

年度摘要 The Year at a Glance

实施完善法律援助制度措施

Implementation of the Enhancement Measures to 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。

政府于2021年10月推行完善法律援助制度措施前，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。有意见认为某些有若干政治立场的律师可能首先向受助人提供「义务性质」的协助，鼓励他们针对政府提出司法覆核，然后有关受助人会向法援署提名这些律师以委派他们为法援律师。此外，亦有关某些刑事法援案件和司法覆核相关的法援案件有否集中在少数律师、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，并确保法援制度持续达到市民的期望，政府检视了法援制度，并于2021年10月相应提出一系列完善法律援助制度的措施，从而：

(a) 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.

Prior to the introduction of the enhancement measures to the legal aid system by the Government in October 2021, there were 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 were suggestions that some lawyers with certain political inclination might, by offering assistance to the APs first on a “pro bono” basis, encourage them to initiate JR cases against the Government, and the APs concerned would then formally nominate these lawyers for the LAD to assign them as legal aid lawyers. There were also concerns on whether some criminal legal aid cases and JR-related legal aid cases were concentrated in a handful of lawyers, law firms or chambers.

Given the importance of the legal aid system in upholding the rule of law in Hong Kong and to ensure that the system could continue to meet the aspirations of the community, the Government conducted a review of legal aid system and accordingly proposed a wide array of enhancement measures to the system in October 2021 to –

(a) 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;

- (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) 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。

所有改善措施已于2021年年底全面落实。法援署于2023年2月向本局汇报完善措施的实施进展如下。

实施进展

委派案件

下调可接办的民事案件限额

根据该项措施，每名律师和大律师可接办的民事案件限额分别由35宗和20宗减少至30宗和15宗。自实施以来，委派予每名《名册》律师的平均案件数目有所减少，显示这项措施有助减少案件可能过度集中于某些律师／大律师的情况，长远而言有助增加可接办法援案件的律师数目。

设立新的可接办司法覆核案件限额

政府已就律师可接办与司法覆核有关的法援案件设立新限额，每名律师可接办的案件限为5宗，每名大律师可接办的案件限为3宗，并计算在每名律师／大律师可接办的所有民事法援案件限额内。除有充分理据支持委派同一律师接办的数宗紧密相连集体／相关集体司法覆核案件外，并无《名册》律师获委派超过委派限额的司法覆核案件。

- (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) enhance the management of legal aid applications and cases to prevent potential abuse of the legal system.

All the enhancement measures have been fully implemented by the end of 2021. In February 2023, LAD reported to this Council the implementation progress of the enhancement measures as follows.

Implementation Progress

Assignment

Reduced overall civil case assignment limits

Under this measure, the overall civil case assignment limits have been reduced from 35 to 30 for solicitors and 20 to 15 for counsel. Since its implementation, the average number of cases assigned to each panel lawyer has reduced showing that this measure is useful in reducing possibility of over-concentration of cases among certain solicitors/counsel, and widening of the pool of lawyers available for taking up legal aid cases in the longer run.

Setting up new assignment limit for JR cases

New assignment limits, at 5 for solicitors and 3 for counsel, have been imposed on JR-related legal aid cases among the overall limit for all civil legal aid cases. Save for a few group/connected group JR cases that are inextricably intertwined and hence assignment of the same lawyer is justifiable, no panel lawyer has been assigned JR cases exceeding the assignment limit.

实施完善法律援助制度措施

Implementation of the Enhancement Measures to Legal Aid System

自这项措施落实以来，委派予每名《名册》律师的平均司法覆核案件数目显著减少。如下表所示，这项措施有效释除对案件过份集中由某些律师／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。

Since the implementation of this measure, the average number of JR cases assigned to each panel lawyer has reduced significantly as tabulated below, showing that this measure has effectively eased the concern on over-concentration of cases among certain solicitors/counsel, while striking a balance between distributing cases more evenly to equally qualified lawyers and allowing APs to nominate their lawyers.

委派予每名《名册》律师的平均司法覆核案件数目		
Average no. of JR cases assigned to each panel lawyer		
	2021年12月 December 2021	2022年12月 December 2022
律师 Solicitor	7.5	4.4
大律师 Counsel	3.2	2.5

法律援助署直接委派《名册》律师接办刑事案件

自2021年10月起，法律援助署开始落实直接委派《名册》律师接办刑事案件，以取代由受助人提名律师的安排。由法律援助署直接委派《名册》律师的刑事案件比率由2021年9月的51.26%增加至2022年12月及此后维持的100%。这项措施对于消除公众以为刑事案件上提名律师是受助人的法定「权利」的误解发挥关键作用。

总体而言，有关委派律师的改善措施有助防止案件过度集中于某些律师／大律师的可能。

Direct assignment of panel lawyers by LAD in criminal cases

LAD started to implement direct assignment of panel lawyers, in place of the APs' nomination, in criminal cases since October 2021. The percentage of criminal cases assigned to the panel lawyers by LAD's direct assignment increased from 51.26% in September 2021 to 100% in December 2022. This measure plays a pivotal role in eliminating the public's misconception that nomination of lawyers for criminal cases is a statutory "right" of APs.

Overall, the enhancement measures in relation to the assignment of lawyers have been effective in helping to forestall possible over-concentration of cases among certain solicitors/counsel.

透明度

司法覆核申请人给予同意披露申请详情

据观察所得，社会对法援署的不少疑虑是出于对法援署工作的一些误解和错误印象。碍于法律专业保密权及某些私隐限制，法援署往往未能迅速澄清其立场或案件的详情。因此，这项改善措施让法援署要求司法覆核申请人给予书面同意，容许在法援署署长认为合适的情况下，披露申请结果及／或批准或拒绝申请的理由。

迄今，绝大多数司法覆核申请人答允给予同意。这项措施让法援署具有所需权力，可以就大部分司法覆核案件澄清其立场或案件的详情。建基于此，法援署会积极制定更有系统的宣传沟通计划，并建立更快速的回应机制，以迅速澄清其立场或案件的详情。

Transparency

JR applicants to provide consent to disclose details of application

It is observed that many concerns in the community towards LAD stem from certain misunderstanding and misconception of LAD's work. Often, LAD may not 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. Accordingly, this enhancement measure was rolled out such that JR applicants have been requested to give written consent to LAD for disclosing the result and/or the reason for granting/refusing the applications whenever Director for Legal Aid (DLA) considers appropriate.

So far, a vast majority of JR applicants have agreed to give consent. This measure equipped LAD with the necessary information and authority to clarify its stance or case details in most of the JR cases. Building on this, LAD will proactively develop a more structured publicity communication plan and work towards a swifter response mechanism to clarify its stance or case details in a prompt manner.



实施完善法律援助制度措施

Implementation of the Enhancement Measures to Legal Aid System

披露统计资料

法律援助署定期在其网页公布各类案件的法律援助统计资料，包括但不限于获批及被拒的法律援助申请数目、法律援助署委派律师接办的法律援助案件分布情况、已报警处理怀疑包揽诉讼案件数目及发出第11条命令的数目、已支出的法律援助费用及所讨回的赔偿和讼费等。迄今，法律援助署网页的统计资料录得的浏览次数超过7 500，显示这项措施有助法律援助署提高公众意识和增进公众对其工作的认识。

管理

成立司法覆核监察委员会

自2021年12月起，法律援助署成立了部门司法覆核监察委员会，由法律援助署署长担任主席，首长级人员出任成员，负责监督司法覆核案件的管理工作。委员会在会议上讨论了多项事宜，包括关于委派案件的统计资料、改善法律援助署的资讯系统以应付集体／相关案件、监察敏感案件和因法律援助上诉成功而获得法律援助的案件、检视司法覆核案件的受助人不同意披露案件详情的原因等。

外委律师在无法履行职责时须通知法律援助署

法律援助署已修订《大律师／律师办理民事／刑事案件指引》，要求大律师／律师预计自己无法履行职责或将会出现某些情况导致他们不适宜或无法代表受助人时，须立即以书面汇报和交还案件文件。如任何

Disclosure of Statistics

LAD has regularly released legal aid statistics for various types of cases on its homepage, including but not limited to the number of successful and refused legal aid applications, distribution of legal aid assignments to legal aid practitioners, number of suspected champerty cases reported to Police and Regulation 11 Order issued, legal aid costs expended, damages and costs recovered, etc. So far, over 7 500 hits on the statistics on LAD's homepage were recorded for 2022, showing that this measure helped facilitate LAD's work in raising public awareness and understanding of its work.

Management

Establishment of JR monitoring committee

A Departmental JR Monitoring Committee, chaired by the Director of Legal Aid with other directorate officers as members, has been set up since December 2021 to oversee the administration of JR cases. At the meetings, the Committee discussed various issues including assignment statistics, enhancement of LAD's information system to cater for group/connected cases, monitoring of sensitive cases and cases where legal aid is granted as a result of successful legal aid appeal, review of reasons for APs in JR cases not giving consent to disclose case details, etc.

Assigned lawyers to inform LAD if unable to perform their duty

LAD has amended its Guidance Notes to Counsel/Solicitors for handling civil/criminal cases requiring them to report in writing and return the papers immediately if it is foreseeable that they will not be able to perform their duties or will be under situations which render them unsuitable or unavailable for representing aided persons. Any panel lawyers who failed to comply with this

《名册》律师未能遵从此规定，法律援助署会将其案件重新委派予其他律师，并会把其失当行为提交部门监察委员会，让委员会采取适当行动，包括发出劝诫信，以及把有关《名册》律师的姓名列入「工作表现欠佳记录册」或从《法律援助律师名册》中剔除。

申报其他资助来源

法律援助申请人必须在提交申请时及在法律援助证书存续期间的任何其他时间，申报其他资助来源，例如众筹。如申请人／受助人被发现没有申报其他资助来源，其申请可能会被拒绝，或其法律援助证书可能会被取消／撤回。法律援助署亦可能以作出虚假声明为由把有关个案转介警方调查。

向法律援助局汇报具体个案

法律援助署会定期于法律援助局的会议上汇报其处理司法覆核案申请及管理相关获批个案的情况，包括汇报关于委派司法覆核案件的最新统计资料、加强对司法覆核案件的监察、要求申请人同意法律援助署披露其案件详情的措施等。

本局肯定法律援助署为完善香港法律援助制度所作出的努力，并相信有关措施能持续地带来显著的正面影响。

requirement will have their cases re-assigned. Such failure will also be referred to the Departmental Monitoring Committee for appropriate action including issuing advisory letter, putting the name of the panel lawyer in the record of unsatisfactory performance, or to remove his name from the Legal Aid Panel, etc.

Declaration of alternative source of funding

Legal aid applicants have been required to declare at the time of application, and also any other time during the subsistence of the legal aid certificates alternative source of funding, such as crowd funding. If applicants/APs are found to have failed to report alternative source of funding, their application may be refused or legal aid certificates may be discharged/revoked. LAD may also refer the matter to the Police for investigation on the ground of false declaration.

Reporting to LASC on specific cases

LAD has reported to LASC its handling of JR applications and the management of relevant approved cases from time to time, including updated assignment statistics on JR cases, tightening up of the monitoring of JR cases, measure requiring applicants to give consent for LAD to disclose relevant details of their cases etc. at the regular meetings.

The Council appreciated the effort that LAD has made to the betterment of legal aid system in Hong Kong and trusted that the positive impact of the measures would be noticeable and persistent.