

NOTE FOR FINANCE COMMITTEE

Legal Expenses for Briefing Out Cases of the Department of Justice for 2000-01

INTRODUCTION

At the Finance Committee meeting on 14 October 1981, Members delegated to the then Attorney General (now Secretary for Justice (SJ)) and the Solicitor General the authority to negotiate and approve payment of higher fees for engaging barristers in private practice in cases of unusual complexity or length; and fees with professionals for matters briefed out which are not covered by the approved scale of fees. At the same meeting, the Administration agreed to provide Members with periodic reports indicating the levels of fees so negotiated and approved. Starting from 1995-96, we have been submitting information on these on an annual basis. This note reports on the expenditure on briefing out cases in the Department of Justice (the Department) covering the period from 1 April 2000 to 31 March 2001 which also covers the levels of fees approved.

2. Briefing out is mainly to meet operational needs. In general, the Department may resort to briefing out when –

- (a) there is a need for expert assistance where the requisite skill is not available in the Department;
- (b) there is no suitable in-house counsel to appear for the Government;
- (c) there is a need for advice or proceedings involving members of the Department who are in conflict or dispute with the Government;
- (d) there is a need for continuity and economy, e.g. where a former member of the Department who is uniquely familiar with the subject matter is in private practice at the time when legal services are required; and
- (e) the size, complexity, quantum and length of a case so dictate.

In addition, some criminal cases are briefed out with the objective of promoting a strong and independent local Bar by providing work, particularly to the junior Bar, and of securing a pool of experienced prosecutors to supplement those within the Department. This practice is also intended to help change the commonly-held perception that all prosecutors must be government lawyers whereas the private Bar can represent only the defence in criminal cases.

LEGAL EXPENSES FOR THE YEAR ENDING 31 MARCH 2001

3. During the year ending 31 March 2001, the Department paid out a total of \$179,727,583 as briefing out expenses. The breakdown is as follows –

	\$
(a) briefing out by cases according to an approved scale of maximum fees	29,871,707
(b) briefing out on a daily basis in the Magistrates' Court	1,255,800
(c) briefing out by cases for attending sentencing hearings or procedural applications in the District Court	14,800
(d) briefing out by cases at fees not covered by the approved scales	148,585,276
	<u>179,727,583</u>

4. As regards paragraph 3(a), the cases briefed out were criminal cases which did not represent particular legal difficulty but required a competent and experienced counsel to present them at court. These cases were briefed out by the Prosecutions Division of the Department according to an approved scale of maximum fees. A breakdown of expenditure under this category by level of court and the approved scale of maximum fees for 2000-01 are at Enclosure 1.

Encl. 1

5. As regards paragraph 3(b), the cases concerned were briefed out on a daily basis in the Magistrates' Court. Under this category, the Prosecutions Division engaged lawyers to prosecute all matters which appeared before a particular Magistrate on a particular day. The approved rate of maximum fee for briefing out on a daily basis in the Magistrates' Court for 2000-01 is \$5,670 per day. During 2000-01, the Department incurred a total amount of \$1,255,800 involving 221.5 days.

6. As regards paragraph 3(c), the Prosecutions Division paid lawyers appearing before the District Court an approved sum per case for attending sentencing hearings or procedural applications. The approved rate of maximum fee for 2000-01 is \$2,830 per case. During the year, the Department incurred a total of \$14,800 involving seven cases, none of which were paid at maximum rate.

7. As regards paragraph 3(d), the Department briefed out various matters which were not covered by the approved scale of fees to lawyers, accountants, expert witnesses, consultants and appointed arbitrators. The Department incurred a total of \$148,585,276 involving 391 cases during 2000-01. Details are at Enclosure 2.

Encl. 2

BACKGROUND INFORMATION

8. In November 1979, Members approved a scale of maximum fees for lawyers in private practice assigned to conduct legal aid criminal cases. The Department also adopts the same scale of fees to engage counsel in private practice to appear for the Government in court in criminal cases. This is designed to ensure that both the defence and the prosecution are represented by counsel of broadly similar experience and ability and that neither the SJ nor the Director of Legal Aid has an unfair advantage in competing for counsel.

9. Initially, the scale of fees was revised at irregular intervals. Since October 1992, Members have agreed that the fees will be reviewed biennially in future. On that occasion, Members further delegated to the Secretary for the Treasury the authority to approve future revisions of the fees if outcome of the reviews justified an increase no greater than inflation (as measured by the Hang Seng Consumer Price Index, now retitled as Consumer Price Index (C)). In all other circumstances, Members' approval for any change in scale of fees will be required.

**Breakdown of criminal cases briefed out
according to an approved scale of maximum fees in 2000-01**

I. Breakdown of expenditure

Level of court	Number of cases	Expenditure \$
Court of First Instance	49	7,065,145
District Court	487	18,110,651
Magistrates' Court	211	4,695,911
Total	<u>747</u>	<u>29,871,707</u>

II. Approved scale of maximum fees

(a) Court of Appeal

	\$
(i) brief fee	28,430
(ii) refresher fee per day	14,180

(b) Court of First Instance

	\$
(i) brief fee	21,330
(ii) refresher fee per day	10,660
(iii) conference per hour	1,130

Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant.

(c) District Court

\$

(i)	brief fee	14,210
(ii)	refresher fee per day	7,100
(iii)	conference per hour	920

Brief fees and refresher fees are subject to a 10% increase on the base figure for each of the second to the sixth defendant.

(d) Magistrates' Court

\$

(i)	brief fee	8,530
(ii)	refresher fee per day	4,260

**Breakdown of cases briefed out at fees
not covered by the approved scales in 2000-01**

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
Civil		
(1) Campenon Bernard/Maeda Corporation J V v The Government of the Hong Kong Special Administrative Region (HKSAR)		
Fees and expenses incurred in relation to arbitration proceedings following the termination and re-entry of two Strategic Sewage Disposal Scheme deep tunnelling contracts, Drainage Services Department (DSD) contract Nos. DC/93/13 and DC/93/14, with an estimated combined claim value of the parties' claims and counterclaims of approximately \$2.5 billion.	25	37,762,972
(2) The Secretary for Justice (SJ) v The HK & Yaumati Ferry Co. Ltd. (HYF) & another-Contract No. UA 11/91, Indemnity Agreement, HCA 15329 of 1999		
Fees and expenses incurred in relation to court proceedings for recovery of additional costs from HYF under an Indemnity Agreement between Government and HYF with an estimated combined claim value of the parties' claims and counterclaims of \$480 million.	7	12,073,578

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(3) The Government of the HKSAR v Swire Properties Ltd and others (Taikoo Shing Development)		
Fees and expenses incurred in relation to arbitration proceedings arising from a dispute with the Swire Properties Group over the liability for premium in respect of the redevelopment at Taikoo Shing. Liability has been determined, but may be subject to appeal.	11	11,162,393
(4) The Government of the HKSAR v Hyder Consulting Ltd		
Fees and expenses incurred in relation to arbitration proceedings between the Government and the Consulting Engineers in DSD Contract No. DR/89/04 with an estimated claim value of \$80 million.	9	4,962,726
(5) Kowloon Canton Railway Corporation (KCRC) v Director of Environmental Protection (DEP) (Sheung Shui to Lok Ma Chau Spur Line Case)		
Fees and expenses incurred in relation to the appeal by KCRC to the Appeal Board established under the Environmental Impact Assessment Ordinance (Cap 499) in respect of DEP's decision not to approve the Environmental Impact Assessment report for the Sheung Shui to Lok Ma Chau Spur Line and not to issue an Environmental Permit for the project.	7	4,620,903

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(6) The Cyperport Project		
Fees and expenses incurred in relation to briefing solicitors in providing legal advice to this Project and, where appropriate, assistance with the negotiation, preparation and drafting of the whole or significant parts of the Project documentation.	1	3,587,309
(7) Tsing Wan Kun		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel to appear on behalf of SJ in her appeal against the Judgment of Mr Justice Yam of 26 November 1998 adjudging that Tsing Wan Kun belonged to the To Ka Yi Tso and the To Clan of Tuen Mun. This is a matter concerning charitable trust and Chinese customary law, and SJ had joined as a party representing the interests of charity.	3	3,265,625
(8) Agrila Limited & 58 others v Commissioner of Rating & Valuation (CRV)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel to provide legal advice and to appear in court on behalf of CRV. These appeals were filed by major developers in Hong Kong against CRV's assessments for Government rent on development sites, re-development sites and agricultural lots.	4	1,997,391

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(9) Sin Hoi Chu & others v The Director of Immigration (HCAL 70/00)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Director of Immigration as Respondent in judicial review proceedings before the Court of First Instance involving right of abode issues as to (i) whether the Applicants are persons unaffected by the Interpretation of the Standing Committee of the National People's Congress of Articles 22(4) & 24(2)(3) of the Basic Law, and (ii) the scope and application of the Government's Concession policy in respect of the said Applicants.	4	1,734,250
(10) Ng Siu Tung & others v The Director of Immigration (HCAL 81/99)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Director of Immigration as Respondent in judicial review proceedings before the Court of First Instance involving right of abode issues as to (i) whether the Applicants are persons unaffected by the Interpretation of the Standing Committee of the National People's Congress of Articles 22(4) & 24(2)(3) of the Basic Law, and (ii) the scope and application of the Government's Concession policy in respect of the said Applicants.	4	1,734,250

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(11) Peter Kwong v SJ, Yeung Kwok Ching v SJ and Wong Wai Kwan v SJ (DECO 3, 4 & 7/99)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Director of Fire Services and the Commissioner of Customs & Excise as the Defendants in disability discrimination claims brought by the Plaintiffs with the assistance of the Equal Opportunities Commission.	6	1,231,573
(12) Shiu Wing Ltd & others v Commissioner of Estate Duty		
Fees and expenses incurred in relation to briefing leading London counsel to appear on behalf of the Commissioner of Estate Duty in the appeal before the Court of Final Appeal (CFA). This appeal involved the determination by the Court as to whether the scheme designed by the taxpayer amounts to a tax avoidance scheme to avoid estate duty.	1	1,191,581
(13) SJ and Sai Kung District Office v Chan Wah & Tse Kwan Sang and others		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel to appear on behalf of SJ and Sai Kung District Office in the appeal before the CFA. This appeal related to the voting rights of non-indigenous villagers in the New Territories.	2	1,074,300

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Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(14) Ng Siu Tung and others v the Director of Immigration (CACV 415/00)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Director of Immigration as Respondent in judicial review proceedings before the Court of Appeal involving right of abode issues as to (i) whether the Appellants are persons unaffected by the Interpretation of the Standing Committee of the National People's Congress of Articles 22(4) & 24(2)(3) of the Basic Law, and (ii) the scope and application of the Government's Concession policy in respect of the said Appellants.	3	1,044,000
(15) Leung Man Cheung & Leung Kam Cheung v Secretary for Planning and Lands (HCAL 274/00)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel to appear on behalf of the Secretary for Planning and Lands. The actions all related to a resumption of lands under the Lands Resumption Ordinance. The Applicants applied to have the recommendation made by the Secretary for Planning and Lands to have their properties resumed quashed. The Applicants also applied to have the decision of the Chief Executive in Council ordering the resumption of their properties quashed. All of the applicants were dismissed with costs to the Secretary and the Chief Executive in Council.	2	1,015,900

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Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(16) Sin Hoi Chu and others v the Director of Immigration (CACV 417/00)		
Fees and expenses incurred in relation to briefing leading counsel and junior counsel on behalf of the Director of Immigration as Respondent in judicial review proceedings before the Court of Appeal involving right of abode issues as to (i) whether the Appellants are persons unaffected by the Interpretation of the Standing Committee of the National People's Congress of Articles 22(4) & 24(2)(3) of the Basic Law, and (ii) the scope and application of the Government's Concession policy in respect of the said Appellants.	3	1,015,750
(17) Fees and expenses incurred in 340 other civil cases under \$1 million each	-	40,320,525
Sub-total: 356 cases		<hr/> 129,795,026 <hr/>

Criminal

(18) The Government of the HKSAR v Lee Ming-tee and Ronald Tse Chu-fai (The Allied case)		
Fees and expenses incurred in the prosecution of two defendants facing two counts of conspiracy to defraud and four counts of false accounting. On 21 July 2000, Pang J. ordered a permanent stay of the court proceedings which SJ appealed to the CFA. The CFA overturned the stay and ordered the trial to commence in the Court of First Instance. Costs were awarded to SJ. The trial of the defendants is now due to commence before Seagroatt J. and a jury from 29 October 2001 for four to six months.	7	4,910,480

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(19) The Government of the HKSAR v Lung Kin-sang & others		
Fees and expenses incurred in the prosecution of two Immigration Officers and an interpreter for conspiracy to pervert the course of justice. All three defendants were subsequently acquitted.	2	1,383,000
(20) The Government of the HKSAR v Kwan Kwok-tai & others		
Fees and expenses incurred in the prosecution of seven defendants facing a total of eight counts of conspiracy to defraud. The first defendant and the third to sixth defendants were convicted. The seventh defendant was acquitted and the jury was unable to return verdicts for the second defendant. No retrial was sought for the second defendant. The first, third, fifth and sixth defendants were sentenced to four years' imprisonment and the fourth defendant to six years' imprisonment. The first defendant and the third to sixth defendants appealed but no date has yet been set for the hearing of the appeal.	1	1,290,000

Brief description of case/matter	Number of counsel/ legal firms/ other professionals involved	Expenditure \$
(21) The Government of the HKSAR v Hui Po-yuen		
Fees and expenses incurred in the prosecution of Mr HUI Po-yuen, Makie for theft, false accounting and publishing a false statement. Mr Hui was convicted of 23 counts of theft, three counts of false accounting and two counts of publishing a false statement. He was sentenced to a total of seven years' imprisonment, disqualified from being a company director for 15 years and ordered to pay the prosecution's costs. Mr Hui has appealed but no date has yet been set for the hearing of the appeal.	2	1,023,120
(22) Fees and expenses incurred in 29 other criminal cases under \$1 million each	-	5,965,367
Sub-total: 33 cases		<hr/> 14,571,967 <hr/>
Hire of consultants		
(23) Fees and expenses for engaging two legal consultants	2	4,218,283
Sub-total: 2 cases		<hr/> 4,218,283 <hr/>
Total expenditure		<hr/> 148,585,276 <hr/>