

LEGAL AID DEPARTMENT
30
法律援助署
1970 - 2000



法
援

法義之門

ACCESS TO JUSTICE



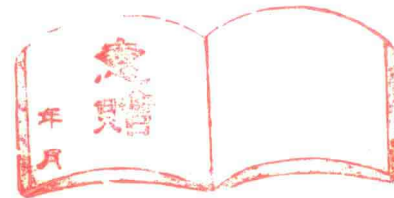
法律援助署三十周年紀念

The Legal Aid Department

Serving the Community for 30 Years

法義之門

ACCESS TO JUSTICE



法律援助署三十周年紀念

The Legal Aid Department

Serving the Community for 30 Years



Contents

目錄

賀詞	5	Messages
署長前言	8	Director's Preview
法律面前人人平等	11	Building Equality Before the Law
服務社會	19	Serving the Community
擴大援助網	27	Widening the Net
改變動力	33	A Force for Change
一視同仁的社會公義	41	Social Justice for All
建立新的文化	49	Shaping a New Culture
轉變與過渡	59	Change and Transition
高瞻遠矚	67	The Way Forward





Message from the Chief Executive Hong Kong Special Administrative Region

香港特別行政區 行政長官賀詞

法律援助署成立三十周年，在香港法律制度發展史上，標誌着重要的里程碑。

法律援助署秉持宗旨，致力確保具充分理據訴諸法律的人士不會因經濟能力不足而不能爭取公正的法律裁決。自一九七零年成立以來，法律援助署一直努力履行所肩負的重任，為社會人士提供所需的法援服務，大力伸張正義，使命重大。

市民對法律權利與義務認識日深，申請和獲得法律援助的人也愈來愈多。法律援助署為滿足社會需求，不斷積極改善服務，精益求精。法律援助服務所涵蓋的範圍日漸擴大，符合法援資格的人數有增無減，訴訟性質也更為廣泛，實在令人鼓舞。

欣逢法律援助署三十周年誌慶，謹向署內全心全意服務大眾的同事衷心致賀，並祝願法律援助署竿頭日進，續創佳績。

董建華

董建華



The 30th Anniversary of the Legal Aid Department is a milestone in the development of the legal system in Hong Kong.

The Legal Aid Department is committed to ensuring that no person who has reasonable grounds for pursuing legal action will be prevented from doing so by lack of means. Since its establishment in 1970, the department has been making unwavering efforts in fulfilling this important mission. Its service plays a crucial role in the promotion of justice in Hong Kong.

With the public's growing awareness of legal rights and obligations, the number of legal aid applicants and recipients has increased. To meet the community's aspiration, the department has made constant efforts to improve its service. It is encouraging to see that the coverage of legal aid service has grown, both in terms of the size of potential beneficiaries and the areas of litigation.

On this memorable occasion of the 30th Anniversary of the Legal Aid Department, I extend my warmest congratulations to all of you on your dedicated service and wish you continuing success in serving the community.

Tung Chee Hwa

Message from the Chief Justice Court of Final Appeal

終審法院 首席法官賀詞

法律援助署三十周年紀念，本人謹此衷心道賀。

提供法律援助服務，是司法工作不可或缺的一環。三十年以來，法律援助署致力提供服務，在維護法治和協助市民進行訴訟方面，貢獻良多。

在這千禧新紀元，執行司法工作要面對不少新挑戰。本人深信，法律援助署定必繼續悉力以赴，與時並進，不負社會人士殷切的期望。



I take pleasure in congratulating the Legal Aid Department on its 30th Anniversary.

The provision of legal aid services is an integral part of the administration of justice. Over the past 30 years, the Legal Aid Department has made a most valuable contribution to upholding the rule of law and promoting access to justice by delivering legal aid services.

In the new millennium, the administration of justice faces many exciting challenges. I am confident that the Legal Aid Department will continue to take on these challenges and keep abreast with changing times in meeting the rising expectations of the community.

A handwritten signature in blue ink that reads "Andrew Li".

Andrew Li

李國能

李國能

Message from the Chairman Legal Aid Services Council

法律援助服務局 主席賀詞

法律援助服務局自一九九六年成立以來，一直與法律援助署保持緊密合作，以履行本局的法定職務。

與法援署相比，本局成立的日子尚短。法援署服務社會經年，致力為缺乏經濟能力的人士提供協助，伸張正義，成績有目共睹。

過去四年，本局與法援署通力合作，尋求改善法援服務的現行安排，並定下行政獨立、運作透明、顧客為本及有效運用資源的共同目標。香港正踏進一個社會和經濟結構出現重大轉變的新時代；與此同時，資訊日益發達，市民對本身的權利也有更多認識。為更能滿足社會的需要，本局與法援署將以上述的目標為指引，竭盡所能為市民服務。

欣逢法援署成立三十周年，本人謹此衷心致賀。對法援署來說，三十年周年不僅是服務的一個里程碑，也標誌着日後在本港日趨複雜的社會，面對更多挑戰中，將扮演舉足輕重的角色。本局定會繼續與法援署攜手合作，為市民提供獨立和優質的法援服務，以鞏固本港的法治制度。

李澤培

李澤培



The Legal Aid Services Council was established in 1996, and since then it has actively worked with the Legal Aid Department in discharging the council's statutory responsibilities.

In comparison therefore, the Legal Aid Department has a long and distinguished record of servicing the community in providing access to justice for people of limited means.

During the past four years, the council and the department have together sought to improve the existing legal aid service delivery arrangements. We have identified the common objectives of independence in administration, transparency in operation, client focus in service, and effectiveness in resources utilisation. Hong Kong is entering a new phase where its socio-economic structure is undergoing significant changes. At the same time, Hong Kong citizens are better informed, and are more conscious of their rights. In this context therefore, the council and the department will endeavour to serve the community with these objectives as our guiding stars.

We should like to offer our congratulations to the Legal Aid Department on its 30th Anniversary. It is not only a milestone of the department's achievement, but is also a pointer to its important role in the challenging times ahead in our increasingly complex society. The council will certainly work hand-in-hand with the department in the provision of independent and quality legal aid services to strengthen the rule of law in Hong Kong.

J P Lee

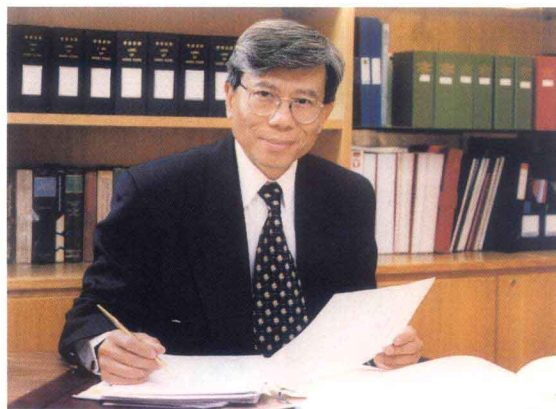
署長前言

法律援助署在一九七零年成立至今三十載，一直肩負起維護司法制度及法治精神的使命。成立之初，本署僅有數名員工，每年處理不下於3 000宗申請。時至今日，本署的職員人數已增至約600名，每年處理超過3萬宗申請，當中約有超過1萬2 000宗獲批法律援助。迄今，本署已協助超過20萬名人士尋求公義。

環顧目前，香港的法律援助制度堪稱是全球最全面而經費又最充裕的其中一個制度，服務範圍涵蓋民事及刑事訴訟。估計目前全港有超過58%的家庭符合申請法律援助的資格，而有關的經濟資格上限亦會定期作出檢討。此外，特別為夾心階層而設的法律援助輔助計劃亦完全自給自足，更成為全球司法管轄區的表表者。

本署能夠提供各項全面的服務，主要在於本港的法援制度是由公帑資助。法律援助經費是由每年的資源撥款中分配，但本署仍可要求額外撥款，以應付預算以外的開支。與此同時，《法律援助條例》內亦訂立了多項條款，以確保公帑能用得其所，以及只有缺乏經濟能力而又有合理理由提出訴訟或抗辯的人士，方可獲批法律援助。

在過去三十年間，本署充分表現出獨立的職能地位，亦有眾多例子顯示申請人在獲得本署提供法律援助後，能夠成功向法院推翻政府的決定。當局更成立法定的獨立機構——法律



The Legal Aid Department was set up 30 years ago, in 1970, to strengthen the legal system and the concept of the rule of law by promoting access to justice. It had a handful of staff dealing with fewer than 3 000 applications a year. Today, our headcount has expanded to around 600, handling over 30 000 applications, of which more than 12 000 are granted legal aid. To date, the department has helped more than 200 000 people in their quest for justice.

As it stands today, the legal aid system in Hong Kong is one of the most comprehensive and well-funded in the world, covering an enormous amount of ground in terms of legal assistance for both civil and criminal cases. More than 58 per cent of households are estimated to fall within the reach of legal aid, and the financial eligibility limits are periodically reviewed. In addition, the supplementary scheme, extending the benefits of legal aid to the sandwich class while being completely self-financing, is a model for jurisdictions around the world.

One of the factors that enables the provision of such a wide-ranging service is that it is publicly funded. The legal aid fund is a matter of annual resource allocation, but the department can seek extra provision to meet unforeseen expenses. At the same time, there are numerous provisions within the Legal Aid Ordinance to ensure that funds are used properly and that only people of limited means who have reasonable grounds to take or defend proceedings will be granted legal aid.

Over the past 30 years, the department has amply demonstrated its ability to act independently of the government. There are numerous examples where government decisions are successfully challenged in court with the help of legal aid. The Legal Aid

援助服務局，專責監察本署所提供的服務，並進一步確保本署的運作獨立和服務質素。

另一方面，本署亦透過將所有公法訴訟及刑事案件交由私人執業律師處理的措施，使本署得以保持公正的立場。本署之所以能夠有效地運作，成為本港法治的基石，實有賴業界專業人士的竭誠合作。

本署致力確保符合獲得法援的人士，不會因缺乏經濟能力而無法尋求公義。本署全體人員在克盡所能履行專業職責之餘，同時也抱著體恤關懷的態度服務社群。本人謹此希望本紀念特刊能有助市民更瞭解本署的工作，以及本署在維護法治方面所扮演的角色。



法律援助署署長
陳樹鏌

Services Council, a statutory independent body, oversees the administration of our service and provides further guarantee of the independence of the department and the quality of its services.

Another way in which we preserve impartiality is by assigning out all public law and criminal cases to private practitioners. Without the full cooperation of the legal profession we could not operate effectively as a cornerstone of the rule of law.

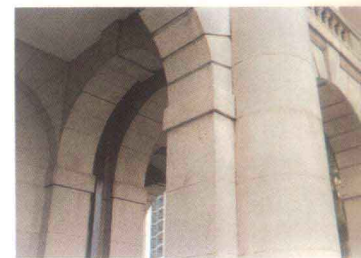
We are committed to ensuring that no one who qualifies for legal aid is denied access to justice because of lack of means. Our staff work tirelessly to discharge their duties, with compassion as well as professionalism. And I hope this anniversary publication will help to provide a good understanding of the department's work and its role in upholding the rule of law.



Chan Shu-ying
Director of Legal Aid



法律面前人人平等



四十年代後期，大批難民從中國大陸相繼湧至，令本港無論在經濟或社會制度方面，均須面對接踵而來的挑戰。至五十年代初期，新移民人數超過200萬，不僅令本港人口數字激增四倍，還對行政方面造成沉重的負擔。期間，當局雖向「寮屋居民」提供基本的援助——但僅此而矣。

直至一九五三年的聖誕日，石硤尾木屋區發生大火，令五萬多人無家可歸。自此，港府一改以往的行政方針，策動了大規模的房屋重建計劃。然而，早期的樓宇均十分簡陋、狹窄而擠迫。這般差劣的居住環境，加上低廉的工資及苛刻的工作待遇，無疑成為社會動亂的誘因——一九五六年的荃灣騷動事件便是其中一宗事例。

當時社會上連串的同類騷動事件，反映了大部分市民無論是在勞工、住屋以至個人申訴等問題上，均沒法循政治或法律途徑得到幫助。在這情況下，他們只好利用自己的方式宣洩怒氣。要紓解他們的怨憤，其中有效的方法是為那些沒有經濟能力的人士，開闢尋求法律援助的途徑。

昔日，貧苦大眾訴諸法律的唯一途徑是遞交「窮民訴狀」，由法官委派一名律師代表貧窮的被告人。然而，有關援助只適用於被告人犯了可判死罪的嚴重刑事案件（直至一九六二年才擴及所有在最高法院審訊的案件）或涉及當事人的資產總值不超過500元的民事案件。可是，由於獲委派的律師未能確定能否收到任何費用，因而對法援工作興趣不大，以致制度的整體運作不符理想。

Following the massive influx of refugees from mainland China in the late 1940s, Hong Kong became a place struggling to adapt to ever-changing economic and social challenges. By the early fifties over two million newcomers had quadrupled the population and placed an enormous burden on the administration which provided basic support for the 'squatters' – but little more.

This attitude changed dramatically, however, after a disastrous fire in the Shek Kip Mei squatter camp on Christmas Day, 1953, which left more than 50 000 people homeless. The catastrophe prompted the start of a rehousing programme, but early flat units were very rudimentary, tiny and overcrowded. Such claustrophobic conditions, coupled with low wages and sweatshop labour conditions, undoubtedly contributed to social unrest such as the Tsuen Wan riots of 1956.

A series of similar disturbances highlighted the fact that a substantial section of the population, denied political or legal redress in matters of labour, housing or personal grievance, had little recourse other than taking matters into their own hands. One possible way to alleviate frustration was at least to improve access to legal assistance for those who could not afford it.

In those days, the only legal remedy for poor people lay in 'pauper's petitions', whereby a judge would appoint a lawyer for a penniless defendant. However, this recourse was available only in the most dire circumstances – for those charged with capital offences in criminal cases (extended to all Supreme Court trials in 1962) or with property worth less than \$500 in civil cases. Moreover, the uncertainty of receiving any fee left lawyers unmotivated, making it an unsatisfactory system all round.

司法行政上的新里程

當時，港府為了應付與日俱增的輿論壓力，遂成立法律援助委員會——當中包括大律師公會及律師會的成員，就「推行法律援助計劃的可行性」提交建議。當局根據委員會的建議，於一九六六年十一月二十三日通過訂立《法律援助條例》，藉此涵蓋多項民事訴訟。

在有關條例草案二讀期間，立法局議員胡百全指出，建議的計劃乃「司法行政上的新里程」，並聲言該計劃將有助「消除部分人士以為貧富階層的法律保障是有區別」的觀念。

《法律援助條例》大致上根據英國的「法律援助及意見法案」而制訂，同時亦參照了新加坡的部分法例條文，旨在推行一套免費及協助性的法律援助計劃。除暴力毆打案件外，該計劃涵蓋幾近所有在合議庭、最高法院及地方法院審理的民事訴訟。政府則按計劃的全年預算提供撥款，如有需要，亦會補加撥款。

在計劃開始實行時，政府沒有就法援的經費預算設定上限，但為了保障公帑起見，申請人必須接受兩項審查，即案情和經濟審查。申請人必須證明具備合理理據進行訴訟，才可通過案情審查；此外，也須證明可動用資產及每月收入，符合分別不超逾3,000元及500元（經扣除必要開支後）的上限，才可通過經濟審查，獲批法律援助。預計當時全港有半數市民被納入該等經濟限額之內，是合乎資格申請法律援助。

經過計算後，若申請人的財務資源超逾某一水平，便須按比例繳付分擔費（協助性質的法律援助）。受助人如獲判勝訴，並且得到賠償，便須退還所支出的訟費。法律援助署署長有權從受助人所討回的賠償金中先扣除該筆訟費，然後才把餘額發還；此外，亦可在受助人取回或保存的任何資產

Great Step Forward

Meanwhile, the government responded to mounting pressure by establishing a Legal Aid Committee – which included members of the Bar Association and the Law Society. It was instructed to look into the feasibility of a legal aid scheme, and following its recommendations, a Legal Aid Ordinance covering civil actions was passed on November 23, 1966.

During the second reading of the Bill, Legislative Councillor Woo Pak-chuen called the proposed scheme “a great step forward in the administration of justice”. He asserted that it would “dispel the impression in certain quarters that there is one set of law [sic] for the rich and another for the poor”.

Based largely on the UK’s Legal Aid and Advice Act, with some elements of Singaporean legislation, the Ordinance introduced a scheme of free and assisted legal aid. It covered almost all civil proceedings in the Full Court, Supreme Court and District Court, except for assault and battery. Funding was to come from government, based on annual projections with supplementary provision if necessary.

From the outset, there was no cap on the legal aid budget, but in the interests of regulating the public purse, granting of legal aid was subject to two tests. The merits test had to demonstrate that there were reasonable grounds for proceedings. The means test, meanwhile, established the maximum financial limits for eligibility, originally set at a disposable capital of \$3,000 and disposable monthly income of \$500 (after deductions). These limits were estimated to embrace about half the population of Hong Kong.

Above a certain financial level, applicants would pay contributions on a sliding scale (assisted legal aid). If damages were awarded, a legally aided person would be liable to refund the legal costs. The Director of Legal Aid was entitled to deduct this amount before releasing the balance, and could also make a so-called first charge against any property recovered or preserved. In practice, the costs would often be fully or partially met by the opposing party.

The scheme came into operation on January 12, 1967, when a special sub-department was hurriedly created within the judiciary. It was guided in its formative stages by two acting



五十年代的民間暴動，反映出市民對缺乏公平的社會待遇日益感到不滿
Civil disturbances in the 1950s reflected growing popular frustration with inadequate social opportunity.

上，登記第一押記。實際上，所支出的訟費通常會由對訟人全數或部分支付。

一九六七年一月十二日，當司法部內的一個特別附屬部門趕急成立之際，亦是法律援助計劃運作之始。初期主要由司法部借調人員，包括 ES Haydon 及其後的 AL Leathlean，署任署長一職，而當時則只有數名職員在最高法院大樓（現為立法會大樓）的辦公室角落埋首工作。

當時，法律援助辦事處同時處理民事及刑事訴訟的法律援助申請。單是在計劃運作的首年，獲批法律援助的民事案件數目便攀升了五倍，達688宗之多。當中大部分申請人仍由法院轉介，而其他則透過社會福利署或勞工處提出申請。經濟審查工作皆由社會福利署職員負責，可是法援辦事處人員間或會重新評核某些審查，但通常是在發現審查結果有偏差時才會採取這樣的行動。

一九六八年，御用大律師梅恩 (Desmond O'Reilly Mayne) 獲正式委任為首位法律援助辦事處處長。與此同時，辦事處的職員人數亦增多一倍至十一名。由於來自中國大陸的難民不斷湧至香港，令本地人口持續倍增；同時法援的工作量亦穩定上升，而法援的財政預算也相應地按年遞增。至一九六九年，當裁判司署把所有民事訴訟的審訊權移交地方法院後，法援的年度預算便進一步攀升。

期間，法律援助辦事處需要脫離司法部獨立工作，已是意料中事。直至一九七零年，《刑事訴訟法律援助規則》正式生效，使法援範圍擴大至包括由最高法院審訊的案件，以及由最高法院和合議庭聆訊的上訴案。基於這個原因，法援辦事處脫離司法部一事得以加速進行。

當其時的急務，便是盡快另行設立一個法律援助署。一九七零年七月一日，法律援助署正式成立。為確立其嶄新的地位，法援署從該時開始遷往位於炮台里俗稱紅磚屋的法國傳道會大樓。成立首年，法援署即接獲2 594宗民事法援申請，其中1 112宗獲批法援；另有133宗刑事案及73宗上訴案均獲批法援。



首任法律援助署署長兼御用大律師梅恩
Desmond O'Reilly Mayne,
QC – the first Director of
Legal Aid.

Directors seconded from the judiciary, namely ES Haydon and later AL Leathlean. Along with a handful of supporting staff, they were housed in a corner room of the Supreme Court building (now the Legislative Council building).

At that time, the office was processing applications for both civil and criminal legal aid, and in the first year alone, the number of civil cases granted legal aid increased fivefold, to 688. Many applicants were still being referred by the courts, while others came via the Social Welfare Department or the Labour Department. It fell to staff of Social Welfare to assess an applicant's means, although the legal aid officers would sometimes reassess a case if they found the regulations too rigidly applied.

In 1968, Desmond O'Reilly Mayne, QC, was appointed as the first permanent Director and by this time the office had doubled its complement of staff to eleven. As refugees from mainland China continued to swell the population, the volume of work expanded steadily, occasioning an annual topping-up of the budget. It mushroomed even further in 1969, after all civil jurisdiction exercised by the Magistrates' Courts was transferred to the District Court.

It was always foreseen that the Director would eventually become independent of the judiciary. One factor in particular served to hasten this event. In 1970, the Legal Aid in Criminal Case Rules came into effect, making legal aid available for Supreme Court trials and appeals in the Supreme Court and Full Court.

A separate Legal Aid Department now seemed imperative, and this came about on July 1, 1970. To underline its new status, the department moved to the old French Mission building on Battery Path, nicknamed the Red Brick building. In its first year the department processed 2 594 applications for civil legal aid, of which it granted 1 112, and awarded legal aid for 133 criminal trials and 73 appeals.



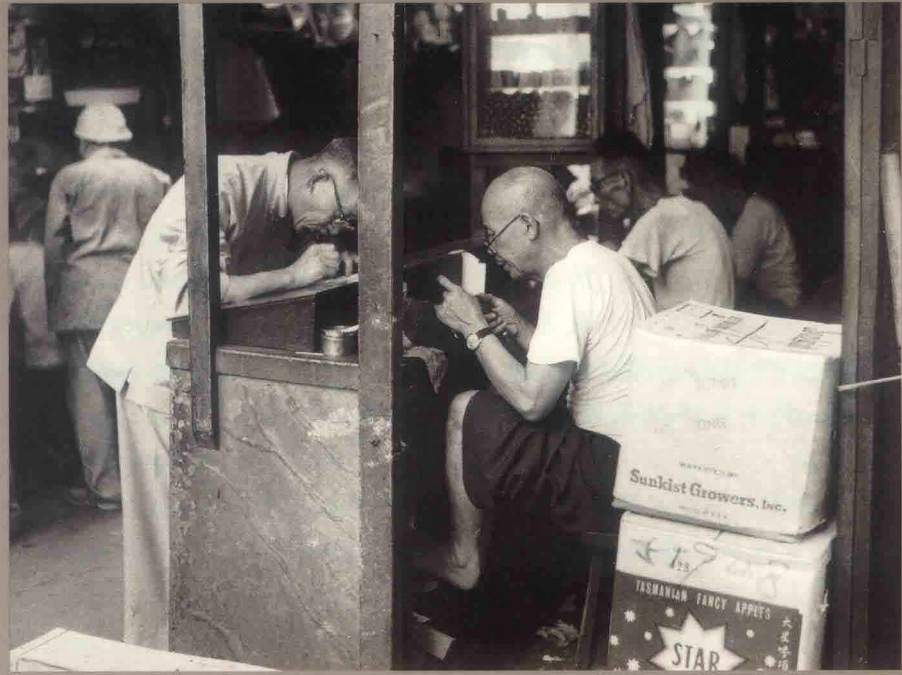
前法國傳道會大樓成為法律援助署首個辦公地點

The former French Mission building became the first home of the Legal Aid Department.



法律援助署協助紓緩因居住及工作環境惡劣所引致的社會問題
 The Legal Aid Department helped address social problems arising from unsatisfactory living and working conditions.





早年曾為法援辦事處的一員、現任律政司法律草擬專員嚴元浩憶述，當時署內沒有仔細的分工，每位職員均身兼數職。他解釋：「即使是一位助理文書主任，也可能要同時處理多項工作，由會計、人事以至接待及為外籍律師擔任傳譯員等。」

由署內律師辦理個案

本署自成立以來，特別是立法局於一九七二年通過提高法援申請人的財務資源限額後，申請法律援助的個案與日俱增。法律援助一經批出，案件便會委派給從法律援助律師名冊內所揀選的律師或大律師辦理。根據《法律援助條例》的具體理念，法律援助計劃應在與法律專業人士緊密合作下全面推行。然而，在早期階段，這方面的合作發展卻遇到阻滯。

畢竟，當時的法律專業人士相當缺乏。於六十年代後期，整份大律師名單僅佔一頁篇幅，而律師事務所的數目更是寥寥可數。此外，許多律師有見於當時的地產市道蓬勃，處理交易買賣較簡易省時且利潤可觀，他們

因而多不願意接辦繁複的法援訴訟。事實上，當年的條例內亦有條文訂明，他們有權把接辦的法援個案限於一定數目之內。

前法律援助署署長張鄭寶蓮憶記任內的情況時說：「很多律師往往表示沒有時間，將法援案件退還本署。當中有些案件甚至是有時限或真正需要緊急處理，尤其是當訴訟人耗盡錢財，需要申請法援才可繼續進行訴訟，以致需要押後審訊



早年法律援助署洋溢着一片家庭的融洽氣氛。嚴元浩（前左）與同僚參與員工旅行
A family atmosphere prevailed in the department in the early days. Tony Yen (front left) with colleagues on a staff outing.

Tony Yen Yuen-ho, now Law Draftsman of the Department of Justice, was one of the first members of the Legal Aid Office. He remembers that there was no clear-cut division of duties and everyone became a jack of all trades. “A clerical officer might find himself handling accounts or personnel, and the next minute manning the reception or acting as interpreter for an expatriate lawyer,” he explains.

Handling Cases In-house

Applications continued to grow steadily, especially after a Legislative Council resolution in 1972 raised the financial limits for legal aid applicants. Once legal aid was granted, the case would be assigned to an outside solicitor and, if necessary, a barrister, both of whom would be selected from a legal aid panel. It was an accepted tenet of the Legal Aid Ordinance that the legal aid scheme should be operated in close cooperation with the legal profession, but in the early days there were some stumbling blocks in this partnership.

For one thing, there was a shortage of legal professionals. In the late 1960s, the entire Bar list was just one page long, and solicitors firms were few. Moreover, many solicitors were reluctant to take on legal aid cases when the booming property market offered far more lucrative and less troublesome work. A provision in the Ordinance actually allowed them to limit the number of cases they handled.

“Solicitors kept sending back cases, saying they didn’t have time to do them,” recalls Lady Pauline Cheung Cheng Po-lin, a former Director of Legal Aid. “Sometimes cases had a time limit or needed to be done urgently, especially when a court case was pending because the litigant had run out of money and needed legal aid to continue. Or in wages claims, workers could be very desperate, because in those days there was no wage protection.”

The lack of private practitioners and chronic delays prompted the department’s decision to set up its own Litigation Unit. It made perfect sense. In-house lawyers would better serve the interests of applicants and they would build up the expertise needed to monitor outside solicitors. Litigation would also enhance career



前法律援助署署長張鄭寶蓮與現任終審法院首席法官李國能合照
Lady Pauline Cheung, former Director of Legal Aid, with Andrew Li, now the Chief Justice of Court of Final Appeal.