

# 年度摘要

## The Year at a Glance

### 實施完善法援制度措施

### Implementation of the Enhancement Measures to 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。

政府於2021年10月推行完善法援制度措施前，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。有意見認為某些有若干政治立場的律師可能首先向受助人提供「義務性質」的協助，鼓勵他們針對政府提出司法覆核，然後有關受助人會向法援署提名這些律師以委派他們為法援律師。此外，亦有關注某些刑事法援案件和司法覆核相關的法援案件有否集中在少數律師、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，並確保法援制度持續達到市民的期望，政府檢視了法援制度，並於2021年10月相應提出一系列完善法援制度的措施，從而：

(a) 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.

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) 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。

所有改善措施已於2021年年底全面落實。法援署於2023年2月向本局匯報完善措施的實施進展如下。

## 實施進展

### 委派案件

#### 下調可接辦的民事案件限額

根據該項措施，每名律師和大律師可接辦的民事案件限額分別由35宗和20宗減少至30宗和15宗。自實施以來，委派予每名《名冊》律師的平均案件數目有所減少，顯示這項措施有助減少案件可能過度集中於某些律師／大律師的情況，長遠而言有助增加可接辦法援案件的律師數目。

#### 設立新的可接辦司法覆核案件限額

政府已就律師可接辦與司法覆核有關的法援案件設立新限額，每名律師可接辦的案件限為5宗，每名大律師可接辦的案件限為3宗，並計算在每名律師／大律師可接辦的所有民事法援案件限額內。除有充分理據支持委派同一律師接辦的數宗緊密相連集體／相關集體司法覆核案件外，並無《名冊》律師獲委派超過委派限額的司法覆核案件。

- (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.

## 實施完善法律援助制度措施

### Implementation of the Enhancement Measures to Legal Aid System

自這項措施落實以來，委派予每名《名冊》律師的平均司法覆核案件數目顯著減少。如下表所示，這項措施有效釋除對案件過份集中由某些律師／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。

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《名冊》律師的平均司法覆核案件數目		
Average no. of JR cases assigned to each panel lawyer		
	2021年12月 December 2021	2022年12月 December 2022
律師 Solicitor	7.5	4.4
大律師 Counsel	3.2	2.5

#### 法律援助署直接委派《名冊》律師接辦刑事案件

自2021年10月起，法律援助署開始落實直接委派《名冊》律師接辦刑事案件，以取代由受助人提名律師的安排。由法律援助署直接委派《名冊》律師的刑事案件比率由2021年9月的51.26%增加至2022年12月及此後維持的100%。這項措施對於消除公眾以為刑事案件上提名律師是受助人的法定「權利」的誤解發揮關鍵作用。

總體而言，有關委派律師的改善措施有助防止案件過度集中於某些律師／大律師的可能。

#### 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

### 司法覆核申請人給予同意披露申請詳情

據觀察所得，社會對法援署的不少疑慮是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某些私隱限制，法援署往往未能迅速澄清其立場或案件的詳情。因此，這項改善措施讓法援署要求司法覆核申請人給予書面同意，容許在法援署署長認為合適的情況下，披露申請結果及／或批准或拒絕申請的理由。

迄今，絕大多數司法覆核申請人答允給予同意。這項措施讓法援署具有所需權力，可以就大部分司法覆核案件澄清其立場或案件的詳情。建基於此，法援署會積極制定更有系統的宣傳溝通計劃，並建立更快速的回應機制，以迅速澄清其立場或案件的詳情。

## 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.



## 實施完善法援制度措施

### Implementation of the Enhancement Measures to Legal Aid System

#### **披露統計資料**

法援署定期在其網頁公佈各類案件的法援統計資料，包括但不限於獲批及被拒的法援申請數目、法援署委派律師接辦的法援案件分布情況、已報警處理懷疑包攬訴訟案件數目及發出第11條命令的數目、已支出的法援費用及所討回的賠償和訟費等。迄今，法援署網頁的統計資料錄得的瀏覽次數超過7 500，顯示這項措施有助法援署提高公眾意識和增進公眾對其工作的認識。

#### **管理**

##### **成立司法覆核監察委員會**

自2021年12月起，法援署成立了部門司法覆核監察委員會，由法援署署長擔任主席，首長級人員出任成員，負責監督司法覆核案件的管理工作。委員會在會議上討論了多項事宜，包括關於委派案件的統計資料、改善法援署的資訊系統以應付集體／相關案件、監察敏感案件和因法援上訴成功而獲得法援的案件、檢視司法覆核案件的受助人不同意披露案件詳情的原因等。

##### **外委律師在無法履行職責時須通知法援署**

法援署已修訂《大律師／律師辦理民事／刑事案件指引》，要求大律師／律師預計自己無法履行職責或將會出現某些情況導致他們不適宜或無法代表受助人時，須立即以書面匯報和交還案件文件。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



《名冊》律師未能遵從此規定，法律援助署會將其案件重新委派予其他律師，並會把其失當行為提交部門監察委員會，讓委員會採取適當行動，包括發出勸誡信，以及把有關《名冊》律師的姓名列入「工作表現欠佳記錄冊」或從《法律援助律師名冊》中剔除。

#### **申報其他資助來源**

法律援助申請人必須在提交申請時及在法律援助證書存續期間的任何其他時間，申報其他資助來源，例如眾籌。如申請人／受助人被發現沒有申報其他資助來源，其申請可能會被拒絕，或其法律援助證書可能會被取消／撤回。法律援助署亦可能以作出虛假聲明為由把有關個案轉介警方調查。

#### **向法律援助局匯報具體個案**

法律援助署會定期於法律援助局的會議上匯報其處理司法覆核案申請及管理相關獲批個案的情況，包括匯報關於委派司法覆核案件的最新統計資料、加強對司法覆核案件的監察、要求申請人同意法律援助署披露其案件詳情的措施等。

本局肯定法律援助署為完善香港法律援助制度所作出的努力，並相信有關措施能持續地帶來顯著的正面影響。

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.