



政府總部  
民政事務局

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本局檔號 OUR REF: S/F (1) to HAB/CR/19/1/7 Pt.11  
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11 February 2010

Mr Huen Wong  
President  
The Law Society of Hong Kong  
3/F Wing On House  
71 Des Voeux Road  
Hong Kong

Dear Mr Wong,

### **Review of Criminal Legal Aid Fees**

Thank you for your letter of 22 January 2010 to the Secretary for Home Affairs (SHA) regarding the Review of Criminal Legal Aid Fees. SHA has asked me to reply on his behalf.

We share the view of the legal profession that the current criminal legal aid fee system has room for enhancement. Throughout the review, we have taken on board many of the profession's suggestions.

## **Past Discussions with the Law Society**

While the original proposal from the Government was to improve the fee structure only, we noted the request from the Law Society (the Society) contained in its submission tabled at a meeting of the Legislative Council Panel on the Administration of Justice and Legal Services (the AJLS Panel) on 25 February 2008 for increase in the hourly rates for solicitors who handle criminal legal aid cases assigned by the Legal Aid Department (LAD). Since then, the Home Affairs Bureau (HAB) and LAD have conscientiously engaged in detailed examination of the implications of your request and dialogue and meetings with representatives from the Society and its Criminal Law & Procedure Committee (the Committee).

In November 2008, the Government proposed to the Society that the remuneration offered for solicitors handling the criminal legal aid cases be increased to \$730 per hour for the Court of First Instance (CFI) cases, with adjustment for cases at other levels of courts. **The revised fee package represented some 120% to 400% increase in remuneration for solicitors depending on individual cases.**

In subsequent months, HAB and LAD colleagues met and discussed with representatives from the Committee, inviting the Society to agree to the early implementation of the proposed new structure and increase in rates so that lawyers undertaking criminal legal aid work can benefit from the proposed changes as early as practicable.

There were further exchanges of views on the subject among HAB, LAD and the Society thereafter. We then noted the Society's concerns about the rates offered to Instructing Solicitors taking up criminal legal aid cases at the District Court (DC).

In response, HAB and LAD critically re-visited the offer made to the Society in November 2008, and came up in April 2009 with revised proposed rates for the Instructing Solicitors at DC. The revised rates amount to some \$620 per hour, or a 110% increase from the current rates.

In June 2009, HAB further wrote to the Society, explaining that we were prepared to review the rates in two years' time **upon implementation of the new rates**. The Society then requested the Administration to consider minimizing the disparity of remuneration for solicitors engaging in civil and criminal legal aid cases. We advised the Society that we have consulted the Department of Justice and carefully examined the proposal, and that our consolidated view is that because of the different nature and work of civil and criminal legal aid work, we made it clear that the Government could not accede to the request at this stage.

Though the Government's position has been set out clearly in the series of exchanges with the Society, HAB wrote in September 2009 to the Society to reiterate our commitment to provide reasonable remuneration for assigned lawyers undertaking criminal legal aid work within the remits of public affordability. We made it clear to the Society that if the new fee structure and increased rates were to be adopted, Government expenditure in criminal legal aid fee was expected to increase by an additional \$100 million, which would more than double the current level. We reiterated that we have responded positively to the Society's suggestion and agreed to review the rates in two years' time after implementation of the new rates.

In response to the Society's further questions over the revised fee structure, HAB wrote again to the Society in December 2009 to make further clarifications.

## Way Forward

We understand the aspirations of the legal profession for an early resolution of this matter. The Legal Aid Services Council has urged the Government to commence legislative work for implementation of the new system. Towards this end, we appealed to the Society in a letter in April 2009 for an agreement on the offered rates so that we could trigger the process of legislative work before the recess of the Legislative Council. We further wrote to the Society in June and September 2009 advising that we were making preparation for the legislative process to effect the new fee system and rates.

On the basis of the above, it is unfair to say that the Government “failed to respond” to the requests of the Society, and it should be appreciated that the Government is making continued efforts within our own constraints to find more resources for legal aid. We are glad to note that the Society has given its final and complete agreement to the new fee structure and rates offered by the Government. We look forward to continued communication with the Society for the early implementation of the new criminal legal aid fee structure.

Yours sincerely,



( Ms Grace LUI )  
for Secretary for Home Affairs

c.c. Secretary for Justice  
Director of Legal Aid