

立法會 *Legislative Council*

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Panel on Administration of Justice and Legal Services

Background brief for the meeting on 22 January 2007

Fees for transcripts and records of proceedings

Purpose

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

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 Law Society queried the charging mechanism adopted by the Judiciary for transcripts as interested parties were required to pay the transcript fee of \$85 per page rather than the copying charges, even though the same set of transcripts had already been produced and paid for under a previous request. The Law Society also noted with concern that Government departments, such as the Department of Justice and the Legal Aid Department, were not charged for their requests for transcripts.

3. The Panel discussed the relevant issues at its meetings on 23 June 2003, 28 June 2004 and 15 December 2005. Representatives of the legal profession bodies attended the meetings and provided views on the relevant issues. The discussions of the Panel are summarized below.

Fees for transcripts and records of proceedings

Present position

4. According to the Judiciary Administration, transcripts are charged at \$17, \$36 or \$85 per page in different situations at different levels of court and are categorised as follows -

- (a) prescribed fees (\$17 and 36 per page) - as prescribed under the Criminal Appeal Rules (Cap. 221A) and Coroners (Fees) Rules (Cap 504D) respectively. The basis on which the fees were originally set cannot be ascertained. Previous revisions were made according to inflation rates, and the last revision was made in 1994;
- (b) directed/authorized fees (\$85 per page) - as directed by the Registrar concerned or authorized by the scheme in force under different statutory provisions. The fee is calculated on the basis of the Digital Audio Recording and Transcript Services (DARTS) contractor's charging rates plus the related administrative charges (paragraphs 7 - 10 refer); and
- (c) administrative fees (\$85 per page) - as approved by the Secretary for Financial Services and the Treasury (SFST). The authority to waive or vary the fee is vested in SFST.

5. A copy of the record of proceedings (i.e. the audio tape produced from the DARTS system) is charged at \$105 per hour.

6. The present position of transcript and audio tape fees, including the mechanism for waiving these fees, is outlined in **Annexes A and B** to the paper provided by the Judiciary Administration (LC Paper No. CB(2)684/05-06(04)) in **Appendix I**.

Costs of production of transcripts

7. The costs of producing transcripts consist of two components -

- (a) transcript service costs charged by the DARTS contractors; and
- (b) costs of the Judiciary staff in dealing with requests for transcripts and related overhead charges.

8. DARTS was introduced by the Judiciary in 1994 to improve efficiency, speed up trials, and relieve the judges and judicial officers from laboriously taking notes of proceedings. It was decided that the full cost of equipping, managing, operating and maintaining DARTS would not be passed on to court users, and only the costs of producing transcripts would be charged.

9. The fee for one page of transcript was at first set at \$80 in 1994, although the production cost having regard to the components listed as calculated in paragraph 7 above was \$112 per page. The fee was increased to \$85 per page in 1997 due to inflation and has remained since then. According to the Judiciary Administration, the transcript fee is set on the basis of an estimation of unit cost using the "absorption costing" method. The total production costs are spread evenly among an estimated utilization that covers all requests for transcripts from different parties (including Government departments), i.e. for a first copy transcribed directly from the audio

recording system as well as subsequent photo-copies. Although Government departments are not required to pay because of the no cross-charging policy, there is no question of transferring the costs to non-Government court users as the costs are charged against the Judiciary's recurrent expenditure.

10. The costs of producing transcripts in Chinese are higher because a page contains more words. However, in order to simplify administration, an average cost approach has been taken. The present level of \$85 per page almost fully covers the Judiciary's costs for producing transcripts.

Impact of transcript fees on appeals

11. The Judiciary Administration has explained that a litigant's ability to pursue appeals would not be adversely affected as a result of insufficient means to pay the transcript fees. It has provided a paper to explain the position on the following appeals -

- (a) criminal appeals (i) from the District Court (DC) and the Court of First Instance (CFI) to the Court of Appeal (C of A); and (ii) from the Magistrates' Courts to CFI; and
- (b) civil appeals (i) from the DC and CFI to C of A; and (ii) from the Labour Tribunal/Small Claims Tribunal to the CFI.

Members are invited to refer to the paper (LC Paper No. CB(2)2918/03-04(02) in **Appendix II** for details.

12. The Panel noted that -

- (a) transcript fees - a fee of \$17 per page was charged for transcripts in respect of criminal appeals from DC and CFI to C of A where the appellant was not legally aided but was represented (paragraph 5(c) of **Appendix II**). However, a fee of \$85 per page was charged in respect of civil appeals from DC and C of A where the appellant was not legally aided (paragraph 11(c)(i) of **Appendix II** refers); and
- (b) waiver mechanism - in respect of criminal appeals where the appellant was legally aided or unrepresented, the Registrar had discretion to waive the transcript fee (for about 90% of all criminal appeals) and must do so on the direction of a judge. In respect of civil appeals, the court had a very restricted power to waive the transcript fees in certain types of civil appeals.

Members' main concerns and views

13. Members and representatives of the Law Society of Hong Kong expressed the following concerns and views -

- (a) a litigant should not be adversely affected in his ability to institute appeals as a result of insufficient means to pay the transcript fees. The existing transcript fee of \$85 per page was too high. The alternative of getting an audio tape of the proceedings, at \$105 for every 60 minutes (equivalent to 16 pages of transcripts), would still be unaffordable for most ordinary litigants, particularly those without legal aid;
- (b) the cost recovery principle should not apply to the production of transcripts, which should be treated as part of the court services provided free of charge to court users;
- (c) 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 at an affordable fee or even without charge;
- (d) in respect of all court proceedings, an interested party should be entitled to receive a copy of the audio recording of the proceedings at a nominal fee;
- (e) the possibility of providing all appellants with free Digital Versatile Disc (DVD) produced from DARTS should be explored;
- (f) as a major proportion of the requests for transcripts came from Government departments which were not required to pay, the Judiciary should take into account the number of such requests in considering the fee charging mechanism for production of transcripts;
- (g) the transcript fee charging mechanism for both criminal and civil appeals should be reviewed and standardized; and
- (h) a clear waiver mechanism for transcript fees in appeal cases should be put in place.

The Judiciary's proposal

14. At the Panel meeting on 15 December 2005, the Judiciary Administration briefed the Panel on its proposal on how the fees for transcript and record of proceedings at all levels of court should be set and administered (LC Paper No. CB(2)684/05-06(04) in **Appendix I** refers).

15. The Judiciary proposed the following -

- (a) the charging basis for the new DARTs contracts had been changed to "per English word and per Chinese character" as from December 2004. Adopting the cost recovery approach, the transcript rates, which were then administrative fees, were proposed to be revised to \$0.14 per English word, and \$0.10 per Chinese character. The proposed rates would 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);
- (b) revised/new rates of \$80, \$315 and \$570 were proposed for audio tape (per 60-minute), Compact Disc, and DVD produced from DARTS respectively;
- (c) while no change was recommended for the waiver mechanism in respect of criminal appeals, a waiver mechanism was proposed to be introduced for civil appeals under which the court could waive the fees for transcript and copy of record of proceedings (paragraph 18 of **Appendix I** refers); and
- (d) relevant subsidiary legislation would be revised and new subsidiary legislation would be enacted to prescribe the revised fees with effect from 3 January 2006.

16. The Panel requested the Judiciary Administration to reconsider whether the proposed fees could be further reduced, given that -

- (a) the proposed fees were still considered to be on the high side. The proposed fee of \$86 per page for Chinese transcript was even higher than the existing standard fee of \$85 per page; and
- (b) under the existing waiver mechanism, transcript fees would not be waived in respect of criminal appeals where the appellant was not legally aided but was represented.

An extract of the minutes of the meeting on 15 December 2005 is in **Appendix III**.

17. The Judiciary Administration agreed to defer the implementation date of 3 January 2006, pending further discussion by the Panel. The Panel Chairman requested the Judiciary Administration to provide a table to set out the fees proposed for different types of transcripts, the types of transcripts which were subject to the waiver mechanism, and those which would be supplied to the parties concerned without charge.

Contracts for DARTS

18. At the meeting on 23 June 2003, the Judiciary Administration advised the Panel that the two contractors of DARTS were secured through open tenders. The production of transcripts of court proceedings was a professional service not commonly available in Hong Kong. The existing contracts would expire at the end of 2004.

19. At the meeting on 23 October 2006, Hon Audrey EU referred to the recent incident where a trio were charged by the Independent Commission Against Corruption (ICAC) for alleged conspiracy to defraud the Judiciary of a DARTS contract in October 2004, and requested the Judiciary to advise whether the incident would have any impact on the level of transcript fees. A relevant press release issued by ICAC on 30 August 2006 is in **Appendix IV**.

Latest position

20. The Judiciary Administration has consulted the two legal professional bodies on the revised charges and will brief the Panel on further developments at the coming meeting on 22 January 2007.

Relevant papers

21. A list of relevant papers which are available on the LegCo website is in **Appendix V**.

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:

	<u>\$</u>
(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

LC Paper No. CB(2)2918/03-04(02)

**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.

**Extract from minutes of meeting of
Panel on Administration of Justice and Legal Services on 15 December 2005**

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V. Transcript fees

(LC Paper No. CB(2)684/05-06(03) – Background brief prepared by the LegCo Secretariat on "Transcript fees")

LC Paper No. CB(2)684/05-06(04) – Paper provided by the Judiciary Administration on "Fees for Transcript and Record of Proceedings")

25. The Chairman said that there was concern that the existing transcript fees were not affordable to some litigants and might affect their ability to lodge appeals. When the Panel discussed the issue in June 2004, members noted that different fees were charged for different types of transcripts/records of proceedings. The Panel had requested the Judiciary Administration to review the charging mechanisms and advise whether the fees could be reduced.

26. JA briefed members on the Judiciary's proposals on how the fees for transcript and record of proceedings at all levels of court should be set and administered as set out in the Judiciary Administration's paper. The major proposals were as follows –

- (a) a fee of \$0.14 per word was proposed for English transcript produced from the Digital Audio Recording and Transcript Services (DARTS);
- (b) a fee of \$0.10 per word was proposed for Chinese transcript produced from DARTS;
- (c) fees of \$80, \$315 and \$570 were proposed for audio tape (per 60 minutes), Compact Disc and Digital Versatile Disc (DVD) produced from DARTS respectively;
- (d) a waiver mechanism be introduced for civil appeals under which the court could waive the fees for transcript and copy of record of proceedings; and
- (e) relevant existing subsidiary legislation be revised and new subsidiary legislation be enacted to implement the revised fees with effect from 3 January 2006.

27. Members noted that the proposed rates would translate into about \$46.20 per page of English transcript (an average of 330 words per page) and about \$86 per page of Chinese transcript (an average of 860 characters per page).

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28. Mr Duncan FUNG of the Law Society of Hong Kong expressed concern that despite the Law Society's request for reduction in transcript fees, the Judiciary Administration had proposed a revised fee for Chinese transcript which would increase by 1% as compared with the existing fee of \$85 per page. Mr FUNG sought clarification on the following –

- (a) the total number of contractors which had been awarded the new DARTS contracts, and the duration of their contracts;
- (b) whether the DARTS contracts had been awarded through open tenders; and
- (c) whether the costs of the Judiciary staff in dealing with requests for transcripts had been included in the proposed transcript fees, and if so, whether the staff costs had increased as compared with the existing staff costs which amounted to 20% to 30% of the transcript fees.

29. Mr FUNG added that the Law Society had requested for reduction in the existing transcript fees because under the existing waiver mechanism, transcript fees would not be waived in criminal cases where the accused persons were not legally aided but were represented, and such persons might not be able to afford the expensive fees.

30. As regards paragraph 27(c) above, Mr FUNG pointed out that the inclusion of the Judiciary staff costs in the transcript fees was not consistent with the policy under which court services (including court facilities and services of Judiciary staff and judges) were provided free of charge to court users. He therefore considered that Judiciary staff costs should be excluded from the proposed transcript fees.

31. JA explained that the costs for Chinese transcripts (around \$104 per page) were much higher than those for English transcript (around \$65 per page) under the existing charging mechanism. The existing fee of \$85 per page was an average cost for both English and Chinese transcripts. As compared with the costs at the existing level, the costs of producing both the English and Chinese transcripts under the proposed revised rates at \$46.20 and \$86 per page respectively had been reduced.

32. JA further said that DARTS were now operated by two contractors each of whom had been awarded a contract of four years through open tender. JA added that Judiciary staff costs had been taken into consideration in calculating the proposed revised transcript fees in accordance with the cost recovery principle. However, the relevant work procedures had been reviewed and streamlined and staff costs had been reduced to less than 15% of the fees.

33. Mr Martin LEE opined that in order to comply with the relevant provisions of the Basic Law and the Hong Kong Bill of Rights Ordinance, the Judiciary Administration should review the fee charging policy and provide transcripts without charge to litigants. Mr LEE explained that the litigant's counsel had to study the

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court case carefully with the aid of transcripts of proceedings in order to determine whether there were sufficient grounds for appeal, especially if the litigant was unrepresented or represented by different counsel in the original court case. Mr LEE pointed out that under the existing waiver mechanism, the court would need to be satisfied that the transcript was necessary for the purpose of the appeal before it decided to waive the transcript fees. It might be difficult for the court to make such a determination in some cases. Mr LEE further suggested that the Judiciary Administration should seek legal advice on its policy on transcript fees, as the Government could be challenged at court for non-compliance with the Basic Law and the Hong Kong Bill of Rights Ordinance.

34. Mr LEE also considered that in determining the fees for English and Chinese transcripts, it was more appropriate to make reference to the number of pages of the English and Chinese transcripts of the same part of the court proceedings, instead of the average number of words/characters per page.

35. JA explained that in relation to criminal appeals, transcripts were provided to LAD free of charge where the appellants were legally aided. The Chairman, however, pointed out that represented appellants who were not legally aided were required to pay the transcript fees although they might not be very well off.

36. JA responded that under the existing waiver mechanism, transcripts were supplied free of charge in about 90% of all criminal appeals. In civil appeals, the court's power to waive transcript fees was very restricted, and the Judiciary Administration had therefore proposed to introduce a waiver mechanism.

37. Mr Martin LEE requested JA to consider as an alternative, whether all appellants should be provided with free DVDs produced from DARTS, since not all appellants would be granted waiver of transcript fees by the court and the cost of a DVD was comparatively cheaper.

38. Mr Stephen HUNG of the Law Society was of the view that to provide the reasons of verdict to a convicted person only after he had lodged a notice of appeal, especially in the District Court and Magistrates' Courts, was putting the cart before the horse. Mr HUNG stressed that it was the right of a convicted person to know the reasons for his verdict. The written reasons for verdict/judgment should therefore be provided free of charge to the convicted person upon request, even before an appeal was lodged.

39. JA clarified that written reasons for verdict/judgments were provided without charge to the parties concerned irrespective of whether an appeal had been lodged at all levels of court. This was explained to Members in a paper presented to the Panel in June 2004. A copy of the DARTS recording of the proceedings on audio tape was provided to the parties without charge for cases tried in the Magistrates' Courts.

40. The Chairman pointed out that according to Annex A to the Judiciary

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Administration’s paper, the transcript of the summing up or the reasons for verdict and of sentencing, and other parts of the proceedings for criminal appeals from the District Court and the Court of First Instance to the Court of Appeal were not provided free of charge. A fee of \$17 per page was charged for these documents. This contradicted JA’s earlier advice (paragraph 39 above).

41. Ms Miriam LAU agreed that written reasons for verdict/judgments should be provided without charge to the parties concerned irrespective of whether an appeal had been lodged. If this was the agreed policy as advised by JA (paragraph 38 above), she requested JA to ensure its full implementation within the Judiciary.

42. Ms LAU also pointed out that as the transcripts were usually prepared in a double-spacing format, the number of words contained in a page was very small, and the transcript fee of \$85 per page was very expensive. Ms LAU further commented that the DARTS contractors had charged for high transcript service costs simply because they were aware that the Government could afford to pay the high costs. Although transcript fees were waived in cases where the appellants were legally aided, one should not ignore the fact that the costs of producing such transcripts were in fact borne by tax payers.

43. Mr LI Kwok-ying sought clarification on the basis for setting the fee of \$17 per page for transcripts in respect of criminal appeals from the District Court and the Court of First Instance to the Court of Appeal. JA explained that the fee was prescribed in the Criminal Appeal Rules (Cap. 221 Sub. Leg. A), and had not been reviewed since 1994.

Way forward

44. The Chairman concluded that members had reservation about the revised fees proposed by the Judiciary Administration. She asked JA to reconsider whether the proposed fees, which were still considered to be on the high side, could be further reduced, as appellants not granted legal aid were required to pay the fees. To facilitate further discussion by the Panel at a future meeting, the Chairman requested JA to prepare a table to set out the fees proposed for different types of transcript, the types of transcript which were subject to the waiver mechanism and those which would be supplied to the parties without charge.

45. The Chairman noted from paragraph 20 of the Judiciary Administration’s paper that the Judiciary would implement the revised/new rates with effect from 3 January 2006. At the request of the Chairman, the Judiciary Administration agreed to defer the implementation date pending further discussion on the matter by the Panel.

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Judiciary
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HKSAR ICAC

Press Release

30/08/06

Trio charged for allegedly defrauding Judiciary of \$61m contract

The ICAC has charged two shareholders and an assistant contract manager of a company for alleged conspiracy to defraud the Judiciary of a digital audio recording and transcription services contract worth \$61 million.

Lui Mei-chi, 41, shareholder-cum-director and contract manager of Megaluck International Limited (Megaluck); Lui Mei-chong, 40, shareholder-cum-director of Megaluck; and Lui Yuen-fai, 36, assistant contract manager of Megaluck, will appear in Shatin Magistracy at 9:30 am on Friday (September 1) on one count of conspiracy to defraud.

The case arose from a corruption complaint. Subsequent ICAC enquiries revealed the alleged offence of conspiracy to defraud.

The charge alleges the defendants of conspiring together to defraud the Judiciary on July 15, 2004.

They are alleged to have dishonestly represented to a tender assessment panel of the Judiciary in relation to the employment of two supervisory staff by Megaluck, the installation of conference and recording system and provision of interpretation and transcription services by Megaluck for two companies, and the service revenue of Megaluck.

As a result of the alleged false representation, the Judiciary was induced to enter into an agreement with Megaluck for the provision of digital audio recording and transcription services in October 2004. The contract was valued at \$61 million.

The Judiciary has rendered full assistance to the ICAC during its investigation.

The defendants have been released on ICAC bail, pending their court appearances on Friday.

Fees for transcript and record of proceedings

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Administration of Justice and Legal Services	23 June 2003	<p>Letter dated 4 April 2001 from the Law Society of Hong Kong to the Chairman enclosing its correspondence with the Judiciary concerning "Transcription Charges for Notes for Proceedings" [LC Paper No. CB(2)1383/00-01(01)] (English version only)</p> <p>Paper provided by the Administration on "Transcript Fees" [LC Paper No. CB(2)2584/02-03(03)]</p> <p>Minutes of meeting [LC Paper No. CB(2)3051/02-03]</p>
	28 June 2004	<p>Paper provided by the Judiciary Administration on "Transcript Fees" [LC Paper No. CB(2)2918/03-04(02)]</p> <p>Minutes of meeting [LC Paper No. CB(2)3322/03-04]</p>
	15 December 2005	<p>Background brief prepared by the LegCo Secretariat on "Transcript fees" [LC Paper No. CB(2)684/05-06(03)]</p> <p>Paper provided by the Administration on "Fees for Transcript and Record of Proceedings" [LC Paper No. CB(2)684/05-06(04)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1198/05-06]</p>