking into account the past actual expenditure and



每个财政年度开始时为部门设定一个核准拨款额。在特殊情况下，若财政年度内的法援服务开支超出核准拨款，行政当局便会寻求增拨款项，以确保合格的法援申请不会因缺乏经费而被拒。

法律援助经费的统计数据

目前，法援署透过其网站和年报，以及通过政府的开支预算案来发放有关法律援助经费的资讯/统计数据。有关资讯/统计数据亦载于法援署向本局提交的季度报告内。

为了对过去5年的法援经费的变动有更全面的掌握，并检视每年的核准拨款额是否追得上经费的变动，专责小组研究了法援经费的统计数据。

the estimated expenses for the coming year. For administrative purpose, an approved funding amount is set at the beginning of each financial year. In exceptional circumstances where the legal aid costs exceed the approved provision within a financial year, supplementary provision will be sought to ensure that no eligible legal aid applications will be turned down owing to a lack of funds.

Statistics on Legal Aid Costs

Currently, LAD disseminates information/statistics on legal aid costs through its website and annual departmental report, as well as the Government's Estimates of Expenditure. It also included such information/statistics in its quarterly report to the Council.

To have a clearer picture on the changes in legal aid costs throughout the past 5 years and whether the approved estimates had fallen behind, the Task Force has studied the statistics on legal aid costs.

Conclusion and Recommendations

Against the budgeting of legal aid costs, the Task Force considered that there was no undue limitation for the legal aid budget and the budgeting system was transparent and administered in a fair way. As the indices on approved estimates and actual expenditure of LAD were good indicators, to enhance the Department's operational transparency, the Task Force suggested LAD publishing the indices in its website and/or annual report.

In the course of discussion, the Task Force was given to note that how much LAD would spend on legal aid

总结及建议

对于法援经费的财政预算，专责小组认为有关预算并没有受到不适当的限制，而制定财政预算的制度亦公开公正。由于法援署的核准预算和实际开支指数是良好的监察指标，专责小组建议法援署在其网站及/或年报刊载这些指数，以提高其运作透明度。

在讨论的过程中，专责小组知悉，律师提交帐单的时间是其中一个影响法援署法援开支的因素，而这个因素并非法援署所能控制。而且，由接获法援申请至案件索偿金额得到裁决所需的时间，会因应个别案件而有所不同，甚至可能长达两年或以上。由于处理每宗法援个案都需要一定的时间，专责小组赞同法援署不可能控制法援的开支，加上法援署已制定处理申请的服务指标，相信法援署不会故意拖延处理申请的过程，以减少某特定时期内的法援经费，因为公众可于相关网站浏览法援署年报及政府的开支预算案，从而知悉其实际服务表现。

法援署的回应


法援署同意以2009-10年作为基准年份，于部门年报内刊载核准预算和实际开支指数，并上载至部门网站。法援署同时确认其法援经费受多个因素所影响，包括律师提交帐单的时间、帐单的金额等。律师可



costs was subject to, among other things, the timing of submission of the lawyers' bills, which was not within the Department's control. Also, from the date of receiving an application to the date of concluding the case when costs matters were resolved, the time required for completing the whole process varied from case to case and might take about 2 or more years. The Task Force agreed with LAD that given the considerable length of the life span of legal aid cases, it was not possible to have any manipulation on the expenditure. In addition, LAD has set performance targets on the processing of applications. It was believed that LAD would not intentionally prolong the processing time with a view to reducing the legal aid costs within a specified period as its actual performance could be accessed by members of the public via LAD's annual report and the Government's Estimates of Expenditure uploaded onto the respective websites.

Response of LAD

LAD agreed to publish indices on approved estimates and actual expenditure with 2009-10 as the base year in the Department's annual report and upload the same to LAD's website. LAD also confirmed that the amount of legal



在法律援助证书发出后于任何时间提交分期或总计帐单，而提交帐单的时间并非法律援助署可以控制。因此，延长法律援助申请处理时间并不能阻止律师提交帐单，亦无助于减少案件所引致的法律费用。再者，法律援助署已就处理民事及刑事法律援助申请订立服务承诺，而统计数据亦显示法律援助署处理申请的表现超越服务指标。相关的数据已刊登于法律援助署年报并上载至其网站，公众透过互联网便可轻易取得有关资讯。因此，有关署方拖延申请处理时间以减低法律援助经费的说法只是一个误解。

aid costs spent by LAD was affected by various factors, including the timing of submission of bills by lawyers, the amount claimed in those bills, etc. Lawyers might at any time after the granting of legal aid certificates tender their interim or final bills, of which LAD did not have control. Therefore, lengthening the processing time for legal aid applications would not stop lawyers from submitting their bills or help to reduce the amount of legal costs incurred for the cases. Furthermore, LAD had in place performance pledges for processing civil and criminal legal aid applications. Statistics showed that LAD's performance of processing applications exceeded the performance targets. The related statistics were published in the Department's annual reports which were uploaded onto LAD's website and could easily be accessed by the public through the internet. Hence, the assertion of reducing the legal aid costs by lengthening the processing time was but a misconceived perception.

