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# 大律师证明书计划

Certificate by Counsel Scheme



## 总览 The Overview

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，述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理由而被拒批出法援，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。

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运作情况。

在2015年4月1日至2016年3月31日期间，本局共接获74宗（68宗刑事案件及6宗民事案件）要求提供大律师证明书的申请。在68宗与刑事案件有关的申请中，最多法援上诉人涉及的案件类别是「贩卖危险药物」，占总刑事案件申请的41.2%。6宗与民事案件有关的申请并没有显著的主要案件类别。在74宗申请中，59宗（55宗刑事案件及4宗民事案件）申请获批，11宗（9宗刑事案件及2宗民事案件）申请被拒，4宗与刑事案件有关的申请被本局中止。

本局就该59宗获批的申请，委派了律师预备大律师证明书，详情如下：

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 its operation have all along been set out in the Council's annual reports.

From 1 April 2015 to 31 March 2016, the Council received 74 (68 criminal and 6 civil) applications for the provision of a certificate by counsel. For the 68 applications of criminal cases, the most common type of case the legal aid appellants were involved was "trafficking in a dangerous drug", which accounted for 41.2% of the total number of criminal applications. For the 6 applications of civil cases, there was no overwhelming majority types of case. Of the 74 applications, 59 (55 criminal and 4 civil) applications were approved, 11 (9 criminal and 2 civil) applications were refused and 4 (criminal) applications were aborted by the Council.

In respect of the 59 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) 委派予法援上诉人提名的名册律师 Assignment to panel lawyers according to legal aid appellants' nomination	55	55
(b) 委派予法援上诉人提名的非名册律师 (该律师曾于上诉庭代表法援上诉人) Assignment to non-panel lawyers (who have represented the legal aid appellants in the appeal court) according to legal aid appellants' nomination	0	0
委派案件总数 Total	55	55

**民事案件**  
**Civil Case**

	大律师 Counsel	律师 Solicitor
(a) 委派予法援上诉人提名的名册律师 Assignment to panel lawyers according to legal aid appellants' nomination	4	4
(b) 委派予法援上诉人提名的非名册律师 (该律师曾于上诉庭代表法援上诉人) Assignment to non-panel lawyers (who have represented the legal aid appellants in the appeal court) according to legal aid appellants' nomination	0	0
委派案件总数 Total	4	4

在2015年4月1日至2016年3月31日期间共签发了59份大律师证明书。当中，5份（4宗刑事案件及1宗民事案件）证明法援上诉人有合理机会向终审法院上诉得直，另外54份（51宗刑事案件及3宗民事案件）则述明法援上诉人提出的上诉并无合理机会成功。

至于该5宗（4宗刑事案件及1宗民事案件）获大律师证明法援上诉人有合理机会上诉得直的案件，法援署经复核后，决定为其中4宗刑事案件提供法律援助。

59 certificates by counsel were issued in respect of the applications approved during the period from 1 April 2015 to 31 March 2016. Of these, 5 (4 criminal and 1 civil) certificates by counsel stated that the legal aid appellants have reasonable prospect of success in their intended appeal to the CFA and 54 (51 criminal and 3 civil) certificates by counsel stating that the legal aid appellants do not have reasonable prospect of success.

For the 5 (4 criminal and 1 civil) cases which were certified by counsel to have reasonable prospect of success, the Legal Aid Department (LAD) agreed to grant legal aid to 4 (criminal) appellants after review.

2014-2015年度及2015-2016年  
度的统计列表如下：

A table showing the statistics in 2014-2015 and 2015-  
2016 is appended below –

	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			2015年4月1日至2016年3月31日接获的申请 For Applications Received from 1.4.2015 to 31.3.2016		
	刑事 Criminal	民事 Civil	总计 Total	刑事 Criminal	民事 Civil	总计 Total
<b>申请</b> Applications						
(a) 获批 approved	55	12	67	55	4	59
(b) 被拒 refused	17	0	17	9	2	11
(c) 被中止 aborted	1	1	2	4	0	4
(d) 撤回 withdrawn	3	0	3	0	0	0
总计 Total	76	13	89	68	6	74
<b>大律师证明书</b> Certificate by Counsel						
(a) 确认有合理机会上诉得直 certified to have reasonable prospect of success	6	3	9	4	1	5
(b) 确认无合理机会上诉得直 certified to have no reasonable prospect of success	49	9	58	51	3	54
总计 Total	55	12	67	55	4	59
<b>有合理机会上诉得直的案件</b> Cases with reasonable prospect of success						
(a) 经法署复核后获提供法 律援助 legal aid granted upon review by LAD	3	3	6	4	0	4
(b) 经法署复核后不获提供 法律援助 legal aid not granted upon review by LAD	3	0	3	0	1*	1
总计 Total	6	3	9	4	1	5

\* 上诉人不打算就其民事案件继续向终审法院提出上诉，因此不获批法律援助。

Legal aid was not granted to the appellant as he would not continue his appeal to CFA in respect of his civil case.

两年的统计数据显示：

- a) 2015-2016年度总申请数目减少了16.9%（由2014-2015年度的89宗下降至2015-2016年度的74宗）；当中与刑事案件有关的申请下降了10.5%（由2014-2015年度的76宗下降至2015-2016年度的68宗）；与民事案件有关的申请亦下降了53.8%（由2014-2015年度的13宗下降至2015-2016年度的6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2014-2015年度的13.4%下降至2015-2016年度的8.5%；及
- c) 法援署因应大律师证明书提供法律援助的案件的百分比，则由2014-2015年度的66.7%上升至2015-2016年度的100%（撇除1宗上诉人决定不继续向终审法院提出上诉的民事案件。）

就2015-2016年度接获并成功获批的申请，合共拨出1,560,000元作为支付大律师及律师提供证明书的费用，详情如下：

	获批申请数目 Number of Applications Approved	每宗个案的大律师费用 Counsel Fee/Case	大律师费用总计 Total Counsel Fee	每宗个案的律师费用 Solicitor Fee/Case	律师费用总计 Total Solicitor Fee	费用总数 Total Fee
刑事案件 Criminal case	55	\$15,000	\$825,000	\$9,000	\$495,000	\$1,320,000
民事案件 Civil case	4	\$40,000	\$160,000	\$20,000	\$80,000	\$240,000
总数 Total	59		\$985,000		\$575,000	\$1,560,000

援助计划自2002年4月实施以来，合共拨出26,880,000元支付提供大律师证明书的费用。

The statistics for the two years reveal that –

- a) the total number of applications in 2015-2016 has decreased by 16.9% (from 89 in 2014-2015 to 74 in 2015-2016), with decrease of 10.5% in applications of criminal cases (from 76 in 2014-2015 to 68 in 2015-2016) and 53.8% in applications of civil cases (from 13 in 2014-2015 to 6 in 2015-2016);
- b) the percentage of cases certified by counsel to have reasonable prospect of success has decreased from 13.4% in 2014-2015 to 8.5% in 2015-2016; and
- c) the percentage of cases where legal aid was granted by LAD in the light of the counsel certificates has increased from 66.7% in 2014-2015 to 100% (excluding the civil case in which the appellant decided not to continue his appeal to CFA) in 2015-2016.

In respect of the applications received and approved in 2015-2016, \$1.56 million was committed as fees for counsel and solicitors for providing the certificates. Details are as follows –



Since the implementation of the assistance scheme in April 2002, a total of \$26.88 million was committed for the provision of certificate by counsel.

## 大律师和律师名册 Panel of Counsel and Solicitors

本局设有大律师和律师名册，名册内的律师会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68名大律师和44名律师。

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 68 counsel and 44 solicitors on the panel.

