



法律援助服務局  
LEGAL AID SERVICES COUNCIL

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Ms CHANG King Yiu  
Director of Administration  
Chief Secretary for Administration's Office  
12/F, West Wing, CGO  
Central, Hong Kong

Dear *King Yiu*,

**Review of Legal Aid in Criminal Cases**

The Hong Kong Bar Association has drawn our attention to the necessity of reviewing the Legal Aid in Criminal Cases Rules (LACCRs). Subsequently we became aware that the Law Society had written to the Government in a similar vein. The issues they raised were considered by Council at its recent meetings.

The question of criminal legal aid fees has been a subject of deliberation before, and as we observed, the Administration should undertake a comprehensive review on the remuneration system in the belief that any question on fees should not affect the quality or delivery of legal aid service. As you know, we are currently studying the consultants' report on cost control and monitoring of case progress to explore avenues to enhance value for money. We are conscious that public funds are expended to uphold justice, and that effective representation should be provided to those in need and eligible for legal aid, within the limits of public affordability.

Specifically, Council would like to make the following points :

- (1) Work actually and reasonably done by lawyers should be paid. This principle is set out in LACCRs, but has not been given full effect in implementation. The Rules stipulate specific rates which are regarded to be low by the legal profession.

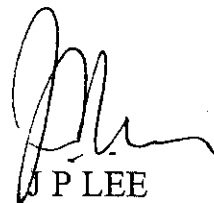
While the Court may grant certificates of exceptional complexity and/or of exceptional length upon application by legal aid lawyers, and thus allow the Director of Legal Aid (DLA) to award a top-up fee, this is not entirely satisfactory because the judge may not see all work done by the lawyers and may refuse the application even if it is supported by the DLA.

- (2) The Rules were made some decades ago. As Hong Kong has grown from a small community to an international city, from a trading economy to a sophisticated commercial centre, and with the increase in complexity in jurisprudence, these Rules are no longer able to cope with the realities of today. There is therefore a need to review the Rules overall. The Rules seem to assume all cases can be prepared with ease and in a relatively short time. That might have been a fair assumption several decades ago. Today with greater complexity of cases the assumption is not justified; some criminal cases require days and sometimes weeks to prepare.
- (3) The principle of equality of arms should be upheld in the court process. Information provided by the profession suggests that there is a great deal of room for improvement in that the fees and the fee structure between prosecution and legal aid defence are not balanced, and the support in kind to the prosecution, e.g. through the bureaucracy of the Administration outweighs the resources of the defence. For instance, LAD is subject to the rigidity of LACCRs while the Department of Justice (D of J) has much greater flexibility. While LAD is bound to pay fees according to LACCRs, the D of J adopts the same scale of fees to outside practitioners on an administrative basis. D of J may pay "reading in" refreshers to practitioners for cases requiring more preparation time than as required in ordinary cases.
- (4) It appears that the Rules Committee rarely meets and there is a need for the work of the Committee to be more transparent to those who are concerned, including the legal profession.

- (5) Proper preparation and representation of a case can cut costs for all parties concerned, e.g. the prosecution, the court, and the defence. For example, the remuneration system should be revised to encourage thorough pre-trial preparation of case. As it currently stands, LACCRs do not provide sufficient remuneration for lengthy preparation required by judges and practice directions, especially in complex cases such as those involving commercial fraud.
- (6) The Rules should be reviewed to allow for greater fairness and flexibility. The current arrangement of brief fee, refresher, and certificate of complexity or of exceptional length may hamper rather than facilitate adequate representation for the defendant.

We will be happy to offer further views in the course of the review and look forward to be kept posted of developments.

Yours sincerely,



J P LEE  
Chairman

c.c. The Hon Margaret NG  
Chairman of the Legislative Council Panel on  
Administration of Justice and Legal Services

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