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## 大律师证明书计划 Certificate by Counsel Scheme

### 概况

根据《法律援助条例》第26A条的规定，凡向终审法院提出上诉而不获批法援的人士，可以在法律援助署署长作出拒绝批出法援的决定后28天内申请复核。寻求复核的申请必须附有由在香港执业的大律师发出的证明书，说明该申请人有合理机会向终审法院上诉得直，以及提出该项意见的理由。

上述申请人如非因经济审查而被拒批出法援，可向本局在相关的援助计划下申请免费提供一张大律师证明书。在民事案件方面，本局只会考虑为已在上诉法庭进行聆讯，并就实质裁决颁布了判决、判定或命令而有意向终审法院提出上诉的案件，安排签发大律师证明书，至于非正审的判决、判定或命令，本局将不会作出以上的安排。

本局自2002年4月起实施该项援助计划，并一直有在本局年报中载述计划的详情和其运作情况。

在2014年4月1日至2015年3月31日期间，本局共接获89宗（76宗刑事案件及13宗民事案件）要求提供大律师证明书的申请。在76宗刑事案件申请中，法援上诉人最常涉及案件类别是「贩卖危险药物」，占总刑事案件申请的32.9%。至于13宗民事案件申请，法援上诉人主

### The Overview

Under section 26A of the Legal Aid Ordinance, a person who has been refused legal aid in respect of his/her appeal to the Court of Final Appeal (CFA) may seek a review of the Director of Legal Aid's refusal within 28 days of the decision. The application for review must be accompanied by a certificate by counsel stating that the person has a reasonable prospect of success in the appeal to the CFA and the grounds for that opinion.

If the above-said person has been refused legal aid other than on ground of means, he/she may apply to the Council for the provision of a certificate by counsel free of charge under an assistance scheme. In respect of civil cases, a certificate by counsel will only be provided if the case has been heard by the Court of Appeal and the intended appeal to the CFA is related to a judgment or decision or order on the substantive merits of the case as opposed to an interlocutory decision or order by the Court of Appeal.

The assistance scheme administered by the Council has been implemented since April 2002. Details of the scheme and its operation have all along been set out in the Council's annual reports.

From 1 April 2014 to 31 March 2015, the Council received 89 (76 criminal and 13 civil) applications for the provision of a certificate by counsel. For the 76 criminal applications, the commonest type of case the legal aid appellants were involved was "trafficking in a dangerous drug", which accounted for 32.9% of the total number of criminal applications. For the 13 civil applications, the majority types of cases the legal aid appellants were involved were

要涉及案件包括司法复核及土地纠纷，占总民事案件的53.8%。在89宗申请中，67宗（55宗刑事案件及12宗民事案件）申请获批，17宗刑事案件申请被拒，3宗刑事案件申请被申请人撤回，两宗（1宗刑事案件及1宗民事案件）申请被本局中止。

本局把该67宗获批的申请外委予律师签发大律师证明书，详情如下：

judicial review and land disputes, which accounted for 53.8% of the total number of civil applications. Of the 89 applications, 67 (55 criminal and 12 civil) applications were approved, 17 criminal applications were refused, 3 criminal applications were withdrawn, 2 (1 criminal and 1 civil) applications were aborted by the Council.

In respect of the 67 approved applications, the Council made the following assignments for the provision of counsel certificate—

刑事案件 Criminal Case	大律师 Counsel	律师 Solicitor
(a) 委派予法律援助上诉人提名的名册律师 Assignment to panel lawyers according to legal aid appellants' nomination	53	51
(b) 委派予法律援助上诉人提名的非名册律师（该律师曾于上诉庭代表法律援助上诉人） Assignment to non-panel lawyers (who have represented the legal aid appellants in the appeal court) according to legal aid appellants' nomination	2	4
委派案件总数 Total assignment	55	55

民事案件 Civil Case	大律师 Counsel	律师 Solicitor
(a) 委派予法律援助上诉人提名的名册律师 Assignment to panel lawyers according to legal aid appellants' nomination	12	7
(b) 委派予法律援助上诉人提名的非名册律师（该律师曾于上诉庭代表法律援助上诉人） Assignment to non-panel lawyers (who have represented the legal aid appellants in the appeal court) according to legal aid appellants' nomination	0	5
委派案件总数 Total assignment	12	12



在已签发的67份大律师证明书当中，9份（6宗刑事案件及3宗民事案件）证明法律援助上诉人有合理机会向终审法院上诉得直，另外58份（49宗刑事案件及9宗民事案件）则说明法律援助上诉人提出的上诉并无合理机会成功。

至于该9宗（6宗刑事案件及3宗民事案件）获大律师证明书陈述法律援助上诉人有合理机会上诉得直的案件，法律援助署（「法援署」）经复核后，决定为其中6宗案件（3宗刑事案件及3宗民事案件）提供法律援助。

2013至2014年度及2014至2015年度的统计列表如下：

Of the 67 certificates issued, 9 (6 criminal and 3 civil) certificates by counsel stated that the legal aid appellants have reasonable prospect of success in their intended appeal to the CFA and 58 (49 criminal and 9 civil) certificates by counsel stating that the legal aid appellants do not have reasonable prospect of success.

For the 9 (6 criminal and 3 civil) cases which were certified by counsel to have reasonable prospect of success, after review the Legal Aid Department (LAD) decided to grant legal aid in 6 (3 criminal and 3 civil) of the cases.

A table showing the statistics in 2013-2014 and 2014-2015 is appended below –

	2013年4月1日至 2014年3月31日接获的申请 For Applications Received from 1.4.2013 to 31.3.2014			2014年4月1日至 2015年3月31日接获的申请 For Applications Received from 1.4.2014 to 31.3.2015		
	刑事 Criminal	民事 Civil	总计 Total	刑事 Criminal	民事 Civil	总计 Total
<b>1. 申请 Applications</b>						
(a) 获批 approved	59	5	64	55	12	67
(b) 被拒 refused	7	4	11	17	0	17
(c) 中止 aborted	3	0	3	1	1	2
(c) 撤回 withdrawn	0	0	0	3	0	3
总计 Total	69	9	78	76	13	89
<b>2. 大律师证明书 Certificate by Counsel</b>						
(a) 有合理机会上诉得直 has reasonable prospect of success	6	1	7	6	3	9
(b) 无合理机会上诉得直 has no reasonable prospect of success	53	4	57	49	9	58
总计 Total	59	5	64	55	12	67
<b>3. 有合理机会上诉得直的案件 Cases with reasonable prospect of success</b>						
(a) 经法律援助审核后获提供 法律援助 legal aid granted upon review by LAD	6	1	7	3	3	6
(b) 经法律援助审核后被拒绝 提供法律援助 legal aid not granted upon review by LAD	0	0	0	3	0	3
总计 Total	6	1	7	6	3	9

两年的统计数据显示：

- a) 2014-2015年度总申请数目增加了14.1%（由2013-2014年度的78宗上升至2014-2015年度的89宗）；当中刑事案件上升了10.1%（由2013-2014年度的69宗上升至2014-2015年度的76宗）；民事案件亦上升了44.4%（由2013-2014年度的9宗上升至2014-2015年度的13宗）；
- b) 获大律师确认有合理机会上诉得直的案件的百分比，由2013-2014年度的10.9%上升至2014-2015年度的13.4%，上升主要来自民事案件；及
- c) 法援署因应大律师证明书提供法律援助案件的百分比，则由2013-2014年度的100%下降至2014-2015年度的66.7%。

就2014-2015年度接获并成功获批的申请，合共拨出2,040,000元作为支付大律师及律师提供证明书的费用，详情如下：

The statistics for the two years reveal that –

- a) the total number of applications in 2014-2015 has increased by 14.1% (from 78 in 2013-2014 to 89 in 2014-2015), with increases of 10.1% in criminal cases (from 69 in 2013-2014 to 76 in 2014-2015) and 44.4% in civil cases (from 9 in 2013-2014 to 13 in 2014-2015);
- b) the percentage of cases certified by counsel to have reasonable prospect of success has increased from 10.9% in 2013-2014 to 13.4% in 2014-2015, with increase mainly comes from civil cases; and
- c) the percentage of cases where legal aid was granted by LAD in the light of the counsel certificates has decreased from 100% in 2013-2014 to 66.7% in 2014-2015.

In respect of the applications received in 2014-2015, \$2.04 million was committed as fees for counsel and solicitors for providing the certificates. Details are as follows –

	获批申请 数目 Number of Applications Approved	每宗案件的大 律师费用 Counsel Fee/Case	大律师费用 总计 Total Counsel Fee	每宗案件的大 律师费用 Solicitor Fee/Case	律师费用 总计 Total Solicitor Fee	费用 总数 Total Fee
刑事 Criminal	55	\$15,000	\$825,000	\$9,000	\$495,000	\$1,320,000
民事 Civil	12	\$40,000	\$480,000	\$20,000	\$240,000	\$720,000
总数 Total	67		\$1,305,000		\$735,000	\$2,040,000

援助计划自2002年4月实施以来，合共拨出25,320,000元支付提供大律师证明书的费用。

Since the implementation of the assistance scheme in April 2002, a total of \$25.32 million was committed for the provision of certificate by counsel.

## 大律师和律师名册

本局设有大律师和律师名册，名册内的律师为本局管理的援助计划提供服务。要登记成为名册律师，大律师须具备最少十年执业经验，而律师则须具备七年执业经验。此外，大律师和律师均须于过去三年内，曾处理最少三宗上诉法庭或终审法院的案件。资深大律师则获豁免最低经验要求。现时，名册上共有67名大律师和45名律师。

## Panel of Counsel and Solicitors

In providing the service under the assistance scheme administered by the Council, the Council maintains a panel of counsel and solicitors. To join the panel, counsel must have at least 10 years' practising experience and for solicitors, 7 years. In addition, both the counsel and solicitors must have handled at least 3 Court of Appeal (CA) or Court of Final Appeal (CFA) cases in the past three years. Senior counsel are exempted from the minimum experience requirements. At present, there are 67 counsel and 45 solicitors on the panel.