

民政事務局常任秘書長  
香港灣仔告士打道五號  
稅務大樓四十一樓



Permanent Secretary for Home Affairs  
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24 April 2009

Mr Lester Huang  
President  
The Law Society of Hong Kong  
3/F Wing On House, 71 Des Voeux Road Central  
Central, Hong Kong

Dear President,

### Review of Criminal Legal Aid Fees

I write to thank you for the frank exchanges of views on the subject, and to set out the latest position of the Home Affairs Bureau (HAB) with a view to winding up the long-standing but useful discussions with the Law Society.

Whilst we share your sentiments and concerns over a reasonable and acceptable rate for the Solicitors undertaking criminal legal aid work, we hope you would appreciate that the Government is operating under stringent financial constraints. As the costs of criminal legal aid cases are funded by the public coffers, any increase in the rates for criminal legal aid fees has to be within the remit of public affordability and prudent utilization of public funds.

We note the Law Society's concern that the corresponding rates offered to the Instructing Solicitors taking up criminal legal aid cases at the District Court (DC) level (which amounted to some \$520 per hour) not acceptable. As requested, HAB and the Legal Aid Department (LAD) have again critically re-visited the offer made to the Law Society in November 2008, and come up with a revised proposed rate for the Instructing Solicitors at the District Court (DC) at *Enclosure A*.

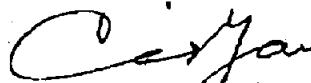
As regards the Solicitor-Advocates serving DC cases and the Solicitors serving higher levels of Courts, we hope the Law Society will be able to accept the Government's original offer in November 2008.

We are prepared to re-visit the rates for the Solicitors in two years' time upon the effective implementation of the new rates. We plan to report the Government's position to the AJLS Panel at its meeting on 22 June 2009 on the matter. It would be extremely useful if you could let us have the views of the Law Society on the matter well in advance of the AJLS Panel meeting. We hope that with your agreement on the offered rates as set out at *Enclosure A*, we could proceed to trigger the process of legislative work before the LegCo recess.

We have completed the biennial review of the criminal legal aid fees. The fees will be raised by 8.3% in accordance with the movement in Consumer Price Index (CPI) (C) during the reference period from July 2006 to July 2008. A note setting out the result of the review is attached at *Enclosure B* for your reference. We have not put up the CPI adjustment yet in the hope that the outcome of the overall review of the criminal legal aid fees and the price adjustment could be announced in one go when we completed the negotiation with the Law Society. Subject to your agreement, we would consult the Criminal Procedures Rules Committee, the Legal Aid Services Council in May/June, if possible, on our proposal to proceed with the introduction of legislative amendments to bring into effect the price adjustments.

I look forward to hearing from the Law Society soon.

Yours sincerely,



(Mrs Carrie Yau)  
for Secretary for Home Affairs

c.c. Hon Margaret Ng  
Secretary for Justice  
Director of Legal Aid

**Fees for Counsel and Solicitors Undertaking Criminal Legal Aid Cases**

	(a) Current Rates <i>(simplified as hourly rate)</i>	(b) Proposed Rates under New Structure and New Rates for Solicitors (taking into account the 8.3% price adjustment as a result of biennial review)  <i>(simplified as hourly rate)</i>
<b>Magistracy</b>		
Solicitor	Not exceeding \$226	Not exceeding \$390
Counsel	Not exceeding \$510	Not exceeding \$550
<b>District Court</b>		
Solicitor	Not exceeding \$300	Not exceeding \$620
Solicitor- Advocate	Not exceeding \$1,050	Not exceeding \$1,136
Counsel	Not exceeding \$850	Not exceeding \$950
<b>Court of First Instance</b>		
Solicitor	Not exceeding \$425	Not exceeding \$730
Counsel	Not exceeding \$1,280	Not exceeding \$1,380
<b>Court of Appeal</b>		
Solicitor	Not exceeding \$570	Not exceeding \$990
Counsel	Not exceeding \$1,700	Not exceeding \$1,840

## Biennial Review

### PURPOSE

The Administration has completed the 2008 biennial review of the fees payable to:

- (a) lawyers in private practice engaged to appear for the Government in criminal cases;
- (b) lawyers in private practice who undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department; and
- (c) duty lawyers providing legal assistance under the Duty Lawyer Scheme<sup>1</sup>.

2. This paper reports on the Administration's findings and proposed way forward.

### BACKGROUND

3. The fees for lawyers in private practice assigned to undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department are prescribed in Rule 21 of the Legal Aid Criminal Cases Rules under the Criminal Procedure Ordinance. The Department of Justice uses the same scale of fees to engage counsel in private practice to appear for the Government in criminal cases. The fee payable under the duty lawyer scheme is the same as the brief fee payable by the Department of Justice to counsel to appear in the magistrates as prosecuting counsel.

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<sup>1</sup> 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 to eligible defendants who appear in Magistrates' Courts, Juvenile Courts and Coroners' Courts.

4. Pursuant to the decision of the Legislative Council Finance Committee in October 1992, the above fees (collectively referred to as "the fees" in the rest of the paper) are subject to review by the Administration on a biennial basis. The Finance Committee also delegated in June 2003 the authority to approve future adjustments to any of the fees to the Director of Administration, provided that the extent of adjustment is no greater than the movement of the Consumer Price Index (C) (CPI(C)) during the reference period.

### THE PREVIOUS BIENNIAL REVIEWS

5. In conducting the biennial reviews, the Administration takes into account mainly inflation/deflation during the reference period and whether there has been difficulty in engaging the services of counsel and solicitors. We would also consider other factors such as the state of economy and office rental. The last biennial review was completed in 2006. The following summarizes the outcome of the previous biennial reviews -

Year	Adjustment
1996 review	+18.18%
1998 review	'nil'
2000 review	'nil'
2002 review	- 4.3%
2004 review	'nil'
2006 Review	'nil'

### THE CURRENT REVIEW

6. The Administration has completed the 2008 biennial review. We note that the CPI(C) for the reference period (i.e. July 2006 to July 2008) had increased by 8.3%.

7. The Home Affairs Bureau, in consultation with the Director of Legal Aid and the Department of Justice, therefore proposes to adjust the fees upward by 8.3% in accordance with inflation in the reference period. The existing fees and the proposed fees, rounded to the nearest \$10, are listed in the Annex.

8. The impact of economic changes after July 2008 will be reflected in the next biennial review.

#### **WAY FORWARD**

9. The Administration intends to invite the Criminal Procedure Rules Committee to amend Rule 21 of the Legal Aid in Criminal Cases Rules to give effect to the proposed new fees. We will give notice to move a motion to obtain the approval from the Legislative Council of the amendment Rules.

Home Affairs Bureau  
April 2009

## Biennial Review -

**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 2003 (\$)</u>	<u>With a 8.3% increase (\$)</u>
<b>1. Court of First Instance Cases</b>			
(a) Counsel			
(i) brief fee	LAD/DOJ*	20,410	22,100
(ii) refresher fee per day	LAD/DOJ*	10,210	11,050
(b) Solicitor			
(i) brief fee	LAD^	6,790	7,350
(ii) refresher fee per day	LAD^	830 to 4,420	890 to 4,780
(c) Conference per hour (counsel)	LAD/DOJ	1,080	1,160
(d) Pre-trial review (per review)	DOJ	2,030	2,190
<b>2. District Court Cases</b>			
(a) Counsel			
(i) brief fee	LAD/DOJ*	13,600	14,720
(ii) refresher fee per day	LAD/DOJ*	6,800	7,360
(b) Solicitor (acting as instructing solicitor)			
(i) brief fee	LAD^	4,840	5,240
(ii) refresher fee per day	LAD^	1,160 to 2,900	1,250 to 3,140
(c) Solicitor (acting as advocate as well as instructing solicitor)			
(i) brief fee	LAD*	16,800	18,190
(ii) refresher fee per day	LAD*	9,310	10,080
(d) Conference per hour (counsel)	LAD/DOJ	880	950
(e) Brief fee for mention/sentence	DOJ	2,710	2,930

<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum w.e.f. 4 July 2003 (\$)</u>	<u>With a 8.3% increase (\$)</u>
<b>3. Magistrates' Court Cases</b>			
(a) Counsel			
(i) brief fee	DOJ	8,160	8,830
(ii) refresher fee per day	DOJ	4,080	4,410
(b) Counsel or solicitor (acting as advocate) in committal proceedings			
(i) brief fee	LAD	8,160	8,830
(ii) refresher fee per day	LAD	4,080	4,410
(c) Solicitor for instructing counsel in committal proceedings			
(i) brief fee	LAD	2,210	2,390
(ii) refresher fee per day	LAD	1,810	1,960
(d) Counsel or solicitor acting as advocate in preliminary inquiry			
(i) brief fee	LAD	8,160	8,830
(ii) refresher fee per day	LAD	4,080	4,410
(e) Brief in place of court prosecutor per day	DOJ	5,430	5,880
(f) Duty Lawyer Fee	DLS	a day 5,430 half day 2,710	5,880 2,930
(g) Pre-trial fee per hour	DLS	670	720
<b>4. Appeals</b>			
(a) Settling notice of appeal	LAD	2,710	2,930
(b) Instructing solicitors for appeals to the Court of Appeal			
(i) from the Court of First Instance	LAD	First day 9,160 1,150 to 5,910 Per subsequent day	9,920 1,240 to 6,400
(ii) from the District Court	LAD	First day 7,330 910 to 4,760 Per subsequent day	7,930 980 to 5,150



<u>Nature of fee</u>	<u>Department/ Service</u>	<u>Current Maximum w.e.f. 4 July 2003 (\$)</u>	<u>With a 8.3% increase (\$)</u>
(c) Counsel for appeals to the Court of Appeal			
(i) from the Court of First Instance	LAD/DOJ	First day 27,210 13,610 Per subsequent day	29,460 14,730
(ii) from the District Court	LAD/DCJ	First day 21,760 10,880 Per subsequent day	23,560 11,780
(d) Conference per hour (counsel)	LAD/DOJ	1,080	1,160

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.