

法律援助

訴訟與調解 - 另類排解糾紛方法



解屬自願性質的參與，由一名中立人士，即調解員，協助涉及法律程序或糾紛的各方當事人達致各方可接受的和解方案。

司法機構於二〇〇〇年推行一項為期三年的家事調解試驗計劃，測試以調解方式解決婚姻糾紛的成效。有關試驗計劃的結論是，接受調解的各方對達成的協議感到非常滿意，遵守該等協議的機會較法庭命令為高，及調解是在香港解決家事糾紛的有用方案。

為鼓勵市民更多使用調解作為另類排解糾紛的方法，法律援助署(法援署)亦於二〇〇五年三月推行了「法援婚姻訴訟個案家事調解試驗計劃」，為期一年。進行婚姻訴訟的法援受助人可選擇接受調解。在該計劃下，有107宗個案的受助人選擇接受調解。在88宗進行調解的個案中，61宗達成全面或部分協議。當局對參與者進行調查，90%受訪者對試驗計劃給予正面評價。

民事司法制度改革於二〇〇九年四月推行後，調解服務已成為民事法律程序的一部分。因此，獲批法援進行民事訴訟(包括婚姻訴訟)的受助人，可獲資助進行調解，作為排解糾紛的另一途徑。

雖然在獲批法援前，受助人並不須要已曾作出調解，但在獲批法援之後，除非其個案並不適合調解，否則為保障其利益，受助人宜考慮使用這項服務。受助人可就其個案是否適合調解，徵詢其律師的意見，律師亦有責任為個案是否適合調解給予適當的意見。在訴訟展開之前或訴訟期間，雙方都可嘗試調解。

如受助人願意嘗試接受調解，代表受助人的律師在聘用調解員之前，須向法援署署長(署長)取得批准，並提供下述資料：例如調解員的資歷和經驗、每小時收費、估計調解所需的時數及其他的附帶費用(例如為調解而租用場地)、調解費用的付款條件，以及受助人是否已獲告知署長第一押記的影響等。受助人了解第一押記的影響十分重要，因為除非對訟一方同意承擔調解的全部費用，否則有關費用須從受助人訴訟所獲得的損害賠償金或保留的財產中支付。

根據法援署的統計數字，自民事司法制度改革推行以來，選擇接受調解的受助人數目不斷增加。在二〇〇九年四月至十二月期間，共有39宗法援個案的受助人獲准進行調解，二〇一〇年截至六月為止的數字則為194宗。

受助人如對與法援個案有關的調解服務，例如費用的資助、個案是否適合調解、對訟費的影響及嘗試調解的程序有任何疑問，歡迎向本署人員查詢。

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法律援助署
Legal Aid Department

Litigation vs. Mediation - An alternative way to settle disputes



Mediation is a voluntary process in which parties involved in court proceedings or disputes can work with an impartial person, called a mediator, to find a solution which is acceptable to all parties.

In 2000 the Judiciary launched a Pilot Scheme on Family Mediation for 3 years to test the effectiveness of mediation in resolving matrimonial disputes. The Pilot Scheme concluded that parties who underwent mediation were more satisfied with the agreements reached and were more likely to comply with such agreements compared to court orders and a useful option for resolving family disputes in Hong Kong.

To encourage greater use of mediation as a method of alternative dispute resolution (ADR), the Department (LAD) also launched a one year mediation pilot scheme in legally aided matrimonial cases in March 2005. Mediation was made available to legally aided persons in matrimonial cases. Aided persons in 107 cases chose to undergo mediation under the scheme and 88 cases proceeded to mediation, of which 61 cases reached full or partial agreement. A survey was conducted among the participants and 90% of those surveyed rated the pilot scheme positively.

Following the implementation of the Civil Justice Reform (CJR) in April 2009, mediation is now a part of civil proceedings. As a result, aided persons involved in civil proceedings including matrimonial proceedings can now obtain funding support for mediation as an alternative means of resolving their disputes.

Although it is not necessary to have tried mediation before being granted legal aid, it is in the interest of a person who has been granted legal aid to consider mediation as an option unless the case is not suitable for mediation. Aided persons can consult their lawyer on the suitability of their cases for mediation and the lawyers are under a duty to give them appropriate advice. Mediation can be attempted at any time before or during court proceedings.

If mediation is to be attempted, the lawyers acting for the aided persons are required to obtain the approval of the Director of Legal Aid (DLA) before engaging a mediator by providing information such as qualification and experience of the mediator; hourly rate, estimated number of hours required for mediation and any other incidental expenses such as hiring of venue for mediation, the terms of payment of the costs of mediation and whether the aided person has been advised of the implications of DLA's First Charge. The First Charge implications are important because unless it has been agreed that the opposite party is to bear the entire costs of the mediation, aided persons may find that they have to pay for the costs out of the damages or property they get or keep in the proceedings.

Statistics kept by LAD show that there is an increasing number of aided persons opting for mediation since the implementation of the CJR. Between April and December 2009, approval was given to aided persons in 39 cases to undergo mediation; the figure for 2010 up to June was 194.

Aided persons who have any queries concerning legal aid for mediation such as funding, suitability, costs implications and procedures for attempting mediation are welcome to discuss such queries with staff of the Department.

作出陳述——提供資料確保公帑用得其所

法律援助是協助有合理理據的人以公帑提出訴訟，惟受助人的資產須低於《法律援助條例》訂明的財務資格限額。本署經常告知法援申請人須如實披露有關案情及經濟狀況的資料，並提醒他們為取得法援作出虛假聲明所帶來的後果。

任何人如懷疑有受助人虛報經濟狀況或案情資料而不應獲批法援，可致函本署，即向我們作出“陳述”。本署歡迎真確的陳述，並會盡力徹底調查，因為隱瞞財務狀況或案情的人是不應獲批法援。

本署需要充足的資料，才可就陳述展開調查。舉例說，如你作出針對案情的陳述，但只是指出受助人的勝算機會不大而不應獲批法援並不足夠。你需要詳細說明有關原因，例如受助人隱瞞某些與個案有關的重要資料。至於針對受助人的財務資格的陳述，則需提供受助人的資產詳情，例如擁有物業的數目、物業地址、存款銀行名稱等。雖然本署致力在12個星期內完成調查，但由於調查往往需依賴另一方（例如銀行或土地註冊處）向我們提供資料，所需時間可能較長。一俟完成調查有關陳述，本署會以書面通知你調查已結束，如你是對訟一方，則會告訴你受助人是否繼續獲得法援。否則，本署不會向你透露調查詳情或結果，或向你詳細解釋本署作出有關決定的理由。此舉是為了遵守個人資料私隱法例及《法律援助條例》限制披露受助人資料的規定。

在二〇〇八及二〇〇九年，本署共接獲126份陳述並進行調查。經調查後，本署將20個懷疑個案轉交警方跟進，以期檢控有關受助人。在二〇〇八及二〇〇九年，警方向四名提供虛假資料以取得法援的受助人提出檢控，該四人全被定罪，被判處的刑罰由緩刑、罰款2,500元和3,000元，以至社會服務令不等。

如你認為某人不應獲批法援，可向本署作出陳述。本署最近印製了有關的小冊子，市民可在以下網站<http://www.lad.gov.hk>閱覽及下載，或於本署各辦事處索取。



Making representations – Providing information to ensure public money is properly spent

Legal aid allows a person who has a reasonable case to litigate at public expense provided the person has means below the financial eligibility limit stipulated in the Legal Aid Ordinance. That is why all legal aid applicants are told that they must be honest about the information provided to the Department concerning their means and their case and the consequences of making false statements in order to qualify for legal aid.

Anyone who believes that an aided person should not have been given legal aid, either because the aided person has given the Department false information about his/her means or the case can write to us. This is called making "representations". We welcome genuine representations and we will deal with them as thoroughly as possible. This is because legal aid should not be provided to persons who are untruthful about their financial circumstances or about the facts of their case.

Representations can only be investigated if enough information is provided to us. For example, if the representation is on the merits of the case, it is not sufficient just to say that legal aid should not have been granted because the aided person does not have a case. Details of why there are no merits in the aided person's case, for example, the aided person has lied about some important facts about the case, will need to be given. If it is on the aided person's financial eligibility, details about the aided person's assets such as number of properties, where the properties are situated, money in which banks etc will have to be provided. As our investigations often rely upon another party (such as a bank or the Land Registry) to provide us with information and although we aim to complete an investigation within 12 weeks, it may take longer than we like. Once we have completed the investigation into your representations, we will write and advise you that our investigation is completed and if you are the opposite party, whether legal aid will be continued. Otherwise, we cannot reveal details of our investigation or its outcome or explain in detail the reasons for our decision because of the law on personal data privacy and the restriction on disclosure of information concerning an aided person as laid down in the Legal Aid Ordinance.

In 2008 and 2009, the Department received 126 representations for investigation. As a result, the Department referred 20 suspected cases to police for investigation with a view to prosecution. In 2008 and 2009, the police prosecuted 4 aided persons who obtained legal aid by providing false information and all 4 were convicted. The sentences ranged from a suspended prison sentence, fines of \$2,500 and \$3,000 to community service orders.

The Department has recently published a leaflet about making representations if you think someone should not have been granted legal aid. The leaflet is available online at <http://www.lad.gov.hk> or you can pick one up from our offices.

第一押記利率下調

 二〇一〇年六月一日起，署長根據《法律援助條例》（第91章）第18A(3A)條把第一押記登記在受助人的居所所收取的息率，由2.099%下調至1.822%。新利率按照《法律援助（財產的押記）（利率）規例》的規定進行調整，在二〇一〇年六月一日至二〇一一年五月三十一日期間適用。

Reduction of 1st charge interest rate

 With effect from 1 June 2010, the interest rate of the Director's First Charge registered on an aided person's home pursuant to Section 18A (3A) of the Legal Aid Ordinance, Cap. 91 is 1.822%, down from 2.099%. The adjustment is made in accordance with the provisions of the Legal Aid (Charge on Property) (Rate of Interest) Regulation. The new rate is valid from 1 June 2010 to 31 May 2011.

使用「繳費靈」繳付法律援助款項

 二〇一〇年六月一日起，受助人如須向本署繳付分擔費，或已簽署協議，同意向本署分期繳付所欠款項，可透過音頻電話或互聯網，使用「繳費靈」（PPS）付款。

如欲使用新的繳費服務，可瀏覽「繳費靈」網站<http://www.ppskh.com>或致電900 00 222 328 / 2311 9876查詢申請詳情。

Use PPS to make Legal Aid Payment

 Starting from the 1 June 2010, you can make use of the Payment by Phone Service (PPS) to pay contributions if you are an aided person or to pay by instalment any sum due to the Department if you have signed an agreement to do so. You can effect the payments by using a tone phone or via the Internet.

If you are interested in this new payment service, you may visit PPS website at <http://www.ppskh.com> or ring 900 00 222 329 / 2311 9876 for application of service.

使用「繳費靈」繳付 法律援助款項

Use PPS to make Legal Aid Payment

如你須就你法援案件的訟費，分期繳付分擔費，或根據書面協議，須向本署分期繳付款項，現可透過音頻電話或互聯網，使用「繳費靈」（PPS）付款。

如欲使用新的繳費服務，可瀏覽「繳費靈」網站
<http://www.ppskh.com> 或
致電 900 00 222 328 / 2311 9876查詢申請詳情。

If you are required to pay by instalments any contributions towards the costs of your legal aid case or any sum due to the Department pursuant to a written agreement, you can now do so with the Payment by Phone Service (PPS) by using a tone phone or via the Internet.

If you are interested in using this new payment service, you may visit PPS website at <http://www.ppskh.com> or ring 900 00 222 329 / 2311 9876 for application of service.



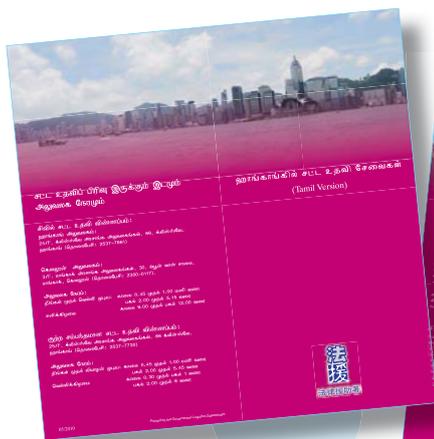
法律援助署
Legal Aid Department

香港法律援助服務小冊子 (少數族裔版本)

在二〇〇九年，本署以孟加拉語、印度語、印尼語、尼泊爾語、菲律賓語、泰語和巴基斯坦語出版了一系列法援小冊子。為進一步向在香港居住的少數族裔推廣法律援助服務，本署新增了**越南語**、**旁遮普語**及**泰米爾語**的版本。這些外語小冊子，連同早前出版的其他小冊子，均可在本署各辦事處索取，亦可在本署網站下載。另外，有關領事館、懲教署、社會福利署、司法機構資源中心、各區警署、勞工處、民政事務總署諮詢服務中心及醫院管理局轄下醫院亦備有上述小冊子，可供索取。

Information Leaflet on Legal Aid Services in Hong Kong for Ethnic Minorities

In 2009, the Department published a series of leaflet on legal aid in Bengali, Hindi, Indonesian, Nepali, Tagalog, Thai and Urdu. In a further effort to promote the legal aid services among ethnic minorities residing in Hong Kong, the Department has published three more leaflets on legal aid in **Vietnamese**, **Punjabi** and **Tamil**. These leaflets together with the other leaflets are now available at the offices of the Department or they can be downloaded from the Department's website. They are also available at relevant Consulate Offices, the Correctional Services Department, Social Welfare Department, Judiciary Resources Centre, Police Stations, Labour Department, Public Enquiries Service Centres of the Home Affairs Department and hospitals under Hospital Authority.



查詢 Enquiries

二十四小時查詢熱線
24-hour Hotline
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LAD Website
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ladinfo@lad.gov.hk

通訊地址 Correspondence Address

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