

Legislative Council

Panel on Administration of Justice and Legal Services

Fees for Transcript and Record of Proceedings

Purpose

1. The purpose of this paper is to set out the Judiciary's proposal on how the fees for transcript and record of proceedings at all levels of court should be set and administered.

The Present Position

2. At present, transcripts are charged at \$17, \$36 or \$85 per page in different situations at different levels of court.

3. A copy of the record (i.e. the audio tape produced from the Digital Audio Recording and Transcription Services (DARTS) System) of the proceedings is charged at \$105 per hour.

4. The present position of the transcript and audio tape fees, including the existing mechanism for waiving these fees, is outlined at **Annexes A and B** respectively.

The Need for Review

5. It is evident from the description at **Annexes A and B** that the present position is not satisfactory. At a meeting of the AJLS Panel on 28 June 2004, it was suggested that the fee charging mechanism for both criminal and civil appeal cases should be standardised and that a clear waiver mechanism for transcript fees in appeal cases should be in place. The Judiciary agrees that the fees for transcript and audio tape should be reviewed.

6. In addition, with the advance of technology, the record of proceedings can now be readily provided on Compact Disc (CD) or Digital Versatile Disc (DVD). The Judiciary intends to provide court

users with more choices by providing record of proceedings on audio tape, CD or DVD. New fees for CD and DVD will need to be set.

Policy Considerations

7. The Judiciary is of the view that the following principles are important in reviewing the matter:
 - (a) The Judiciary does not object to adopting a cost recovery approach in setting the level of the fees for transcript and record of proceedings on audio tape, CD or DVD, provided that adequate safeguards are in place to ensure that access to justice, in particular the litigant's ability to pursue appeals, would not be prejudiced as a result of insufficient means to pay the fees;
 - (b) As a matter of principle, the fees for transcript and record of proceedings on audio tape, CD or DVD should be prescribed in the form of subsidiary legislation; and
 - (c) The court should be given a general power to waive, reduce or defer the fees for transcript and record of proceedings on audio tape, CD or DVD in deserving appeal cases.

Practical Considerations

(A) The Level of Fee and Charging Basis

(I) Fees for Transcript

8. The Judiciary is of the view that the present position as set out in **Annex A** is not satisfactory and that a standard fee should be set for transcripts of all types of proceedings at all levels of court. The level of the fee should be set on the basis of the cost recovery approach.

9. At present, the fee is charged on a "per page" basis and no distinction is made between fees for English and Chinese transcript though the cost for Chinese transcript is much higher on a "per page" basis, as the number of Chinese characters per page is greater than that of English words (see paragraph 12 below).

10. In our review, we propose to introduce two changes to the charging mechanism:

- (a) With effect from December 2004, the charging basis for the new DARTS contracts has been changed to “per English word and per Chinese character”. This is considered to be a refinement to the “per page” charging basis. It is therefore proposed that the charging basis for transcript fees should also be changed to “per word/character” instead of “per page”; and
- (b) The proposed setting of separate fees for English and Chinese transcript is considered to be a fairer arrangement and will bring the resultant fees closer to the user-pay principle.

11. Adopting the cost recovery approach, the proposed revised transcript rates, which are currently administrative fees, are as follows:

(a)	Transcript produced from DARTS (per English word)	\$ 0.14
(b)	Transcript produced from DARTS (per Chinese character)	0.10

12. The proposed rates will translate into about \$46.20 per page of English transcript (an average of 330 words per page) and \$86 per page of Chinese transcript (an average of 860 characters per page). Compared with the existing fee of \$85 per page for both English and Chinese transcripts, it is estimated that each page of English transcript will cost much less (a decrease of 46%) while each page of Chinese transcript will remain more or less the same (a marginal increase of 1%). As the ratio of English transcript pages produced against Chinese transcript pages in 2004 was 1.5 to 1, it is expected that the new charging regime will bring about considerable benefits to litigants.

(II) Fees for Audio Tape, CD or DVD

13. The Judiciary is of the view that the fees for supplying DARTS recording on audio tape, CD or DVD should be reviewed/set at the same time as the transcript fee and the cost recovery approach should also be adopted.

14. The proposed revised /new rates, which are currently administrative fees, are as follows:

(a)	Audio tape produced from DARTS (per 60-minute audio tape or part thereof)	<u>\$</u> 80
(b)	CD produced from DARTS (per CD of no less than 700MB with full recording (i.e. about 14 hours) or part thereof)	315
(c)	DVD produced from DARTS (per DVD of no less than 4.7GB with full recording (i.e. about 98 hours) or part thereof)	570

15. Comparing the proposed rate for audio tape with the existing fee of \$105 per hour for audio tapes produced from DARTS, each audio tape will cost much less (a decrease of 24%). In addition, the availability of record of proceedings from DARTS on CD or DVD at very affordable fees would be of great assistance to litigants.

(B) The Waiver Mechanism

(I) Criminal Appeals

16. As far as criminal appeals are concerned, the existing waiver mechanism for transcript fee as prescribed in *Rules 63(2) and (3) of the Criminal Appeal Rules, Cap.221A* (see paragraphs 4-5 of the paper for the AJLS Panel meeting on 28 June 2004 at **Annex C**) is considered adequate and satisfactory. No change is recommended. The requirement that the court must be satisfied that the transcript is necessary for the purpose of the appeal is an effective safeguard against possible abuse.

(II) Civil Appeals

17. The court has a very restricted power to waive the fees for transcript and copy of record of proceedings in certain types of civil appeals (see paragraph 11 of the paper for the AJLS Panel meeting on 28 June 2004 at **Annex D**). It should be noted that unlike the position in criminal appeals, 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, and that the fees for transcript and copy of record of proceedings are recoverable by the successful party.

18. In the interest of enhancing access to justice, the Judiciary proposes that consideration should be given to introducing a waiver mechanism in the following manner. Where the appellant wishes to apply to the court for waiver of transcript fees for the whole or part of the transcript and/or fees for a copy of record of a civil proceedings, the court would need to be satisfied that:

- (a) The transcript and/or copy of record of proceedings in question are necessary for the purpose of the appeal; and
- (b) The appellant is in such poor financial circumstances that the cost of a transcript and/or a copy of record of proceedings would be such an excessive burden on him that he would be deprived of the transcript and/or copy of record of proceedings if no reduction, remittance or deferment of payment of such fees is allowed.

Consultation with the Administration

19. The Judiciary has consulted the Financial Services and The Treasury Branch (FSTB) on the above proposals. The FSTB has approved the administrative fees as set out in paragraphs 11 and 14 above, and has also indicated agreement with the Judiciary's proposals at paragraph 7 above.

Advice Sought

20. Members' views are sought on the proposals at paragraphs 7 to 18 above. Taking into account Members' views, the Judiciary would:

- (a) in respect of the administrative fees at **Annexes A and B**, implement the revised/new rates in paragraphs 11 and 14 above with effect from 3 January 2006;
- (b) in respect of the directed/authorised fees at **Annexes A and B**, implement the revised rates in paragraphs 11 and 14 above with effect from 3 January 2006; and
- (c) work with the Administration on the detailed legislative proposals to:

- (i) revise the fees in existing subsidiary legislation at **Annexes A and B** according to the revised rates in paragraphs 11 and 14 above; and
- (ii) enact new subsidiary legislation to:
 - (1) prescribe the fees in paragraphs 20(a) and 20(b) above; and
 - (2) implement the proposals in paragraph 7 above.

Judiciary Administration
December 2005

Transcript Fees
Summary of Present Position

(A) Prescribed Fees

Level of Court	Purpose	Level of Fees	Relevant Provisions	Waiver Mechanism
1. High Court (“HC”) and District Court (“DC”)	For criminal appeals from the Court of First Instance (“CFI”) and DC to the Court of Appeal, a transcript of the summing up (in the case of CFI) or the reasons for verdict (in the case of DC) and of sentencing, and other parts of the proceedings which the court considers to be necessary for inclusion in the appeal bundle provided to the appellant or his solicitor.	\$17 per page ¹	Rule 63(1)(b) of the Criminal Appeal Rules, Cap.221A	Pursuant to r.63(2) and (3) of Criminal Appeal Rules, Cap.221A, the Registrar, HC has a discretion to waive the transcript fees, where the appellant is legally aided or unrepresented, or in any other case, and must do so on the direction of a judge.
2. Coroners’ Court	A transcript of the notes or record of evidence, documentary exhibits or documents made at an inquest in the Coroners Court provided to “properly interested persons” as defined in Schedule 2 to the Coroners Ordinance, Cap.504, irrespective of any further proceedings.	\$36 per page ²	Item 1(a), Schedule to the Coroners (Fees) Rules, Cap.504D	No express provision for waiver.

¹ The basis on which the fee was originally set cannot be ascertained. Previous revisions made according to inflation rates. Last revision made in 1994.

² The basis on which the fee was originally set cannot be ascertained. Previous revisions made according to inflation rates. Last revision made in 1994.

(B) Directed or Authorised Fees – All at \$85 per page³

Level of Court	Purpose	Relevant Provisions	Waiver Mechanism
1. HC and DC	(a) For criminal proceedings in HC and DC – a transcript of the whole or of part of a trial or other proceedings provided to a party interested in such trial or other proceedings, irrespective of whether an appeal has been lodged.	Rule 12(1) of the Criminal Appeal Rules, Cap.221A [As directed by the Registrar, HC]	Pursuant to Rule 13 of the Criminal Appeal Rules, Cap.221A, the Registrar, HC has a discretion to waive the transcript fees, where an accused person is legally aided or unrepresented, and must do so on the direction of a judge.
	(b) For civil proceedings in the HC and matrimonial proceedings in the DC – a transcript of the whole or of any part of a trial or other proceedings provided to any party to the proceedings in relation to cases tried or heard with witnesses, regardless of whether an appeal has been lodged.	Order 68 of the Rules of the HC, Cap.4A [As authorized by the scheme in force]	In accordance with Order 68 of the Rules of the HC, Cap.4A, a judge or the Court of Appeal or the Registrar of Civil Appeals has a discretion to waive the transcript fees.
	(c) For civil proceedings in the DC – a transcript of the whole or of any part of the proceedings provided to any party to the proceedings in relation to cases tried or heard with witnesses, regardless of whether an appeal has been lodged.	Order 68 of the Rules of the DC, Cap.336H [As authorised by the scheme in force]	In accordance with Order 68 of the Rules of the DC, Cap.336H, a judge or the Court of Appeal or the Registrar of Civil Appeals has a discretion to waive the transcript fees.

³ The fee was calculated on the basis of the DARTS contractor’s charging rates plus the related administrative charges. The fee was first introduced in 1994, and was set at \$80 per page. The same fee was extended to cases in the then Supreme Court and the Magistrates’ Courts in 1996. The fee of \$80 was revised to \$85 in 1997 by reference to inflation.

Level of Court	Purpose	Relevant Provisions	Waiver Mechanism
2. Lands Tribunal	A transcript of the whole or of any part of the proceedings provided to any party to the proceedings.	Item 34, Schedule to the Lands Tribunal (Fees) Rules, Cap.17B [As directed by the Registrar, Lands Tribunal]	Pursuant to Rule 4 of the Lands Tribunal (Fees) Rules, Cap.17B, the Registrar, Lands Tribunal may reduce, remit or defer transcript fees.
3. Labour Tribunal (“LabT”)	A transcript of the whole or of any part of the proceedings provided to any party to the proceedings.	Item 13, Schedule to the LabT (Fees) Rules, Cap.25B [As directed by the Registrar, LabT]	Pursuant to Rule 4 of the LabT (Fees) Rules, Cap.25B, the Registrar, LabT may reduce, remit or defer transcript fees.
4. Small Claims Tribunal (“SCT”)	A transcript of the whole or of any part of the proceedings provided to any party to the proceedings.	Item 18, Schedule to the SCT (Fees) Rules, Cap.338B [As directed by the Registrar, SCT]	Pursuant to Rule 4 of the SCT (Fees) Rules, Cap.338B, the Registrar, SCT may reduce, remit or defer transcript fees.

(C) Administrative Fees – All at \$85 per page

Level of Court	Purpose	Waiver Mechanism
1. HC and DC	For civil proceedings (including matrimonial proceedings) in the HC and DC – a transcript of the whole or of any part of a trial or other proceedings provided to any party to the proceedings in relation to cases <u>other than those tried or heard with witnesses</u> , irrespective of whether an appeal has been lodged.	The court has no power to waive administrative fees.
2. Magistrates' Courts	A transcript of the whole or of any part of a trial or other proceedings provided to a party interested in such trial or other proceedings, where no appeal has been lodged.	The court has no power to waive administrative fees.
3. Obscene Articles Tribunal	A transcript of the whole or of any part of the proceedings provided to any party to the proceedings, irrespective of any further proceedings.	The court has no power to waive administrative fees.

Audio Tape Fees
Summary of Present Position

(A) Prescribed Fees

Level of Court	Purpose	Level of Fees	Relevant Provisions	Waiver Mechanism
1. High Court (“HC”) and District Court (“DC”)	For criminal proceedings in the HC and DC – a copy of the DARTS recording of the proceedings on audio tape provided to persons under s.79(2)(g) and (h) of the Criminal Procedure Ordinance, Cap.221.	No fee has been prescribed. Hence, free of charge.	s.79(2)(g) and (h) of the Criminal Procedure Ordinance, Cap.221	No express provision for waiver.
2. Magistrates’ Court	A copy of the DARTS recording of the proceedings on audio tape provided to persons under s.35A(1)(g), (h) and (i) of the Magistrates Ordinance, Cap.227.	No fee has been prescribed. Hence, free of charge.	s.35A(1)(g), (h) and (i) of the Magistrates Ordinance, Cap.227	No express provision for waiver.

(B) Directed Fees – All at \$105 per hour¹

Level of Court	Purpose	Relevant Provisions	Waiver Mechanism
1. Lands Tribunal	A copy of the DARTS recording of the proceedings on audio tape provided to any party to the proceedings.	Item 34, Schedule to the Lands Tribunal (Fees) Rules, Cap.17B [As directed by the Registrar, Lands Tribunal]	Pursuant to Rule 4 of the Lands Tribunal (Fees) Rules, Cap.17B, the Registrar, Lands Tribunal may reduce, remit or defer fees.
2. Labour Tribunal (“LabT”)	A copy of the DARTS recording of the proceedings on audio tape provided to any party to the proceedings, where an appeal has been lodged.	Item 13, Schedule to the LabT (Fees) Rules, Cap.25B [As directed by the Registrar, LabT]	Pursuant to Rule 4 of the LabT (Fees) Rules, Cap.25B, the Registrar, LabT may reduce, remit or defer fees.
3. Small Claims Tribunal (“SCT”)	A copy of the DARTS recording of the proceedings on audio tape provided to any party to the proceedings, where an appeal has been lodged.	Item 18, Schedule to the SCT (Fees) Rules, Cap.338B [As directed by the Registrar, SCT]	Pursuant to Rule 4 of the SCT (Fees) Rules, Cap.338B, the Registrar, SCT may reduce, remit or defer fees.

¹ The fee was calculated on the basis of the related staff and administrative costs in producing the audio tape from DARTS recording. The fee was set at \$100 per hour or part thereof in 1994, which was subsequently revised to \$105 in 1997 by reference to inflation.

(C) Administrative Fees – All at \$105 per hour

Level of Court	Purpose	Waiver Mechanism
1. HC and DC	For civil proceedings (including matrimonial proceedings) in the HC and DC – a copy of the DARTS recording of the proceedings on audio tape provided to parties concerned.	The court has no power to waive administrative fees.
2. Coroners Court	A copy of the DARTS recording of the proceedings on audio tape provided to any party to the proceedings, irrespective of any further proceedings.	The court has no power to waive administrative fees.
3. Obscene Articles Tribunal	A copy of the DARTS recording of the proceedings on audio tape provided to any party to the proceedings, irrespective of any further proceedings.	The court has no power to waive administrative fees.

**Extract from the
Paper for the Panel on
Administration of Justice and Legal Services
at the Meeting on 28 June 2004**

Transcript Fees

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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.

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**Extract from the
Paper for the Panel on
Administration of Justice and Legal Services
at the meeting on 28 June 2004**

Transcript Fees

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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.

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Judiciary Administration
June 2004