

提供大律师证明书计划

Scheme of Provision of Certificate by Counsel

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，说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。

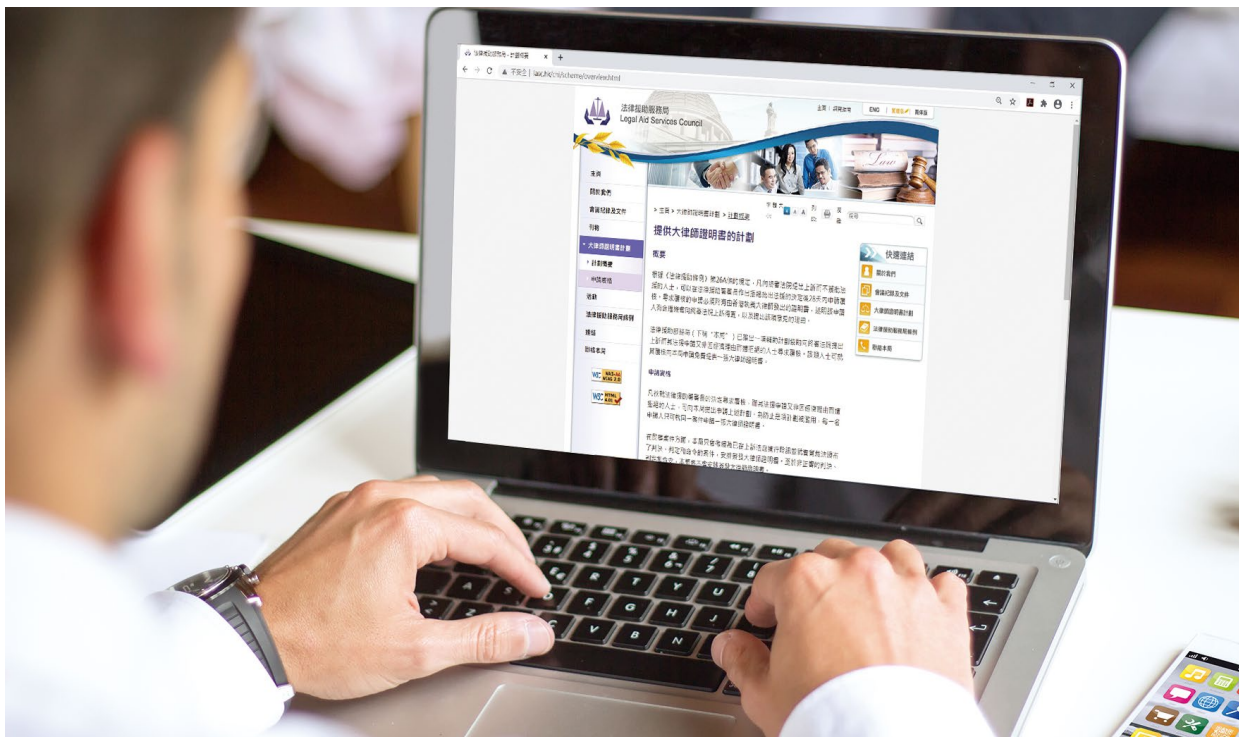
为协助向终审法院提出上诉而缺乏经济能力的人士就不获批法援寻求复核，法援局推行了一项辅助计划。通过法援经济审查的人士可向本局申请免费提供一张大律师证明书。为防止计划被滥用，每名申请人只能就同一案件申请一张证明书。在民事案件方面，本局只会考虑为已在上诉法庭进行聆讯，并有意就实质裁决所颁布的判决、判定或命令向终审法院提出上诉的案件，安排签发大律师证明书。至于非正审的判决、判定和命令，本局将不会安排签发大律师证明书。

在2019年4月1日至2020年3月31日期间，本局共接获42宗要求提供大律师证明书的申请。其中最多申请人涉及的刑事案件类别是「贩卖危险药物」，占总刑事案件申请的53.6%；至于民事案件，超过一半的申请是与司法复核有关。在42宗申请中，30宗获批，10宗被拒，一宗撤回申请，另有一宗被终止。

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 Of the 42 applications, 30 were approved, ten were refused, one was withdrawn and one was aborted.



在已签发的29份大律师证明书中，七份证明申请人有合理机会上诉得直，另外22份则述明申请人提出的上诉并无合理机会得直。

至于该七宗获大律师证明申请人有合理机会上诉得直的案件，法律援助署（法援署）经复核后，决定为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年度接获的
申请的相关统计列表如下：

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	总计 Total	刑事案件 Criminal Case	民事案件 Civil Case	总计 Total
申请 Applications						
获批 Approved	42	14	56	24	6	30
被拒 Refused	4	4	8	3	7	10
被终止 Aborted	1	0	1	0	1	1
被撤回 Withdrawn	0	0	0	1	0	1
总计 Total	47	18	65	28	14	42
已发出的大律师证明书 Certificates by counsel issued						
有合理机会上诉得直案件 Cases certified to have reasonable prospects of success	11	2	13	4	3	7
无合理机会上诉得直案件 Cases certified not to have reasonable prospects of success	31	12	43	20	2	22
总计 Total	42	14	56	24	5*	29
有合理机会上诉得直案件 Cases certified to have reasonable prospects of success						
经法援署复核后获提供法律援助 Legal aid granted after review by LAD	10	2	12	4	1	5
经法援署复核后仍不获提供法律援助 Legal aid not granted after review by LAD	0	0	0	0	2	2
总计 Total	10 [#]	2	12	4	3	7

* 未包括其中一名民事案件的申请人未有回复本局就提名律师协助拟备大律师证明书所提出的事宜。
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.

在一宗获大律师证明有合理机会上诉得直的刑事案件中，申请人未有提交新一份法援申请供法援署复核。
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.

以上统计数据显示：

- (a) 2019-2020 年度总申请数目下降 35.4%（由2018-2019年度的65宗下降至2019-2020年度的42宗）；与刑事案件有关的申请下降40.4%（由2018-2019年度的47宗下降至2019-2020年度的28宗）及与民事案件有关的申请下降22.2%（由2018-2019年度的18宗下降至2019-2020年度的14宗）；
- (b) 在2019-2020年度获大律师确认有合理机会上诉得直的案件的百分比与去年大致相同（在2018-2019年度是23.2%而在2019-2020年度是24.1%）；和
- (c) 法援署因应大律师意见提供法律援助的案件的百分比，由2018-2019年度的100%（不包括一宗申请人未有提交新一份法援申请供法援署复核的案件）降至2019-2020年度的71.4%。

每个成功申请的个案会获本局委派在律师名册内的一名大律师和一名律师以拟备大律师证明书。支付大律师和律师提供证明书的费用为定额费用。

是项计划由本局管理，经费由公帑支付。在考虑调整律师费用时，本局有责任谨慎

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。在最近一次费用检讨中，本局决定将大律师在刑事案件的定额费用提高53%至23,000元，民事案件的费用提高45%至58,000元。而律师在刑事案件的定额费用则增加44%至13,000元，民事案件的费用增加45%至29,000元。该次检讨已参考了丙类消费物价指数的上升，以及近期对刑事法律援助费用和在评定民事案件讼费时的律师每小时收费率的调整，并同时考虑了是项计划在委派合适的律师执行所需工作上是否存在困难。修订后的费用自2019年12月16日起生效。

在2019-2020年度，就30宗成功获批的申请，合共拨出1,011,000元作为支付大律师及律师提供证明书的费用，详情如下：

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 –

	获批申请数目 Number of Applications Approved	大律师费用 Counsel Fees	律师费用 Solicitor Fees	费用总数 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
总计 Total	30	\$650,000	\$361,000	\$1,011,000

要加入法援局所备存的执业律师名册，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工作经验的要求。

作为计划的管理人，本局有责任确保所有名册内的大律师和律师均熟悉有关向终审法院提出上诉的程序和要求，以及具备相关的工作经验。因此，本局于2019至2020年度进行了名册更新工作，要求名册内的执业律师提供资料以更新其工作经验记录。本局亦借此机会邀请尚未登记香港大律师公会及香港律师会的会员加入名册。于2020年3月31日，名册内共有64名大律师和33名律师。

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.