

提供大律師證明書計劃 Scheme of Provision of Certificate by Counsel

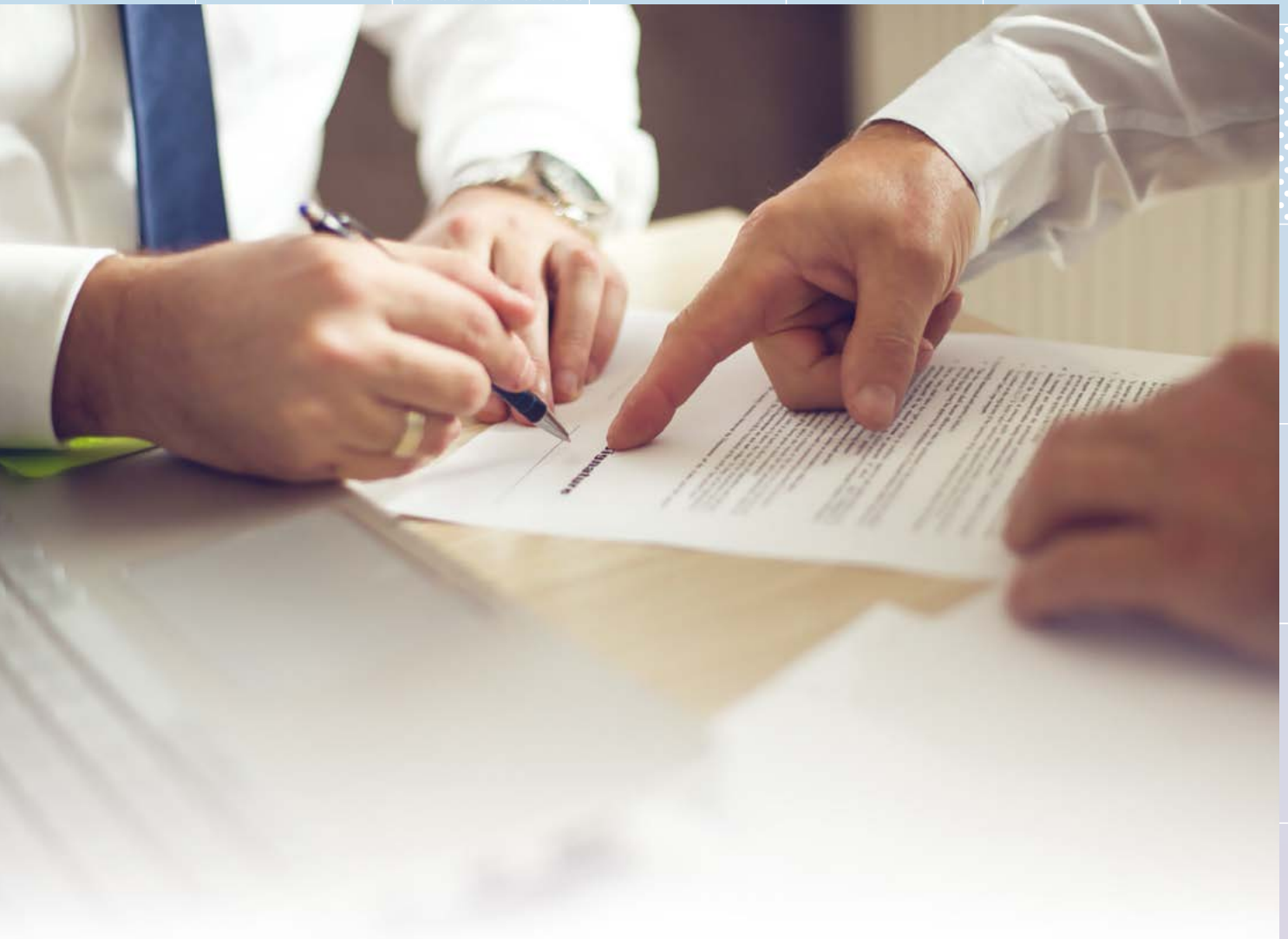
根據《法律援助條例》第 26A 條的規定，凡向終審法院提出上訴而不獲批法援的人士，可以在法律援助署署長作出拒絕批出法援的決定後 28 天內申請覆核。尋求覆核的申請必須附有由在香港執業的大律師發出的證明書，述明該申請人有合理機會向終審法院上訴得直，以及提出該項意見的理由。

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。

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.





在 2020 年 4 月 1 日至 2021 年 3 月 31 日期間，本局共接獲 26 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一半以上；至於民事案件，38% 的申請是與人身傷害有關。在 26 宗申請中，12 宗獲批，13 宗被拒，1 宗撤回申請。

在已簽發的 12 份大律師證明書中，2 份證明申請人有合理機會上訴得直，另外 10 份則述明申請人提出的上訴並無合理機會得直。

至於該 2 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 1 宗提供法律援助。

From 1 April 2020 to 31 March 2021, the Council received 26 applications for the provision of a certificate by counsel. The most common type of criminal case involved was “trafficking in dangerous drugs” accounting for more than half of the total number of applications in respect of criminal cases. As for civil cases, 38% of the applications were related to personal injuries. Of the 26 applications, 12 were approved, 13 were refused, one was withdrawn.

Of the 12 certificates by counsel issued, two certificates stated that the applicants had reasonable prospects of success in their intended appeal while ten stated that they did not.

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

在 2019-2020 年度及 2020-2021 年度接獲的申請的相關統計列表如下：

The relevant statistics on the applications received in 2019-2020 and 2020-2021 are set out in the table below –

	1.4.2019 to 31.3.2020			1.4.2020 to 31.3.2021		
	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	24	6	30	10	2	12
被拒 Refused	3	7	10	7	6	13
被終止 Aborted	0	1	1	0	0	0
被撤回 Withdrawn	1	0	1	1	0	1
總計 Total	28	14	42	18	8	26
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	4	3	7	0	2	2
無合理機會上訴得直案件 Cases certified not to have reasonable prospects of success	20	2	22	10	0	10
總計 Total	24	5*	29	10	2	12
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	4	1	5	0	1	1
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	2	2	0	1	1
總計 Total	4	3	7	0	2	2

- * 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.

以上統計數據顯示：

- (a) 2020-2021 年度總申請數目下降 38% (由 2019-2020 年度的 42 宗下降至 2020-2021 年度的 26 宗)；與刑事案件有關的申請下降 35.7% (由 2019-2020 年度的 28 宗下降至 2020-2021 年度的 18 宗) 及與民事案件有關的申請下降 42.9% (由 2019-2020 年度的 14 宗下降至 2020-2021 年度的 8 宗)；
- (b) 在 2020-2021 年度獲大律師確認有合理機會上訴得直的案件的百分比由 2019-2020 年度的 24.1% 下降至 2020-2021 年度的 16.7%；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 2019-2020 年度的 71.4% 降至 2020-2021 年度的 50%。

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。

在 2020-2021 年度，就 12 宗成功獲批的申請，合共撥出 534,000 元作為支付大律師及律師提供證明書的費用，詳情如下：

The above statistics reveal that –

- (a) the total number of applications in 2020-2021 has decreased by 38% (from 42 in 2019-2020 to 26 in 2020-2021), with a decrease of 35.7% in the number of applications for criminal cases (from 28 in 2019-2020 to 18 in 2020-2021) and 42.9% for civil cases (from 14 in 2019-2020 to 8 in 2020-2021);
- (b) the percentage of cases certified by counsel to have reasonable prospects of success in 2020-2021 has dropped from 24.1% in 2019-2020 to 16.7% in 2020-2021; and
- (c) the percentage of cases where legal aid was granted by LAD in light of the counsel certificates has dropped from 71.4% in 2019-2020 to 50% in 2020-2021.

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.

In 2020-2021, a total of \$534,000 was committed as fees for counsel and solicitors to provide certificates for the 12 approved applications. Details are as follows –

	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	10	\$230,000	\$130,000	\$360,000
民事案件 Civil Case	2	\$116,000	\$58,000	\$174,000
總計 Total	12	\$346,000	\$188,000	\$534,000