

立法會
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Panel on Administration of Justice and Legal Services

Background Brief for the meeting on 26 February 2007

Criminal legal aid fees system

Purpose

This paper provides background information on the past discussions of Members of the Legislative Council (LegCo) on the criminal legal aid fees system (i.e. the system of payment of fees to lawyers in private practice engaged by the Legal Aid Department (LAD) to act as defence lawyers in criminal legal aid cases).

Background

2. Following a review conducted by the Panel on the provision of legal aid services, the Panel requested the Administration to conduct a comprehensive review on the objective, adequacy and effectiveness of the legal aid regime in August 2002. In the ensuing discussions of the Panel, the subject of criminal legal aid fees system was raised by the Hong Kong Bar Association and the Law Society of Hong Kong. The two legal professional bodies had, respectively, provided written submissions to the Panel in May and June 2005.

Mechanism for review of criminal legal aid fees

3. Since 1992, the Administration reviews the following fees on a biennial basis -
- (a) lawyers in private practice engaged by the Legal Aid Department (LAD) to act as defence lawyers in criminal legal aid cases (criminal legal aid fees);
 - (b) lawyers in private practice engaged by the Department of Justice (DoJ) to prosecute in criminal cases on behalf of the Government (prosecution fees); and

- (c) duty lawyers providing legal representation under the Duty Lawyer Scheme (DLS fees).

The Finance Committee delegated in June 2003 the authority to approve adjustments to the above fees (the fees) to the Director of Administration, provided that the extent of adjustment is no greater than the movement of consumer prices as measured by the Consumer Price Index (C) during the reference period. In conducting the biennial reviews, the Administration takes into account mainly changes in consumer prices during the reference period, actual or anticipated difficulties in engaging the services of private counsel and solicitors, and other factors such as the state of the economy and office rentals.

4. The criminal legal aid fees are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules (LACCR), a subsidiary legislation of the Criminal Procedure Ordinance (Cap. 221). Any change proposed by the Administration needs to be prescribed by the Criminal Procedure Rules Committee and endorsed by LegCo through a positive resolution. A copy of Rule 21 is in **Appendix I**.

5. The Administration has advised the Panel that the prosecution fees follow the same scale administratively. This is to ensure that neither the LAD nor DoJ would have a fair advantage in competing for lawyers. For the same reason, the DLS fees are also based on the brief fee payable by DoJ to engage counsel in place of a court prosecutor.

6. The fees were last reduced by 4.3% pursuant to the 2002 biennial review, following the change in CPI(C) during the two-year period ending March 2002. In the context of the 2004 biennial review, a deflation rate of 4.4% was recorded during the reference period. As LAD had not encountered any difficulties in engaging quality and experienced lawyers, the Administration consulted the two legal professional bodies on its proposal to effect a 4.4% reduction in criminal legal aid fees. The two legal professional bodies objected to the proposed reduction, and the Administration subsequently decided to reserve the 4.4% reduction and consider it together with the findings of the next biennial review, due in mid 2006.

7. The Administration informed the Panel of the outcome of the 2006 biennial review in December 2006. While the CPI(C) had increased since the last review, the cumulative change in CPI(C) from April 2002 to July 2006 (i.e. taking into account the 4.4% held in reserve) recorded a decrease of 1%. As regards the assignment of cases to private legal practitioners, both the LAD and the DoJ had no difficulties in engaging suitable private legal practitioners at the current rates. On the other hand, the Administration appreciated that the economy was picking up and that office rental in Grade A and Grade B offices had increased by 57% and 29% respectively. Balancing the considerations, the Administration decided that it would be appropriate to freeze the rates of the fees. The current rates of fees are set out in **Appendix II**.

Scale of fees applicable to prosecution and defence lawyers

8. Hon Margaret NG raised an oral question at the Council meeting on 11 May 2005 concerning amendments to the LACCR to make provisions for appropriate payment for preparation work undertaken by counsel in criminal legal aid cases. In reply, the Chief Secretary for Administration explained that according to the LACCR, the Director of Legal Aid (DLA) pays to an assigned defence counsel, and solicitor for that matter, a "brief fee", generally equivalent to two days' court fee, to cover the preparation work undertaken by the counsel and his attendance for the first day of trial of the criminal case. From the second day of trial onwards, the assigned counsel receives a *per diem* court fee or "refresher fee", calculated at a fixed rate at half the brief fee. Notwithstanding the prescription of the brief fee in the LACCR, if the counsel considers that the assigned criminal case is exceptionally long or complex, he may, in accordance with the LACCR, apply to the Court and the Court may so certify. With the certificate issued by the Court, DLA is empowered to increase the fees payable to the counsel by such amount as he considers proper in the circumstance. An extract from the Record of Proceedings of the Council meeting on 11 May 2005 is in **Appendix III**.

9. In response to the Panel, the Administration has explained the differences between the fees payable to lawyers in private practice engaged for criminal litigation work by the DoJ and the LAD as follows -

(a) Prescribed level of fees

The briefs of DoJ are "marked brief", i.e. fees are marked before the work is done.

For legal aid cases, LAD could only assess the fees "having regard to the work actually and reasonably done" in accordance with Rule 21(1) of the LACCR and the maximum rates permitted under the LACCR. The current approach is for LAD to agree with individual assigned lawyers the fees level after the conclusion of the cases. LAD considers that if fees are to be agreed with individual lawyers beforehand for all legal aid cases, not only will it involve more administrative work, the assignment exercise would be relegated to a fee bargaining exercise and seen to be putting the interests of lawyers before the aided persons.

(b) Fees payable at a level that exceeds the statutory limits

DoJ uses broadly similar rates as those prescribed in the LACCR for their standard briefing out work in accordance with the complexity and length of each case. DoJ may pay an additional fee called "reading in refresher" calculated at daily refresher fee if the pre-trial preparation work required as assessed by counsel is substantially over and above that required for normal cases.

LAD could increase the brief fee and refresher fee payable to an assigned lawyer beyond the maximum rates if the assigned solicitor or counsel obtains from the Court a certificate of exceptional complexity/length.

(c) Cases of exceptional complexity and/or length

For non-standard briefing out work involving more complex and lengthy cases, DoJ adopts a "tender" system whereby quotations (including quotation for preparation work) are sought from practitioners and critically examined by a Selection Board.

For legal aid cases of exceptional complexity and/or length, an assigned counsel or solicitor may apply to a judge for a certificate of exceptional complexity and/or length which, if obtained, would provide authority to the LAD to increase the brief fee and refresher fee beyond the maximum rates permitted under the LACCR. LAD has explained that it cannot adopt a tender system partly because the fees have to be assessed on "work actually and reasonably done" basis, and partly because of time constraint. LAD has no control over when a legal aid applicant may come forward for assistance. He may lodge his application for legal aid shortly before hearing and the urgency simply precludes the possibility of selecting counsel through a tender process. Where senior counsel are assigned nonetheless, their fees are subject to negotiation and are paid at non-standard rates.

Views received by the Panel

10. The Panel has received written submissions concerning criminal legal aid fees system from the Bar Association and the Law Society in May and June 2005 respectively (LC Paper Nos. CB(2)1588/04-05(01) and 1793/04-05(01)). The legal professional bodies point out that the current system is unsatisfactory in that -

- (a) while the LACCR specify that fees payable to legal aid lawyers shall be determined by DLA "having regard to work actually and reasonably done", DLA does not have flexibility to pay more than the maximum fees stipulated in the LACCR;
- (b) the fees stipulated in the LACCR are unrealistically low and the brief fee is far from adequate to compensate preparation work in complex cases;
- (c) while the Court may grant certificates of exceptional complexity and/or length upon application by legal aid lawyers, and thus allow DLA to award a top-up fee, this is not entirely satisfactory as there are no

guidelines for the trial judge to grant the certificate and for DLA to calculate the enhanced fee;

- (d) the LACCR were made many years ago and are no longer able to cope with the realities of today. Criminal cases have become more complex and require more time for preparation; and
- (e) the incompatibility of the criminal legal aid fees system with the prosecution fees regime, as illustrated in paragraph 9 above, would lead to "inequity of arms" between prosecution and defence, resulting in a situation whereby the legally aided client would be represented by a far less experienced defence lawyer.

11. The request of the legal professional bodies for a comprehensive review of the current remuneration system for lawyers engaging in criminal legal aid work is supported by the Panel. The Legal Aid Services Council (LASC) has considered the issues raised by the professional bodies and supports such a review. In relaying the two legal professional bodies' concerns, the Chief Justice has suggested that the Administration should undertake a review on the subject with an appropriate representation.

Review of the criminal legal aid fees system

12. The issue was followed up by the Panel [at its](#) meeting on 15 December 2005. On the basis of the views of the legal professional bodies and LASC, the Administration proposed to review the following issues -

- (a) the prescribed level of fees;
- (b) the flexibility to pay fees at a level that exceeds the statutory limits;
- (c) the fees for pre-trial preparation work;
- (d) the issue of certificate of exceptional complexity or length as the basis to raise assessed fees;
- (e) fee for an appeal on the basis of the level of the originating trial court; and
- (f) the conference fees.

13. The Administration informed the Panel of the progress of the review in May and September 2006. The Panel noted that four meetings had been held by the Administration Wing and LAD with stakeholders (i.e. the Judiciary, the two legal professional bodies and DoJ), and the following issues were discussed -

- (a) the principles of the review -
 - (i) general compatibility of the criminal legal aid fees system with the prosecution fees regime;
 - (ii) rectification of inconsistency between policy on payment to solicitors and counsel; and
 - (iii) reasonable and effective remuneration for legal aid lawyers within the remits of public affordability;
- (b) alternatives to the LAD's system, such as introducing a "marked brief" system and adopting a taxation system similar to the one for civil practitioners in legal aid cases; and
- (c) details of a possible "marked brief" system, based on a paper prepared by the Bar Association and the DoJ's existing system.

Latest position

14. The Administration will brief the Panel on the latest developments of the review at the coming meeting on 26 February 2007.

Relevant papers

15. A list of relevant papers available on the LegCo website is in **Appendix IV**.

[附屬法例]

[Subsidiary]

第 IV 部

PART IV

雜項

MISCELLANEOUS

19. 交付羈押的裁判官須將申請法律援助
的權利通知被控人19. Committing magistrate to inform accused
of his right to apply for legal aid

(1) (由 1983 年第 323 號法律公告廢除)

(1) (*Repealed L.N. 323 of 1983*)

(2) 裁判官根據《裁判官條例》(第 227 章)第 IV 部將控罪或申訴移交區域法院時，須將申請法律援助的權利通知被控人。(1978 年第 64 號法律公告；1998 年第 25 號第 2 條)

(2) Upon transferring a charge or complaint to the District Court under Part IV of the Magistrates Ordinance (Cap. 227) the magistrate shall inform the accused person of his right to apply for legal aid. (*L.N. 64 of 1978*)

20. 謄本的文本

20. Copies of transcripts

根據本規則而指派予被控人或上訴人的律師或大律師，有權在提出申請後，免費從香港的適當法院收取法律程序謄本或案件中的書面供詞的文本，包括文件證物(如有的話)的文本在內。

Solicitor or counsel assigned to an accused person or to an appellant under these rules shall be entitled upon application to receive free of charge from the appropriate court in Hong Kong a copy of the transcript of the proceedings or of the depositions, including documentary exhibits, if any, in the case.

(1986 年第 157 號法律公告)
(比照第 221 章附屬法例 A 第 5 條)

(*L.N. 157 of 1986*)
(*cf. Cap. 221 sub. leg. A r. 5*)

21. 律師及大律師費用

21. Solicitor and counsel fees

(1) 須付予根據本規則被指派代表受助人的律師或大律師的費用，由署長經考慮已實際及合理地完成的工作後，在符合本條的規定下，按照以下各項而釐定——(1981 年第 414 號法律公告；1985 年第 115 號法律公告)

(1) The fees payable to a solicitor or counsel assigned under these rules to represent an aided person shall be determined by the Director having regard to the work actually and reasonably done and, subject to this rule, in accordance with the following— (*L.N. 414 of 1981; L.N. 115 of 1985*)

(a) 根據法律援助證書就原訟法庭的法律程序所指派的律師，費用為 \$6,790，如審訊沒有在開始審訊的當天完結，則就第二天及其後每天另收不少於 \$830 但不超逾 \$4,420 的每日費用；(1991 年第 101 號法律公告；1992 年第 351 號法律公告；1994 年第 154 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1998 年第 25 號第 2 條；2003 年第 174 號法律公告)

(a) to a solicitor assigned under a legal aid certificate in respect of proceedings in the Court of First Instance a fee of \$6,790 and additionally if the trial is not concluded on the day on which it started, a daily fee of not less than \$830 and not exceeding \$4,420 in respect of the second and every subsequent day; (*L.N. 101 of 1991; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; 25 of 1998 s. 2; L.N. 174 of 2003*)

(aa) 根據上訴援助證書就來自原訟法庭向上訴法庭提出的上訴所指派的律師，費用為 \$9,160，如上訴沒有在開始聆訊的當天完結，則就第二天及其後每天另收不少於 \$1,150 但不超逾 \$5,910 的每日費用；(1991 年第 101 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1998 年第 25 號第 2 條；2003 年第 174 號法律公告)

(aa) to a solicitor assigned under an appeal aid certificate in respect of an appeal from the Court of First Instance to the Court of Appeal a fee of \$9,160 and additionally if the appeal is not concluded on the day on which it started, a daily fee of not less than \$1,150 and not exceeding \$5,910 in respect of the second and every subsequent day; (*L.N. 101 of 1991; L.N. 119 of 1995; L.N. 235 of 1997; 25 of 1998 s. 2; L.N. 174 of 2003*)

[附屬法例]

- (ab) 根據上訴援助證書就來自區域法院向上訴法庭提出的上訴所指派的律師，費用為 \$7,330，如上訴沒有在開始聆訊的當天完結，則就第二天及其後每天另收不少於 \$910 但不超過 \$4,760 的每日費用；（1991 年第 101 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1998 年第 25 號第 2 條；2003 年第 174 號法律公告）
- (b) 根據法律援助證書就區域法院的法律程序所指派的律師，費用為 \$4,840，如審訊沒有在開始審訊的當天完結，則就第二天及其後每天另收不少於 \$1,160 但不超過 \$2,900 的每日費用；（1973 年第 70 號法律公告；1979 年第 289 號法律公告；1987 年第 83 號法律公告；1990 年第 87 號法律公告；1991 年第 101 號法律公告；1992 年第 351 號法律公告；1994 年第 154 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1998 年第 25 號第 2 條；2003 年第 174 號法律公告）
- (c) 根據法律援助證書就區域法院的法律程序，被指派以出庭代訟人兼發出指示的律師的身分行事的律師，費用不超過 \$16,800，如審訊沒有在開始審訊的當天完結，則就第二天及其後每天另收不超過 \$9,310 的每日費用；（1991 年第 101 號法律公告；1992 年第 351 號法律公告；1994 年第 154 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1998 年第 25 號第 2 條；2003 年第 174 號法律公告）
- (d) 根據法律援助證書就原訟法庭的法律程序所指派的大律師，費用不超過 \$20,410，或如屬資深大律師，則費用為署長覺得在有關情況下屬恰當的費用，如審訊沒有在開始審訊的當天完結，則就第二天及其後每天另收在有關情況下看來屬恰當的每日費用，但每日費用不得超過根據本段准予的費用的一半；（1991 年第 101 號法律公告；1992 年第 351 號法律公告；1994 年第 154 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1997 年第 94 號第 20 條；1998 年第 25 號第 2 條；2003 年第 174 號法律公告）
- (da) 根據上訴援助證書就來自原訟法庭的向上訴法庭提出的上訴所指派的大律師，費用不超過 \$27,210，或如屬資深大律師，則費用為署長覺得在有關情況下屬恰當的費用，如上訴沒有在開始聆訊的當天完結，則就第二天及其後每天另收在有關情況下看來屬恰當的每日費用，但每日費用不得超過根據本段准予的費用的一半；（1991 年第 101 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1997 年第 94 號第 20 條；1998 年第 25 號第 2 條；2003 年第 174 號法律公告）

[Subsidiary]

- (ab) to a solicitor assigned under an appeal aid certificate in respect of an appeal from the District Court to the Court of Appeal a fee of \$7,330 and additionally if the appeal is not concluded on the day on which it started, a daily fee of not less than \$910 and not exceeding \$4,760 in respect of the second and every subsequent day; (*L.N. 101 of 1991; L.N. 119 of 1995; L.N. 235 of 1997; L.N. 174 of 2003*)
- (b) to a solicitor assigned under a legal aid certificate in respect of proceedings in the District Court a fee of \$4,840; and additionally, if the trial is not concluded on the day on which it started, a daily fee of not less than \$1,160 and not exceeding \$2,900 in respect of the second and every subsequent day; (*L.N. 70 of 1973; L.N. 289 of 1979; L.N. 83 of 1987; L.N. 87 of 1990; L.N. 101 of 1991; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; L.N. 174 of 2003*)
- (c) to a solicitor assigned under a legal aid certificate to act as advocate as well as instructing solicitor in respect of proceedings in the District Court a fee not exceeding \$16,800 and additionally if the trial is not concluded on the day on which it started, a daily fee not exceeding \$9,310 in respect of the second and every subsequent day; (*L.N. 101 of 1991; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; L.N. 174 of 2003*)
- (d) to counsel assigned under a legal aid certificate in respect of proceedings in the Court of First Instance a fee not exceeding \$20,410 or in the case of Senior Counsel, such fee as appears to the Director to be proper in the circumstances and additionally if the trial is not concluded on the day on which it started, such daily fee not exceeding one half of the fee allowed under this sub-paragraph in respect of the second and every subsequent day as appears to be proper in the circumstances; (*L.N. 101 of 1991; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; 94 of 1997 s. 20; 25 of 1998 s. 2; L.N. 174 of 2003*)
- (da) to counsel assigned under an appeal aid certificate in respect of an appeal from the Court of First Instance to the Court of Appeal a fee not exceeding \$27,210 or in the case of Senior Counsel, such fee as appears to the Director to be proper in the circumstances and additionally if the appeal is not concluded on the day on which it started, such daily fee not exceeding one half of the fee allowed under this sub-paragraph in respect of the second and every subsequent day as appears to be proper in the circumstances; (*L.N. 101 of 1991; L.N. 119 of 1995; L.N. 235 of 1997; 94 of 1997 s. 20; 25 of 1998 s. 2; L.N. 174 of 2003*)

[附屬法例]

- (db) 根據上訴援助證書就來自區域法院的向上訴法庭提出的上訴所指派的大律師，費用不超逾 \$21,760，或如屬資深大律師，則費用為署長覺得在有關情況下屬恰當的費用，如上訴沒有在開始聆訊的當天完結，則就第二天及其後每天另收在有關情況下看來屬恰當的每日費用，但每日費用不得超逾根據本段准予的費用的一半；（1991 年第 101 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1997 年第 94 號第 20 條；1998 年第 25 號第 2 條；2003 年第 174 號法律公告）
- (e) 根據法律援助證書就區域法院的法律程序所指派的大律師，費用不超逾 \$13,600，或如屬資深大律師，則費用為署長覺得在有關情況下屬恰當的費用，如審訊沒有在開始審訊的當天完結，則就第二天或其後每天另收在有關情況下看來屬恰當的每日費用，但每日費用不得超逾根據本段准予的費用的一半；（1987 年第 83 號法律公告；1990 年第 87 號法律公告；1991 年第 101 號法律公告；1992 年第 351 號法律公告；1994 年第 154 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1997 年第 94 號第 20 條；1998 年第 25 號第 2 條；2003 年第 174 號法律公告）
- (f) 根據法律援助證書就原訟法庭或區域法院進行的法律程序或根據上訴援助證書所指派的資深大律師，就署長所認可的諮詢服務而言，費用按署長覺得在有關情況下屬恰當的每小時收費率計算；（1997 年第 94 號第 20 條；1998 年第 25 號第 2 條）
- (g) 根據法律援助證書就原訟法庭進行的法律程序或根據上訴援助證書所指派的大律師（資深大律師除外），就署長所認可的會議而言，費用按署長覺得在有關情況下屬恰當的每小時收費率計算，但每小時不得超逾 \$1,080；（1987 年第 83 號法律公告；1990 年第 87 號法律公告；1991 年第 101 號法律公告；1992 年第 351 號法律公告；1994 年第 154 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1997 年第 94 號第 20 條；1998 年第 25 號第 2 條；2003 年第 174 號法律公告）
- (h) 根據法律援助證書就區域法院進行的法律程序所指派的大律師（資深大律師除外），就署長所認可的會議而言，費用按署長覺得在有關情況下屬恰當的每小時收費率計算，但每小時不得超逾 \$880；（1987 年第 83 號法律公告；1990 年第 87 號法律公告；1991 年第 101 號法律公告；1992 年第 351 號法律公告；1994 年第 154 號法律公告；1995 年第 119 號法律公告；1997 年第 235 號法律公告；1997 年第 94 號第 20 條；1998 年第 25 號第 2 條；2003 年第 174 號法律公告）
- (i) 根據上訴援助證書就向終審法院提出的上訴或向終審法院上訴的許可申請所指派的大律師及律師，費用為署長覺得在有關情況下屬恰當的費用；（1982 年第 122 號法律公告；1999 年第 39 號第 3 條）

[Subsidiary]

- (db) to counsel assigned under an appeal aid certificate in respect of an appeal from the District Court to the Court of Appeal a fee not exceeding \$21,760 or in the case of Senior Counsel, such fee as appears to the Director to be proper in the circumstances and additionally if the appeal is not concluded on the day on which it started, such daily fee not exceeding one half of the fee allowed under this sub-paragraph as appears to be proper in the circumstances; (L.N. 101 of 1991; L.N. 119 of 1995; L.N. 235 of 1997; 94 of 1997 s. 20; L.N. 174 of 2003)
- (e) to counsel assigned under a legal aid certificate in respect of proceedings in the District Court, a fee not exceeding \$13,600 or, in the case of Senior Counsel, such fee as appears to the Director to be proper in the circumstances; and additionally, if the trial is not concluded on the day on which it started, a daily fee not exceeding one half of the fee allowed under this sub-paragraph in respect of the second and every subsequent day as appears to be proper in the circumstances; (L.N. 83 of 1987; L.N. 87 of 1990; L.N. 101 of 1991; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; 94 of 1997 s. 20; L.N. 174 of 2003)
- (f) to Senior Counsel assigned under a legal aid certificate in respect of proceedings in the Court of First Instance, District Court or an appeal aid certificate, fees for such consultations approved by the Director at such hourly rate as appears to the Director to be proper in the circumstances; (94 of 1997 s. 20; 25 of 1998 s. 2)
- (g) to counsel, other than Senior Counsel, assigned under a legal aid certificate in respect of proceedings in the Court of First Instance, or an appeal aid certificate, fees for such conferences approved by the Director at such hourly rate, not exceeding \$1,080 per hour, as appears to the Director to be proper in the circumstances; (L.N. 83 of 1987; L.N. 87 of 1990; L.N. 101 of 1991; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; 94 of 1997 s. 20; 25 of 1998 s. 2; L.N. 174 of 2003)
- (h) to counsel, other than Senior Counsel, assigned under a legal aid certificate in respect of proceedings in the District Court, fees for such conferences approved by the Director at such hourly rate, not exceeding \$880 per hour, as appears to the Director to be proper in the circumstances; (L.N. 83 of 1987; L.N. 87 of 1990; L.N. 101 of 1991; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; 94 of 1997 s. 20; L.N. 174 of 2003)
- (i) to counsel and solicitors assigned under an appeal aid certificate in respect of appeals to, or applications for leave to appeal to, the Court of Final Appeal, such fees as appear to the Director to be proper in the circumstances; (L.N. 122 of 1982; 39 of 1999 s. 3)

[附屬法例]

- (j) (由 1993 年第 182 號法律公告廢除)
- (k) 根據第 13A 條獲轉交任何申請或事宜的大律師及律師，費用為署長覺得在有關情況下屬恰當的費用； (1982 年第 122 號法律公告)
- (l) 根據法律援助證書就初級偵訊所指派以出庭代訟人身份行事的大律師及律師，費用不超過 \$8,160，如該偵訊沒有在開始偵訊的當天完結，則就第二天及其後每天另收在有關情況下看來屬恰當的每日費用，但每日費用不得超過根據本段准予的費用的一半； (1983 年第 48 號第 5 條； 1987 年第 83 號法律公告； 1992 年第 351 號法律公告； 1994 年第 154 號法律公告； 1995 年第 119 號法律公告； 1997 年第 235 號法律公告； 2003 年第 174 號法律公告)
- (m) 根據法律援助證書被指派就交付審判程序 (包括初級偵訊) 而向大律師發出指示的律師，費用為 \$2,210，如該等程序沒有在開始程序的當天完結，則就第二天及其後每天另收在有關情況下看來屬恰當的每日費用，但每日費用不得超過 \$1,810； (1983 年第 48 號第 5 條； 1987 年第 83 號法律公告； 1992 年第 351 號法律公告； 1994 年第 154 號法律公告； 1995 年第 119 號法律公告； 1997 年第 235 號法律公告； 2003 年第 174 號法律公告)
- (n) 根據法律援助證書被指派在交付審判程序 (非以初級偵訊的形式) 中以出庭代訟人身份行事的大律師或律師，費用不超過 \$8,160，如該等程序沒有在開始程序的當天完結，則就第二天及其後每天另收在有關情況下看來屬恰當的每日費用，但每日費用不得超過 \$4,080； (1983 年第 48 號第 5 條； 1987 年第 83 號法律公告； 1990 年第 87 號法律公告； 1992 年第 351 號法律公告； 1994 年第 154 號法律公告； 1995 年第 119 號法律公告； 1997 年第 235 號法律公告； 2003 年第 174 號法律公告)
- (o) 擬定上訴通知 (根據第 9(a) 條擬定的上訴理由除外) 的大律師或律師，費用為署長覺得在有關情況下屬恰當的費用，但費用不得超過 \$2,710； (1984 年第 204 號法律公告； 1987 年第 83 號法律公告； 1992 年第 351 號法律公告； 1994 年第 154 號法律公告； 1995 年第 119 號法律公告； 1997 年第 235 號法律公告； 2003 年第 174 號法律公告)
- (p) 對根據第 7(1A) 條聘用的律師，費用為署長覺得在有關情況下屬恰當的費用。 (1986 年第 157 號法律公告)
- (2) 如審訊案件或聆訊上訴的法官，認為案件或上訴異常費時或異常複雜，則法官可核證情況如此，而—— (1998 年第 25 號第 2 條)

[Subsidiary]

- (j) (*Repealed L.N. 182 of 1993*)
- (k) to counsel and solicitors to whom an application or matter has been referred under rule 13A, such fees as appear to the Director to be proper in the circumstances; (*L.N. 122 of 1982*)
- (l) to counsel or a solicitor assigned under a legal aid certificate to act as advocate in respect of a preliminary inquiry, a fee not exceeding \$8,160 and additionally, if the inquiry is not concluded on the day on which it started, a daily fee not exceeding one half of the fee allowed under this sub-paragraph in respect of the second and every subsequent day as appears to be proper in the circumstances; (*48 of 1983 s. 5; L.N. 83 of 1987; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; L.N. 174 of 2003*)
- (m) to a solicitor assigned under a legal aid certificate to instruct counsel in respect of committal proceedings (including a preliminary inquiry), a fee of \$2,210 and additionally, if such proceedings are not concluded on the day on which they started, a daily fee not exceeding \$1,810 in respect of the second and every subsequent day as appears to be proper in the circumstances; (*48 of 1983 s. 5; L.N. 83 of 1987; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; L.N. 174 of 2003*)
- (n) to counsel or a solicitor assigned under a legal aid certificate to act as advocate in committal proceedings otherwise than by way of a preliminary inquiry, a fee not exceeding \$8,160 and additionally, if such proceedings are not concluded on the day on which they started, a daily fee not exceeding \$4,080 in respect of the second and every subsequent day as appears to be proper in the circumstances; (*48 of 1983 s. 5; L.N. 83 of 1987; L.N. 87 of 1990; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; L.N. 174 of 2003*)
- (o) to counsel or a solicitor settling a notice of appeal, other than grounds of appeal settled under rule 9(a), such fee not exceeding \$2,710 as appears to the Director to be proper in the circumstances; (*L.N. 204 of 1984; L.N. 83 of 1987; L.N. 351 of 1992; L.N. 154 of 1994; L.N. 119 of 1995; L.N. 235 of 1997; L.N. 174 of 2003*)
- (p) to any lawyer engaged under rule 7(1A), such fees as appear to the Director to be proper in the circumstances. (*L.N. 157 of 1986*)

(2) If in the opinion of a judge before whom a trial or appeal is heard the case is of exceptional length or complexity, the judge may so certify and thereupon—

- (a) 根據第(1)(d)款須付予大律師的費用；及
- (b) 根據第(1)(a)款須付予律師的費用，
- 可隨即按署長覺得在有關情況下屬恰當的款額增加，而第(1)(a)或(d)款(視屬何情況而定)所規定的每日費用，亦可按比例增加。(1985年第115號法律公告)
- (3) 如審訊案件的區域法院法官認為案件異常費時或異常複雜，則法官可核證情況如此，而就此——(1998年第25號第2條)
- (a) 根據第(1)(e)款須付予大律師的費用，或根據第(1)(c)款就律師出庭代訟而須付予律師的費用；及
- (b) 根據第(1)(b)款須付予律師的費用，
- 可按署長覺得在有關情況下屬恰當的款額增加，而第(1)(b)、(c)或(e)款(視屬何情況而定)所規定的每日費用，亦可按比例增加。(1985年第115號法律公告)
- (4) 除根據第(1)款須付的費用外，另須付予律師以下費用——
- (a) 律師本人及其文員，為準備或進行審訊或上訴，前往法庭或從法庭返回以及往返任何地方，而實際及合理地招致的開支；及
- (b) 實際及合理地招致的任何其他現金付款開支。
- (5) 如任何律師或大律師(資深大律師除外)被署長指派代表2名或多於2名的被控人或2名或多於2名的上訴人，而該等人士是一併審訊或其上訴是一併聆訊的，則——(1997年第94號第20條)
- (a) 根據第(1)(a)或(b)款須付予律師的費用，包括每日費用，可按署長覺得在有關情況下屬恰當的款額增加；
- (b) 須付予——
- (i) 根據第(1)(c)款就律師出庭代訟而須付予律師的費用，包括每日費用；
- (ii) 根據第(1)(d)或(e)款須付予大律師(資深大律師除外)的費用，包括每日費用。(1997年第94號第20條)
- 就獲如此代表的每一名額外被控人或上訴人可增加10%，而凡有6名或多於6名的被控人或上訴人獲如此代表，則最多可增加50%。(1981年第414號法律公告)
- (6) 凡署長指派某大律師在原訟法庭代表2名或多於2名的上訴人，而該等人士的上訴是在同日聆訊，則就所有該等上訴而須付予該大律師的費用，為署長覺得在有關情況下屬恰當的按照第(1)(d)款釐定的費用。(1987年第83號法律公告；1990年第87號法律公告；1998年第25號第2條)

- (a) the fee payable to counsel under paragraph (1)(d); and
- (b) the fee payable to a solicitor under paragraph (1)(a),
- may be increased by such amount as appears to the Director to be proper in the circumstances, and the daily fee provided for in paragraph (1)(a) or (d), as the case may be, may be increased proportionately. (L.N. 115 of 1985)
- (3) If in the opinion of a District Judge before whom a trial is heard the case is of exceptional length or complexity, the judge may so certify and thereupon—
- (a) the fee payable to counsel under paragraph (1)(e) or to a solicitor in respect of his advocacy under paragraph (1)(c); and
- (b) the fee payable to a solicitor under paragraph (1)(b),
- may be increased by such amount as appears to the Director to be proper in the circumstances, and the daily fee provided for in paragraph (1)(b), (c) or (e), as the case may be, may be increased proportionately. (L.N. 115 of 1985)
- (4) In addition to the fees payable under paragraph (1), there shall be payable to a solicitor—
- (a) expenses actually and reasonably incurred by himself and his clerk in travelling to or from the court and to and from any place visited for the purpose of preparing or conducting any trial or appeal; and
- (b) any other out-of-pocket expenses actually and reasonably incurred.
- (5) Where a solicitor or counsel (other than Senior Counsel) represents 2 or more accused persons or 2 or more appellants to whom he has been assigned by the Director and who are tried together or whose appeals are heard together— (94 of 1997 s. 20)
- (a) the fee, including the daily fee, payable to a solicitor under paragraph (1)(a) or (b), may be increased by such amount as appears to the Director to be proper in the circumstances;
- (b) the fee, including the daily fee, payable to—
- (i) a solicitor under paragraph (1)(c) in respect of his advocacy;
- (ii) counsel (other than Senior Counsel) under paragraph (1)(d) or (e). (94 of 1997 s. 20)
- may be increased by 10% for each additional accused person or appellant so represented up to a maximum of 50% where 6 or more accused persons or appellants are so represented. (L.N. 414 of 1981)
- (6) Where in the Court of First Instance counsel represents 2 or more appellants to whom he has been assigned by the Director and whose appeals are heard on the same day, there shall be payable to counsel, in respect of all the appeals, such fee in accordance with paragraph (1)(d) as appears to the Director to be proper in the circumstances. (L.N. 83 of 1987; L.N. 87 of 1990; 25 of 1998 s. 2)

(7) 申索費用須採用署長所規定的格式及方式向署長提出。(1990 年第 87 號法律公告)

附表

(由 1992 年第 199 號法律公告廢除)

(7) A claim for fees shall be submitted to the Director in such form and manner as he shall require. (*L.N. 87 of 1990*)

SCHEDULE

(*Repealed L.N. 199 of 1992*)

**Criminal Legal Aid Fees,
Prosecution Fees and Duty Lawyer Fees**

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum w.e.f. 4 July 03 (\$)</u>
1. <u>Court of First Instance Cases</u>		
(a) Counsel		
(i) brief fee	LAD/DOJ*	20,410
(ii) refresher fee per day	LAD/DOJ*	10,210
(b) Solicitor		
(i) brief fee	LAD^	6,790
(ii) refresher fee per day	LAD^	830 to 4,420
(c) Conference per hour (counsel)	LAD/DOJ	1,080
(d) Pre-trial review (per review)	DOJ	2,030
2. <u>District Court Cases</u>		
(a) Counsel		
(i) brief fee	LAD/DOJ*	13,600
(ii) refresher fee per day	LAD/DOJ*	6,800
(b) Solicitor (acting as instructing solicitor)		
(i) brief fee	LAD^	4,840
(ii) refresher fee per day	LAD^	1,160 to 2,900
(c) Solicitor (acting as advocate as well as instructing solicitor)		
(i) brief fee	LAD*	16,800
(ii) refresher fee per day	LAD*	9,310
(d) Conference per hour (counsel)	LAD/DOJ	880
(e) Brief fee for mention/sentence	DOJ	2,710
3. <u>Magistrates' Court Cases</u>		
(a) Counsel		
(i) brief fee	DOJ	8,160
(ii) refresher fee per day	DOJ	4,080
(b) Counsel or solicitor (acting as advocate) in committal proceedings		
(i) brief fee	LAD	8,160
(ii) refresher fee per day	LAD	4,080

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum w.e.f. 4 July 03 (\$)</u>	
(c) Solicitor for instructing counsel in committal proceedings			
(i) brief fee	LAD	2,210	
(ii) refresher fee per day	LAD	1,810	
(d) Counsel or solicitor acting as advocate in preliminary inquiry			
(i) brief fee	LAD	8,160	
(ii) refresher fee per day	LAD	4,080	
(e) Brief in place of court prosecutor per day	DOJ	5,430	
(f) Duty Lawyer Fee	DLS	5,430	a day
		2,710	half day
(g) Pre-trial fee per hour	DLS	670	
4. <u>Appeals</u>			
(a) Settling notice of appeal	LAD	2,710	
(b) Instructing solicitors for appeals to the Court of Appeal			
(i) from the Court of First Instance	LAD	9,160	first day
		1,150 to 5,910	per subsequent day
(ii) from the District Court	LAD	7,330	first day
		910 to 4,760	per subsequent day
(c) Counsel for appeals to the Court of Appeal			
(i) from the Court of First Instance	LAD/DOJ	27,210	first day
		13,610	per subsequent day
(ii) from the District Court	LAD/DOJ	21,760	first day
		10,880	per subsequent day
(d) Conference per hour (counsel)	LAD/DOJ	1,080	

Note :

LAD Legal Aid Department

DOJ Department of Justice

DLS Duty Lawyer Service

* Subject to an increase of 10% on the base figures for each of the second to sixth defendant or appellant.

^ Subject to an increase of such amount as appears to the Director of Legal Aid to be proper in the circumstances.

Extract from the Official Record of
Proceedings of the Council meeting on 11 May 2005

~~MR PATRICK LAU (in Cantonese): I want to follow up. Will an open competition be held?~~

~~SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we can certainly consider holding an open competition. However, sometimes an open competition may not be the best way to initiate this project as it may delay or even postpone the development of the entire project.~~

PRESIDENT (in Cantonese): Second question.

Amendments to Legal Aid in Criminal Cases Rules

2. **MS MARGARET NG:** *Madam President, there is no provision in the Legal Aid in Criminal Cases Rules which authorizes the Director of Legal Aid to pay fee, other than a fixed brief fee, to the counsel in criminal cases for his work in preparing for a trial or an appeal, irrespective of how much work he has done. In his speech at the Opening of the Legal Year 2005, the Chairman of the Hong Kong Bar Association (the Bar) pointed out that the rules governing counsel fees in criminal legal aid cases were outmoded and would not attract enough barristers to practise criminal law. As thorough preparation may save a great deal of court time and is in the public interest, will the Government inform this Council whether it plans to amend existing legislation to make provisions for appropriate payment for preparation work undertaken by counsel in criminal legal aid cases; if so, of the details of the plan; if not, the reasons for this?*

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, at present, the Legal Aid in Criminal Cases Rules prescribe the maximum fees payable to counsel and solicitors for undertaking criminal litigation work for the Legal Aid Department (LAD). It has long been the Administration's policy to review the fees on a biennial basis, to take account of changes in consumer prices and other related factors. We last adjusted the fees in the middle of 2003

following approval by the Finance Committee and a resolution passed by the Legislative Council.

The Honourable Member refers in her question to remuneration for preparation work undertaken by the defence counsel in particular. Before I address the specific question, let me briefly explain the criminal legal aid fee system enshrined in the Legal Aid in Criminal Cases Rules, as applied to both defence counsel and defence solicitors.

According to the Rules, the Director of Legal Aid pays to an assigned defence counsel, and solicitor for that matter, a "brief fee", generally equivalent to two days' court fee, to cover the preparation work undertaken by the counsel and his attendance for the first day of trial of the criminal case. From the second day of trial onwards, the assigned counsel receives a *per diem* court fee or "refresher fee", calculated as a fixed rate at half the brief fee.

Notwithstanding the prescription of the brief fee in the Rules, if the counsel considers that the assigned criminal case is exceptionally long or complex, he may, in accordance with the Rules, apply to the Court and the Court may so certify. With the certificate issued by the Court, the Director of Legal Aid is empowered to increase the fees payable to the counsel by such amount which the Director considers proper in the circumstances.

The Administration keeps an open mind to proposals which may further improve the cost-effectiveness of the criminal legal aid fee system. Indeed, in the context of the Finance Committee's approval of the last fee adjustments in mid-2003, the Bar and The Law Society of Hong Kong (The Law Society) stated that they would study the fee system and put forward a joint submission with improvement proposals. The Administration undertook to consider the joint submission when it is available. In the event, the Bar wrote to the Administration last month on a number of matters, including its views on the remuneration for the preparation work undertaken by the defence counsel. We will examine these views together with those which The Law Society will provide us, as part of the Administration's comprehensive review of the criminal legal aid fee system.

MS MARGARET NG (in Cantonese): *Madam President, the adjustment mentioned by the Chief Secretary for Administration is in fact made according to*

the consumer price index, the rate of which is very small, only a few percentage points, and it can also be increased or decreased. It was said in the fourth paragraph of the main reply that if the case was exceptional, the counsel would have to make his own application. According to existing legislation, the normal fee ceiling is only \$13,600. No matter how many case-related documents the counsel has to read, he cannot charge additional fees. As regards service of notice for appeal, even though the counsel may have read a lot of documents, summarized everything and saved court time, the normal fee ceiling is only \$2,710 — even if the Director of Legal Aid wishes to give the counsel more, this normal ceiling cannot be altered. My supplementary question is: Has the Government considered revising these normal ceilings? My question is really about time spent. Would the Chief Secretary for Administration revise the normal fees for legal aid with the same efficiency as he is presently trying to boost the remuneration of the Chief Executive? Would he accomplish this task with the same efficiency, before his term as the Chief Executive for Administration expires?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): At present, fees payable to counsels are approved by the Legislative Council and the Finance Committee. In arriving at the amounts, we have applied the fees charged by counsels with the same experience in handling such cases for the general public as the standard. In addition, we have also applied the principle of prudent financial management. Just as I said earlier, we would make adjustments according to market condition on a biennial basis. Of course, these adjustments must be compatible with market changes and cannot deviate from them completely. Besides, we also have to consider a number of other factors. If such fees cannot attract sufficient counsels to join the list of counsels of the LAD, we then would have to review but for the time being, we have not discovered any problem. Notwithstanding this, I have made it very clear in the main reply earlier that we would keep an open mind. If the Bar or The Law Society considers that there are specific problems which we must handle, we should of course critically examine if there are any problems with the system.

I have also said earlier that if a certain case requires a long preparation period, or requires the counsel to read a lot of documents, I think the Court would make special arrangements. Just as I said earlier, if the counsel tells the Court that he has to spend much time on preparation and do a lot of preparation work, there should be special treatment under such circumstances. If the Court

is also convinced that much time is needed and the case is complicated, the LAD would make special arrangements and pay additional fees.

I believe the Government has to strike a balance between deploying resources of the LAD and encouraging counsels to participate in this scheme. With regard to the present system, I think it is feasible. However, just as I said earlier, we would keep an open mind. Besides, I can assure Ms Margaret NG that if the Bar and The Law Society think that there are particular problems in this respect and give us their opinions, we would handle them as soon as possible. I said earlier that I had received the opinions of the Bar one month ago, and I also hope to have the opinions of The Law Society so that we could address this issue soon.

MS AUDREY EU (in Cantonese): *Madam President, may I ask the Chief Secretary if he agrees that the better and more thoroughly we do our preparation, the shorter the hearing time will be? Ms Margaret NG earlier asked about appeal. Most of the times, before lodging an appeal, a counsel has to refer to trial records — this may mean the records for 20 or 30 days. Even if he is only talking about obtaining the faired records of the hearings, several hundred thousand dollars have to be spent — this sum is paid to the Court and not charged by the counsel. Having studied all the documents, the counsel understands the reason for appeal and he has to write it on the notice for appeal. This process may take the counsel several days, but the fee for preparing the appeal notice is only \$2,710. Therefore, may I ask the Chief Secretary if he agrees that this is not a matter of making adjustments in accordance with consumer prices, but rather a matter of the structure itself? That is, does he agree that there is a shortcoming with the formula stipulated by existing legislation: regardless of how much effort we have put into the preparation, everything has been provided by law, thus the cart is put before the horse which is not cost-effective?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): I think Ms Audrey EU has a point there. We would examine if the system has to be refined. If this can shorten the Court's hearing time and save government spending in this respect, I am sure we can consider this. I would pay special attention to this, and study the issue further with colleagues of the LAD.

MR RONNY TONG (in Cantonese): *Madam President, I would like to raise a supplementary question on the fourth paragraph of the main reply. In the fourth paragraph, the Chief Secretary said that the Court is empowered to increase the fee payable, but does the Chief Secretary in fact know that upon receiving a case, there is no way for the counsel to be sure that the Court will definitely accept his application? Besides, even if the Court approves the application, it is only asking the Director of Legal Aid to handle the application; it is still unknown as to how the application will be handled. On the contrary, if the counsel is working for the prosecution, these shackles would not exist. Therefore, we can see that the prosecution and the defence may be receiving different treatment, and this may have a direct impact on quality. May I ask the Chief Secretary here if he would consider lifting these rigid stipulations and fee ceilings which are out of touch with the reality, and switch to using the time spent as the criterion in determining the fees payable to counsels? I hope the Chief Secretary can say whether he would consider changing this criterion, unlike the present practice where, regardless of the complexity of the cases, a rigid amount is prescribed as fee payable to the counsel no matter he has to work for three weeks or two days. I hope the Chief Secretary can consider using the time spent as the criterion for calculating fees.*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): This argument has been put forward many times. Just as I said earlier, the present brief fee is calculated on the basis of two working days. Generally speaking, everybody seems to be happy with it. Granting special circumstances and the counsel feels that the fee is not enough, I have said that the Court can issue certificates to handle it with flexibility, and the LAD will adjust the fee for the preparation period in accordance with the certificate. Judging from the records I have seen, if the LAD receives such certificates issued by the Court, approval will be given under normal circumstances, and the LAD also has clear guidelines on this.

If counsels with the LAD consider that preparation work will really take a long time, they should point it out to the Court. However, in order to safeguard the expenditure of taxpayers in legal aid, the authorities will lay down some criteria on the premise that discretion would not be exercised too frequently. I think there are advantages to this. At present, generally speaking, our criterion is to calculate the initial brief fee on the basis of two working days. I have said

earlier that if for a certain case, the difference is too big, I hope individual counsel would point it out. I think this is also a fair way to handle the matter. However, if we have to handle it in another way, I believe we have to take a look at the relevant expenses and whether this would result in higher administrative cost. This is a matter with the system. In this regard, I said earlier that the Bar had given us some opinions a month ago. Although I have not read those opinions and do not know whether this point is included, I very much believe that they have included it. If so, we will study this further to see if adjustments can be made.

MR LI KWOK-YING (in Cantonese): *Madam President, I am very glad to hear the Chief Secretary say earlier that he would keep an open mind in handling this and I welcome him saying so. Ms Margaret NG's main question is mainly about fees for counsels but the few colleagues who have asked supplementary questions earlier seem to have made a mistake, thinking that it is only looking at counsel fees. However, we all know that at present, the judicial system is made up of barristers and solicitors, and the philosophy behind this is when the two different kinds of lawyers are handling the same case, it is hoped that the objective factor will not come in, so that the lawyers can accurately grasp the information and enforce the law impartially. If this is the reason, we all know that when barristers handle complicated cases and have relatively spent more time, the same applies to solicitors. Therefore, if barristers can charge according to the time they have spent on the cases, may I ask the Chief Secretary if the same applies to solicitors too?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): *Madam President, I have said that we are waiting for solicitors to give us their opinions in this regard. If The Law Society considers that adjustments are necessary, I would consider them. However, we do have a common goal with the Legislative Council, that is, to ensure the proper spending of public money. If there is a way which is fair, and which can improve the entire legal aid system to the satisfaction of every party, I will definitely strike a balance.*

MR CHIM PUI-CHUNG (in Cantonese): *Madam President, may I ask the Chief Secretary if it is required by law that barristers or solicitors must take up*

cases of the LAD? If not, this is something which they take upon themselves voluntarily. The reason for lawyers to serve society in this way is perhaps they have made more than enough money from the fees they charge in handling other cases. Therefore, may I ask the Chief Secretary if barristers are required to take up cases of the LAD? If not, this is a matter of free will.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): There is no mandatory obligation.

~~**PRESIDENT** (in Cantonese): Third question.~~

Tenants Purchase Scheme Phase 6B

3. **MR WONG KWOK-HING** (in Cantonese): *Madam President, regarding the Tenants Purchase Scheme (TPS) Phase 6B, will the Government inform this Council if it knows:*

- (a) *the reasons for re-introducing the TPS this year, whether it has assessed the impact of the TPS on the property market before re-introducing the TPS concerned, and considered extending the TPS phase to other public housing estates or introducing a new TPS phase in the light of market changes;*
- (b) *as the public areas adjacent to TPS estates will be designated as public areas and subject to the Deed of Mutual Covenant (DMC) for TPS estates, the criteria for delineating the areas to be included; and whether the authorities will consult the residents of TPS estates before making the relevant DMC; if so, of the details of such consultation; if not, the reasons for that; and*
- (c) *given that the Housing Department (HD), in response to the outbreak of Severe Acute Respiratory Syndrome (SARS) in the community in 2003, decided to defer the sale of flats under the TPS Phase 6B pending the inspection and maintenance of sewage systems of the estates concerned, the reasons for the authorities' repeated refusal to carry out comprehensive replacement works to the sewer*

Criminal legal aid fees system

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Panel on Administration of Justice and Legal Services	27 October 2003	Letter dated 20 October 2003 from the Director of Administration responding to the issues raised by the Panel at the meetings on 23 June and 29 July 2003 (LC Paper No. CB(2)159/03-04(03)) Minutes of meeting (LC Paper No. CB(2)387/03-04)
Legislative Council	11 May 2005	Official Record of Proceedings of the Council on an oral question raised by Hon Margaret NG on "Payment of fee to the defence counsel in criminal legal aid cases in respect of preparation work"
Panel on Administration of Justice and Legal Services	--	An Executive Summary and the submission on "Review of legal aid in criminal cases" from the Special Committee on Legal Aid Reform of the Hong Kong Bar Association to the Legal Aid Services Council (LC Paper No. CB(2)1588/04-05(01)) (<i>English version only</i>) Letter dated 1 June 2005 and a position paper on "The System of Remuneration of Solicitors for Conducting Criminal Legal Aid Work" from the Law Society of Hong Kong to the Director of Administration (Annex 7 to the position paper is confidential) (LC Paper No. CB(2)1793/04-05(01)) (<i>English version only</i>) Letter dated 8 July 2005 from the Administration to the Hong Kong Bar

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
		<p>Association on "2004 Biennial Review of Criminal Legal Aid Fees, Prosecution Fees and Duty Lawyer Fees" (LC Paper No. CB(2)2268/04-05(01)) <i>(English version only)</i></p> <p>Letter dated 26 October 2005 from the Chairman of LASC to the Director of Administration on "Review of criminal legal aid fees" (LC Paper No. CB(2)260/05-06(01)) <i>(English version only)</i></p> <p>Letter dated 27 October 2005 from the Panel Chairman to the Director of Administration on "Review of criminal legal aid fees" (LC Paper No. CB(2)260/05-06(02)) <i>(English version only)</i></p>
	<p>15 December 2005</p>	<p>An extract from the Official Record of Proceedings of the Council meeting on 11 May 2005 on an oral question raised by Hon Margaret NG on "Amendments to Legal Aid in Criminal Cases Rules" (LC Paper No. CB(2)658/05-06(01))</p> <p>Paper provided by the Administration on "Criminal legal aid fees system" (LC Paper No. CB(2)658/05-06(02))</p> <p>Minutes of meeting (LC Paper No. CB(2)1198/05-06)</p>
	<p>--</p>	<p>Letter dated 15 May 2006 from the Director of Administration concerning the progress of the review of criminal legal aid fees system (LC Paper No. CB(2)2058/05-06(01))</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
		Paper provided by the Administration on "2006 Biennial Review of Criminal Legal Aid Fees, Prosecution Fees and Duty Lawyer Fees" (LC Paper No. CB(2)563/06-07(01))