



THE

LAW SOCIETY
OF HONG KONG

香 港 律 師 會

The Law Society of Hong Kong Members' Survey Report

January 2008

Executive Summary

- A survey of solicitors practising criminal law and law firms was conducted between 17th October 2007 and 6th November 2007 to gauge their views about the criminal legal aid fee system. The Law Society sent questionnaires to 721 lawyers and 709 law firms. The response rates of 35.9% for lawyers and 23.4% for law firms were considered satisfactory for a self-administered questionnaire survey.
- There was an overwhelming call among both lawyers and firms that the criminal legal aid system should be improved, so as to cope with the increasingly complex nature of criminal trials and to attract high quality and experienced lawyers to take up criminal legal aid work. The majority of the lawyers and firms (93.9% of lawyers and 86.1% of firms) were either somewhat dissatisfied or very dissatisfied with the criminal legal aid fee.
- The majority of lawyers (69.6%) and firms (78.6%) considered that the actual time they spent on cases was the most important factor in determining their fees in criminal legal aid work.
- A significant portion of the lawyers (47.0%) and firms (35.7%) indicated that they have considered ceasing to act in criminal legal aid cases, with the majority citing the low level of fee as the main reason. A large section of the respondents who have involved in criminal legal aid cases were relatively inexperienced. A significant gap seemed to exist between senior practitioners and the less experienced, implying that the pool of experience could be further reduced if the senior lawyers give up criminal legal aid work.
- There is a gulf between the Government's proposal and members' expectations. Although about half of the respondents indicated that they would consider a discounted market rate for acting in criminal legal aid cases, the fees expected by most respondents were some seven times higher than the Government suggested rates for High Court and District Court cases. Many call for adopting the civil taxation rate for criminal legal aid cases.

Background

To gauge the views of the Law Society's members on the criminal aid fee system and how it might be improved, the Law Society conducted a survey between 17 October to 6 November 2007. The survey was composed of two parts. Part One targeted lawyers practising criminal law based on the list containing details of the lawyers who have joined the Duty Lawyer Scheme. Part Two targeted all law firms.

Letters were sent to individual members and firms inviting them to participate in the survey through an online platform. Details of the survey exercise are as follows:

Number of questionnaires sent: 721 to individual lawyers; 709 to law firms

Response Rate: 35.9% for individual lawyers; 23.4% for law firms

This report presents the 10 major findings of the exercise.

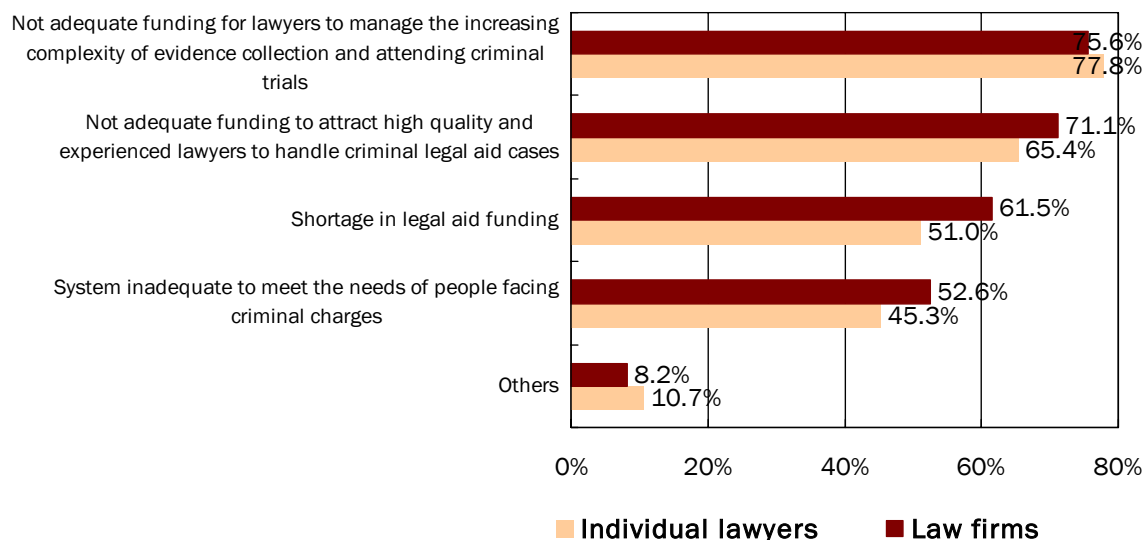
The Need for Reforms to the Criminal Legal Aid System

1. **There was an overwhelming call among both lawyers and firms that the criminal legal aid system should be improved, so as to cope with the increasingly complex nature of criminal trials and to attract high quality and experienced lawyers to take up criminal legal aid work.**

- Around two-thirds of the lawyers (66.9%) and firms (67.3%) were either somewhat dissatisfied or very dissatisfied with the present criminal legal aid system.
- 95.6% of all lawyers and 91.8% of all firms that responded to our survey believed that the present criminal legal aid system should be improved.

2. **Both lawyers and firms identified the lack of funding to attract lawyers with high quality and experience to handle criminal legal aid cases, and the need for lawyers to manage the increasing complexity of evidence collection and attending criminal trials, as the most serious problems with the present system.**

Problems with the present criminal legal aid system



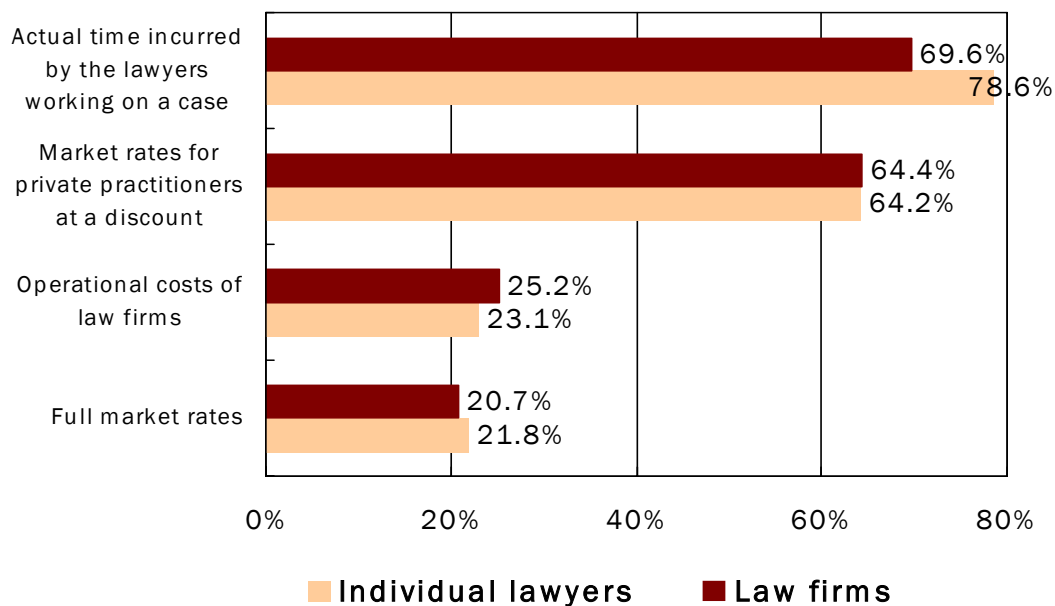
3. In particular, lawyers and law firms found the remuneration system for criminal legal aid cases problematic.

- The majority of the lawyers (93.9%) and firms (86.1%) were either somewhat dissatisfied or very dissatisfied with the criminal legal aid fee.
- The percentage of ‘very dissatisfied’ alone reached 53.5% amongst lawyers and 57.1% amongst firms respectively.

4. When informed about the recently proposed new rates for criminal legal aid cases by the HKSAR Government, i.e. HK\$425 per hour for High Court cases and HK\$300 per hour for District Court cases, a majority of the responding lawyers and firms were of the view that the rates hardly reflected the actual time spent by lawyers. The majority view was that the market rate of private practitioners should serve as the basis for fee calculation.

- A large number of lawyers (78.6%) and firms (69.6%) indicated that the proposed criminal legal aid remuneration system failed to take into account the actual time incurred by the lawyers working on a case.
- While over 64% of both lawyers and firms pointed out that the proposed system should be based on discounted market rates, some 20% of them also urged the Government to consider paying for criminal legal aid cases in full market rates.

Criminal legal aid remuneration system should be based on:



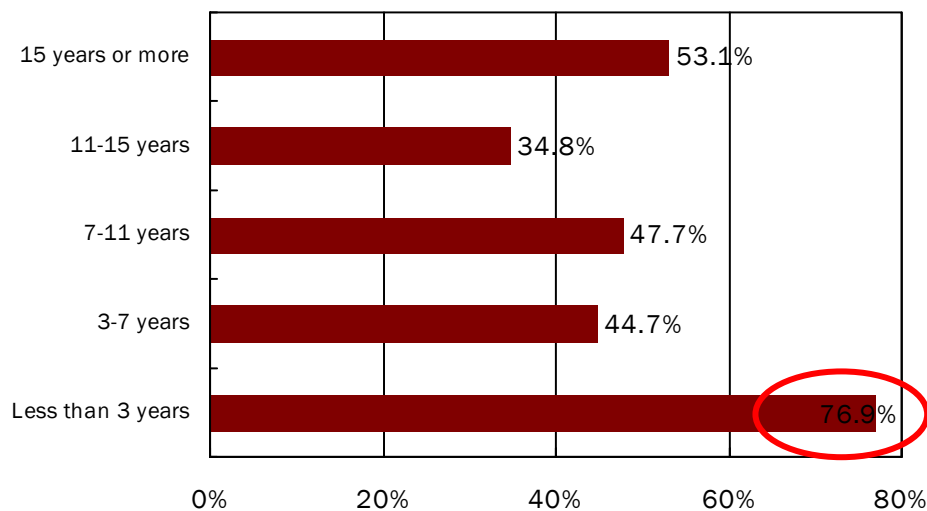
Risk of Losing Legal Expertise for Criminal Legal Aid Cases

5. A large number of the respondents who have involved in criminal legal aid cases were relatively inexperienced. A gap seemed to exist between senior practitioners and the less experienced, potentially implying that the pool of experience would be further reduced if the more senior lawyers give up criminal legal aid work.

- 74.7% of lawyers and 66.3% of firms responding to the survey said they were involved in criminal legal aid cases.

- Among the lawyers, 44.5% had experience of seven years or less in criminal legal aid work, as opposed to 19.5% who had 15 years of experience or more.
6. **The less experienced lawyers were found to be less active in taking up criminal legal aid cases than senior practitioners, indicating that the overall pool of experience could suffer from a double blow if the senior lawyers give up criminal legal aid work and are replaced by a generation of lawyers who have less hands-on experience.**
- 78.1% of lawyers with less than 3 years of experience and 63.4% with 3-7 years of experience worked on 3 or fewer cases in the past 12 months.
 - In contrast, 53.1% of individual lawyers with 15 or more years of experience worked on 7 cases or more in the past 12 months.
7. **A significant portion of the lawyers and firms indicated that they have considered ceasing to act in criminal legal aid cases, with the majority citing the low level of remuneration as the main reason. The group of lawyers with three years or less experience in criminal legal aid cases had the highest proportion indicating that they might give up the criminal legal aid practice.**
- 47.0% of the lawyers and 35.7% of the firms said they had considered to cease acting in criminal legal aid cases, mainly due to low remuneration.
 - The survey found the biggest portion of respondents who had considered ceasing to act in criminal legal aid cases in the group of lawyers who had experience of three years or less in criminal legal aid cases (76.9%).
 - In all the three other groups, about half of the respondents indicated that they had considered ceasing to act in criminal legal aid cases.

Potential drop-out risk amongst criminal legal aid lawyers

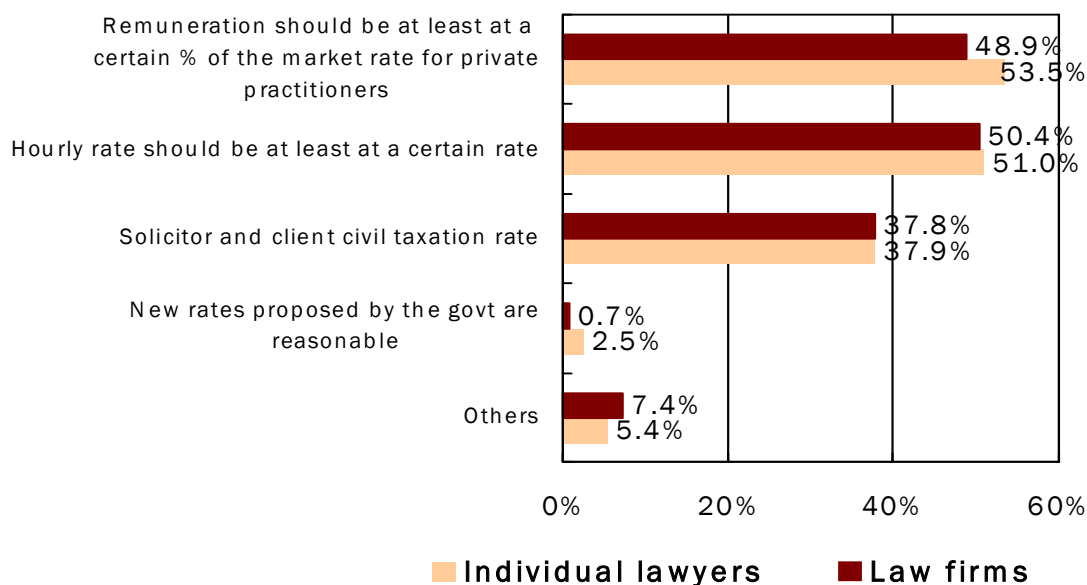


Recommendations

8. **There is a wide gap between the new rates proposed by the HKSAR Government and the expectations from lawyers and firms.**
- Only 2.5% of the lawyers and 0.7% of the firms considered the new rates proposed by the HKSAR Government as reasonable.
 - About half from both groups opined that the remuneration should reach a certain percentage of the private market rate or at least a certain rate.

- It is worth-noting that 37.8% from both respondent groups supported adopting the solicitor and client civil taxation rate.

A reasonable level of remuneration for criminal legal aid cases should be:



9. Amongst respondents who indicated their preferred rates by a discounted market rate, the most frequently mentioned percentage (mode) was 70% amongst lawyers and 80% amongst firms for High Court cases, and 70% amongst both lawyers and firms for District Court cases.

- 90.8% of the lawyers and 77.3% of the firms considered a 50% discount of the market rate or under as unreasonable.

10. Amongst respondents who indicated their preferred rates by specific figures, the most frequently mentioned figure (mode) was \$3,000 for High Court cases and \$2,000 for District Court cases.

Discussion

The survey has confirmed the long standing perception that criminal law practitioners have been very dissatisfied with the criminal legal aid system and that they felt very deeply about the urgent need of reform.

The majority of lawyers and firms who responded to the survey indicated that funding had been inadequate for lawyers to manage the increasingly complex nature of evidence in criminal trials. They also expressed grave concern that the inadequate funding would lead to difficulties in attracting high quality and experienced professionals to take up criminal legal aid work.

It is alarming that over half of the respondents, including both the senior practitioners and those who were relatively less experienced, had considered giving up criminal legal aid work. Inevitably, the quality of such work and the protection of defendants’ legal rights in criminal trials would be seriously affected if experienced lawyers drop out, while promising young practitioners are not attracted to develop a criminal law career and take up

criminal legal aid cases. This could ultimately put the rights of the lawfully arrested to a fair trial, as stipulated in the Basic Law, at stake.

While the legal community has been deeply dissatisfied with the funding for the criminal legal aid system and the fees paid by the system, most practitioners and firms who undertake criminal legal aid work have been acting out of a strong sense of professionalism and the ethical consideration of providing necessary help to the accused. Their professionalism and ethical conviction to uphold justice and the spirit of the Basic Law, however, should not be taken advantage of.

The Law Society has always maintained that it is the HKSAR Government's duty to ensure that Hong Kong residents receive timely and necessary legal representation. While the legal profession has a role to play, and has been demonstrating its commitment in many different ways, the government has no sustainable ground to ask the profession to heavily subsidise the public criminal legal aid service out of lawyers' private resources, so much so that much of the work in more complicated cases were conducted on effectively pro bono basis.

This survey has found that a very large gap existed between the expectations of the respondents and the Government's proposed new rates. The majority view was that the market rates should serve as the basis for fee calculation, and many suggested putting criminal legal aid fees on a par with the civil taxation rate. These opinions should serve as an important reference for future discussion on reforming the system.

**The Law Society of Hong Kong
January 2008**