

律政司民事法律科提供的法律服務

主席：

各位先生、女士早晨，政府帳目委員會在今天的公開聆訊中，會繼續聽取管制人員就審計署署長第30及31號報告書所提的事項作證。即將進行聆訊的事項是審計署署長在第30號報告書第5章，有關律政司民事法律科提供的法律服務。我們收到政府帳目委員會秘書林葉慕菲女士來信聲明，其丈夫林瑞麟先生是現任律政司政務專員，並以此身份擔任該部門的管制人員。委員會認為她作此聲明是恰當的做法。為避免引起任何利益衝突和保持委員會與秘書處的公正無私，委員會同意豁免林葉慕菲女士執行與上述事項有關的職務。她將不會處理與該事項有關的來往書信、不會列席有關的公開聆訊及與委員會商議該事項的會議、不參與編制委員會報告書內有關審計署署長第30號報告書第5章的部分。這些職務將由其上司負責。現在開始進入聆訊。應邀出席的證人包括律政司司長梁愛詩女士、律政司民事法律專員溫法德先生、律政司政務專員林瑞麟先生和庫務局局長俞宗怡女士。這份是審計署署長第30號報告書，因為相隔的時間頗長，我們先請有關的管制人員作介紹，使我們了解最新資料。先請律政司司長梁愛詩女士發表聲明。

律政司司長梁愛詩女士：

多謝主席。各位早晨。我很歡迎審計署署長報告書內提及律政司民事法律科的運作，及就律政司內推行資訊系統策略的進度作出評論。報告書評述民事法律科的工作情況，並提出若干改善建議，我原則上接納大部分的建議。其中有一些建議已經開始執行，包括：第一，在資訊系統的策略，特別是電子資訊追溯計劃中，為民事訴訟組設立記錄時間的制度，這項措施有助該組評估法律程序的訟費，新制度會以電腦進行，並且特別為提供資料計算每宗案件的訟費而設計；第二，密切監察資訊系統策略中的其他計劃，並致力於1999年9月前按新訂的目標如期完成。7項資訊系統策略計劃中，有4項已經完成，即裝置電腦網絡和辦公室自動化計劃、英文文件管理系統、雙語法例資料系統和圖書管理系統。餘下的3項計劃包括電子資料追溯計劃、行政系統和資料中心計劃；第三，有效運用律政司歷年所製作對各項服務的承諾，來監察本司的工作量，本司按照季度監察這些服務表現成效指標，來評估工作量的增加，從而作出相應的人手調配安排，為了配合資源增值計劃，本司已著手覆檢部門的資源，確保用得其所，藉以提高服務的能力；第四，為民事訴訟組和債項追收組所有檔案加設條碼，改善追溯檔案的程序，以確保可以定期更新電腦紀錄；及第五，採取步驟，確保能及時再行註冊及妥善執行各項押記令。直至現在，本司已查核所有押記令的檔案，並且因應情況把押記令再行登記。本司樂於遵從審計署署長報告書的建議，密切注視其他司法管轄區的做法，以汲取適當的經驗。民事法律科會處理審計署署長所特別關注的事宜，亦會致力為各政府部門及決策局提供最符合經濟效益的法律服務，特別是追收債項的工作。債項追收組在1996年至1998年間，平均每月收回的債款，由126萬增至432萬，可見此方面的工作已有改進。我與我的同事樂意回答各位議員就審計署署長報告

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

書提出的問題。多謝主席。

主席：

多謝梁愛詩司長。先請劉江華議員展開聆訊。

劉江華議員：

多謝主席。我先提出有關採用記錄時間制度的問題。此制度以往曾經使用過，但明顯地律政司屬下的員工不太接受。現在由審計署署長重新提出，請問律政司司長，是否同意採用這個制度對計算訴訟費會有幫助？第二，在管理員工上，這個制度有沒有幫助？

Chairman:

Mr Wingfield.

Mr Ian Wingfield, Law Officer (Civil Law), Department of Justice (LO, D of J):

Mr Chairman, I think the problem with the time recording system introduced in 1990 was that it focused very much on the individual work of individual counsel. It didn't, for example, cover non-qualified staff. So, the debt collection unit clerks wouldn't have in any event been asked to complete time records.

But we came to the conclusion that the real measure of productivity is the productivity of the Division as a whole, and in particular in debt collection work, the productivity of the debt collection unit. And that the measure of the cost benefit of the work done was better done on the basis of the work of the unit as a whole. So, in other words, when one is looking at the improvement in productivity, the figures that the Secretary for Justice has just given you is a measure of the increased productivity in the period in question. I don't think it is very helpful to try and sub-divide that to assess the productivity of individual members of the unit when one is looking at the measure of the productivity of the division as a whole.

So, I think that was the major problem with the time recording system. The time recording system also attempted to break down into ten minute intervals the work performed by each counsel during the day, and again that wasn't a measure of the work done within that period. It was merely a measure of the assignment as between different Government departments of the time of the counsel concerned, but it didn't measure the productivity.

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

And I think on that basis the original system as introduced in 1990 wasn't effective and when it ceased to be effective, or when it was recognised that it wasn't effective, counsel then had great difficulty in seeing why it was being imposed upon them.

劉江華議員：

主席。先請溫法德先生澄清，其實你亦同意其他私人公司可能有相同的制度，並對促進生產力有一定的幫助。為何你對此制度在政府內執行有不同的想法呢？是否政府的民事法律科以不同角度來看生產力的促進，還是你個人認為政府服務無此需要？

Chairman:

Mr Wingfield?

LO, D of J:

Again, the perspective we had, originally it was introduced as a mirror of the private sector, but the private sector uses time recording for the purpose of billing its clients, except in the Civil Litigation Unit where we need to have a record of costs expended on individual cases. The identify of the counsel is not a relevant consideration. What is important is to have a file which includes a record of all the time spent on that particular case. So, it is very much case-orientated rather than the identity of the counsel.

And so that the problem with comparing the private sector is the private sector does actually bill clients, and if you are billing clients you have to have an accurate record of the time spent by each level of fee charger. But if you are not going to bill your clients, then the purpose of recording time spent by each fee charger isn't immediately apparent.

Chairman:

I am one of the few people who has been completing time sheets for a long time as a professional. Some of the answers you gave doesn't seem to compare to the private sector very much. Now, when you do mention about law clerks and other administrative supportive staff, I think the very usual practice of the private sector is actually to take the whole costs and then apportion it as a percentage of add-on to what we call the charge-out rate or the calculation of the professional's time.

LO, D of J:

Absolutely. I mean, that's very much the point I was trying to make, if I didn't

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

make myself clear. There is no point really trying to assess the work done of each of the law clerks on each file. What we want to have is a measure of the work done by the clerks collectively and then compare that with the debts recovered, and that is then quite a good measure of the expense of recovering a particular debt.

And we do have raw figures indicating that there has been a marked improvement in the cost of recovery of every dollar. And it has gone down from something approaching a dollar for a dollar down to something nearer twenty percent, in other words, twenty cents for the recovery of every dollar. But these are very raw figures and they are not figures that I would wish to place before the Committee.

Chairman:

Right, I think it is useful to compare overall figures and overall costs, but it is also useful, I think in the private sector, to measure individual professionals', in particular, performances. It is a very important instrument of planning for every case. Even before we start we do make up a time budget so that I think the planning of the whole division or the work force is very clearly planned out well in advance. And then we compare the budget to the actual turn-up.

It is perhaps not a good method for, there is probably not a need for the department to have a charge-out in this case, but it is a very important and useful management tool. And I think in the Audit report it is mentioned that, although there are shortcomings in the old system, that there were plans to put this in force in the new system. And although you have been critical of the old system, I am just wondering whether that is your answer, you are not going to attempt it and use it?

LO, D of J:

No, as the Secretary for Justice has said, we are proposing to introduce into the computer system a facility to enable us to enter the time spent by professional officers on litigation cases, but it is very much for the purposes of providing costing in those cases because that is a clear purpose in doing so.

So, this is very much a facility that we are including in the ISS programme and we will examine how effective that is in relation to the Civil Litigation Unit as a first step and then see if it has application for the remainder of the Civil Division and indeed other parts of the Department. So, we are taking it a step at a time, very much in accordance with the recommendation of the Director of Audit.

Chairman:

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

Right, thank you.

劉江華議員：

主席，既然他有新的方法取代多年前的舊方法，請問我們何時可看到初步的結果，讓我們可衡量應該達到的功能？

LO, D of J:

We are proposing to introduce a system early next year, early in 1999, but the ISS study as a whole, the ISS programme as a whole is expected to be completed by September 1999. But certainly in terms of the civil litigation costing, we are proposing to introduce that programme early next year.

主席：

劉慧卿議員。

Miss Emily LAU:

Thank you, Chairman. Just a short follow-up on what Mr Wingfield just said and what the Secretary just told us about the incorporation of a time recording system for the Civil Litigation Unit in the ISS. But the Director of Audit's report, Paragraph 11 refers to the fact that:

"Despite the initial success reported in 1992-93 the time recording system quickly became unpopular with the staff of the Civil Division and the percentage of return of time sheets was low."

So, Chairman, the initial success was in the whole division and now it seems that this new experiment, or whatever you want to call it, is only going to be extended to the Civil Litigation Unit. So for the rest of the division the use of time sheets will no longer take place, in spite of the success. Is that what you are telling the Committee?

Chairman:

Mr Wingfield?

LO, D of J:

Well, I think the Director has made it clear that the time recording system, the completion of time sheets was discontinued in 1993, I think. So, that it isn't a current

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

system that is in operation. And the difficulties that are set out in the Director's report would mean that we wouldn't wish to reintroduce that system.

What we want to do is consider whether some different method of productivity is to be preferred. And this is very much in accordance with the Director's recommendations. In other words he is recommending, as I understand it, that we should reintroduce the system in the Civil Litigation Unit and then see whether that then gives us an indication as to how we should proceed with the remainder of the division and indeed the rest of the department.

Miss Emily LAU:

Yes, I just want to confirm that they would consider extending it if this proved to be successful?

LO, D of J:

Yes.

Miss Emily LAU:

OK, thank you.

主席：

劉江華議員。

劉江華議員：

請問庫務局局長，她對於過往的記錄時間方法及管理成效都有保留，現在他們提出新的方法，妳認為是否能達到預期的功能？

主席：

俞宗怡局長。

庫務局局長俞宗怡女士：

多謝主席。我很高興看到資訊系統策略追索計劃，可讓律政司有一個較為科學化和高度技術的方法來記錄他們職員所花的時間，這會較1991年至1993年以勞工密集式的方法來記錄時間簡單得多。員工接受的程度和時間記錄的準確性亦可望提高。但我想藉此機會表達庫務局對跨部門服務收費原則的看法，政府內有很多部門主要的

律政司民事法律科提供的法律服務

工作是向其他的政府部門提供服務。例如民事法律科內的民事訴訟組，部分的工作是協助政府部門提出訴訟，假若勝訴，便會要求對方補償政府在訴訟的支出，若我們有好的紀錄成本方式，在追討欠款時便會較為容易。但民事法律科其他的工作，主要是向其他政府部門提供法律意見。正如資訊科技署向其他政府部門提供資訊和電腦的工作。根據政府的《財務及會計規例》及《常務會計指令》內已清楚列明，部門毋須發帳單予其他的政府部門收取費用。我們認為這制度有其優點，因為任何一個政府部門向另一個部門提供服務，而又收取費用的做法，只會令政府的開支帳目與收入帳目同時膨脹，例如甲部門提供了1,000元的服務予乙部門，甲部門有1,000元的開支，乙部門又要求政府支付1,000元予甲部門，造成政府的開支和收入同時膨脹。我們認為這不是一個好的方法；另外，若甲部門向乙部門收取費用，甲部門亦需耗用資源在聘請會計人員或文員來處理一些紀錄和發帳單等工作，這亦會影響資源的運用。我們又需要考慮這種做法是否值得，因為這樣只會令政府的公帑左袋入右袋出，所以只在一些很例外的情況下才會准許跨部門收取費用，包括5個以營運資金方式運作的部門，除此以外，我們只容許政府印務局和運輸署這樣做。其他部門即使向其他政府部門提供服務，亦不能採取收費的方式，但並不表示提供服務的部門不需要着重成本效益和提高效率，我們有其他方法可以達到這個目標。特首在1997年施政報告內要求政府部門提供任何服務均須以目標為本，我們亦有實施公營部門改革計劃，每個部門在每個工作範疇均有服務指標，並載於每年的政府開支預算內。所以部門首長、管制人員和其他人士包括立法會，都可以根據這些資料來監察政府部門的工作和服務，是否能達到和不斷提高指標，能否更有效率地運用資源，和服務質素有否不斷提高，這是我們對跨部門服務收費的觀點。

主席：

劉江華議員。

劉江華議員：

服務指標固然重要，資源的指標亦同樣重要。妳剛才說民事法律科不同於營運基金的部門，在此情況下，民事法律科實施工作時間記錄制度，妳是否認為這是浪費資源和不需要這樣做？

主席：

俞宗怡局長。

庫務局局長：

多謝主席。這要視乎投入多少資源才能取得工作時間的紀錄。如果律政司繼

律政司民事法律科提供的法律服務

續沿用90年至93年那套勞工密集的方式，從成本效益的角度我認為不值得，但現在透過資訊系統策略追索計劃，以簡單的程序幫助律政司的職員記錄工作時間，並準備明年以民事訴訟組作試點，假若民事訴訟組用電腦系統來記錄工作時間這個試點成功的話，而需要投入的時間和資源不多，若律政司想把這項靠電腦來跟進的紀錄系統用在其他民事法律科的工作組內，甚至乎整個律政司的工作，這應該由律政司司長來決定；這系統可提供多一個管理的訊息，即“management information”，律政司司長可根據這些額外的管理訊息，知道部門現在的資源分配是否已達到理想或仍可作出改善。我認為這個系統可以協助律政司司長，但並不代表她有了這套系統，政府便會立即批准律政司實施跨部門收費措施，因為我們對跨部門收費的做法會考慮得十分清楚，不想令政府的開支和收入不必要地膨脹，而我們亦要顧及接受服務的部門，他們無法準確預算需要接受律政司提供多少服務，因而引起將來在財政上許多不必要的工作。部門每年作預算案時，無法估計未來12個月內究竟需要多少的法律服務，無法準確預計將會遇到多少個需要徵詢法律意見的個案，若我們落實律政司進行跨部門的收費政策，我預期部門會向政府申請額外撥款用於向律政司徵詢法律意見，這樣未必值得和未必合乎成本效益。

Chairman :

Mr Wingfield.

LO, D of J:

Thank you, Chairman. I just want to confirm that of course we do cost individual cases at the moment and we always have done. So, we do that for the purposes of cost recovery in actions that we take in which we are successful. So, we are not saying that we don't at the moment have a costing system for litigation cases, but what we are proposing is an enhanced computerised system as opposed to the manual record on the file.

主席 :

林瑞麟先生。

律政司政務專員林瑞麟先生 :

主席，多謝有機會再作補充。律政司司長在會議開始時提到電子資料追索計劃，這是我們整個電腦系統、整個部門跨過各個法律科別的一個系統，而這個系統可幫助負責管理的同事，追索每宗法庭的個案或其他部門向我們徵詢法律意見的個案的進度。雖然計算時間和應該收回多少費用，是由律政司民事法律科開始，但事實上，刑事檢控科的同事，若完成了一宗訴訟要向對方收取庭費，同樣可以電子資料追索計

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

劃協助工作，因此，有了這個電腦系統後，將來便更有彈性，利用這個資源和系統我們可以做得更多，而基本需要做的已經可以做到。

主席：

俞宗怡局長提供了很有用的資料，但我希望大家提問時集中在審計署署長報告書，不要作太廣泛的討論。劉慧卿議員。

劉慧卿議員：

審計署署長報告書第63段提到收回成本／引入競爭模式大大激勵提供服務者提供有效率及高質素的服務，並以英國、澳洲和加拿大為例。但在第65(b)段律政司司長認為那些國家的情況與本港不同，例如英國有12個部門設有內部的法律科。律政司司長可否解釋清楚，是否因為其他國家的個別部門已有法律科，例如英國的內政部、稅務局等均設有法律科，容易清楚計算收費？另外，報告書第65(f)段指出，決策局或部門可能因為財政緊絀，在出現問題前沒有徵詢法律意見而作了錯誤的決定。請問律政司司長，你看過那些外國的例子後，是否認為完全不適用於本港？

主席：

我讓李華明議員提問，他亦是就同一事件提問。

李華明議員：

主席。就引入競爭與收回成本的做法，以外國的經驗為例，多與非政府部門的律師服務競爭，政府部門可選擇使用政府的民事法律服務或私人律師的法律服務，藉此引入競爭。在香港並沒有這樣做，請問梁愛詩司長有沒有從這方向考慮過？

主席：

梁司長，這也是審計署署長報告書中所提出的建議，若妳把兩個建議合併來考慮，那麼兩位議員的問題便很有理由。Mr Wingfield, you want to take the question？

LO, D of J:

We have, of course, agreed that we will examine the experience of other jurisdictions to see whether there are lessons to be learnt from them, and the three particular jurisdictions that have been identified are ones that we have particularly close connections with: the UK, Australia and Canada. And we actually have a member of the Treasury

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

Solicitor's Department on an attachment with our department at the moment. And he has confirmed that the option of going to private solicitors is only ever exercised by departments that have their own in-house legal advisors. So that the selection of the private firm, the briefing of that private firm and the monitoring of the conduct of the proceedings by that private firm are all undertaken by the in-house lawyers in the particular Government department concerned.

Well, of course that isn't the way in which things are organised in Hong Kong. We have a centralised legal advisory system to the Government, so that the option of in-house lawyers briefing out work to private firms could only be done through the centralised Department of Justice because that is where the legal advisors to the individual departments are.

We of course do brief out quite a lot of work to private firms of solicitors and to barristers, particularly the latter. We try as far as possible to do all solicitorial work in-house, but certainly we do brief out a certain amount of work to solicitors as well as to barristers, particularly on complex construction cases, for example, where the amount of resources required would exceed that which we have in-house. So, this is all already undertaken but when we say you can't compare the two it is very much because Government departments in the UK, the larger Government departments, all have their own in-house legal advisers who can do that work without going to the Treasury Solicitor.

主席：

李華明議員。

李華明議員：

部門有本身“in-house”的律師是否必須，香港政府的中央化便不可能這樣做，若部門本身有律師而再外判，技術上是有些方便，但是否表示完全不可行，我未看到這點。

主席：

似乎很多私人的企業都不一定有自己律師才找外面的律師的。

李華明議員：

應否再作研究？

主席：

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

梁司長。

律政司司長：

主席。其實我們不是完全由自己處理案件。剛才民事法律專員指出，我們亦有大部分案件外判予其他律師事務所或轉聘大律師處理，不同之處是若部門有“in-house lawyer”，我們的工作量便可減少了，因為很多工作部門本身已可應付，不需全部向律政司徵詢意見。

主席：

劉慧卿議員。

劉慧卿議員：

我剛才聽得不太清楚，請司長再解釋。報告書中文版第33頁表六提及英國和澳洲向用家收回全部成本，是否因為那些國家有些部門內設有法律科，故此很容易向部門收回費用？他們是如何向用家收回成本？我希望了解外國的做法是否可以套用到香港。

LO, D of J:

Sorry, is the question relating to the practice in the United Kingdom, for example?

Miss Emily LAU:

Yes, UK and Australia. The full cost recovery from users.

LO, D of J:

Well, each Government department that uses the service of the Treasury Solicitor, to take the UK as an example, has to then give them a credit in respect of the cost of the service provided so that that is then done on an interdepartmental basis. It is very much what the Secretary for Treasury was describing earlier on and saying that she wasn't in favour of that across the board in Hong Kong.

Miss Emily LAU:

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

What about the in-house, I guess the cost for the in-house legal department is very clear, then?

LO, D of J:

Well, the costs of the in-house legal department, of course, are not recovered from anybody. They are a part of the costs of the particular department concerned. And so that, this is why the analogy with these other jurisdictions isn't an exact one, which of course the Director of Audit recognises. He accepts that it isn't an exact analogy. He is just saying there may be lessons to be learned. We accept that that is the position.

主席：

林瑞麟先生想補充。

Mr Stephen LAM Sui-lung, Director of Administration and Development, Department of Justice:

And the points we have been trying to make is that despite the inappropriateness of a direct analogy there are already some similarities. Where there is a major ministry, say in the UK, say the Home Office, they have in-house lawyers who do most of the work that they can, and then to the extent necessary they brief out the work to private practitioners.

In the case of Hong Kong we would, as Department of Justice act as the SAR Government's in-house lawyers, and then to the extent necessary we also brief out work to private practitioners. But that's where the similarities end.

主席：

律政司司長在聆訊開始時的聲明中指出會密切注意其他司法管轄制度的做法，和汲取適當的經驗，不單是司法管轄區，你們是否察覺到現今香港的法律界，私人執業律師的工作量似乎減少了，收費亦已經下降，相對於你們的成本來計算，妳有沒有考慮這點？梁愛詩司長。

律政司司長：

多謝主席。我們亦留意到私人執業律師的工作量降低了，因此，我們不斷與大律師公會與律師公會保持聯絡，我們設有法律專業委員會，定期商討有關專業的問題。

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

題。最近大律師公會向律政司刑事檢控科反映可否增加外判的工作給他們。其實我們一直有很大部分的外判案件，問題是調配到那個層面，例如是地方法院、高等法院的原訟庭或上訴庭等，最近亦作了調整。我們明白到除了要作好部門工作以外，對法律專業亦有責任，我們向來都有外判工作，盡可能照顧他們和部門的需要。

Chairman:

Mr Wingfield?

LO, D of J:

Yes, just to give a comparison, the staff costs of counsel within the department range from an average of \$511 per hour for Government counsel, up to \$1,420 per hour for principal Government counsel. The solicitors that we currently brief out have charging rates on an hourly basis of between \$1,200 and \$4,000, barristers between \$1,000 and \$4,500 per hour, and senior counsel rather greater sums than that. But I don't think that anybody is suggesting we should retain senior counsel in the Department so I don't think we need to consider them.

But certainly as far as solictorial costs are concerned the costs of lawyers within the department are quite clearly lower than the cost in the private sector on a staff cost regular basis. If one included full staff costs then the Government, so to include the cost of accommodation, secretarial support, then the figures come rather closer. The cost of Government counsel are \$858 per hour and up to \$2,626 for principal Government counsel. But even if you include full accommodation costs and secretarial costs, there is clearly still a difference in favour of Government lawyers.

主席：

劉慧卿議員。

劉慧卿議員：

主席，我們希望索取有關計算收費的詳細資料，讓我們知道如何計算費用。另外，請問律政司司長，民事法律科外判案件佔總數的百分比為何？有沒有政策規定外判案件的比例？若否，你們以甚麼來作外判的準則？

Chairman:

Mr Wingfield.

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

LO, D of J:

It is extremely hard to give a meaningful percentage of cases that are briefed out because the vast majority of our cases are very small debt collection cases, and those are not cost-effectively briefed out. They are done by law clerks under supervision and it wouldn't be cost-effective to brief those out.

The cases which we brief out to solicitors are almost exclusively construction litigation cases, and again the numbers of such cases are very small but the costs are very large. So, again to give a percentage is quite a difficult thing. One could give a raw figure of the number of cases.

As far as barristers are concerned we now brief out most High Court civil litigation to barristers but the number of cases again are quite small.

主席：

劉慧卿議員。

Miss Emily LAU:

Chairman, I think it would be helpful if Mr Wingfield can provide some figures later ...

LO, D of J:

I would be happy to do so.

Miss Emily LAU:

... on the number of cases and the amount involved, so that we can see what percentage out of the total amount that is, as well as the percentage of the cases briefed out in relation to the total number of cases. Can you supply those figures, please?

LO, D of J:

I can certainly provide the number of cases briefed out and the cost of that briefing out. Whether it is helpful to then translate that into a percentage when we are dealing with, I mean debt collection cases, we are talking about over 5,000 cases for example. Well, to turn five construction disputes into a percentage of 5,005 cases isn't a meaningful exercise. So, I think it is more helpful to just give the raw figures rather than to try and give that as some sort of percentage, because you are not comparing like with

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

like.

Miss Emily LAU:

Well, if you give those figures to us in different categories then there is no worry of any confusion, but we want to have a full picture, say, in each category how many cases and how much is involved and then how much has been briefed out and maybe with a brief sentence or two to tell us why it has not been briefed out.

Chairman:

I think Miss Emily LAU is trying to help judge what the Director of Audit has recommended on Page 41, particularly in Table 6, the provision of legal services to the Government in three other countries where I think competition was very much a key feature in those countries. I think without the essential information it would be difficult for the Committee to judge how far we can support or push that particular recommendation.

LO, D of J:

My sense is that actually we brief out most of the cases that would be briefed out in other jurisdictions. Certainly that is the experience of the Treasury Solicitor in the UK. Construction litigation is largely briefed out. We largely brief out such work, so I think very much a comparison on that issue.

Chairman:

Sure. I think to be helpful, I think although Miss Emily LAU did ask for very specific information, but if you think the provision of information on paper to explain your department is helpful to the Committee to judge the whole issue, I don't think we want to limit your reply to what Ms Lau has asked. But certainly those are the key information we are seeking.

LO, D of J:

Certainly.

主席：

我想我們可以進入第二個討論題目，劉江華議員。

劉江華議員：

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

我想問報告書第26頁表四，關於進度緩慢案件的問題。明顯地看到約57%的案件已經完結，但律政司還不知道，請問出現這種資訊混亂，案件是否已完結無人理會，是否因為缺乏財政的誘因呢？

Chairman:

Mr Wingfield.

LO, D of J:

No. The WIP system, work-in-progress system, is a forerunner of the information system that we are now introducing. It was introduced in 1988. It is extremely ineffective, and that is one of the reasons that we wish to replace it. One of the difficulties is that the information in it hasn't always been kept up to date and it means that sometimes files are closed and that information hasn't been put into the system. So that the system, the integrity of the system is pretty suspect.

And so that, for example, those cases when further analysed, turned out to have been closed but that information hadn't been included in the system. So, this is one of the major reasons that we are proposing to have the case tracking system which will recall all this information and ensure that it is effectively implemented and included in the system

主席：

劉江華議員。

劉江華議員：

主席，我當然知道事實是這樣，但他未能解釋剛才我問題的真正原因在那裏。報告書第49段提到的27個檔案，經過4個月的調查仍未找到，是否到現在仍未能找到？

Chairman:

Mr Wingfield.

LO, D of J:

Well, all those files have now been identified so that there is nothing more to be done in relation to these files.

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

主席：

報告書已記載全部檔案都找到了，他們是有跟進這類工作的。李華明議員。

李華明議員：

雖然這些檔案現在已全部找到，但明顯地反映出，一直以來在管理和監察上出現很大的問題。有些案件被長時間拖延、有些案件完結了也不知。梁愛詩司長表示已查核了所有押記令的檔案，並按適當情況辦理再註冊，但若非審計署作了這個研究，可能很多還是沒有辦理。有些案件的押記令其實已經拖延超過10年。這些情況反映梁愛詩司長需要對案件檔案和資料輸入加強監管。請問梁愛詩司長，目前的問題雖已解決，但如何保證這些問題以後不會再出現？

Chairman:

Mr Wingfield.

LO, D of J:

One of the other improvements that we have introduced is the introduction of a band coding system so that file control generally will be very much better than in the past.

It is not entirely true, I think, to say that the Director of Audit identified the problems before we did because if one looks in the policy commitments given by the Secretary for Justice in 1997 one of the new commitments was that we would speed up action to recover costs and enforce judgment debts. So, we were ourselves very much aware of the need to improve the arrangements for debt collection, and that included improved supervision of files and tracking their allocation. So, this is something that we have ourselves recognised as being a problem for some time.

It is partly, I think, a reflection of the huge increase in this work. I think just to give again just an indication of the huge increase in work that we are talking about. In 1994 the number of cases referred to the Debt Collection unit was 1,052. The number of cases referred to the Debt Collection Unit last month, November of 19 98, was 507. Members will appreciate, therefore, that last month we received half the number of cases that we received in the whole of 1994.

So, we recognise that there is a big problem in meeting the huge demands, increasing demands that have been placed on us, and this is why we have taken very serious steps and implemented those steps to ensure that case file tracking is improved and that the

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

steps identified by the Director of Audit are remedied in the way that he has suggested. So, I think that although I have to obviously accept that there have been deficiencies in the past, the steps that we have taken have been extremely proactive and we have taken a very serious steps to ensure that these don't happen again.

李華明議員：

換言之，若審計署一年後再做同樣的審查，必定找不出現在出現的問題，是嗎？

Chairman:

Mr Wingfield.

LO, D of J:

Well, one can never, unfortunately human error is always a factor in these things, but I certainly hope he won't.

主席：

吳亮星議員。

吳亮星議員：

多謝主席。梁司長剛才在聲明中表示可喜的是在96年至98年間，平均每月收回債款由126萬增加至432萬。溫法德先生亦指出現時一個月所收到追收債款案件數目便等於以往1994全年總和的一半。報告書第44段指出截至97年10月為止，尚未清還判予政府的判定債務及訴訟費的總數達1.84億元，涉及案件1 900多宗，但根據報告書第36段的周年預算中公布有關民事法律科的服務表現指標，並沒有把這類數字包括在服務表現指標內。請問司長會否考慮把追收債款納入服務表現指標內？這對政府收回有關債項應該有所幫助。報告書第25頁表三提及有348宗判定債務／訟費判予政府的案件超過5年仍未清還，牽涉的判定債務／訟費總額為5,200萬元。請問這筆債項能收回的機會如何？

主席：

我亦想跟進，若以每月平均收回400萬元來計算，亦要46個月才可以收回1億8400萬元。請問梁愛詩司長，這是否一個滿意的指標？

律政司司長：

主席。我認為不可以這樣計算。是要視乎欠債人的還款能力，若欠債人確是無力償還，這並非我們的責任，若欠債人申請破產，我們便不能收回款項，故欠款的數目並不等於我們可成功收回的數目。我們只能盡力而為，若欠債人確是無力償還，我們也無辦法追回欠款，很難估計需要多少個月才可以收回債項。

主席：

吳亮星議員。

吳亮星議員：

對於拖欠已久仍未清還的債務，是否有註銷這類欠款的程序？

主席：

有沒有註銷的程序？Mr Wingfield.

LO, D of J:

The problem with the figures is that they don't necessarily indicate whether the debts have been secured or not. Certainly some of these debts have been secured by charging orders. Whether it is then cost effective to apply for a mortgagee sale of the property which is charged, is then a matter of assessing whether or not there is equity in the premises, because almost all these properties will have a prior charge, and whether the cost of recovery is disproportionate to the amount of the debt.

Certainly once one has a property charged then, assuming that property prices still rise in the normal course of events, the debt will eventually be recovered, plus the interest that is payable on the debt at judgment rate.

So, to some extent it seems to me that charging a property, certainly for relatively small debts, and not then seeking to enforce the charge until the property is eventually sold is quite a cost-effective way of recovering relatively small debts. So, the fact that the debt is outstanding isn't necessarily an indication of lack of effective action.

But it does, again, I think that recovery is a good measure and the increase in the rate of recovery is a good measure because it does show the extent to which we have been successful. The fact that at the present time the amount of Government debt is increasing, the amount of debt to the Government is increasing, I am afraid is a matter of outside factors as well.

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

吳亮星議員：

報告書第36段提到的服務表現指標，會否考慮把追收債項作為服務表現指標之一？

Chairman:

I understand there is a slight time difference in the translation but I think Mr NG has also asked for a procedure for write-off. I think that was not answered.

LO, D of J:

There is a procedure for write-off but it is not a step that we take unless we are absolutely certain that the money is irrecoverable. So we are very slow to write off debts or to seek authority to write off debts, to be more precise. So, there will be debts that probably are irrecoverable but we haven't sought to have written off simply because we don't want to leave the remote possibility that at some stage somebody wins the Mark Six or something and then is able to pay it off. So, we will keep debts, we will keep the enforceability of debts alive as long as we possibly can until we are absolutely certain that there is no prospect of recovery.

Chairman:

Of course to accountants and bankers, writing off debts is just accounting treatment. We are not saying that we are not pursuing or not trying to recover, but never mind.

LO, D of J:

Well, in our terms once we have written a debt off we close the file.

Chairman:

I think there is some difference in philosophy and thinking there. Whether it should be included as a performance indicator, is the question asked.

LO, D of J:

Well, I would be very happy to consider that, thank you.

主席：

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

俞宗怡局長。

庫務局局長：

多謝主席。我只想簡單地補充，《財務及會計規例》第130條賦予庫務局局長有權註銷款項，條件是沒有欺詐、懷疑欺詐或疏忽的成分，在此情況下，若管制部門的首長認為某一項欠款需要註銷，他們可以書面向我提出。

主席：

劉慧卿議員。

Miss Emily LAU:

Thank you, Chairman. Just two brief points. Earlier we asked for figures about the cost per hour for the solicitors. I hope that Mr Wingfield is also going to provide the cost for the lawyers outside so that we can see and you know ...

LO, D of J:

I did read those out actually but I will be happy to confirm it in writing if you would like.

Miss Emily LAU:

Yes, because you said it is \$1,420, so if you can give us both and then maybe we can also get it from the Law Society. Well, anyway, are you clear on what we want?

LO, D of J:

The costs that I am talking about are the costs that we pay. Whether other solicitors are paid more or less is a matter for their clients. I don't have information that other clients ...

Chairman:

Can I try to help there? I think Mr Wingfield did read out very precise figures from his text. I think that should be picked up by our record. I think we can ask Mr Wingfield to confirm that or to provide any further information that he thinks is helpful.

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

As far as the out-sourcing of some of the cases or briefing out of some of the cases, which I think the lawyers are more used to calling it, it may be difficult to provide very precise figures but obviously the Justice Department might have obtained quotes recently from some of the briefing-out works which would act as some kind of an indicator of what was being asked for by the private sector recently. Is there any information about recent quotations that you can provide?

LO, D of J:

Well, the problem is of course as you know only too well yourself, firms of solicitors ...

Chairman:

... they do vary.

LO, D of J:

... as well as firms of accountants, may offer different rates to different clients. And we like to think that we are a very hard negotiator and so I don't think that necessarily the figures that we give are going to be representative of solicitors generally.

Chairman:

We will consider in what other way we can confirm or double check those sources.

LO, D of J:

But certainly I will give you broad figures, giving ranges. What I wouldn't want to do is give figures for individual cases obviously.

Chairman:

Obviously, we don't ask for that kind of clarification.

Miss Emily LAU:

Thank you, Mr Chairman. The other point I want Mr Wingfield to clarify is that

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

earlier when we were talking about the new experiment with the time recording function, which is going to be carried out in the Civil Litigation Unit, but if it is successful he said it could be extended to the rest of the division. But if we look at Paragraph 21, the fourth inset, the Secretary for Justice has said that it is unlikely to be done because this is only useful for work that involved costing. So, I want either Ms Leung or Mr Wingfield to clarify whether it will be done or it won't be done.

Chairman:

I think it is a policy matter. I would like to defer to the Secretary for an answer.

S for J:

We will see how the experiment goes and then we will decide on whether it will be useful to extend it to other units of the Civil Law Division or other divisions. So, we will have to see first how the present experiment will go.

Miss Emily LAU:

Chairman, because if we look at what is said here, the Secretary has said that because the work does not involve costing, which probably is true, then no matter how successful it is then I guess you would be quite reluctant to extend it to the rest of the division. Is that correct?

Chairman:

Secretary?

S for J:

Well, for some divisions, for example, Legal Policy, then I see little likelihood of this being extended to Legal Policy Division. However, the Prosecutions, we have already been doing some calculation, of course, for the purpose of taxation. For example if the Government succeeds in an action they are awarded the cost, then costing is one of the things which the Prosecutions Division will have to do. At the moment there is no difficulty regarding this but we will see how the experiment in the Civil Litigation Unit proceeds and then we will see whether that could be applied to other divisions.

主席：

我問最後一條簡單的問題便完結這節聆訊。“Work in progress”及“Re-charging Order”這兩類工作牽涉檔案的交收和跟進程序，從前因有人為錯誤跟進檔案有困難。

律政司民事法律科提供的法律服務

雖然現時可以借助電腦，例如加設條碼等，但加設條碼並不能排除人為錯誤的出現，除非設立覆檢制度。請問現時你們是否採用中央管理檔案的跟進制度，還是由專業人士管理個別的檔案，究竟現時的檔案是如何安排？若不是以中央檔案室的方式來管理的話，會否考慮使用這種方式？你們的看法如何？梁愛詩司長。

律政司司長：

我們部門的不同科別都有其中央檔案集中處，通常在案件完結後，檔案便會存放該處。現在說的扣押令“charging order”情況是很特殊的，我們是用這方式來保證政府能收回這些債務；如果知道欠債人有物業，便會申請扣押令“charging order”，在土地註冊處註冊。剛才民事法律專員亦解釋過，若欠債人已把物業作抵押，我們若立即申請拍賣其物業，可能要花很多錢，這樣便得不償失，在扣除欠債人的按揭款項後便所餘無幾，故我們通常會等待欠債人出售物業，這些程序需時頗長。問題是有些註冊令的有效年是12年，12年後再“bring up”，因沒有留意已過期，忘記了再登記，但現在透過這個電子系統可以處理這些問題，到期便自動有紀錄，讓我們知道是需要跟進和重新登記。第二，若案件被拖延，電子文件追蹤制度會提醒我們應該審理和跟進，龐大數量的案件若不加緊控制檔案，便會出現問題。但最主要是這幾年間工作量大了很多，正如民事法律專員亦解釋過，以往半年內完成的工作，現在要在一個月內完成，現在發現問題所在，除了電子系統的配合外，我們將會更加留意上述情況。

主席：

Mr Wingfield有補充？

LO, D of J:

In addition to the general measures referred to by the Secretary since April of this year on a monthly basis all counsel are asked to check and confirm that they hold the files that the work in progress system has indicated have been allocated to them. So, in every months there is a reconciliation on a manual basis between the record of file allocation and the actual files held by individual counsel. And obviously if they haven't got a file that appears to have been allocated to them then that is checked and investigated at that stage, and that's done on a monthly basis.

Once the bar coding system has been done then there will be an opportunity to scan on a periodic basis all the bar codes to ensure that no file has gone missing. So, these systems have already either been introduced or are in the course of being introduced in the context of the bar coding.

We are also introducing a number of other simple measures including the colour-

The provision of legal services by the Civil Division of the Department of Justice

律政司民事法律科提供的法律服務

coding of file jackets to enhance the detection of files that may have been mis-filed. So each of these measures, I think, will enhance the tracking of files that may otherwise go missing.

主席：

因時間關係，我在這裏結束這節聆訊。多謝有關的管制人士出席，多謝各位。

**The provision of legal services by the Civil Division of the Department of
Justice**

律政司民事法律科提供的法律服務
