

检视法律援助制度的运作

Review of the Operations of the Legal Aid System

「法治」是香港的核心价值和赖以成功的基石。为确保市民享有《基本法》第二十五条所赋予的权利，即「香港居民在法律面前一律平等」，确保没有人会因欠缺经济能力而无法寻求公义乃至为重要。在过去50年，法律援助署（法援署）的专业和卓越表现，成就一个备受国际推崇以及全面的法援制度，并在香港一直担当着重要角色。

尽管如此，社会越来越关注法援受助人（受助人）可能滥用提名律师的机制，尤其在司法覆核案件。此外，亦有关某些刑事法援案件及与司法覆核有关的法援案件有否集中由某些律师、律师事务所或大律师事务所处理。

鉴于法援制度对维护本港法治的重要性，政府必须维持公众对该制度的信心，确保法援制度持续达到市民的期望。按照上述方针，政务司司长办公室与法援署为达致以下目标，于2021年10月完成检视法律援助制度：

- (a) 加强管理法援申请及个案，以防范法援制度可能出现滥用的情况；
- (b) 提升法援署工作的透明度，以加深公众对该署工作的认识和了解，并提升对法援制度的信心；以及
- (c) 增加合资格接办法援案件的律师人数，以加强防止获委派案件过度集中的情况，长远而言，让受助人获益。

“Rule of law” is a core value of Hong Kong and a cornerstone of its success. To ensure that “All Hong Kong residents should be equal before the law” as provided for in Article 25 of the Basic Law, it is of vital importance that no one is denied access to justice because of lack of means. Hong Kong has an internationally acclaimed and comprehensive legal aid system which has been playing this important role. This relied very much on the professionalism and excellent work accomplished by Legal Aid Department (LAD) over the past 50 years.

Nevertheless, there have been growing community concerns over the potential abuse in the nomination of lawyers by legally aided persons (APs), in particular for judicial review (JR) cases. There are also concerns on whether some criminal legal aid cases and JR-related legal aid cases are concentrated in only a handful of lawyers, law firms or counsel chambers.

Given the importance of the legal aid system in upholding the rule of law in Hong Kong, it is essential to maintain public’s confidence in the system, and ensure that the system can continue to meet the aspirations of the community. Along the above direction, Chief Secretary for Administration’s Office and LAD have examined the legal aid system and conducted a review in October 2021 with the objectives to –

- (a) enhance the management of legal aid applications and cases to prevent potential abuse of the legal system;
- (b) enhance the transparency of LAD’s work to raise the public’s awareness and understanding of its work and confidence in the system; and
- (c) enlarge the pool of qualified lawyers to take up legal aid cases with a view to strengthening the prevention of overconcentration in assignment and benefitting the APs in the longer term.



完善制度的建议措施

受助人提名律师及法援署委派案件

为释除公众对案件过分集中由某些律师及大律师接办的疑虑，以及在更平均地分配案件给同样符合资格的律师和容许受助人提名律师两者之间取得平衡，法援署将就律师可接办与司法覆核有关的法援案件设立新限额，计算在每名律师 / 大律师可接办的所有民事法援案件限额内，即每名律师可接办的案件限额为5宗，每名大律师可接办的案件限额为3宗。新建议会增加可处理与司法覆核有关案件的律师及大律师的数目。由于与司法覆核有关的案件相对较少及较复杂，若有更多具备相关经验的律师及大律师可接办有关案件，长远来说对受助人和法援制度都会有所裨益。

Enhancement Measures Proposed in the Review

Nomination of Lawyers and Assignment of Cases

To ease the public's concern on overconcentration of cases among certain solicitors and counsel, while striking a balance between distributing cases more evenly to equally qualified lawyers and allowing APs to nominate their lawyers, new assignment limits would be imposed on JR-related legal aid cases among the overall limit for all civil legal aid cases, namely five for each solicitor and three for each counsel. This would increase the number of solicitors and counsel involved in JR-related cases. Given JR cases' relative rarity and complexity, having more solicitors and counsel who have such experience will in the long run be beneficial to both the APs and the legal aid system.

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民事案件方面，每位律师和大律师可接办的民事法律案件限额分别为35宗和20宗。政府会不时检讨及在行政上调整这些个案数目的上限。上一次的调整在2018年，当时每位律师的案件限额由45宗调低至现时的35宗，大律师的限额则由25宗调低至现时的20宗。为了进一步防止过度集中委派案件予某些律师/大律师的可能及加强把关，法援署将进一步下调每位律师可接办的民事法援案件限额至30宗和每位大律师的限额至15宗。长远而言，新限额有助增加《法律援助名册》(《名册》)内合资格并具经验的法援律师数目。

《法律援助条例》(第91章)有条文规定民事法援案件的受助人自行提名律师的情况，但规管刑事法援案件的《刑事案件法律援助规则》(第221D章)则没有就提名律师事宜订定条文。然而，多年来，刑事案件的受助人往往会自行提名律师，而署方会像审批民事案件的提名般审批这类提名。虽然法援署署长会在考虑多项因素后决定是否接纳有关提名，但这做法让受助人和市民产生错误印象，以为在刑事案件提名律师是受助人的法定「权利」。

为免产生错误印象，以及为让法援署可逐步累积更多具备处理刑事法援案件经验的律师，标准做法会由法援署署长指派律师予受助人，并只在特殊情况下才接受提名律师，例如所提名的律师曾在下级法院代表受助人。

法援署会根据案件的性质和审讯所属法院，在考虑律师的专业范畴和经验后，为《名册》内的律师设立不同登

For civil case, the overall assignment limits for solicitors and counsel are 35 and 20 respectively. These limits are subject to review and administrative adjustments from time to time. The last change was made in 2018 when the limits were lowered from 45 to the current level of 35 for solicitors, and from 25 to the current level of 20 for counsel. To further forestall possible over-concentration of cases among certain solicitors / counsel and strengthen gatekeeping, the assignment limits would be further adjusted downward to 30 for solicitors and 15 for counsel. In the long run, the new limits will also facilitate the creation of a wider pool of qualified / experienced lawyers on the Legal Aid Panel (the Panel).

Unlike civil legal aid cases which are covered by the Legal Aid Ordinance (Cap. 91), nomination of lawyers for criminal cases is not provided for under the Legal Aid in Criminal Cases Rules (Cap. 221D). However, the practice over the years is that APs for criminal cases used to nominate a lawyer and LAD would consider such nominations in a similar manner as that in civil cases. Although Director of Legal Aid (DLA) would decide on whether the AP's nomination should be acceded to after taking into account a number of factors, this practice has given some APs and members of the public a misconception that the nomination of lawyers for criminal cases is a statutory "right" of the APs.

To avoid such misconception and to allow LAD to build up a larger pool of Panel lawyers with experience in handling criminal legal aid cases, the standard practice would be for DLA to assign lawyers to APs. DLA should only accept nomination of lawyers under exceptional circumstances, such as the nominated lawyer having represented the AP in lower court(s).

LAD would set up registers of lawyers on the Panel for cases of different nature and at different courts, having

注册；亦会考虑为一些登记册制订轮替表。不过，最终的指派决定仍会由法援署署长作出。这项措施连同司法覆核个案的新委派限额，以及下调后的民事法援个案委派限额，应有助增加《名册》内符合资格接办各类案件的法援律师数目，长远来说会对受助人有利。

加强个案管理工作

为更妥善管理委派的法援个案，法援署将引入下列改善措施：

- (a) 要求外委律师，如他们预计自己无法履行职责，例如因刑事罪行被捕或被起诉，须及时通知法援署。如他们未能及时通知法援署，便须承担后果；
- (b) 订立机制，以便在原本委派的律师被认为有利益冲突，或出现某些情况导致他们不适宜/无法代表受助人时，法援署可把个案重新委派予其他律师；
- (c) 如受助人（或外委律师）在未经法援署事先同意下增聘私人执业律师（即使属义务性质或最终遭法庭拒绝），法援署会取消有关法援（或重新委派律师）；
- (d) 要求受助人在法援申请获批之前及之后，就其个案申报其他资助来源；
- (e) 成立专责的内部司法覆核监察委员会，由法援署署长担任主席，监督与司法覆核有关的外委案件的管理工作；以及

regard to the expertise and experiences of the lawyers. LAD would consider devising rosters for some of the registers. Nonetheless, DLA would make the final decision on the assignment. Like the new limits for JR cases and lower assignment limits for civil legal aid cases, this measure should help create larger pools of qualified legal aid lawyers on the Panel for different types of cases and in turn benefit the APs in the longer term.

Strengthening Case Management

To better manage assigned legal aid cases, LAD would introduce the following improvement measures:

- (a) impose a duty on assigned lawyers to inform LAD timely if it is foreseeable that they will not be able to perform their duties, such as in situations where the assigned lawyer has been arrested or charged for a criminal offence, and there will be consequences for failure to timely inform LAD;
- (b) build in a mechanism to reassign a case to other lawyers where the originally assigned lawyers are perceived to have conflict of interests or under situations which render them unsuitable / unavailable for representing the APs;
- (c) discharge legal aid (or reassign lawyers) when the AP (or the assigned lawyers) engages additional private lawyers (albeit on a pro bono basis or eventually rejected by the Court) without LAD's prior agreement;
- (d) ask APs to declare alternative source(s) of financial aid for their cases before and after the legal aid application has been approved;
- (e) set up a dedicated internal JR Monitoring Committee, to be chaired by DLA, to oversee the administration of assignments to lawyers for JR-related cases; and

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- (f) 在有需要时，定期向本局汇报处理司法覆核案申请及管理相关获批个案的情况。

就与司法覆核有关的案件而言，法律援助署会从以下几方面加强它的把关角色：

- (a) 除了继续严谨地进行案情审查，并只批出法援予具合理理据的司法覆核案申请者外，分阶段发出有限度的法援证书，让法律援助署严密监察有关案件在法律程序中不同阶段的理据（例如在司法覆核许可获得批准的情况下才扩大法援证书的范围）。对于再没合理理据继续进行法律程序的案件，法律援助署会取消有关的法援证书；
- (b) 严格审查涉及寻求相同或实质相同结果而提出的多宗司法覆核法援申请，当中只有最具实质理由进行司法覆核的申请才会获批法援；以及
- (c) 继续行使发出法定命令的权力，如有人濫用法援服务，例如多次在没有充分理由或一再被拒发证书的情况下仍提出申请，其申请将概不受理，为期最长3年。

这些措施可加强防范法律援助制度可能遭到濫用，有助确保公帑用得其所；而通过更妥善地管理外委个案，受助人的利益亦会获得保障。

提高透明度

近期社会对法律援助的不少疑虑，似乎出于对法律援助工作的一些误解和错误印象。碍于法律专业保密权及

- (f) regularly report to the Council on LAD's handling of JR applications and management of relevant approved cases where necessary.

For JR-related cases, to strengthen its gate-keeping role, LAD would –

- (a) while continuing to apply stringent merits test and only grant legal aid to JR-related applications with reasonable grounds, issue limited legal aid certificates by stages such that LAD will vigilantly monitor merits of cases at various stages of proceedings (e.g. to extend the legal aid certificates on the condition that leave for JR is granted) and discharge those which cease to have reasonable grounds to proceed;
- (b) critically examine legal aid applications that involve multiple JR proceedings seeking the same or substantially the same outcome and grant legal aid only to the application which involves the most substantive grounds for JR; and
- (c) continue to exercise its authority to issue statutory orders that no application from a person would be processed for up to a period of three years if that person abuses legal aid services, e.g. through numerous applications made without sufficient grounds and repeated refusal.

These measures will bring about stronger prevention against potential abuse of the legal aid system and thereby help ensure the efficient use of public funds. Interests of APs can also be upheld through better management of assigned cases.

Enhancing Transparency

It appears that many of the recent concerns in the community towards LAD stem from certain misunderstanding and misconception of LAD's work. Often, LAD may not

某些私隱限制，法援署往往未能迅速澄清其立場或有關個案詳情。法援署將要求法援申請人（或可從與司法覆核有關案件的申請人開始）給予書面同意，容許法援署在法援署署長認為合適的情況下，披露該申請人的申請結果及 / 或批准或拒絕申請的原因。

在不違反任何法律程序及相關私隱限制的情況下，法援署會定期在其網站公布與各類案件（包括司法覆核案件）相關的法援統計資料。法援署亦會清楚列明案情審查的準則和考慮因素，以及委派法援案件的準則，例如：個別律師事務所的人手、資源，以及如何評估這些因素；外委律師在其律師事務所的表现記錄；以及曾否延誤法援案件的進度等，以供公眾和法律業界參考。

實施情況

本局支持政府於2021年10月提出的改善措施建議，並期望完善制度的建議措施得以尽早實施。

be able to clarify its stance or case details in a quick manner as it is bound by legal professional privilege and certain privacy restrictions. LAD would request legal aid applicants (may start with JR-related ones) to give their written consent to LAD for disclosing the result and / or the reason for granting or refusing their applications whenever DLA considers appropriate.

Without compromising any court proceedings and relevant privacy restrictions, LAD would also regularly release relevant legal aid statistics for various types of cases (including JR cases) on its website. LAD would set out clearly the criteria and factors taken into account in its conduct of the merits test and the criteria adopted in the assignment of legal aid cases, such as the manpower and resource of individual law firms and how to assess them, performance records of the assigned lawyers in the firm, and whether there has been delay in progress in legal aid cases, etc. for reference of the public and the legal profession.

Implementation

The Council endorsed the proposed enhancement measures in October 2021 and is looking forward to the implementation of the proposed enhancement measures.

