

# 立法會 *Legislative Council*

LC Paper No. CB(2)684/05-06(03)

Ref : CB2/PL/AJLS

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

### **Background brief prepared by the Legislative Council Secretariat for the meeting on 15 December 2005**

#### **Transcript fees**

#### **Purpose**

This paper provides background information on the past discussions of the Panel on Administration of Justice and Legal Services on issues relating to the fees for providing transcripts of court proceedings (transcript fees).

#### **Background**

2. Issues relating to the basis for setting the transcript fee at 85 per page were brought to the attention of the Panel by the Law Society of Hong Kong in 2001. The matter was discussed by the Panel at its meetings on 23 June 2003 and 28 June 2004. Representatives of the Law Society of Hong Kong and the Hong Kong Bar Association attended the meeting(s) and provided views on the relevant issues.

#### **Discussions of the AJLS Panel**

##### Charging mechanism for production of transcripts of court proceedings

3. The Judiciary Administration explained to the Panel that the costs of producing transcripts consisted of two components:-

- (a) transcript service costs charged by the Digital Audio Recording and Transcript Services (DARTS) contractors according to contract terms; and
- (b) costs of the Judiciary staff in dealing with requests for transcripts and related overhead charges.

DARTs were operated by two contractors. Both contracts would expire at the end of 2004.

4. The transcript fee was set on the basis of an estimation of unit cost using the “absorption costing” method, i.e. the total production costs (paragraph 3 above) were spread evenly among an estimated utilization that covered all requests for transcripts from different parties (including Government departments). Although Government departments were not required to pay because of the no cross-charging policy, there was no question of transferring the costs to non-Government court users as the costs were charged against the Judiciary’s recurrent expenditure.

5. The transcript fee of \$85 per page had been set since 1997, which almost fully covered the Judiciary’s costs for producing transcripts. The transcript fee was an administrative fee approved by the Secretary for Financial Services and the Treasury (SFST). The authority to waive or vary was vested in him. All fees collected went to the Government’s General Revenue. SFST would be invited to review the level of fee in the light of the new DARTS contracts in early 2005.

6. The Judiciary Administration had also advised that in obtaining a record of the proceedings, the applicants had the alternative of getting an audio tape of the proceedings at a fee of \$105 for every 60 minutes.

7. On the charging mechanism for production of transcripts, members had made the following suggestions -

- (a) the Judiciary should review the application of the cost recovery policy in respect of transcript fees. The production of transcripts should be treated as part of the court services to which the principle of cost recovery should not apply;
- (b) a convicted person should be entitled to obtain the court’s judgment, regardless of whether an appeal would be lodged. The judgment should be provided without charge or charged at an affordable fee; and
- (c) in respect of any court proceedings, a party should be entitled to receive a copy of the audio recording of the proceedings at a nominal fee.

#### Effect of transcript fees on criminal and civil appeals

8. A major concern of members and the legal profession was the effect of the transcript fee (\$ 85 per page) on the litigant’s ability to institute appeals.

9. The Judiciary Administration had advised the Panel that a litigant’s ability to pursue the following appeals should not be prejudiced as a result of insufficient means to pay the transcript fees –

- (a) criminal appeals from the District Court and the Court of First Instance as well as from the Magistrates' Courts; and
- (b) civil appeals from the District Court and the Court of First Instance as well as from the Labour Tribunal and the Small Claims Tribunal.

For details, members are requested to refer to the paper provided by the Judiciary Administration in **Appendix I**.

10. The Panel noted that a fee of \$17 per page was charged for transcripts in respect of criminal appeals where the appellant was not legally aided but was represented (paragraph 5(c) of **Appendix I** refers), whereas a fee of \$85 per page was charged in respect of civil appeals where the appellant was not legally aided (paragraph 11(c)(i) of **Appendix I** refers). In respect of criminal appeals where the appellant was legally aided or unrepresented, the Registrar had discretion to waive the transcript fee and must do so on the direction of a judge. In respect of civil appeals, the court had the power to waive the fee for a transcript of the judgment and of the evidence.

11. Members requested the Judiciary Administration to consider –
- (a) standardising the transcript fee charging mechanism for criminal and civil appeals; and
  - (b) specifying clear policy guidelines on the circumstances under which the court might exercise discretion to waive the transcript fees in appeal cases.

### **Relevant papers**

12. A list of other relevant papers is in **Appendix II**. These papers are available on the LegCo website (<http://www.legco.gov.hk>).

**Paper for the Panel on  
Administration of Justice and Legal Services**

**Transcript Fees**

**Purpose**

This paper sets out the Judiciary's responses to the issues on transcript fees raised by the Panel on Administration of Justice and Legal Services, as recorded in paragraphs 20 and 28 of the minutes of the meeting on 23 June 2003.

**The Issues**

2. Paragraphs 20 and 28 of the minutes raise issues regarding the fees for providing transcripts of proceedings recorded by the DARTS Systems ("the transcript fee"). Paragraph 20 relates to members' concerns as to the effect of the level of transcript fees (of \$85 per page) on the litigant's ability to institute appeals and paragraph 28 raises the question of whether a party requesting a written judgment for the purpose of appeal should be required to pay for it.

**Impact of Transcript Fees on Appeals**

3. In principle, the Judiciary believes that a litigant should not be adversely affected in his ability to pursue appeals as a result of insufficient means to pay the transcript fees. To explain the position, the following appeals will be dealt with separately :

- (a) Criminal appeals (i) from the District Court and the Court of First Instance to the Court of Appeal; and (ii) from the Magistrates' Courts to the Court of First Instance.
- (b) Civil appeals (i) from the District Court and the Court of First Instance to the Court of Appeal; and (ii) from the Labour Tribunal/Small Claims Tribunal to the Court of First Instance.

***Criminal appeals from the District Court and the Court of First Instance to the Court of Appeal***

4. In relation to such criminal appeals, as provided for in the relevant practice direction, the position is as follows:

- (a) Notice of appeal with initial grounds of appeal should be filed in the first instance without waiting for any transcript.
- (b) The Appeals Registry of the Clerk of Court Office then prepares the appeal bundle and sends it to the parties. This would include:
  - (i) The transcript of the summing up and of sentencing (in the case of the Court of First Instance) and the transcript of the reasons for verdict and sentence (in the case of the District Court).
  - (ii) The transcript of other parts of the proceedings (e.g. evidence) where the court (i.e. a Justice of Appeal as the directions judge or the Registrar), on his own or on the application of any party, considers necessary. It should be noted that such consideration by the court serves as an effective safeguard against abuse of the use of transcript production, as was pointed out by the Chairman of the Panel (see para 19 of the minutes).
- (c) The appellant then files perfected grounds of appeal before the hearing which should contain references to the transcripts included in the appeal bundle.

5. In relation to such criminal appeals, the position as regards transcript fees for all transcripts included in the appeal bundle as set out above is as follows (See rule 63 of the Criminal Appeal Rules):

- (a) Where the appellant is legally aided, the Registrar has a discretion to waive the transcript fee and must do so on the direction of a judge. In practice, all legally aided appellants are provided with such transcripts without charge.
- (b) Where the appellant is unrepresented, the Registrar has a discretion to waive the transcript fee and must do so on the direction of a

judge. In practice, all unrepresented appellants are provided with such transcripts without charge.

- (c) Where the appellant is not legally aided but is represented, a fee of \$17 per page as prescribed in rule 63 of the Criminal Appeal Rules is charged for such transcripts. It should be noted that where the appellant obtains an order for costs in his favour, the transcript fees are part of his costs which are recoverable from the prosecution subject to taxation.
- (d) In any other case, the Registrar also has a discretion to waive the transcript fee and must waive on the direction of a judge.

It should be noted that the criminal appeals in (a) and (b) in which transcripts are supplied free of charge make up about 90% of all criminal appeals.

### ***Criminal appeals from the Magistrates' Courts to the Court of First Instance***

6. Magisterial appeals are usually lodged under s.113 of the Magistrates Ordinance, Cap.227. For such appeals, the Magistrate is required by s.114(b) to prepare a statement of his findings on the facts and other grounds of his decision and must give a copy of such statement to both the appellant and the respondent.

7. In relation to such appeals, as provided for in the relevant practice direction, the position is as follows:

- (a) The Appeals Clerk of the Magistrates court prepares the appeal bundle. This would include Magistrate's statement of findings and the transcript of the proceedings relating to the plea, oral closing submissions, verdict, reasons for verdict, mitigation, sentence and reasons for sentence.
- (b) The transcript of other parts of the proceedings (e.g. evidence) will also be included in the appeal bundle where the court (i.e. the Registrar High Court or a Judge of the Court of First Instance) on his own or an application of any party considers it necessary.

The appeal bundle is supplied to the parties without charge.

### ***Summary Position of Criminal Appeals***

8. Having regard to paragraphs 4 to 7 above, the litigant's ability to pursue criminal appeals from the District Court and the Court of First Instance as well as from the Magistrates' Courts should not be prejudiced as a result of insufficient means to pay the transcript fees.

### ***Civil appeals from the District Court and the Court of First Instance to the Court of Appeal***

9. In relation to such appeals, it is appropriate (a) to deal first with the position regarding judgments of the lower court, that is, the District Court or the Court of First Instance ("judgment of the lower court"); and (b) then to deal with the transcript of other parts of the proceedings, apart from the judgment, such as the evidence ("transcript of other parts of the proceedings").

### ***Judgment of the lower court***

10. The position is as follows:
- (a) After trial, the court would usually hand down a written judgment which is supplied to the parties without charge. In the instances where the court delivers an oral judgment after trial, it would usually reduce it into writing and this is supplied to the parties without charge.
  - (b) For interlocutory applications set down for hearing for say 2 hours or more (which would usually not be simple), the court would usually hand down a written judgment which is supplied to the parties without charge. In the instances where the court delivers an oral judgment, it would usually reduce it into writing and this is supplied to the parties without charge.
  - (c) For simple interlocutory applications which are usually set down for hearing for less than 2 hours, the court often delivers an oral judgment. The court may reduce it into writing on its own initiative or on the request of a party and the written judgment will be supplied to the parties without charge. Where this is not done, and a party requests a transcript of the oral judgment from the DARTS recording, it will be supplied to the parties without charge. There may have been instances in the past where this practice was

departed from but steps have been taken to ensure that this practice will be followed.

***Transcript of other parts of the proceedings***

11. In relation to civil appeals from the District Court and the Court of First Instance, the position as regards transcript fees for the transcript of other parts of the proceedings is set out below. It should be noted that unlike the position in criminal appeals (see para 4 above), it is usually the parties who decide whether and the extent to which the transcript of other parts of the proceedings such as the evidence should be included in the appeal bundle.

- (a) Where an application for legal aid has been made, the Director of Legal Aid is entitled to such transcripts without charge.
- (b) Where legal aid has been granted, the Director of Legal Aid is entitled to such transcripts without charge on behalf of the legally aided person.
- (c) Where the appellant is not legally aided, the position is as follows:
  - (i) The transcript fee of \$85 per page is charged. It should be noted that where a party obtains an order for costs in his favour, the transcript fees are part of his costs which are recoverable from the paying party subject to taxation.
  - (ii) In the case of a trial with witnesses, the judge in the lower court or the Court of Appeal has the power to waive the transcript fees in certain proceedings. The interpretation of the relevant rule as to the scope of the proceedings covered has not been tested in any case but it would appear to be limited to proceedings excepted from the Legal Aid Ordinance. (See Order 68 of the Rules of High Court and Order 68 of Rules of the District Court). Under the relevant rule, the court has the power to waive the fee for a transcript of the judgment and of the evidence. As explained above (para 10), the judgment after a trial with witnesses is supplied free of charge. As regards the transcript of the evidence, the court has to be satisfied under the relevant rule that the appellant is in such poor financial circumstances that the cost of a transcript would be an excessive burden on him and that there is reasonable ground of the appeal.



*Civil Appeals from the Labour Tribunal and Small Claims Tribunal to the Court of First Instance*

12. For tribunal appeals, the presiding officer/adjudicator is required in practice to write a full judgment on the case. A copy of the judgment will be provided to the parties without charge.

13. For the purpose of an appeal, transcripts of proceedings in Labour Tribunal and Small Claims Tribunal are usually not required.

*Summary Position of Civil Appeals*

14. Having regard to paragraphs 9 to 13 above, the litigant's ability to pursue civil appeals from the District Court and the Court of First Instance as well as from the Labour Tribunal and the Small Claims Tribunal should not be prejudiced as a result of insufficient means to pay the transcript fees.

**Other matters**

15. Having regard to the above clarifications, the Judiciary Administration regrets that its earlier statement on the courts having no discretion to waive or vary the transcript fee was over-simplified. This paper clarifies the position.

**Summary**

16. As stated in paragraphs 8 and 14 above, the litigant's ability to pursue criminal or civil appeals should not be prejudiced as a result of insufficient means to pay the transcript fees.

## Appendix II

### Transcript fees

### Relevant papers

<b>LC Paper No.</b>	<b>Papers/Documents</b>
<a href="#">CB(2) 1383/00-01(01)</a>	-- Letter dated 4 April 2001 from the Law Society of Hong Kong on “Transcript charges for notes for proceedings”
<a href="#">CB(2) 2584/02-03(03)</a>	-- Paper provided by the Judiciary Administration on “Transcript fees”
<a href="#">CB(2) 3051/02-03</a>	-- Minutes of meeting of the Panel on Administration of Justice and Legal Services on 23 June 2003
<a href="#">CB(2) 3322/03-04</a>	-- Minutes of meeting of the Panel on Administration of Justice and Legal Services on 28 June 2004