

政府總部
民政事務局

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GOVERNMENT SECRETARIAT
HOME AFFAIRS BUREAU

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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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16 June 2009

Ms Christine Chu,
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F, Wing On House
71, Des Voeux Road
Central, Hong Kong

Dear Ms Chu,

Review of Criminal Legal Aid Fee System

Thank you for your letter of 26 May 2009 addressed to our Mrs Carrie Yau.

Further to our earlier frank exchanges of views on the subject with the Law Society, we hope to set out again the position of the Home Affairs Bureau (HAB) with a view to winding up the long-standing but useful discussions with the Law Society. We sincerely hope that the matter could be settled such that the legal profession could benefit from the increased remuneration package as soon as practicable.

Basic principles behind the structural review

To recap, to ensure general compatibility of the fee systems between the prosecution and the criminal legal aid regime (i.e. equality of arms) and to provide reasonable and effective remuneration for assigned lawyers undertaking criminal legal aid work within the remits of public affordability, the Administration has embarked on a review of the criminal legal aid fees system. A broad consensus has been reached with the legal profession on the adoption of a new fee structure, with the following improvements –

- (a) **Proper recognition for preparation or pre-trial work:** Under the current system, solicitors and counsel are paid a “flat” fee for pre-trial preparation, irrespective of the time spent. Under the proposed system, **pre-trial work will be remunerated** according to the time required.
- (b) **Rationalization of fee items:** At present, where a conference has taken place among the assigned lawyers and the legally aided defendant, the counsel, but not the solicitor, is eligible for a “conference fee”. Under the proposed structure, **conference fee will also be payable to solicitors.**
- (c) **Enhanced transparency for the fee setting and re-determination basis:** Under the current system, the fees payable to an assigned lawyer are assessed after the work is done and the cases concluded. Under the proposed system, the classification of a particular case and hence the rates, as well as the required preparation time will be assessed beforehand and marked on the brief when making the assignment. Assigned lawyers will be allowed to view the bundle before accepting assignments, whenever circumstances permit, to facilitate their consideration. These measures will greatly enhance the transparency of the fee system.

Yardstick for reviewing criminal legal aid fees

The Administration adopts the following general yardsticks in reviewing the fee proposals –

- (a) **general compatibility** of the criminal legal aid fee system for the defense lawyers with the fee regime for the prosecution counsel;
- (b) **rectification of inconsistency** between policy on payment to solicitors and counsel;
- (c) **reasonable and effective remuneration** for legal aid assigned lawyers within the remits of public affordability; and
- (d) **prudence in public money spending.**

Remuneration for government lawyers

In considering the level of criminal legal aid fees, we have certainly drawn reference to the remuneration to in-house government lawyers handling criminal cases. For illustration purpose, we are pleased to set out for your reference the remuneration package for government lawyers handling criminal cases.

You may wish to note that for Government Counsel and Legal Aid Counsel, their remuneration in 1992 and 2009 (when turned into hourly rates) are respectively \$260 and \$468 per hour, while the rates for Senior Government Counsel and Senior Legal Aid Counsel in 1992 and 2009 are respectively \$310 and \$687.

For the assigned Solicitors undertaking legal aid cases, the hourly rates in 1992 and 2009 are respectively \$280 and \$425 for High Court cases. The rates are now proposed to be increased to \$730 per hour in the current review exercise, representing a 160% increase over the rates in 1992. For the District Court cases, the hourly rates in 1992 and 2009 are respectively \$190 and \$300. In response to the Law Society's request, the rates are now proposed to be further increased from \$520 to \$620 per hour, representing a 226% increase over those in 1992.

	(a) 1992 remuneration	(b) 2009 remuneration	(b) – (a) Increase %
Govt Counsel*	\$260 per hour	\$468 per hour	80%
Senior Govt Counsel*	\$310 per hour	\$687 per hour	120%

* Govt Counsel and Legal Aid Counsel are on the same pay scale. The same applies to Senior Govt Counsel and Senior Legal Aid Counsel.

As requested, the remuneration for government lawyers handling criminal cases in the past two decades is set out at **Annex A** for reference.

We understand from the Department of Justice that the report for Grade Structure Review (Report No. 43) was released on 27 November 2008. Both the starting point and the maximum point of the Government Counsel rank (which also apply to Legal Aid Counsel) remain unchanged.

Responses to concerns raised

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 level (which amounted to some \$520 per hour) not acceptable. As requested, HAB has offered to the Law Society vide our letter on 24 April 2009 a revised proposed rate for the Instructing Solicitors at the District Court which amounted to some \$620 per hour.

As requested, the annual expenditure on criminal cases for the past two decades is provided at **Annex B**. Should the new fee structure and the revised proposal on rates be adopted, the expenditure in criminal legal aid fee was expected to increase by an additional \$100 million, while the estimated increase in remuneration for Solicitors engaged in criminal legal aid work would range from 120% to 400%, depending on the length and complexity of individual cases.

We note that the Law Society has requested the Administration to consider minimizing the disparity of remuneration for Solicitors engaged in civil and criminal legal aid cases. We have consulted the Department of Justice and carefully examined the proposal. Our consolidated view is the nature of and work entailing to civil and criminal legal aid cases is different. As such, we cannot accede to your request at this stage.

For avoidance of doubt, the Administration has never expected criminal legal aid to be a public service to be provided by Solicitors on a "charitable" basis. In considering the level of rates for solicitors, the Administration has taken into account factors including division of labor between counsel and solicitors in criminal legal aid cases, and the Law Society's wish to have the fees raised to a professional and reasonable level to attract more solicitors to take up criminal legal aid work. We have adopted the principle of prudent utilization of public funds, and considered from the perspective of public affordability in determining the appropriate increase in criminal legal aid fees for solicitors.

We hope the above has helped clarify the queries you raised. We welcome continuous discussion with the Law Society on the remuneration package for solicitors, and are prepared to review the rates in two years' time upon implementation of the new rates. Upon reaching agreement with the Law Society, we shall proceed with consultation with the Criminal Procedure Rules Committee and draft legislative work could then commence.

Yours sincerely,



(Ms Grace LUI)
for Secretary for Home Affairs

c.c. Director of Legal Aid 2877 5122
Hon Margaret Ng 2179 6190

Annex A

**Salary changes for Government Counsel and Legal Aid Counsel
in the past two decades (1989 – 2009)**

Year (as at 1 April)	Monthly Salary of Government Counsel and Legal Aid Counsel \$
1989 (as at 1.4.1989)	15,915 (MPS Pt. 32) – 27,495 (MPS Pt. 44)
1989 (as at 1.10.1989)	19,225 (MPS Pt. 32) – 32,415 (MPS Pt. 44)
1990	22,110 (MPS Pt. 32) – 37,275 (MPS Pt. 44)
1991	24,415 (MPS Pt. 32) – 41,165 (MPS Pt. 44)
1992	27,245 (MPS Pt. 32) – 45,765 (MPS Pt. 44)
1993	30,150 (MPS Pt. 32) – 50,230 (MPS Pt. 44)
1994	33,130 (MPS Pt. 32) – 54,985 (MPS Pt. 44)
1995	36,490 (MPS Pt. 32) – 60,475 (MPS Pt. 44)
1996	39,290 (MPS Pt. 32) – 65,120 (MPS Pt. 44)
1997	41,965 (MPS Pt. 32) – 69,615 (MPS Pt. 44)
1998	44,395 (MPS Pt. 32) – 73,815 (MPS Pt. 44)
1999	44,395 (MPS Pt. 32) – 73,815 (MPS Pt. 44)
2000	* 35,285 (Reference Pay Scale Pt. 27) – 73,815 (MPS Pt. 44)
2001	*35,285 (Reference Pay Scale Pt. 27) – 77,500 (MPS Pt. 44)

Year (as at 1 April)	Monthly Salary of Government Counsel and Legal Aid Counsel \$
2002	*35,285 (Reference Pay Scale Pt. 27) – 74,075 (MPS Pt. 44)
2003	*35,285 (Reference Pay Scale Pt. 27) – 74,075 (MPS Pt. 44)
2004	*34,320 (Reference Pay Scale Pt. 27) – 71,845 (MPS Pt. 44)
2005	*33,355 (Reference Pay Scale Pt. 27) – 69,615 (MPS Pt. 44)
2006	*33,355 (Reference Pay Scale Pt. 27) – 69,615 (MPS Pt. 44)
2007 (as at 1.4.2007)	*34,895 (Reference Pay Scale Pt. 27) – 73,070 (MPS Pt. 44)
2007 (as at 1.8.2007)	43,905 (MPS Pt. 32) – 73,070 (MPS Pt. 44)
2008	46,230 (MPS Pt. 32) – 77,675 (MPS Pt. 44)
2009	46,230 (MPS Pt. 32) – 77,675 (MPS Pt. 44)

Annex B

Financial Year	Cost incurred for Criminal Cases (\$)
1989-90	41,938,821.68
1990-91	60,969,942.48
1991-92	63,088,058.29
1992-93	73,711,427.64
1993-94	118,902,521.53
1994-95	133,632,301.43
1995-96	109,609,197.18
1996-97	98,149,480.65
1997-98	95,252,866.33
1998-99	109,917,619.16
1999-2000	88,086,663.04
2000-01	72,569,696.38
2001-02	91,171,694.70
2002-03	100,173,407.58
2003-04	91,157,018.15
2004-05	92,944,161.56
2005-06	101,672,173.91
2006-07	105,488,623.77
2007-08	97,181,135.69
2008-09	82,808,601.03