

8

大律師證明書計劃

Certificate by Counsel Scheme



總覽

The Overview

根據《法律援助條例》第26A條的規定，凡向終審法院提出上訴而不獲批法援的人士，可以在法律援助署署長作出拒絕批出法援的決定後28天內申請覆核。尋求覆核的申請必須附有由在香港執業的大律師發出的證明書，述明該申請人有合理機會向終審法院上訴得直，以及提出該項意見的理由。

上述申請人如非因經濟理由而被拒批出法援，可向本局在相關的援助計劃下申請免費提供一張大律師證明書。在民事案件方面，本局只會考慮為已在上訴法庭進行聆訊，並就實質裁決頒布了判決、判定或命令而有意向終審法院提出上訴的案件，安排簽發大律師證明書。

本局自2002年4月起實施該項援助計劃，並一直有在本局年報中載述計劃的運作情況。

在2015年4月1日至2016年3月31日期間，本局共接獲74宗（68宗刑事案件及6宗民事案件）要求提供大律師證明書的申請。在68宗與刑事案件有關的申請中，最多法援上訴人涉及的案件類別是「販賣危險藥物」，佔總刑事案件申請的41.2%。6宗與民事案件有關的申請並沒有顯著的主要案件類別。在74宗申請中，59宗（55宗刑事案件及4宗民事案件）申請獲批，11宗（9宗刑事案件及2宗民事案件）申請被拒，4宗與刑事案件有關的申請被本局中止。

本局就該59宗獲批的申請，委派了律師預備大律師證明書，詳情如下：

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

	大律師 Counsel	律師 Solicitor
(a) 委派予法援上訴人提名的名冊律師 Assignment to panel lawyers according to legal aid appellants' nomination	55	55
(b) 委派予法援上訴人提名的非名冊律師 (該律師曾於上訴庭代表法援上訴人) Assignment to non-panel lawyers (who have represented the legal aid appellants in the appeal court) according to legal aid appellants' nomination	0	0
委派案件總數 Total	55	55

民事案件
Civil Case

	大律師 Counsel	律師 Solicitor
(a) 委派予法援上訴人提名的名冊律師 Assignment to panel lawyers according to legal aid appellants' nomination	4	4
(b) 委派予法援上訴人提名的非名冊律師 (該律師曾於上訴庭代表法援上訴人) Assignment to non-panel lawyers (who have represented the legal aid appellants in the appeal court) according to legal aid appellants' nomination	0	0
委派案件總數 Total	4	4

在2015年4月1日至2016年3月31日期間共簽發了59份大律師證明書。當中，5份（4宗刑事案件及1宗民事案件）證明法援上訴人有合理機會向終審法院上訴得直，另外54份（51宗刑事案件及3宗民事案件）則述明法援上訴人提出的上訴並無合理機會成功。

至於該5宗（4宗刑事案件及1宗民事案件）獲大律師證明法援上訴人有合理機會上訴得直的案件，法援署經覆核後，決定為其中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
度的統計列表如下：

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日接獲的申請 For Applications Received from 1.4.2014 to 31.3.2015			2015年4月1日至2016年3月31日接獲的申請 For Applications Received from 1.4.2015 to 31.3.2016		
	刑事 Criminal	民事 Civil	總計 Total	刑事 Criminal	民事 Civil	總計 Total
申請 Applications						
(a) 獲批 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
總計 Total	76	13	89	68	6	74
大律師證明書 Certificate by Counsel						
(a) 確認有合理機會上訴得直 certified to have reasonable prospect of success	6	3	9	4	1	5
(b) 確認無合理機會上訴得直 certified to have no reasonable prospect of success	49	9	58	51	3	54
總計 Total	55	12	67	55	4	59
有合理機會上訴得直的案件 Cases with reasonable prospect of success						
(a) 經法援署覆核後獲提供法 律援助 legal aid granted upon review by LAD	3	3	6	4	0	4
(b) 經法援署覆核後不獲提供 法律援助 legal aid not granted upon review by LAD	3	0	3	0	1*	1
總計 Total	6	3	9	4	1	5

* 上訴人不打算就其民事案件繼續向終審法院提出上訴，因此不獲批法律援助。

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

兩年的統計數據顯示：

- a) 2015-2016年度總申請數目減少了16.9%（由2014-2015年度的89宗下降至2015-2016年度的74宗）；當中與刑事案件有關的申請下降了10.5%（由2014-2015年度的76宗下降至2015-2016年度的68宗）；與民事案件有關的申請亦下降了53.8%（由2014-2015年度的13宗下降至2015-2016年度的6宗）；
- b) 獲大律師確認有合理機會上訴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) 法援署因應大律師證明書提供法律援助的案件的百分比，則由2014-2015年度的66.7%上升至2015-2016年度的100%（撇除1宗上訴人決定不繼續向終審法院提出上訴的民事案件。）

就2015-2016年度接獲並成功獲批的申請，合共撥出1,560,000元作為支付大律師及律師提供證明書的費用，詳情如下：

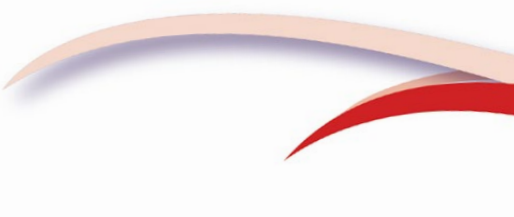
	獲批申請數目 Number of Applications Approved	每宗個案的大律師費用 Counsel Fee/Case	大律師費用總計 Total Counsel Fee	每宗個案的律師費用 Solicitor Fee/Case	律師費用總計 Total Solicitor Fee	費用總數 Total Fee
刑事案件 Criminal case	55	\$15,000	\$825,000	\$9,000	\$495,000	\$1,320,000
民事案件 Civil case	4	\$40,000	\$160,000	\$20,000	\$80,000	\$240,000
總數 Total	59		\$985,000		\$575,000	\$1,560,000

援助計劃自2002年4月實施以來，合共撥出26,880,000元支付提供大律師證明書的費用。

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.

大律師和律師名冊 Panel of Counsel and Solicitors

本局設有大律師和律師名冊，名冊內的律師會為本局管理的援助計劃提供服務。要登記成為名冊律師，大律師須具備最少十年執業經驗，而律師則須具備七年執業經驗。此外，大律師和律師均須於過去三年內，曾處理最少三宗上訴法庭或終審法院的案件。資深大律師則獲豁免最低經驗要求。現時，名冊上共有68名大律師和44名律師。

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.

