

## 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2022年4月1日至2023年3月31日期間，本局共接獲41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」，將近佔總刑事案件申請的一半；至於民事案件，則沒有顯著的主要類別。在41宗申請中，29宗獲批，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 Of the 41 applications, 29 were approved, 11 were refused and 1 was withdrawn.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

在已簽發的 29 份大律師證明書中，8 份證明申請人有合理機會上訴得直，另外 21 份則述明申請人提出的上訴並無合理機會得直。

在 2021-2022 年度及 2022-2023 年度接獲申請的相關統計列表如下：

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	總計 Total	刑事案件 Criminal Case	民事案件 Civil Case	總計 Total
<b>申請 Applications</b>						
獲批 Approved	21	2	23	23	6	29
被拒 Refused	1	4	5	6	5	11
被終止 Aborted	0	0	0	0	0	0
被撤回 Withdrawn	0	0	0	1	0	1
總計 Total	22	6	28	30	11	41
<b>已發出的大律師證明書 Certificates by counsel issued</b>						
有合理機會上訴得直案件 Cases certified to have reasonable prospects of success	1	0	1	6	2	8
無合理機會上訴得直案件 Cases certified not to have reasonable prospects of success	20	2	22	17	4	21
總計 Total	21	2	23	23	6	29
<b>有合理機會上訴得直案件 Cases certified to have reasonable prospects of success</b>						
經法援署覆核後獲提供法律援助 Legal aid granted after review by LAD	0	0	0	2	2	4
經法援署覆核後仍不獲提供法律援助 Legal aid not granted after review by LAD	1	0	1	4	0	4
總計 Total	1	0	1	6	2	8

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以上統計數據顯示：

- (a) 2022-2023年度總申請數目上升46% (由2021-2022年度的28宗上升至2022-2023年度的41宗)；與刑事案件有關的申請上升36% (由2021-2022年度的22宗上升至2022-2023年度的30宗) 及與民事案件有關的申請上升83% (由2021-2022年度的6宗上升至2022-2023年度的11宗)；
- (b) 在2022-2023年度獲大律師證明有合理機會上訴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) 法援署因應大律師證明書的意見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。

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 宗成功獲批的申請，合共撥出 1,350,000 元作為支付大律師及律師提供證明書的費用，詳情如下：

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 –

	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	23	\$529,000	\$299,000	\$828,000
民事案件 Civil Case	6	\$348,000	\$174,000	\$522,000
總計 Total	29	\$877,000	\$473,000	\$1,350,000

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 2022 至 2023 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香港大律師公會及香港律師會尚未登記的會員加入名冊。於 2023 年 3 月 31 日，本局名冊內共有 63 名大律師和 35 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 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.