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Criminal
CSO/ADM/CR 7/3221/89(03)

30 August 2004

BY FAX (25015779) AND BY POST

Mr. Chan Yum-min, James
Government Secretariat
Room 1211,
Central Government Offices
(West Wing),
Lower Albert Road,
Hong Kong.

Dear Mr. Chan,

**REVIEW OF CRIMINAL LEGAL AID FEES, PROSECUTION FEES AND
DUTY LAWYER FEES**

Thank you for your letter dated 9 July 2004 proposing to effect a 4.4% reduction in the above fees following the decrease in the Consumer Price Index ("CPI") for the previous 2 years.

The Society noted the proposal with grave concern and would like to put on record its strong objection to the proposed reduction in fees.

Whilst the Prosecution Fees and the Duty Lawyer Fees are both based on the Criminal Legal Aid Fees prescribed in Rule 21 of the Legal Aid in Criminal Rules ("the Rules"), practitioners doing criminal legal aid cases have, for a long time, expressed discontent about the criminal legal aid remuneration system. Government's latest proposal to cut fees in line with the CPI will thus make it increasingly difficult for practitioners to apply proper professional standards in carrying out criminal legal aid assignments.

To highlight the major deficiency of the system, we would point out that the Rules provide for solicitors to be paid in the same manner as a barrister by: a brief fee and daily refreshers. However, under the Rules, barristers are also paid for conferences at an hourly rate (see Rule 21(1)(f), (g) and (h)). There are no similar provisions for solicitors. Yet the main task of an instructing solicitor is to prepare a case for trial. This requires the solicitor to have conferences with the barrister, and most importantly, with the client, to get proper instructions.

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Cases vary enormously in how much preparation work is needed. The maximum brief makes no provision for the amount of preparation work the solicitor has properly done.

This is not only unfair, it works against professional standards. Practitioners understand that in criminal cases, clients' interests are served by:

- thorough preparation including reading all the case papers and "unused material"
- advising the client to plead Guilty when the prosecution evidence is overwhelming
- agreeing non-controversial evidence so as to present the defence case as clearly as possible

Logically, however, the only way that many cases could be made financially worthwhile would be: to do little or no preparation, to encourage the client to plead Not Guilty, and to refuse to agree evidence so as to extend the length of the trial.

You can see from the above that solicitors who do fulfill their professional duties are already left with no compensation for their efforts. Accordingly, a further reduction in fees resulting in exceptionally low fee levels would discourage solicitors, particularly the more experienced ones, from accepting cases.

A counter-argument may be that if you don't like the fees, don't accept the case. However, solicitors will know very little about a case when they are offered an assignment. The amount of preparation that will be required will be unknown.

All illustration of how the present system is illogical is when a case is prepared for trial, and at the last moment the defendant pleads Guilty. The solicitor who has prepared the case for a Not Guilty plea is paid no more than if the case had been prepared for a plea of Guilty. When the fixed fee is divided by the hours spent in preparation, the solicitor can end up being paid at ridiculously low rates.

There are further objections to the system, such as:

- the system is inflexible with the maximum amount that a solicitor can be paid being fixed by law. Irrespective of the number of hours that have been properly spent in preparing the case for court, the Director of Legal Aid has no discretion to increase fees over the maximum limit even though he may think this is justified.
- there is a general lack of right to lawyers to appeal against any assessment of costs



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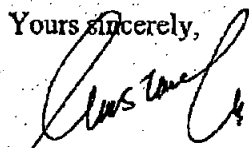
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The Committee has indeed set up its internal Working Party to conduct an in-depth review of the system. Short of reviewing the system, the Society objects to the piecemeal review of fees based purely on the movement of the CPI over the previous years, particularly when the economy is seen to be recovering. The most recent two-year period had the very exceptional effect of SARS depressing the index. Further, the extended period of deflation has now come to an end this year, which means that prices generally, which will be reflected in rents and office overheads for solicitors, will be rising. This current adjustment thus seems to be at the bottom of the price levels. If at present the system is at crisis point, that will be exacerbated as prices rise but fees stay fixed at the lowest point of the index.

We note in this regard that it has not been a tradition for the Government to follow the CPI trend in every fee review. In the 1998 review, despite a recorded increase of 10% in the CPI(C) for the reference period, the Government did not make any upward adjustment to fees in view of the worsening economic climate and market condition at the time of review. In the 2000 review, despite the CPI(C) having decreased by 8.8% for the reference period, as this more or less offset the CPI(C) increase accumulated in the previous reference period, the Administration chose to freeze the fee levels. Given that the fee level has already been adjusted downward by 4.3% in the last review exercise and in view of the recovering economy, it does not seem to be justifiable for the Government to just follow the CPI to request for a fee reduction at this stage.

In the light of what we have said above, we would urge the Government to seriously reconsider its proposal on fee reduction. We look forward to receiving your comments and shall be pleased to meet with you to explain our position, if you consider this to be helpful.

Yours sincerely,



Christine W. S. Chu
Assistant Director of Practitioners Affairs

c.c.: Mr. Michael Lintern-Smith, President
The Finance Committee, LegCo
The LegCo Panel on Administration of Justice and Legal Services
Mr. Andrew Bruce, c/o the Hong Kong Bar Association

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