

Legislative Council
Panel on Administration of Justice and Legal Services

Fees for Transcript and Record of Proceedings

Purpose

This paper reports progress on the actions taken by the Judiciary Administration on the issues relating to the fees for transcript and record of proceedings since the matter was last discussed by the Panel on Administration of Justice and Legal Services (“AJLS”) in January 2007.

Background

2. At the AJLS Panel meeting in January 2007, Members agreed that the Judiciary Administration should -

- (a) implement its proposal for new fees and charging method for transcript and record of proceedings - including audio tapes, Compact Discs (“CDs”) and Digital Versatile Discs (“DVDs”) produced from the Digital Audio Recording and Transcription Services (“DARTS”) - with effect from 1.2.2007, to be followed by a review of the fees for DARTS recording on audio tape/CD/DVD as soon as practicable;
- (b) consider how to rationalize the situation where the power and criteria for courts to waive transcript fees are prescribed in different statutory provisions; and
- (c) consider whether fees for all transcripts included in criminal appeal bundles should be waived, including cases where the appellants are not legally aided but represented.

Present Position

3. The actions taken by the Judiciary Administration and the present position in respect of the three issues raised at the meeting in January 2007 are set out below.

(A) Fees for Transcript and Record of Proceedings from DARTS

4. With effect from 1.2.2007, transcript and record of proceedings from DARTS are charged at the following rates –

<u>Description</u>	<u>Fee</u>
(1) <u>Transcript of proceedings</u> produced from DARTS -	
(a) per English word	\$0.14
(b) per Chinese character	\$0.10
(2) <u>Record of proceedings</u> produced from DARTS -	
(a) Audio tape (per 60-minute audio tape or part thereof)	\$80
(b) CD (per CD of no less than 700MB with full recording, i.e. about 14 hours, or part thereof)	\$315
(c) DVD (per DVD of no less than 4.7GB with full recording, i.e. about 98 hours, or part thereof)	\$570

5. During the 12-month period (i.e. from 1.2.2007 to 31.1.2008) since the implementation of the new fees and charging method, the estimated notional savings to court users requesting different types of transcript and record of proceedings are as follows –

Transcript of Proceedings	Quantities Produced ('000)	Fees Based on New Charging Method (\$million)	Fees Based on Previous Charging Method (\$million)	Estimated Notional Savings (\$million) / (%)
1. English words	31,768	4.45	7.15	2.70 (38%)
2. Chinese characters	54,071	5.41	6.30	0.89 (14%)
Record of Proceedings	Quantities Produced	Fees Based on New Charging Method (\$)	Fees Based on Previous Charging Method (\$)	Estimated Notional Savings (\$) / (%)
3. Tapes	1,548	124,000	163,000	39,000 (24%)
4. CDs	392	123,000	154,000*	31,000 (20%)
5. DVDs	17	10,000	40,000*	30,000 (76%)

* Estimated on the basis of the number of audio tapes which would have been produced under the previous rates and charging method for the same duration as recorded in the CDs and DVDs.

6. As can be seen from the above table, the new charging rates and method have yielded notional savings ranging from 14% to 76% to court users, depending on the types of transcript and record of proceedings they require.

7. In 2007, the Judiciary Administration completed the tender exercise for one of the two DARTS contracts. It has started the tender exercise for the other DARTS contract, which is expected to complete by October 2008. The Judiciary Administration will conduct an overall costing review of transcript and recording services by end-2008.

(B) Statutory Provisions for Courts to Waive Fees for Transcript and Record of Proceedings

8. We are consulting the Administration, including the Department of Justice (“DoJ”), on the proposed legislative amendments to -

- (a) Revise the prescribed fees for transcript which are currently stipulated in subsidiary legislation, i.e. \$17 per page in the Criminal Appeal Rules (Cap. 221A) and \$36 per page the Coroners (Fees) Rules (Cap. 504D), to reflect the rates under the new charging method;
- (b) Prescribe the directed / authorized / administrative fees for transcript and records of proceedings in the relevant subsidiary legislation applicable to the respective levels of court;
- (c) Provide a general power for the Court to waive, reduce or defer the fees for transcript and record of proceedings; and
- (d) Make provisions for items (a)-(c) above more easily accessible for reference by court users, and simplify the scale of amendments required following fee reviews in future.

9. In order to achieve the objectives as set out in paragraph 8 (a)-(c) above, the Judiciary has identified that amendments to the following 12 sets of subsidiary legislation would be required –

- (1) Hong Kong Court of Final Appeal Fees Rules (Cap. 484B);
- (2) Rules of the High Court (Cap. 4A);
- (3) High Court (Fees) Rules (Cap. 4D);
- (4) Rules of the District Court (Cap. 336H);
- (5) District Court Civil Procedure (Fees) Rules (Cap. 336C);
- (6) Lands Tribunal (Fees) Rules (Cap. 17B);
- (7) Labour Tribunal (Fees) Rules (Cap. 25B);
- (8) Criminal Appeal Rules (Cap. 221A);
- (9) Magistrates (Fees) Regulations (Cap. 227B);
- (10) Small Claims Tribunal (Fees) Rules (Cap. 338B);
- (11) Control of Obscene and Indecent Articles Regulations (Cap. 390A); and
- (12) Coroners (Fees) Rules (Cap. 504D).

10. To facilitate court users' easy reference to the provisions for prescribed fees and waiver mechanisms, it is proposed that -

- (a) The relevant provisions in the Criminal Appeal Rules relating to fees for transcript and record of proceedings be set out in a new Schedule entitled "*Fees for Transcript and Record of Proceedings*"; and
- (b) The existing directed / authorized / administrative fees for transcript and record of proceedings be prescribed in the schedule / scale as appropriate in the various Fees Rules and grouped under a new heading, "*Transcript and Record of Proceedings*".

11. In line with the existing policy to standardize the rates for transcript and record of proceedings at all levels of court, and in order to simplify the scale of amendments for future adjustment exercises, we are exploring the feasibility of adopting a "referential approach" in the amendments to the various Rules, i.e. the exact fee levels for transcript and record of proceedings will be specified in (i) certain sets of rules, and (ii) other rules would make reference to the relevant fee items in (i) as appropriate, instead of spelling out the exact fee levels. This "referential approach" would simplify future fee adjustment exercises so that only amendments to (i) would be required.

12. The Judiciary will consult the two legal professional bodies when the draft amendment rules are available. We will report further to the AJLS Panel after consultation with the two legal professional bodies. The Judiciary will liaise with the Administration and the DoJ, with a view to introducing the subsidiary legislation to LegCo in 2009.

(C) *Fees for Transcripts in Criminal Appeal Bundles*

13. The Judiciary has considered the suggestion that the fees for all transcripts in criminal appeal bundles should be waived, including those for appellants who are not legally aided but represented. As set out in our previous submissions to the AJLS Panel –

- (a) Under the existing waiver mechanism pursuant to rule 63(2) of the Criminal Appeals Rules (Cap. 221A), transcripts are supplied free of charge to legally-aided and unrepresented

appellants. These cases make up about 90% of all criminal appeals;

- (b) For the remaining 10% of criminal appeal cases, i.e. 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 transcripts in the appeal bundle. 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;
- (c) Moreover, of the cases in item (b) above, the Court already has discretion to waive and reduce the transcript fees for deserving cases pursuant to rule 63(3) of the Criminal Appeal Rules; and
- (d) The suggestion to waive the transcript fees for all criminal appeal bundles across-the-board would mean that the cost for transcripts for all cases, including those where the appellants are able to afford the costs, have to be borne by taxpayers.

14. In view of the above, the Judiciary considers that the suggestion to waive the fees for all transcripts in criminal appeal bundles, including those for appellants who are not legally aided but represented, is not justified. We maintain the view that the existing waiver mechanism for transcripts in criminal appeal bundles adequate and satisfactory.

Judiciary Administration
April 2008