

檢視法律援助制度的運作

Review of the Operations of the Legal Aid System

「法治」是香港的核心價值和賴以成功的基石。為確保市民享有《基本法》第二十五條所賦予的權利，即「香港居民在法律面前一律平等」，確保沒有人會因欠缺經濟能力而無法尋求公義乃至為重要。在過去50年，法律援助署（法援署）的專業和卓越表現，成就一個備受國際推崇以及全面的法援制度，並在香港一直擔當着重要角色。

儘管如此，社會越來越關注法援受助人（受助人）可能濫用提名律師的機制，尤其在司法覆核案件。此外，亦有關注某些刑事法援案件及與司法覆核有關的法援案件有否集中由某些律師、律師事務所或大律師事務所處理。

鑑於法援制度對維護本港法治的重要性，政府必須維持公眾對該制度的信心，確保法援制度持續達到市民的期望。按照上述方針，政務司司長辦公室與法援署為達致以下目標，於2021年10月完成檢視法律援助制度：

- (a) 加強管理法援申請及個案，以防範法援制度可能出現濫用的情況；
- (b) 提升法援署工作的透明度，以加深公眾對該署工作的認識和了解，並提升對法援制度的信心；以及
- (c) 增加合資格接辦法援案件的律師人數，以加強防止獲委派案件過度集中的情況，長遠而言，讓受助人獲益。

“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.



完善制度的建議措施

受助人提名律師及法援署委派案件

為釋除公眾對案件過分集中由某些律師及大律師接辦的疑慮，以及在更平均地分配案件給同樣符合資格的律師和容許受助人提名律師兩者之間取得平衡，法援署將就律師可接辦與司法覆核有關的法援案件設立新限額，計算在每名律師 / 大律師可接辦的所有民事法援案件限額內，即每名律師可接辦的案件限額為5宗，每名大律師可接辦的案件限額為3宗。新建議會增加可處理與司法覆核有關案件的律師及大律師的數目。由於與司法覆核有關的案件相對較少及較複雜，若有更多具備相關經驗的律師及大律師可接辦有關案件，長遠來說對受助人和法援制度都會有所裨益。

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.

檢視法律援助制度的運作

Review of the Operations of the Legal Aid System

民事案件方面，每位律師和大律師可接辦的民事法律案件限額分別為35宗和20宗。政府會不時檢討及在行政上調整這些個案數目的上限。上一次的調整在2018年，當時每位律師的案件限額由45宗調低至現時的35宗，大律師的限額則由25宗調低至現時的20宗。為了進一步防止過度集中委派案件予某些律師/大律師的可能及加強把關，法援署將進一步下調每位律師可接辦的民事法援案件限額至30宗和每位大律師的限額至15宗。長遠而言，新限額有助增加《法律援助名冊》(《名冊》)內合資格並具經驗的法援律師數目。

《法律援助條例》(第91章)有條文規定民事法援案件的受助人自行提名律師的情況，但規管刑事法援案件的《刑事案件法律援助規則》(第221D章)則沒有就提名律師事宜訂定條文。然而，多年來，刑事案件的受助人往往會自行提名律師，而署方會像審批民事案件的提名般審批這類提名。雖然法援署署長會在考慮多項因素後決定是否接納有關提名，但這做法讓受助人和市民產生錯誤印象，以為在刑事案件提名律師是受助人的法定「權利」。

為免產生錯誤印象，以及為讓法援署可逐步累積更多具備處理刑事法援案件經驗的律師，標準做法會由法援署署長指派律師予受助人，並只在特殊情況下才接受提名律師，例如所提名的律師曾在下級法院代表受助人。

法援署會根據案件的性質和審訊所屬法院，在考慮律師的專業範疇和經驗後，為《名冊》內的律師設立不同登

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

記冊；亦會考慮為一些登記冊制訂輪替表。不過，最終的指派決定仍會由法援署署長作出。這項措施連同司法覆核個案的新委派限額，以及下調後的民事法援個案委派限額，應有助增加《名冊》內符合資格接辦各類案件的法援律師數目，長遠來說會對受助人有利。

加強個案管理工作

為更妥善管理委派的法援個案，法援署將引入下列改善措施：

- (a) 要求外委律師，如他們預計自己無法履行職責，例如因刑事罪行被捕或被起訴，須及時通知法援署。如他們未能及時通知法援署，便須承擔後果；
- (b) 訂立機制，以便在原本委派的律師被認為有利益衝突，或出現某些情況導致他們不適宜/無法代表受助人時，法援署可把個案重新委派予其他律師；
- (c) 如受助人（或外委律師）在未經法援署事先同意下增聘私人執業律師（即使屬義務性質或最終遭法庭拒絕），法援署會取消有關法援（或重新委派律師）；
- (d) 要求受助人在法援申請獲批之前及之後，就其個案申報其他資助來源；
- (e) 成立專責的內部司法覆核監察委員會，由法援署署長擔任主席，監督與司法覆核有關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

檢視法律援助制度的運作

Review of the Operations of the Legal Aid System

- (f) 在有需要時，定期向本局匯報處理司法覆核案申請及管理相關獲批個案的情況。

就與司法覆核有關的案件而言，法援署會從以下幾方面加強它的把關角色：

- (a) 除了繼續嚴謹地進行案情審查，並只批出法援予具合理理據的司法覆核案申請者外，分階段發出有限度的法援證書，讓法援署嚴密監察有關案件在法律程序中不同階段的理據（例如在司法覆核許可獲得批准的情況下才擴大法援證書的範圍）。對於再沒合理理據繼續進行法律程序的案件，法援署會取消有關的法援證書；
- (b) 嚴格審查涉及尋求相同或實質相同結果而提出的多宗司法覆核法援申請，當中只有最具實質理由進行司法覆核的申請才會獲批法援；以及
- (c) 繼續行使發出法定命令的權力，如有人濫用法援服務，例如多次在沒有充分理由或一再被拒發證書的情況下仍提出申請，其申請將概不受理，為期最長3年。

這些措施可加強防範法援制度可能遭到濫用，有助確保公帑用得其所；而通過更妥善地管理外委個案，受助人的利益亦會獲得保障。

提高透明度

近期社會對法援署的不少疑慮，似乎出於對法援署工作的一些誤解和錯誤印象。礙於法律專業保密權及

- (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現記錄；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盡早實施。

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.

