

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准法援的人士，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准法援寻求覆核，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。

在2022年4月1日至2023年3月31日期间，本局共接获41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」，将近占总刑事案件申请的一半；至于民事案件，则没有显著的主要类别。在41宗申请中，29宗获批，11宗被拒，1宗被撤回。

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 2022 to 31 March 2023, the Council received 41 applications for the provision of a certificate by counsel. The most common type of criminal case involved was "trafficking in dangerous drugs" accounting for almost half of the total number of applications in respect of criminal cases. As for civil cases, there was no prevalent majority type of case. Of the 41 applications, 29 were approved, 11 were refused and 1 was withdrawn.

Of the 29 certificates by counsel issued, 8 certificate stated

在已签发的 29 份大律师证明书中，8 份证明申请人有合理机会上诉得直，另外 21 份则述明申请人提出的上诉并无合理机会得直。

在 2021-2022 年度及 2022-2023 年度接获申请的相关统计列表如下：

that the applicant had reasonable prospects of success in his/her intended appeal while 21 stated that they did not.

The relevant statistics on the applications received in 2021-2022 and 2022-2023 are set out in the table below –

	1.4.2021 至 31.3.2022			1.4.2022 至 31.3.2023		
	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	21	2	23	23	6	29
被拒 Refused	1	4	5	6	5	11
被终止 Aborted	0	0	0	0	0	0
被撤回 Withdrawn	0	0	0	1	0	1
总计 Total	22	6	28	30	11	41
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	1	0	1	6	2	8
无合理机会上诉得直案件 Cases certified not to have reasonable prospects of success	20	2	22	17	4	21
总计 Total	21	2	23	23	6	29
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	0	0	0	2	2	4
经法援署覆核后仍不获提供法律援助 Legal aid not granted after review by LAD	1	0	1	4	0	4
总计 Total	1	0	1	6	2	8

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以上统计数据显示：

- (a) 2022-2023年度总申请数目上升46%（由2021-2022年度的28宗上升至2022-2023年度的41宗）；与刑事案件有关的申请上升36%（由2021-2022年度的22宗上升至2022-2023年度的30宗）及与民事案件有关的申请上升83%（由2021-2022年度的6宗上升至2022-2023年度的11宗）；
- (b) 在2022-2023年度获大律师证明有合理机会上诉得直的案件的比率由2021-2022年度的4.3%上升至2022-2023年度的20%；和
- (c) 法援署因应大律师证明书的意见而提供法律援助的案件比率，由2021-2022年度的0%上升至2022-2023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。

The above statistics reveal that –

- (a) the total number of applications in 2022-2023 has increased by 46% (from 28 in 2021-2022 to 41 in 2022-2023), with an increase of 36% in the number of applications for criminal cases (from 22 in 2021-2022 to 30 in 2022-2023) and an increase of 83% for civil cases (from 6 in 2021-2022 to 11 in 2022-2023);
- (b) the percentage of cases certified by counsel to have reasonable prospects of success in 2022-2023 has risen from 4.3% in 2021-2022 to 20% in 2022-2023; and
- (c) the percentage of cases where legal aid was granted by LAD in light of the counsel certificates has risen from nil in 2021-2022 to 50% in 2022-2023.

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.



在 2022-2023 年度，就 29 宗成功获批的申请，合共拨出 1,350,000 元作为支付大律师及律师提供证明书的费用，详情如下：

In 2022-2023, a total of \$1,350,000 was committed as fees for counsel and solicitors to provide certificates for the 29 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	23	\$529,000	\$299,000	\$828,000
民事案件 Civil Case	6	\$348,000	\$174,000	\$522,000
总计 Total	29	\$877,000	\$473,000	\$1,350,000

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 2022 至 2023 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。本局亦藉此机会邀请香港大律师公会及香港律师会尚未登记的会员加入名册。于 2023 年 3 月 31 日，本局名册内共有 63 名大律师和 35 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 2022-2023 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 2023, the number of counsel and solicitors on the panel were 63 and 35 respectively.