

提供大律師證明書計劃

Scheme of Provision of Certificate by Counsel

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。

為協助向終審法院提出上訴而缺乏經濟能力的人士就不獲批法援尋求覆核，法援局推行了一項輔助計劃。通過法援經濟審查的人士可向本局申請免費提供一張大律師證明書。為防止計劃被濫用，每名申請人只能就同一案件申請一張證明書。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。至於非正審的判決、判定和命令，本局將不會安排簽發大律師證明書。

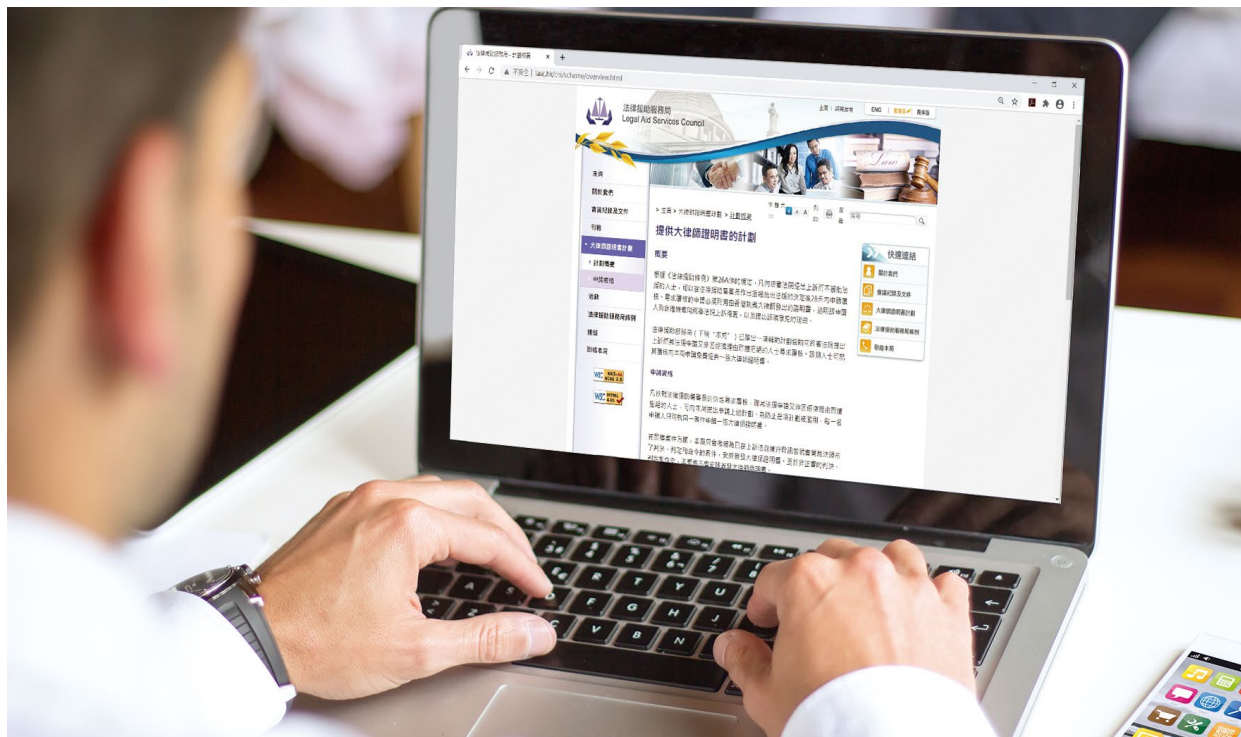
在2019年4月1日至2020年3月31日期間，本局共接獲42宗要求提供大律師證明書的申請。其中最多申請人涉及的刑事案件類別是「販賣危險藥物」，佔總刑事案件申請的53.6%；至於民事案件，超過一半的申請是與司法覆核有關。在42宗申請中，30宗獲批，十宗被拒，一宗撤回申請，另有一宗被終止。

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 practising in Hong Kong stating that the person has a reasonable prospect of success in the appeal and the grounds for that opinion.

To assist persons who lack means to seek a review of legal aid refusal in respect of his/her appeal to the CFA, the Council has implemented an assistance scheme. A person who has passed the means test for legal aid may apply to the Council for the provision of a certificate by counsel free of charge. In order to prevent abuse of the scheme, each applicant can only apply once for a certificate in respect of the same case. 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 2019 to 31 March 2020, the Council received 42 applications for the provision of a certificate by counsel. The most common type of criminal case involved was "trafficking in dangerous drugs" accounting for 53.6% of the total number of applications in respect of criminal cases. As for civil cases, more than half of the applications were related to judicial review. Of the 42 applications, 30 were approved, ten were refused, one was withdrawn and one was aborted.

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在已簽發的29份大律師證明書中，七份證明申請人有合理機會上訴得直，另外22份則述明申請人提出的上訴並無合理機會得直。

至於該七宗獲大律師證明申請人有合理機會上訴得直的案件，法律援助署（法援署）經覆核後，決定為其中五宗提供法律援助。

Of the 29 certificates by counsel issued, seven certificates stated that the applicants had reasonable prospects of success in their intended appeal while 22 stated that they did not.

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

在2018-2019年度及2019-2020年度接獲的
申請的相關統計列表如下：

The relevant statistics on the applications received in 2018-
2019 and 2019-2020 are set out in the table below –

	1.4.2018 - 31.3.2019			1.4.2019 - 31.3.2020		
	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
申請 Applications						
獲批 Approved	42	14	56	24	6	30
被拒 Refused	4	4	8	3	7	10
被終止 Aborted	1	0	1	0	1	1
被撤回 Withdrawn	0	0	0	1	0	1
總計 Total	47	18	65	28	14	42
已發出的大律師證明書 Certificates by counsel issued						
有合理機會上訴得直案件 Cases certified to have reasonable prospects of success	11	2	13	4	3	7
無合理機會上訴得直案件 Cases certified not to have reasonable prospects of success	31	12	43	20	2	22
總計 Total	42	14	56	24	5*	29
有合理機會上訴得直案件 Cases certified to have reasonable prospects of success						
經法援署覆核後獲提供法律援助 Legal aid granted after review by LAD	10	2	12	4	1	5
經法援署覆核後仍不獲提供法律援助 Legal aid not granted after review by LAD	0	0	0	0	2	2
總計 Total	10 [#]	2	12	4	3	7

* 未包括其中一名民事案件的申請人未有回覆本局就提名律師協助擬備大律師證明書所提出的事宜。
Excluding one of the applicants in the approved civil cases has not responded to the Council on matters concerning the nomination of solicitor for the preparation of certificate by counsel.

在一宗獲大律師證明有合理機會上訴得直的刑事案件中，申請人未有提交新一份法援申請供法援署覆核。
In one criminal case certified by counsel to have reasonable prospects of success on appeal, the applicant has not submitted a fresh application for review by LAD.

以上統計數據顯示：

- (a) 2019-2020 年度總申請數目下降 35.4% (由2018-2019年度的65宗下降至2019-2020年度的42宗)；與刑事案件有關的申請下降40.4% (由2018-2019年度的47宗下降至2019-2020年度的28宗) 及與民事案件有關的申請下降22.2% (由2018-2019年度的18宗下降至2019-2020年度的14宗)；
- (b) 在2019-2020年度獲大律師確認有合理機會上訴得直的案件的百分比與去年大致相同 (在2018-2019年度是23.2%而在2019-2020年度是24.1%)；和
- (c) 法援署因應大律師意見提供法律援助的案件的百分比，由2018-2019年度的100% (不包括一宗申請人未有提交新一份法援申請供法援署覆核的案件) 降至2019-2020年度的71.4%。

每個成功申請的個案會獲本局委派在律師名冊內的一名大律師和一名律師以擬備大律師證明書。支付大律師和律師提供證明書的費用為定額費用。

是項計劃由本局管理，經費由公帑支付。在考慮調整律師費用時，本局有責任謹慎

The above statistics reveal that –

- (a) the total number of applications in 2019-2020 has decreased by 35.4% (from 65 in 2018-2019 to 42 in 2019-2020), with a decrease of 40.4% in the number of applications for criminal cases (from 47 in 2018-2019 to 28 in 2019-2020) and 22.2% for civil cases (from 18 in 2018-2019 to 14 in 2019-2020);
- (b) the percentage of cases certified by counsel to have reasonable prospects of success in 2019-2020 has been more or less the same as last year (23.2% in 2018-2019 and 24.1% in 2019-2020); and
- (c) the percentage of cases where legal aid was granted by LAD in light of the counsel certificates has dropped from 100% in 2018-2019 (excluding the case for which the applicant has not submitted a fresh legal aid application to LAD for review) to 71.4% in 2019-2020.

For the purpose of the provision of certificate by counsel, one counsel and one solicitor from the panel of lawyers maintained by the Council will be assigned for each successful scheme application. The fees paid to assigned counsel and solicitor for the provision of a certificate are fixed.

The scheme administered by the Council is funded by public funds. The Council is duty-bound to exercise prudence when considering adjustment to the level of fees to lawyers assigned under the scheme. In a recent review of the fees,

行事。在最近一次費用檢討中，本局決定將大律師在刑事案件的定額費用提高53%至23,000元，民事案件的費用提高45%至58,000元。而律師在刑事案件的定額費用則增加44%至13,000元，民事案件的費用增加45%至29,000元。該次檢討已參考了丙類消費物價指數的上升，以及近期對刑事法律援助費用和在評定民事案件訟費時的律師每小時收費率的調整，並同時考慮了是項計劃在委派合適的律師執行所需工作上是否存在困難。修訂後的費用自2019年12月16日起生效。

在2019-2020年度，就30宗成功獲批的申請，合共撥出1,011,000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	大律師費用 Counsel Fees	律師費用 Solicitor Fees	費用總數 Total Fees
刑事案件 Criminal Case	24	\$392,000	\$232,000	\$624,000
民事案件 Civil Case	6	\$258,000	\$129,000	\$387,000
總計 Total	30	\$650,000	\$361,000	\$1,011,000

the Council decided to increase the fixed fees to counsel by 53% to \$23,000 for criminal cases and by 45% to \$58,000 for civil cases. As for solicitors, the fixed fees were increased by 44% to \$13,000 for criminal cases and by 45% to \$29,000 for civil cases. In conducting the review, reference has been made to the increase in the Consumer Price Index (C), and the recent adjustments to criminal legal aid fees and the Solicitor's Hourly Rates for taxation in civil cases. Consideration has also been given as to whether there is any difficulty in identifying suitable lawyers to perform the work required under the scheme. The revised fees took effect from 16 December 2019.

In 2019-2020, a total of \$1.011 million was committed as fees for counsel and solicitors to provide certificates for the 30 approved applications. Details are as follows –

要加入法援局所備存的執業律師名冊，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工作經驗的要求。

作為計劃的管理人，本局有責任確保所有名冊內的大律師和律師均熟悉有關向終審法院提出上訴的程序和要求，以及具備相關的工作經驗。因此，本局於2019至2020年度進行了名冊更新工作，要求名冊內的執業律師提供資料以更新其工作經驗記錄。本局亦藉此機會邀請尚未登記香港大律師公會及香港律師會的會員加入名冊。於2020年3月31日，名冊內共有64名大律師和33名律師。

To join the panel maintained by the Council, counsel must have at least ten years' practicing experience and for solicitors, seven years. In addition, both counsel and solicitors must have handled at least three CA or CFA cases in the past three years. Senior counsel are exempted from the minimum experience requirements.

As the administrator of the 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 exercise in 2019-2020 inviting 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 2020, the number of counsel and solicitors on the panel were 64 and 33 respectively.