

**For discussion**

**LegCo Panel on Administration of Justice and Legal Services**

**Biennial Review of Criminal Legal Aid Fees, Prosecution Fees  
and Duty Lawyer Fees**

**PURPOSE**

The Administration has completed the 2002 biennial review of the fees payable to:

- (a) lawyers in private practice engaged to appear for the Government in criminal cases;
- (b) lawyers in private practice who undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department; and
- (c) duty lawyers providing legal assistance under the Duty Lawyer Scheme<sup>1</sup>.

2. This paper reports on the Administration's findings and proposed way forward.

**BACKGROUND**

3. The fees for lawyers in private practice assigned to undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department are prescribed in Rule 21 of the Legal Aid Criminal Cases Rules under the Criminal Procedure Ordinance. The Department of Justice uses the same scale of fees to engage counsel in private practice to appear for the Government in criminal cases. This is in order to ensure that both the defence and prosecution are represented

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<sup>1</sup> The Duty Lawyer Scheme of the Duty Lawyer Service was established in 1979 to supplement the legal aid services provided by the Legal Aid Department under the Legal Aid Ordinance. The Duty Lawyer Scheme provides legal representation to eligible defendants who appear in Magistrates' Courts, Juvenile Courts and Coroners' Courts.

by counsel of broadly similar experience and ability, and that neither the Secretary for Justice nor the Director of Legal Aid has an unfair advantage in competing for counsel. For the same reason, the duty lawyer fee is the same as the brief fee payable by the Department of Justice to engage counsel in place of a court prosecutor.

4. Pursuant to the decision of the Legislative Council Finance Committee in October 1992, the above fees (collectively referred to as “the fees” in the rest of the paper) are subject to review by the Administration on a biennial basis. The Finance Committee also delegated at the same time the authority to approve future revisions of the fees to the then Secretary for the Treasury (now Secretary for Financial Services and the Treasury), if the increases are no greater than the inflation as measured by the then Hang Seng Consumer Price Index (now CPI(C)). In all other circumstances, the approval of the Finance Committee for any change in the fees should be sought.

## **RESULTS OF THE PREVIOUS BIENNIAL REVIEWS**

5. In conducting the biennial reviews, the Administration takes into account mainly inflation/deflation during the reference period and whether there has been difficulty we have in engaging the services of counsel and solicitors. We would also consider other factors such as the state of economy and office rental.

6. The fees were last adjusted in May 1997 in accordance with the findings of the 1996 biennial review. Fee levels were increased by 18.18% to reflect the level of inflation recorded during the reference period (i.e. April 1994 to March 1996).

7. In the 1998 review, the Administration noted that the CPI(C) for the reference period (i.e. April 1996 to March 1998) had increased by 10%. Despite the findings of the exercise, the Administration had not made any upward adjustments to the fees in view of the worsening economic climate and market condition at the time. The Administration assessed that we should not have any difficulty in engaging the services of counsel and solicitors with the then prevailing fee levels. This was borne out by actual experience.

8. In the 2000 review, the Administration noted that the CPI(C) for the reference period (i.e. April 1998 to March 2000) had decreased by 8.8%, more or less offsetting the CPI(C) increase accumulated in the previous reference period. On the other hand, the prevailing market condition showed signs of recovery with real growth in GDP and consumer spending, increase in office rental and decrease in unemployment rate. Despite the deflation of 8.8%, the Administration decided to freeze the fee levels.

## **THE CURRENT REVIEW**

9. The Administration has completed the 2002 biennial review. We note that the CPI(C) for the reference period (i.e. April 2000 to March 2002) had decreased further by 4.3%. Office rental had also decreased during the period by 11.5%. Given the persistent deflation, the Administration sees a case of adjusting downward the fees to reflect the changes in consumer prices during the reference period. Under the present market condition, the Department of Justice and the Legal Aid Department envisage that they should not have difficulty in engaging the services of counsel and solicitors, if the fees are reduced by 4.3% in accordance with the decrease in consumer prices.

10. The Director of Administration, in consultation with the Director of Legal Aid and the Department of Justice, therefore proposes to adjust the fees downwards by 4.3% in accordance with deflation in the reference period. The existing fees and the proposed fees, rounded to the nearest \$10, are listed in the Annex.

## **WAY FORWARD**

11. The Administration intends to seek the Finance Committee's approval of the revision of the fees in due course within this legislative session. Subject to the Finance Committee's approval, the Criminal Procedure Rules Committee will be invited to amend Rule 21 of the Legal Aid in Criminal Cases Rules to give effect to the new fees. The Administration will then give notice to move a motion to obtain the approval from the Legislative Council of the amendment Rules.

12. The Administration will also take the opportunity to seek the Finance Committee's approval to delegate the authority to approve future revisions of the fees to the Director of Administration, if the changes are no greater than the changes in price indices as measured by CPI(C).

### FINANCIAL IMPLICATIONS

13. Based on the average expenses on assigning lawyers according to the scale fees in the past three financial years, we have projected the savings with the reduction of the scale fees by 4.3% as follows:

<b>Head/Subhead</b>	<b>Savings per year</b>
<b>Head 92 DEPARTMENT OF JUSTICE</b> Subhead 000 Operational expenses	\$1,646,000
<b>Head 94 LEGAL AID DEPARTMENT</b> Subhead 208 Legal aid costs	\$3,423,000
<b>Head 176 SUBVENTIONS:</b> <b>MISCELLANEOUS</b> Subhead 446 Duty Lawyer Service	\$2,452,000
<b>Total:</b>	<b>\$7,521,000</b>

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Administration Wing  
Chief Secretary for Administration's Office  
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**Review of Criminal Legal Aid Fees,  
Prosecution Fees and Duty Lawyer Fees**

	<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum Levels w.e.f. 16-May-97 (\$)</u>	<u>Proposed Maximum Levels (\$)</u>	<u>Percentage of change</u>
1.	<u>Court of First Instance Cases</u>				
	(a) Counsel				
	(i) brief fee	LAD/DOJ*	21,330	20,410	-4.31%
	(ii) refresher fee per day	LAD/DOJ*	10,660	10,200	-4.32%
	(b) Solicitor				
	(i) brief fee	LAD^	7,100	6,790	-4.37%
	(ii) refresher fee per day	LAD^	870 to 4,620	830 to 4,420	-4.6% to -4.33%
	(c) Conference per hour	LAD/DOJ	1,130	1,080	-4.42%
	(d) Pre-trial review (per review)	DOJ	2,120	2,030	-4.25%
2.	<u>District Court Cases</u>				
	(a) Counsel				
	(i) brief fee	LAD/DOJ*	14,210	13,600	-4.29%
	(ii) refresher fee per day	LAD/DOJ*	7,100	6,790	-4.37%
	(b) Solicitor (acting as instructing solicitor)				
	(i) brief fee	LAD^	5,060	4,840	-4.35%
	(ii) refresher fee per day	LAD^	1,210 to 3,030	1,160 to 2,900	-4.13% to -4.29%
	(c) Solicitor (acting as advocate as well as instructing solicitor)				
	(i) brief fee	LAD*	17,560	16,800	-4.33%
	(ii) refresher fee per day	LAD*	9,730	9,310	-4.32%
	(d) Conference per hour	LAD/DOJ	920	880	-4.35%
	(e) Brief fee for mention/sentence	DOJ	2,830	2,710	-4.24%
3.	<u>Magistrates' Court Cases</u>				
	(a) Counsel				
	(i) brief fee	DOJ	8,530	8,160	-4.34%
	(ii) refresher fee per day	DOJ	4,260	4,080	-4.23%
	(b) Counsel or solicitor (acting as advocate) in committal proceedings				
	(i) brief fee	LAD	8,530	8,160	-4.34%
	(ii) refresher fee per day	LAD	4,260	4,080	-4.23%
	(c) Solicitor for instructing counsel in committal proceedings				
	(i) brief fee	LAD	2,310	2,210	-4.33%
	(ii) refresher fee per day	LAD	1,890	1,810	-4.23%
	(d) Preliminary inquiry fee				
	(i) brief fee	LAD	8,530	8,160	-4.34%
	(ii) refresher fee per day	LAD	4,260	4,080	-4.23%

(e) Brief in place of court prosecutor per day	DOJ	5,670	5,430	-4.23%
(f) Duty Lawyer Fee	DLS	5,670 a day	5,430	-4.23%
		2,830 half day	2,710	-4.24%
(g) Pre-trial fee per hour	DLS	700	670	-4.29%
<b>4. Appeals</b>				
(a) Settling notice of appeal	LAD	2,830	2,710	-4.24%
(b) Instructing solicitors for appeals to the Court of Appeal				
(i) from the Court of First Instance	LAD	9,570 first day 1,200 to 6,180 any subsequent day	9,160 1,150 to 5,910	-4.28% -4.17% to -4.37%
(ii) from the District Court	LAD	7,660 first day 950 to 4,970 any subsequent day	7,330 910 to 4,760	-4.31% -4.21% to -4.23%
(c) Counsel for appeals to the Court of Appeal				
(i) from the Court of First Instance	LAD/DOJ	28,430 first day 14,180 any subsequent day	27,210 13,570	-4.29% -4.30%
(ii) from the District Court	LAD/DOJ	22,740 first day 11,360 any subsequent day	21,760 10,870	-4.31% -4.31%
(d) Conference per hour	LAD/DOJ	1,130	1,080	-4.42%

Note: LAD Legal Aid Department  
DOJ Department of Justice  
DLS Duty Lawyer Service

\* Subject to an increase of 10% on the base figures for each of the second to sixth defendant.

^ Subject to an increase of such amount as appears to the Director of Legal Aid to be proper in the circumstances.