

ITEM FOR FINANCE COMMITTEE

HEAD 94 – LEGAL AID DEPARTMENT

Subhead 208 Legal aid costs

HEAD 92 – DEPARTMENT OF JUSTICE

Subhead 000 Operational expenses

HEAD 176 – SUBVENTIONS : MISCELLANEOUS

Subhead 446 Duty Lawyer Service

Members are invited to approve –

- (a) a downward adjustment by 4.3% to the fees payable to –
 - (i) lawyers in private practice engaged to undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department;
 - (ii) lawyers in private practice engaged to appear for the Hong Kong Special Administrative Region in criminal cases as instructed by the Department of Justice;
 - (iii) duty lawyers providing legal assistance under the Duty Lawyer Scheme; and
- (b) delegation of authority to the Director of Administration to approve future adjustments to any of the fees mentioned in (a) above provided that the extent of adjustment is no greater than the movement of consumer prices as measured by the Consumer Price Index (C) during the reference period.

/PROBLEM

PROBLEM

The current fees payable to lawyers in private practice who are engaged to undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department (LAD) (LAD criminal legal aid fees); to appear for the Hong Kong Special Administrative Region (HKSAR) in criminal cases as instructed by the Department of Justice (D of J) (D of J prosecution fees); as well as the fees payable to duty lawyers providing assistance under the Duty Lawyer Scheme (DLS fees) require adjustments in light of the outcome of the 2002 review. The above fees are collectively referred as “the fees” in the rest of this paper.

PROPOSAL

2. Director of Administration (D of Adm), in consultation with the Director of Legal Aid (DLA) and the Secretary for Justice (SJ), proposes –

- (a) to adjust the fees downward by 4.3% ; and
- (b) for the Finance Committee (FC) to delegate the authority to D of Adm to approve future adjustments to any of the fees provided that the extent of adjustment is no greater than the movement of consumer prices as measured by the Consumer Price Index (C) (CPI(C)) during the reference period.

JUSTIFICATION

3. The LAD criminal legal aid fees are prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules under the Criminal Procedure Ordinance. D of J uses the same scale of fees to engage counsel in private practice to appear for the HKSAR in criminal cases. This is in order to ensure that lawyers of broadly similar experience and ability represent both the defence and the prosecution, and that neither DLA nor SJ has an unfair advantage in competing for counsel. For the same reason, the DLS fees payable under the Duty Lawyer Scheme¹ are also based on the brief fee payable by D of J to engage counsel in place of a court prosecutor.

/4.

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.

4. Pursuant to a decision of the FC made in October 1992, the fees are subject to review by the Administration on a biennial basis. 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.

The 2002 Review

5. The Administration has completed the 2002 review. We note that the CPI(C) decreased by 4.3% during the reference period (i.e. April 2000 to March 2002). Office rental also decreased by 11.5% during the same period. LAD and D of J envisage that they should not have difficulties in engaging the services of counsel and solicitors if the fees were to be reduced in accordance with such movement of the consumer prices. Taking into account these considerations, the Administration proposes to adjust the fees downward by 4.3% in accordance with the decrease in the CPI(C) during the reference period. The current and proposed fees (rounded to the nearest \$10) are listed at Enclosure 1.

Encl. 1

Effective Date

6. Subject to Members' approval of the proposed fees adjustment, the Administration will invite the Criminal Procedure Rules Committee to make amendments to Rule 21 of the Legal Aid in Criminal Cases Rules² to give effect to the adjustments to the LAD criminal legal aid fees. We would aim to seek the approval of the Legislative Council (LegCo) of the Rules by means of a resolution within the current LegCo session. Although the D of J prosecution fees and the DLS fees are not similarly prescribed in law, we propose that as a matter of principle and consistency, the relevant adjusted fees shall become effective from the same date when the amendments to the Legal Aid in Criminal Cases Rules become effective.

Delegation of Authority

7. Pursuant to the decision of the FC made in October 1992, currently the Secretary for Financial Services and the Treasury only has delegated authority to approve revisions of the fees provided that the increases are no greater than the inflation as measured by the CPI(C). Under all other circumstances (including to

/decrease

² Rule 21 of the Legal Aid in Criminal Cases Rules is made by the Criminal Procedure Rules Committee under Section 9A of the Criminal Procedure Ordinance.

decrease the fees in accordance with deflation), the approval of the FC has to be sought. To streamline the procedure and having regard to the deflationary economic environment, we propose that the FC delegates to D of Adm the authority to approve future adjustments to any of the fees provided that the extent of adjustment is no greater than in the movement of consumer prices as measured by the CPI(C). In other circumstances, the approval of the FC for any change in the fees will be sought.

FINANCIAL IMPLICATIONS

8. Based on the average expenditure on payment of the fees to lawyers in private practice in the past three financial years, we estimate that the proposal will give rise to savings of \$7,521,000, made up as follows –

Head/Subhead	Savings per year
Head 94 LEGAL AID DEPARTMENT	\$3,423,000
Subhead 208 Legal aid costs	
Head 92 DEPARTMENT OF JUSTICE	\$1,646,000
Subhead 000 Operational expenses	
Head 176 SUBVENTIONS : MISCELLANEOUS	\$2,452,000
Subhead 446 Duty Lawyer Service	
Total:	\$7,521,000

CONSULTATION WITH LEGISLATIVE COUNCIL PANEL

9. We consulted the Legal Aid Services Council (LASC) on our current proposal in early 2003. The LASC supported our proposal to revise the fees in light of consumer price changes during the reference period.

10. We consulted the LegCo Panel on Administration of Justice and Legal Services on 26 May 2003. Members did not raise objection to the fees adjustment proposal. A Member asked for statistics on services of lawyers in the private practice engaged by LAD, D of J and DLS in the past two years. They are provided at Enclosure 2. We have also notified the Bar Association and the Law Society of the proposed fees adjustment and our rationale.

Encl. 2

/BACKGROUND

BACKGROUND INFORMATION

11. The fees have been reviewed by the Administration biennially since 1992. They were last adjusted in May 1997 in accordance with the findings of the 1996 review, and were increased by 18.18% to reflect the inflation recorded during the reference period (i.e. April 1994 to March 1996).

12. In the 1998 review, the Administration noted that the CPI(C) for the reference period (i.e. April 1996 to March 1998) had increased by 10%. The Administration did not make any upward adjustment to the fees in view of the worsening economic climate and market condition at the time of review. The Administration assessed that the two departments should not have difficulties in engaging the services of counsel and solicitors with the then prevailing fee levels. This was borne out by actual experience.

13. In the 2000 review, the Administration noted that the CPI(C) for the reference period (i.e. April 1998 to March 2000) had decreased by 8.8%, more or less offsetting the CPI(C) increase accumulated in the previous reference period. On the other hand, the then prevailing market condition showed signs of recovery with real growth in GDP and consumer spending, increase in office rental and decrease in the unemployment rate. The Administration decided to freeze the fee levels against these considerations.

Administration Wing
Chief Secretary for Administration's Office
June 2003

**Proposed Adjustments to Criminal Legal Aid Fees,
Prosecution Fees and Duty Lawyer Fees**

Nature of fee	Department/ Service	Current Maximum Levels w.e.f. 16 May 97 (\$)	Proposed Maximum Levels (Rounded to nearest \$10) (\$)
1. Court of First Instance Cases			
(a) Counsel			
(i) brief fee	LAD/DOJ*	21,330	20,410
(ii) refresher fee per day	LAD/DOJ*	10,660	10,210
(b) Solicitor			
(i) brief fee	LAD	7,100	6,790
(ii) refresher fee per day	LAD	870 to 4,620	830 to 4,420
(c) Conference per hour	LAD/DOJ	1,130	1,080
(d) Pre-trial review (per review)	DOJ	2,120	2,030
2. District Court Cases			
(a) Counsel			
(i) brief fee	LAD/DOJ*	14,210	13,600
(ii) refresher fee per day	LAD/DOJ*	7,100	6,800
(b) Solicitor (acting as instructing solicitor)			
(i) brief fee	LAD	5,060	4,840
(ii) refresher fee per day	LAD	1,210 to 3,030	1,160 to 2,900
(c) Solicitor (acting as advocate as well as instructing solicitor)			
(i) brief fee	LAD*	17,560	16,800
(ii) refresher fee per day	LAD*	9,730	9,310
(d) Conference per hour	LAD/DOJ	920	880
(e) Brief fee for mention/sentence	DOJ	2,830	2,710
3. Magistrates' Court Cases			
(a) Counsel			
(i) brief fee	DOJ	8,530	8,160
(ii) refresher fee per day	DOJ	4,260	4,080
(b) Counsel or solicitor (acting as advocate) in committal proceedings			
(i) brief fee	LAD	8,530	8,160
(ii) refresher fee per day	LAD	4,260	4,080

Nature of fee	Department/ Service	Current Maximum Levels w.e.f. 16 May 97 (\$)	Proposed Maximum Levels (Rounded to nearest \$10) (\$)
(c) Solicitor for instructing counsel in committal proceedings			
(i) brief fee	LAD	2,310	2,210
(ii) refresher fee per day	LAD	1,890	1,810
(d) Preliminary inquiry fee			
(i) brief fee	LAD	8,530	8,160
(ii) refresher fee per day	LAD	4,260	4,080
(e) Brief in place of court prosecutor per day	DOJ	5,670	5,430
(f) Duty Lawyer Fee	DLS	5,670 a day 2,830 half day	5,430 a day 2,710 half day
(g) Pre-trial fee per hour	DLS	700	670
4. Appeals			
(a) Settling notice of appeal	LAD	2,830	2,710
(b) Instructing solicitors for appeals to the Court of Appeal			
(i) from the Court of First Instance	LAD	9,570 first day 1,200 to 6,180 any subsequent day	9,160 first day 1,150 to 5,910 any subsequent day
(ii) from the District Court	LAD	7,660 first day 950 to 4,970 any subsequent day	7,330 first day 910 to 4,760 any subsequent day
(c) Counsel for appeals to the Court of Appeal			
(i) from the Court of First Instance	LAD/DOJ	28,430 first day 14,180 any subsequent day	27,210 first day 13,610 any subsequent day
(ii) from the District Court	LAD/DOJ	22,740 first day 11,360 any subsequent day	21,760 first day 10,880 any subsequent day
(d) Conference per hour	LAD/DOJ	1,130	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.

**Statistics on engaging the service of lawyers in private practice by
D of J, LAD and DLS in criminal cases in the past two years**

Department of Justice

Cases heard in District Court or above, and complex cases in Magistrates' Courts ^{Note 1}

	2001	2002
Total number of cases ^{Note 2}	3 205	3 573
Number of cases assigned out	798	980

Appearances (in days) by Court Prosecutors in Magistrates' Courts and lawyers in private practice in place of Court Prosecutors ^{Note 3}

	2001	2002
Total appearances (in days) by Court Prosecutors and lawyers in private practice in place of Court Prosecutors	15 334	14 706
Appearances (in days) by lawyers in private practice in place of Court Prosecutors	797	691

Costs incurred on assigning out

	2001 – 02 ^{Note 4}	2002 – 03 ^{Note 4}
Costs incurred on assigning out (including legal and other professional services)	\$62,800,000	\$65,800,000

^{Note 1} Complex cases refers to those that are factually complicated or cases involving legal issues that require the attention of qualified lawyers.

^{Note 2} Excluding cases handled by Court Prosecutors in the Magistrates' Courts.

^{Note 3} Lawyers in place of Court Prosecutors are retained on a daily basis.

^{Note 4} The figures denote the costs incurred in these financial years.

Legal Aid Department

	2001-02	2002-03
Number of criminal legal aid certificates granted	2 738	2 915
Number of certificates for assigned-out cases	1 481	1 970
Number of lawyers assigned (in times)	Solicitors: 1 569	Solicitors: 2 053
	Counsel: 2 034	Counsel: 1 975
Costs incurred on assigning out	\$89,112,000	\$96,428,000

Duty Lawyer Service ^{Note 5}

	2001-02	2002-03
Number of defendants assisted	43 164	47 612
Appearances (in days) by duty lawyers	9 847	9 448
Costs incurred on assigning duty lawyers	\$57,886,000	\$55,987,000

^{Note 5} As Duty Lawyer Service does not have any in-house lawyers, all cases are assigned to duty lawyers who are solicitors and counsel in private practice.