



Review of Criminal Legal Aid Fee System

Submissions of the Law Society of Hong Kong

1. The Law Society of Hong Kong has, since March 2006, been engaged in discussions with the Administration on the review of criminal legal aid fee system through a Joint Working Group (“JWG”) convened by the Administration. Membership of the JWG comprises representatives from the Legal Aid Department, the Judiciary, the Bar, the Law Society and the Administration. 7 meetings have been held to-date and there is consensus the fee system has to be improved.
2. The Law Society believes the Government must uphold the spirit of the Basic Law and ensure adequate legal representation for all. It should be inherent in the provision of adequate legal representation that those providing such representation should be paid at a rate which properly reflects the responsibilities that they undertake and the skills they provide. They should not be expected to provide their services at an uneconomic rate. Inevitably if forced to do so those most able will no longer provide the service and there will be a diminution in the service or a reduction in the accessibility to justice.
3. At the JWG meetings, the Administration insisted that discussions on the fee review should be split into two stages and refused to discuss a review of the fee rates until an agreement on the revised fee structure was reached.
4. After 6 meetings, the JWG managed to reach broad consensus on the revised fee structure with only a few issues outstanding. A progress report was made to the LegCo Panel on Administration of Justice and Legal Services (“AJLS”) on 26 February 2007. The Director of Administration indicated at the AJLS

meeting her intention to complete the consultation on the outstanding issues, including the rates under the revised system, before Summer.

5. Since the last meeting of the AJLS in February 2007, the JWG met on 16 March 2007 when the Administration tabled a schedule of the proposed fee rates to apply under the new criminal legal aid regime. The Administration, however, stressed the figures are confidential and should be confined to discussion within the JWG and the 2 professional bodies.

6. The Law Society feels constrained by the confidentiality requirement and is unable to fully argue its contentions before the AJLS from which essential information has been withheld. However, the AJLS should note:
 - derisorily low fixed hourly rates were proposed for solicitors
 - the existing brief fee for court attendance under Rule 21 will be further reduced

These proposals do not give incentive to or prospect of any meaningful discussion. The Administration explained the proposed rates were based on the existing statutory fees in Rule 21 of the Legal Aid in Criminal Cases Rules (Cap. 221D), which had been substantially revised in 1992 but refused to provide any information on the basis of the 1992 fee review.

7. The Administration's proposed fee rates are considered totally unacceptable for the following reasons:
 - there is no reason why a system similar to the civil legal aid fee system with the right to taxation should not be adopted for criminal legal aid work. The Administration has never furnished any valid reasons for treating the two systems differently

 - No reason has been provided why the new fees should be determined by reference to the existing statutory rates prescribed in Rule 21, which are now under review. If there is to be reform of the whole system, there is no justification to tie the new system to a review which took place 15 years ago

 - the proposed hourly rates equate to about 10% of the existing market hourly rate for criminal law practitioners of 5 years' experience and are

totally unacceptable. They fail to have any correlation to fees in other legal proceedings:

- * the party and party taxation rate for a 5-6 years' experienced solicitor is from HK\$2,400 to HK\$3,000 per hour for High Court civil proceedings.
- * a trainee solicitor: HK\$1,400/hour
- * Duty Lawyers: HK\$670 for pre-trial preparation work and respectively HK\$2,710 and HK\$5,430 for half and full day court hearing
- * mediators: HK\$600 per hour
- * court interpreters HK\$204 per hour

- there are substantial discrepancies in the fees proposed for Counsel and Instructing Solicitors. The proposed hourly rates for solicitors in a criminal case in the CFI are only equivalent to:
 - * 33% of that for Counsel in a Class 1 case;
 - * 40% of that for Counsel in a Class 2 case; and
 - * 46% of that for Counsel in a Class 3 caseThis is not justified or acceptable when one stated principle of the fee review exercise is *"rectification of inconsistency between policy on payment to solicitors and counsel"*.
- no conference fee rates have been proposed for Solicitor Advocates in District Court cases.

8. We note the Administration has indicated it will provide at least a 30% increase in the criminal legal aid expenditure. However, we have to stress that such increase, which may look substantial in terms of percentage change, does not in reality represent any significant improvement to the existing fee system given that one is starting from a very low figure. Many criminal law practitioners at present take up criminal legal aid work on charitable or pro bono work basis but cannot be realistically expected to continue to do so and maintain a viable practice. At the last AJLS meeting, the Law Society provided an example of low fees when the solicitor concerned was paid fees of HK\$118.3 per hour. A 30% increase in that case would mean an increase in fee to HK\$153.8 per hour only. We do not think it is justified that the legal aid system in HK should be substantially subsidized by the legal profession. It is the Government's responsibility under the Basic Law to ensure access to justice and that means at a reasonable cost. We do not think this situation should continue.

9. In our view, we consider the fee review has reached an impasse given the Administration's failure to provide any meaningful increase in the budget. At present, we do not believe any consensus can be reached on the fee rates for the new system. The Government should lift its embargo on what the proposed rates are so the AJLS could truly appreciate the latest position. The Administration should state clearly why the right to taxation should not be available for criminal legal aid work. Unless the Administration is prepared to seriously consider properly funding the criminal legal aid system and make a realistic offer, no purpose is to be served in continuing with a review which is, at best, a sham.

**The Criminal Law & Procedure Committee
The Law Society of Hong Kong**

22 June 2007