



HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong
DX-180053 Queensway 1 E-mail: info@hkba.org Website: www.hkba.org
Telephone: 2869 0210 Fax: 2869 0189

27th July, 2005

Mrs Alice Cheung
Government Secretariat
Room 1211 Central Government Offices (West Wing)
Lower Albert Road
Hong Kong

Dear Mrs Cheung,

Thank you for your letter dated 8 July 2005.

I note that fees for criminal legal aid work will not be cut by 4.4% as originally proposed. You said that the decision not to impose a cut was taken after considering the views of my association and 'other bodies'.

The setting of fees in all criminal cases other than those cases which are dealt with by magistrates is governed by s.9A(1)(g) Criminal Procedure Ordinance, Cap. 221. That provision says that the Criminal Procedure Rules Committee (the CPRC'), established under s. 9 of the ordinance, shall '*prescribe the scale of fees and costs which shall be paid to solicitor or counsel acting for an aided person (or submitting any opinion for the purpose of the rules)*'.

The Association's representative on the CPRC does not recollect any decision being made by that body to 'freeze' fees. He does not recollect the matter of fees being discussed at all recently. Can you please confirm that the Director of Administration has not consulted the CPRC about this decision.

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

Chairman 主席：

Mr. Philip Dykes, S.C. 戴啓思

Vice Chairman 副主席：

Mr. Andrew Bruce, S.C. 布思義

Mr. Rimsky Yuen, S.C. 袁國強

Hon. Secretary & Treasurer

名譽秘書及財政：

Ms. Lisa Wong 黃國瑛

Administrator 行政幹事：

Miss Mendy Chong 張文迪

Members 執行委員會成員：

Mr. Peter Duncan, S.C.

Mr. Kumar Ramanathan

Mr. Leo Remedios

Mr. Anthony Ismail

Mr. Joseph Tse

Mr. Valentine Yim

Mr. Keith Yeung

Mr. Robert Pang

Mr. Andrew Mak

Mr. Simon Leung

鄧樂勤

林孟達

李美度士

石善明

謝若瑟

嚴斯泰

楊家雄

彭耀鴻

蔡業成

梁俊文

Mr. Lawrence Ng

Mr. Giles Surman

Ms. Jennifer Tsang

Ms. Linda Chan

Ms. Glenys Newall

Mr. Lin Feng

Mr. Donald Leo

Mr. Abraham Chan

Ms. Elaine Liu

吳港發

蘇明哲

曾昭珍

陳靜芬

-

林 峰

劉健能

陳樂信

廖玉玲

If there was no discussion by the CPRC about the issue and can you please explain to me how the Director of Administration can make any decision about criminal legal aid fees without first having it first formally approved by the CPRC. I am copying this letter to those parties to whom you copied your letter of 8 July 2005. I am also copying this letter and your letter to the Secretary to the CPRC so that he may know my concerns.

Yours sincerely,

A handwritten signature in black ink, appearing to read "P J Dykes". The signature is written in a cursive, somewhat stylized font.

Philip J. Dykes, SC
Chairman

c.c. Director of Legal Aid
Clerk to the LegCo Panel on Administration of Justice and Legal Services
Secretary to the CPRC

政府總部
香港下亞厘畢道



GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本函檔號 Our Ref.: CSO/ADM CR 7/3221/89

來函檔號 Your Ref.:

Room 1211
Central Government Offices (West Wing)
Tel: (852) 2810 2576
Fax: (852) 2501 5779

10 November 2005

Mr Philip Dykes, S. C.
Chairman
Hong Kong Bar Association
LG2 Floor
High Court
38 Queensway
Hong Kong

Dear Mr Dykes,

I refer to your letter of 27 July 2005. We have taken some time in preparing our reply pursuant to consultation with our legal adviser and the Judiciary.

Section 9A(1)(g) of the Criminal Procedure Ordinance (CPO) provides that the Criminal Procedure Rules Committee (CPRC) "may, with the approval of the Legislative Council, make rules providing for the granting of legal aid in criminal cases to persons of limited means which rules, in particular, may prescribe the scale of fees and costs which shall be paid to solicitor or counsel acting for an aided person". The scale of fees payable to solicitors and counsel for criminal legal aid cases are currently set out in Rule 21 of the Legal Aid in Criminal Cases Rules.


The authority to approve the adjustment of the fees level has been delegated by the Finance Committee to the Director of Administration, provided that the adjustment does not exceed the movement of the CPI(C) in the relevant reference period. Should the Administration make a policy decision to adjust the fees level, the Administration will, in accordance with section 9A(1) of CPO, seek the approval of the CPRC to make the relevant Rules, and introduce the amendment Rules to the Legislative Council.

- 2 -

Following the last biennial review, notwithstanding the recorded downward movement of CPI(C) then, the Administration decided not to adjust and reduce the level of fees payable to criminal legal aid lawyers. We also advised the two professional bodies of the policy decision in July 2005. Given that the CPRC's statutory role is to make rules to effect the Administration's decision to adjust the fees level, it has no function to perform in relation to the decision to freeze and not to adjust the fees level. Therefore, the Administration saw no need to refer the matter to the CPRC. We have, nonetheless, kept the then Chairman of the CPRC informed of the review and the Administration's decision, through the Judiciary Administrator's office.

I trust that the above has clarified matters.

Yours sincerely,



(Mrs Alice Cheung)
for Director of Administration

c.c. Director of Legal Aid
Clerk to the LegCo Panel on Administration of Justice and Legal
Services
Secretary to the Criminal Procedure Rules Committee
Judiciary Administrator (Attn.: Ms Sally Wong)