

Biennial Review of Criminal Legal Aid Fees, Prosecution Fees and Duty Lawyer Fees

PURPOSE

The Administration has completed the 2006 biennial review of the fees payable to:

- (a) lawyers in private practice engaged by 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 Scheme¹ (“DLS fees”).

This paper sets out the Administration’s review findings and decision.

BACKGROUND

2. The criminal legal aid fees are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules under the Criminal Procedure Ordinance (Cap. 221). The prosecution fees follow the same scale administratively. This is to ensure that neither LAD nor DoJ would have an unfair 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.

3. Since 1992, the Administration reviews the above fees (“the fees”) on a biennial basis. The Finance Committee also delegated in June 2003 the authority to approve adjustments of the fees to the Director of Administration (“D of Adm”), provided that the extent of adjustment is

¹ The Duty Lawyer Scheme of the Duty Lawyer Service was established in 1979 to supplement the legal aid services provided by the Legal Aid Department under the Legal Aid Ordinance. The Duty Lawyer Scheme provides legal representation by lawyers in private practice to eligible defendants who appear in Magistrates’ Courts, Juvenile Courts and Coroners’ Courts.

no greater than the movement of consumer prices as measured by Consumer Price Index (C) (“CPI(C)”) during the reference period.

THE REVIEW

4. In conducting the biennial reviews, the Administration takes into account mainly changes in consumer prices during the reference period, the actual or anticipated difficulties in engaging the services of counsel and solicitors, and other factors such as the state of economy and office rental.

5. 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. Pursuant to 2004 biennial review, the Administration decided not to reduce the fees to follow the 4.4% drop in CPI(C) recorded from April 2002 to March 2004. Instead, we reserved the 4.4% reduction and pledged to consider it together with the findings of the 2006 biennial review.

6. The Administration has now completed the 2006 biennial review. While the CPI(C) has 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) still records a decrease of 1%. As regards assigning cases to private legal practitioners, both Legal Aid Department and Department of Justice have no difficulties in engaging suitable private legal practitioners at the current rates. On the other hand, we appreciate that the economy is picking up and that office rental in Grade A and Grade B offices have increased by 57% and 29% respectively. Balancing the above considerations, we have decided that it would be appropriate to freeze the current rates of the fees. This decision will not prejudice the more fundamental review on the criminal legal aid fee system which is currently being conducted together with the two legal professional bodies and the Judiciary. The current fees are set out at the **Enclosure** for easy reference.

7. As noted from the above, the cycle of the 2006 biennial review ended in July instead of March as in previous biennial reviews. This

represents a streamlining measure aimed to synchronize the review cycle with that for other reviews on legal aid, namely the annual and biennial review on financial eligibility limits. The change has not affected the direction of the relevant indices for the purpose of the review. Future biennial reviews of the fees will henceforth follow a July-to-July cycle.

Administration Wing
Chief Secretary for Administration's Office

November 2006

**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.