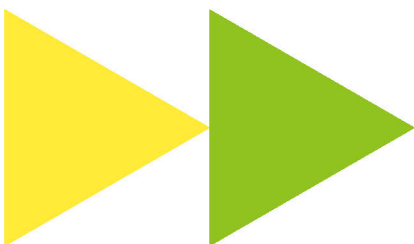


Certificate by Counsel Scheme



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 person has been refused legal aid other than on ground of means, he/she may apply for the assistance scheme of the Council. Eligible applicants will be provided with a certificate by counsel free of charge. In respect of civil cases, a certificate by counsel will only be provided if the case concerned has been heard by the Court of Appeal (CA) 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 CA.

During the period from 1 April 2016 to 31 March 2017, the Council received 53 (46 criminal and 7 civil) applications for the provision of a

CERTIFICATE BY COUNSEL SCHEME

certificate by counsel. For the 46 applications in respect of criminal cases, the most common type of case the legal aid appellants were involved was “trafficking in a dangerous drug” which accounted for 45.7% of the total number of

criminal applications. As regards the 7 applications for civil cases, there was no overwhelming majority types of case. Of the 53 applications, 39 (36 criminal and 3 civil) applications were approved and 14 (10 criminal and 4 civil) applications were refused

by the Council.

In respect of the 39 approved applications, the Council made the following assignments for the provision of counsel certificate –

Criminal Case	Counsel	Solicitor
(a) No. of assignments to panel lawyers according to legal aid appellants’ nomination	35	36
(b) No. of assignments to non-panel lawyers (who have represented the legal aid appellants in the appeal court) according to legal aid appellants’ nomination	1	0
Total	36	36

Civil Case	Counsel	Solicitor
(a) No. of assignments to panel lawyers according to legal aid appellants’ nomination	3	3
(b) No. of assignments to non-panel lawyers (who have represented the legal aid appellants in the appeal court) according to legal aid appellants’ nomination	0	0
Total	3	3

Of the 39 certificates by counsel issued, 7 (criminal) certificates by counsel stated that the legal aid appellants have reasonable prospect of success in their intended appeal to the CFA and 32 (29 criminal and

3 civil) certificates by counsel stating that the legal aid appellants do not have reasonable prospect of success.

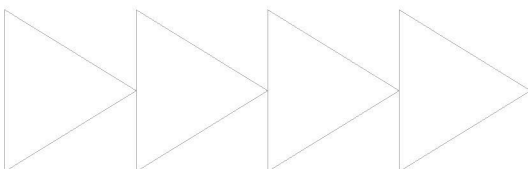
For the 7 criminal cases which had been certified by counsel to have

reasonable prospect of success, the Legal Aid Department (LAD) agreed to grant legal aid to 6 appellants after review.

A table showing the statistics relating to the applications received in 2015-2016 and 2016-2017 is appended below –

	1.4.2015 to 31.3.2016			1.4.2016 to 31.3.2017		
	Criminal Case	Civil Case	Total	Criminal Case	Civil Case	Total
Applications						
(a) approved	55	4	59	36	3	39
(b) refused	9	2	11	10	4	14
(c) aborted	4	0	4	0	0	0
Total	68	6	74	46	7	53
Certificate by Counsel						
(a) has reasonable prospect of success	4	1	5	7	0	7
(b) has no reasonable prospect of success	51	3	54	29	3	32
Total	55	4	59	36	3	39
Cases with reasonable prospect of success						
(a) legal aid granted upon review by LAD	4	0	4	6	0	6
(b) legal aid not granted upon review by LAD	0	1*	1	1	0	1
Total	4	1	5	7	0	7

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



The statistics for the two years reveal that –

- (a) the total number of applications in 2016-2017 has decreased by 28.4% (from 74 in 2015-2016 to 53 in 2016-2017), with a decrease of 32.4% in applications of criminal cases (from 68 in 2015-2016 to 46 in 2016-2017) and an increase of 16.7% in applications of civil cases (from 6 in 2015-2016 to 7 in 2016-2017);
- (b) the percentage of cases certified by counsel to have reasonable prospect of success has increased from 8.5% in 2015-2016 to 17.9% in 2016-2017; and
- (c) the percentage of cases where legal aid was granted by LAD in the light of the counsel's opinion has decreased from 100% in 2015-2016 (excluding the civil case in which the appellant decided not to continue his appeal to CFA) to 85.7% in 2016-2017.

In respect of the approved applications, \$1.044 million was committed in 2016-2017 as fees for counsel and solicitors for providing the certificates. Details are as follows –

	Number of Applications Approved	Counsel Fee/Case	Total Counsel Fee	Solicitor Fee/Case	Total Solicitor Fee	Total Fee
Criminal Case	36	\$15,000	\$540,000	\$9,000	\$324,000	\$864,000
Civil Case	3	\$40,000	\$120,000	\$20,000	\$60,000	\$180,000
Total	39		\$660,000		\$384,000	\$1,044,000

Since the implementation of the assistance scheme in April 2002, a total of \$27.924 million was committed for the provision of certificate by counsel.

Update on Panel of Lawyers

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.

As the administrator of the assistance scheme, the Council has the responsibility to ensure that counsel and solicitors on the panel possess both relevant experience and sound knowledge of the laws and practices

relating to appeal procedures and requirements for appeal to the CFA. To perform this duty, the Council conducted an updating exercise in October 2016 requiring panel lawyers to provide information to update their experience records. The Council also took the opportunity to invite members of Hong Kong Bar Association and the Law Society of Hong Kong, who have not yet registered with the Council, to join the panel. As at 31 March 2017, the numbers of counsel and solicitors on the panel were 68 and 38 respectively.