

提供大律师证明书计划 Scheme of Provision of Certificate by Counsel

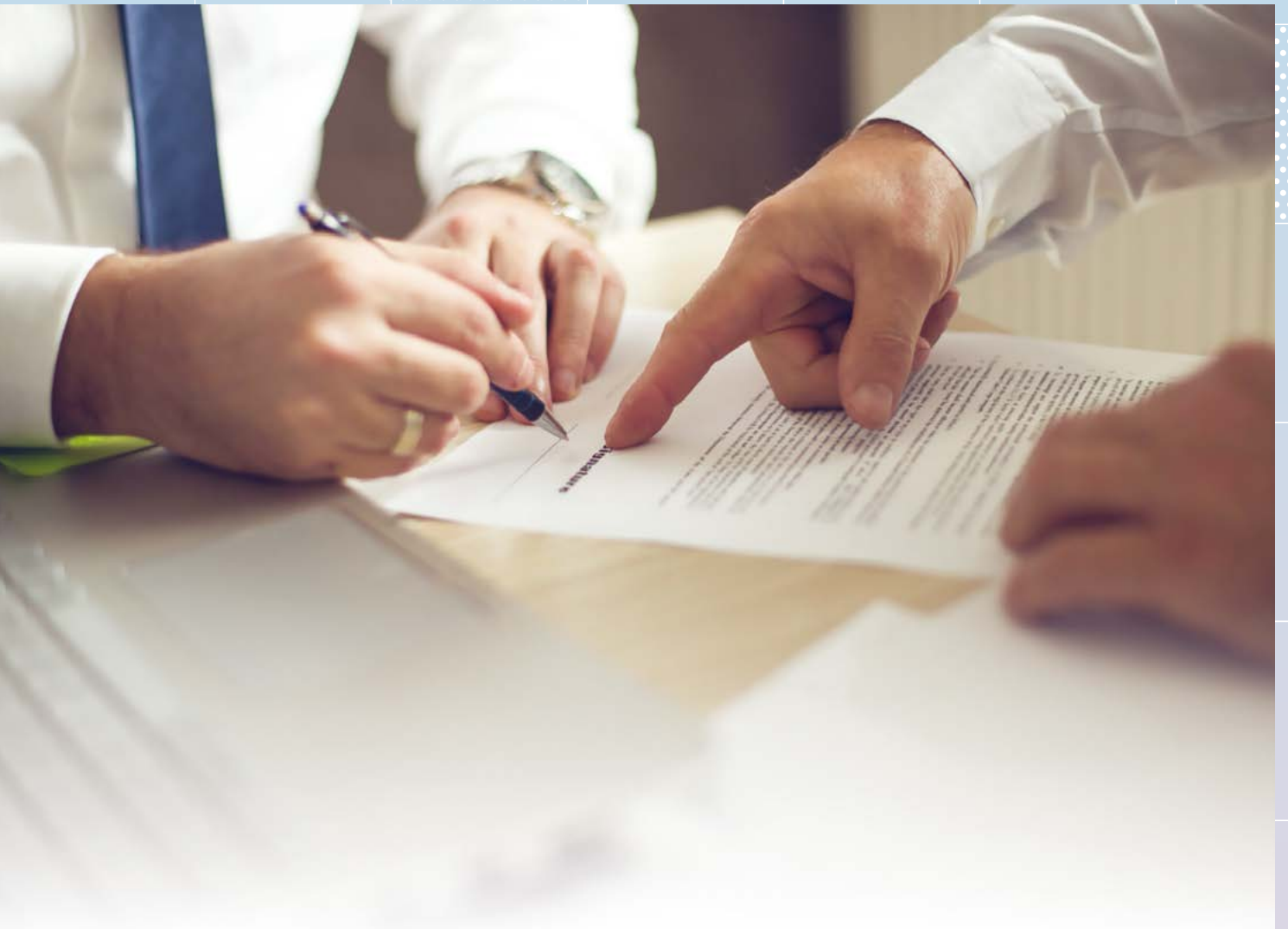
根据《法律援助条例》第 26A 条的规定，凡向终审法院提出上诉而不获批法援的人士，可以在法律援助署署长作出拒绝批出法援的决定后 28 天内申请覆核。寻求覆核的申请必须附有由在香港执业的大律师发出的证明书，述明该申请人有合理机会向终审法院上诉得直，以及提出该项意见的理由。

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覆核，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。

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 日期间，本局共接获 26 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一半以上；至于民事案件，38% 的申请是与人身伤害有关。在 26 宗申请中，12 宗获批，13 宗被拒，1 宗撤回申请。

在已签发的 12 份大律师证明书中，2 份证明申请人有合理机会上诉得直，另外 10 份则述明申请人提出的上诉并无合理机会得直。

至于该 2 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）经覆核后，决定为其中 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 年度接获的申请的统计列表如下：

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	总计 Total	刑事案件 Criminal Case	民事案件 Civil Case	总计 Total
申请 Applications						
获批 Approved	24	6	30	10	2	12
被拒 Refused	3	7	10	7	6	13
被终止 Aborted	0	1	1	0	0	0
被撤回 Withdrawn	1	0	1	1	0	1
总计 Total	28	14	42	18	8	26
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	4	3	7	0	2	2
无合理机会上诉得直案件 Cases certified not to have reasonable prospects of success	20	2	22	10	0	10
总计 Total	24	5*	29	10	2	12
有合理机会上诉得直案件 Cases certified to have reasonable prospects of success						
经法援署覆核后获提供法律援助 Legal aid granted after review by LAD	4	1	5	0	1	1
经法援署覆核后仍不获提供法律援助 Legal aid not granted after review by LAD	0	2	2	0	1	1
总计 Total	4	3	7	0	2	2

* 未包括其中一名民事案件的申请人未有回覆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.

以上统计数据显示：

- (a) 2020-2021 年度总申请数目下降 38% (由 2019-2020 年度的 42 宗下降至 2020-2021 年度的 26 宗)；与刑事案件有关的申请下降 35.7% (由 2019-2020 年度的 28 宗下降至 2020-2021 年度的 18 宗) 及与民事案件有关的申请下降 42.9% (由 2019-2020 年度的 14 宗下降至 2020-2021 年度的 8 宗)；
- (b) 在 2020-2021 年度获大律师确认有合理机会上诉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) 法援署因应大律师意见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。

在 2020-2021 年度，就 12 宗成功获批的申请，合共拨出 534,000 元作为支付大律师及律师提供证明书的费用，详情如下：

The 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 –

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