



THE

LAW SOCIETY
OF HONG KONG
香港律師會



3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話) : (852) 2846 0500
FACSIMILE (傳真) : (852) 2845 0387
E-MAIL (電子郵件) : sg@hklawsoc.org.hk
WEBSITE (網頁) : www.hklawsoc.org.hk

Our Ref : Criminal
Your Ref :
Direct Line :

BY FAX (25015779) AND BY HAND

16 February 2007

Mrs. Alice Cheung
Government Secretariat
Lower Albert Road,
Room 522, Central Government Offices,
(East Wing), Hong Kong

Dear Mrs. Cheung,

Review of Criminal Legal Aid Fees

Thank you for your letter dated 26 January 2007 and the enclosures and we are pleased to confirm that we have no comments to make on the draft notes of the meeting of the Joint Working Party ("JWG") held on 21 December 2006.

The Law Society's Criminal Law & Procedure Committee has further discussed the issues regarding the proposed fee structure left outstanding from the 21 December 2006 JWG meeting. We now set out our response on the outstanding issues for further deliberations by the JWG on the understanding that the JWG has otherwise reached consensus on the proposals put forward in our 15 December 2006 paper:

Negotiation of Fee Rates

First and foremost, we would stress that it has all along been our position that whatever fee structure to be proposed, it will not make sense without the figures. Whilst the Administration has insisted on first agreeing on the revised fee structure, we have engaged in the present discussion on the understanding that the Administration will involve us in the future negotiations of fees. We would need an express undertaking from the Administration in this regard.

Reading Fee

We agree to the Administration's counter-proposal for "reading fee" to be paid on an hourly basis and at an hourly rate with *90 pages to be regarded as one hour's work*.

President	Vice-Presidents	Council Members				Secretary General
Peter C.L. Lo	Lester G. Huang Wong Kwai Huen Junius K.Y. Ho	Michael J. Lintern-Smith Ip Shing Hing Billy W.Y. Ma Sylvia W.Y. Siu	Cecilia K.W. Wong Alex T.H. Lai Kenneth S.Y. Ng Andrew Jeffries	Stephen W.S. Hung Dieter L.T. Yih Ambrose S.K. Lam Joseph C.W. Li	Amirali B. Nasir Melissa K. Pang Thomas S.T. So James E. Jamison	Patrick R. Moss

Banding System

We agree to the Administration's counter-proposal to have "4-hour bands" instead of "10-hour bands" on the understanding that:

- (a) an additional hour of work above one band will entitle a jump to the next band; and
- (b) a progressive rate system to apply up the bands.

Conference Fee

We agree to the Administration's counter-proposal for conference fee to be paid separately based on the actual number of hours spent including traveling time.

Difference in the rates between the Court of First Instance (CFI) and District Court (DC) cases

We remain of the view that one set of rates should apply to cases tried in either the CFI or DC. The logic of our proposal is that irrespective of the court level, a more complex case should warrant a higher pay and vice versa. The fact that a case is tried at the DC does not mean less preparation work will be demanded from solicitors.

Rates for the first day of court hearing should be higher for subsequent days

We maintain the views that the first day court attendance should attract a higher pay. We do not think the present exercise should merely result in a redistribution of funds but given the importance of the first day court hearing, solicitors should be given the incentive to personally attend that hearing. We note that members of the Judiciary and the Bar in the JWG share our views that the presence of instructing solicitor on the first day of court hearing is important and helpful and much costs and expenses could be saved for making sure things are in order on day one.

Rates should be specified for CFA cases as in trial cases

We have no strong objection for the existing arrangements for CFA cases to continue.

Same Fee Structure for solicitor advocate and instructing solicitors

We do not agree that the fee structure for counsel should apply to solicitor advocates as solicitor advocates are effectively playing 2 roles as instructing solicitors and counsel, although there will be some overlapping in the work.

Return of papers

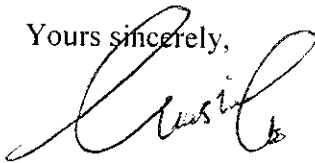
We maintain the stance that in the event of return of papers by solicitors, they should be paid for all work done up to the day the papers are returned unless this is due to some fault on the solicitors' part. In this respect, it may be helpful to note that the Hong Kong Solicitors' Guide to Professional Guide, Vol. 1 clearly sets out the circumstances that would allow solicitors to withdraw from a case.

Taxation

We object to the Director of Legal Aid being the final arbiter on fee disputes. We insist that taxation is the best way to resolve disputes on criminal legal aid fees. Alternatively, the jurisdiction of the Legal Aid Review Committee should be extended or a similar statutory body should be set up to adjudicate disputes on fees.

Lastly, we believe the LegCo Panel on Administration of Justice and Legal Services should be kept fully informed of our stance and the status of the fee review exercise for the purpose of the 26 February meeting. For this purpose, we shall be submitting our latest proposal paper, the draft minutes of the last JWG meeting held on 21 December 2006 and this letter for the attention of LegCo Panel members.

Yours sincerely,



Christine W. S. Chu
Assistant Director of Practitioners Affairs