

## 大律師證明書計劃 Certificate by Counsel Scheme

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律援助的人士，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。

上述人士如非因經濟理由而被拒批出法律援助，可申請本局的援助計劃，本局會為合資格申請人免費安排簽發一張大律師證明書。在民事案件方面，本局只會考慮為已在上訴法庭進行聆訊，並有意就實質裁決所頒布的判決、判定或命令向終審法院提出上訴的案件，安排簽發大律師證明書。

在2017年4月1日至2018年3月31日期間，本局共接獲55宗要求提供大律師證明書的申請。其中最多申請人涉及的刑事案件類別是「販賣危險藥物」，佔總刑事案件申請的37.5%；至於申請人所涉及的民事案件，則沒有顯著的主要類別。在55宗申請中，42宗獲批，9宗被拒，3宗被終止，另有1宗被撤回。

在已簽發的42份大律師證明書中，7份證明申請人有合理機會上訴得直，另外35份則述明申請人提出的上訴並無合理機會成功。

Under section 26A of the Legal Aid Ordinance, a person who has been refused legal aid in respect of his 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 and the grounds for that opinion.

For the above-mentioned applicant, if he has been refused legal aid other than on ground of means, he may consider applying for the assistance scheme administered by the LASC. Eligible applicants will be provided with a certificate by counsel free of charge. For civil cases, a certificate by counsel will only be provided if the case 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.

From 1 April 2017 to 31 March 2018, the Council received 55 applications for the provision of a certificate by counsel. The most common type of criminal case involved was "trafficking in dangerous drugs" accounting for 37.5% of total criminal applications. As for civil cases, there was no prevalent majority type of case. Of the 55 applications, 42 were approved, 9 were refused, 3 were aborted and 1 was withdrawn.

Of the 42 certificates by counsel issued, 7 certificates stated that the applicants had reasonable prospects of success in their intended appeal while 35 stated that they did not.

至於該7宗獲大律師證明申請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6宗提供法律援助。

For the 7 cases certified by counsel to have reasonable prospects of success, the Legal Aid Department (LAD) granted legal aid to 6 applicants after reviewing the matter.

在2016-2017年度及2017-2018年度接獲的申請的相關統計列表如下：

The relevant statistics on the applications received in 2016-2017 and 2017-2018 are set out in the table below –

	2016年4月1日至 2017年3月31日 1.4.2016 to 31.3.2017			2017年4月1日至 2018年3月31日 1.4.2017 to 31.3.2018		
	刑事案件 Criminal Case	民事案件 Civil Case	總計 Total	刑事案件 Criminal Case	民事案件 Civil Case	總計 Total
<b>申請 Applications</b>						
獲批 Approved	36	3	39	38	4	42
被拒 Refused	10	4	14	7	2	9
被中止 Aborted	0	0	0	2	1	3
被撤回 Withdrawn	0	0	0	1	0	1
總計 Total	46	7	53	48	7	55
<b>大律師證明書 Certificates by counsel</b>						
有合理機會上訴得直案件 Cases having reasonable prospects of success	7	0	7	7	0	7
無合理機會上訴得直案件 Cases not having reasonable prospects of success	29	3	32	31	4	35
總計 Total	36	3	39	38	4	42
<b>有合理機會上訴得直案件 Cases having reasonable prospects of success</b>						
經法援署覆核後獲提供法律援助 Legal aid granted after review by LAD	6	0	6	6	0	6
經法援署覆核後不獲提供法律援助 Legal aid not granted after review by LAD	1	0	1	1	0	1
總計 Total	7	0	7	7	0	7

以上統計數據顯示：

- (a) 2017-2018年度總申請數目輕微上升了3.8%（由2016-2017年度的53宗上升至2017-2018年度的55宗）；主要是由於與刑事案件有關的申請上升了4.3%（由2016-2017年度的46宗上升至2017-2018年度的48宗）；
- (b) 在2016-2017及2017-2018年度，獲大律師確認有合理機會上訴得直的案件的百分比約為17%；及
- (c) 法援署因應大律師意見提供法律援助的案件的百分比，維持在85.7%。

在2017-2018年度，就42宗成功獲批的申請，合共撥出1,152,000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's Fee/Case	大律師費用總計 Total Counsel Fees	每宗個案的律師費用 Solicitor's Fee/Case	律師費用總計 Total Solicitor Fees	費用總數 Total Fees
刑事案件 Criminal Case	38	\$15,000	\$570,000	\$9,000	\$342,000	\$912,000
民事案件 Civil Case	4	\$40,000	\$160,000	\$20,000	\$80,000	\$240,000
總數 Total	42		\$730,000		\$422,000	\$1,152,000

援助計劃自2002年4月實施以來，合共批出1 054宗申請，以及撥出29,076,000元支付提供大律師證明書的費用。

The above statistics reveal that –

- (a) the total number of applications in 2017-2018 has slightly increased by 3.8% (from 53 in 2016-2017 to 55 in 2017-2018), which is mainly caused by the increase of 4.3% in the number of applications for criminal cases (from 46 in 2016-2017 to 48 in 2017-2018);
- (b) the percentages of cases certified by counsel to have reasonable prospects of success in 2016-2017 and 2017-2018 are about 17%; and
- (c) the percentage of cases where legal aid was granted by LAD in light of the counsel certificates remains at 85.7%.

In 2017-2018, a total of \$1.152 million was committed as fees for counsel and solicitors to provide certificates for the 42 approved applications. Details are as follows –

Since the implementation of the assistance scheme in April 2002, a total of 1 054 applications have been approved and \$29.076 million has been committed for the provision of certificates by counsel.