

**Replies to written questions raised by Finance Committee Members in examining
the Draft Estimates of Expenditure 2001-02**

**[Controlling Officer : Director of Administration and Development]
[Session No. : 10]**

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Bureau Serial No.

SJ001

Question Serial No.

0617

Examination of draft Estimates of Expenditure 2001-02

**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

- (A) On promoting the use of Chinese in prosecutions, can the Government provide the percentage of proceedings conducted in Chinese amongst all proceedings in the following courts -
- (1) Court of Final Appeal;
 - (2) Court of Appeal;
 - (3) Court of First Instance;
 - (4) District Court; and
 - (5) Magistrates' Court?
- (B) In 2001-02, apart from giving continued training to in-house counsel for conducting prosecutions in Chinese, what specific measures will be taken to promote prosecutions in Chinese? How much expenditure will be involved?

Asked by : Hon Cyd HO Sau-lan

Reply :

- (A) The percentages of cases conducted in Chinese in different levels of courts in 2000 are given below –
- | | |
|-----------------------------|-------|
| (1) Court of Final Appeal | 0% |
| (2) Court of Appeal | 15.2% |
| (3) Court of First Instance | |
| - Magistracy Appeals | 48.6% |
| - Trials | 15.4% |
| (4) District Court | 22.3% |
| (5) Magistrates' Courts | 72.9% |
- (B) Apart from providing continued training to in-house counsel on conducting prosecutions in Chinese, the Department has taken the following measures to promote the wider use of Chinese in prosecution work –

- (a) a Committee on Glossary of Legal Terms for Criminal Proceedings was established in 1998 within the Prosecutions Division to develop a legal language in Chinese for use in criminal proceedings in court, to provide reference materials for use by prosecutors in criminal proceedings conducted in Chinese; and to compile and update the Glossary of Legal Terms for Criminal Proceedings on a regular basis; and
- (b) the Committee on Bilingual Legal System, chaired by the Secretary for Justice, has completed a pilot project on translation of judgments into Chinese. The Committee is now considering the potential use of the translated judgments and their publication. Long-term strategies for the translation of case law and the vetting of translated judgments by legal professionals will be considered with a view to developing a sufficient body of bilingual case law.

As the above activities are being undertaken by the Department through existing resources, no extra expenditure will be involved.

Name in block letters	<u>Peter H K Cheung</u>
	<u>Director of Administration</u>
Post Title	<u>and Development (Ag)</u>
Date	<u>16 March 2001</u>

Bureau Serial No.

SJ002

Question Serial No.

0618

Examination of draft Estimates of Expenditure 2001-02

**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

- (A) Can the Government provide details on the percentage of prosecution work briefed out to private counsel amongst all proceedings in the following courts in 1999 and 2000 -
- (1) Court of Final Appeal;
 - (2) Court of Appeal;
 - (3) Court of First Instance;
 - (4) District Court; and
 - (5) Magistrates' Court?
- (B) What are the criteria for briefing out prosecution work to private counsel instead of assigning counsel of the Prosecutions Division? How much expenditure will be required on briefing out prosecution work?

Asked by : Hon Cyd HO Sau-lan

Reply :

- (A) The percentages of prosecution work briefed out to private counsel in 1999 and 2000 in different levels of courts are as follows –

	<u>1999</u>	<u>2000</u>
(1) Court of Final Appeal	7.3%	2.5%
(2) Court of Appeal	0%	0%
(3) Court of First Instance	10%	8%
(4) District Court	41.1%	33.3%
(5) Magistrates' Courts		
- in place of Government Counsel	31.5%	32.4%
- in place of Court Prosecutors	0.5%	0.9%

- (B) The Department has not set a fixed ceiling for briefing out. The actual amount of work to be briefed out will necessarily be determined by various factors, including the workload, the availability of counsel, the nature of the cases and the desirability of employing outside counsel for a particular case. In 2001-02, it is estimated that an amount of \$58m will be required to meet the expenditure on briefing out prosecution work.

Name in block letters Peter H K Cheung

Director of Administration

Post Title and Development (Ag)

Date 16 March 2001

Bureau Serial No.

SJ003

Question Serial No.

0619

Examination of draft Estimates of Expenditure 2001-02

**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question : Are there any specific measures to be taken in 2001-02 to enhance the ability of the in-house counsel in conducting prosecutions in various levels of courts? How much expenditure will be involved?

Asked by : Hon Cyd HO Sau-lan

Reply : The Department recognises the need to keep our prosecutors up-to-date with developments in the areas of legislation, case law and procedure. In 2001, there are plans to conduct 18 in-house seminars for our counsel to enhance their advocacy skills and professional knowledge. There will be 20 workshops/seminars aimed at sharpening the skills of our bilingual counsel in using Chinese in court. Two twelve-week Criminal Advocacy Courses will be organized for counsel newly posted to the Prosecutions Division and legal trainees, which cover lectures and practical experience of prosecuting in Magistracies. Junior counsel will be assigned on rotation as juniors in trials and appeals to give them direct exposure to advocacy at higher levels. Since these are in-house training programmes, the Department will not incur any extra expenditure.

Apart from running in-house training, we will also send counsel to attend the Advanced Legal Education Courses organized by the Hong Kong Bar Association, the workshops organized by the Advocacy Institute of Hong Kong and the seminars organized by the Law Society or by the Society's approved course providers of the Continuous Professional Development Scheme. A provision of \$100,000 has been included under the departmental Training Vote to meet the necessary expenditure.

Name in block letters Peter H K Cheung

Director of Administration

Post Title and Development (Ag)

Date 16 March 2001

Bureau Serial No.
SJ004
Question Serial No.
0620

Examination of draft Estimates of Expenditure 2001-02
**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question : Please provide the number of Court Prosecutors in 1999 and 2000. How many of them have professional qualifications?

Asked by : Hon Cyd HO Sau-lan

Reply : There were 113 Court Prosecutors (CPs) in 1999 and 109 in 2000. Nine of them have been admitted to the Bar. In addition, there were 24 CPs who have obtained a law degree.

Name in block letters	<u>Peter H K Cheung</u>
Post Title	<u>Director of Administration and Development (Ag)</u>
Date	<u>16 March 2001</u>

Bureau Serial No.

SJ005

Question Serial No.

0955

Examination of draft Estimates of Expenditure 2001-02

**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question : How many counsel of the Prosecutions Division received training in conducting proceedings in Chinese in 2000? What is the percentage of those who have received such training amongst all counsel in the Division?

Asked by : Hon Mrs Miriam LAU Kin-ye

Reply : In 2000, the Prosecutions Division has provided training to enhance the ability of counsel in the use of Chinese in Court as follows -

	<u>Sessions</u>	<u>Total number of counsel</u>
(a) In-house training		
(i) Chinese mock trials	5	15
(ii) Chinese mock appeals	8	24
(iii) Workshop on drafting court documents in Chinese	7	21
(b) The Advocacy Institute of Hong Kong – Workshop on pleas in mitigation in Chinese	1	1
(c) The Law Society of Hong Kong – Legal Writing in Chinese	1	7

Out of 109 counsel in the Prosecutions Divisions, 83(76%) are bilingual and most of them have received training in the use of Chinese in Court.

Name in block letters Peter H K Cheung
Director of Administration
Post Title and Development (Ag)
Date 16 March 2001

Bureau Serial No.
SJ006
Question Serial No.
0956

Examination of draft Estimates of Expenditure 2001-02
**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question : What are the numbers of cases conducted in Chinese in different levels of courts in 2000?

Asked by : Hon Mrs Miriam LAU Kin-yee

Reply : The numbers of cases conducted in Chinese in different levels of courts in 2000 are given below –

(a)	Court of Final Appeal	0
(b)	Court of Appeal	88
(c)	Court of First Instance (Magistracy Appeals)	537
(d)	Court of First Instance (Trials)	20
(e)	District Court	160
(f)	Magistrates' Courts	6151

Name in block letters	<u>Peter H K Cheung</u>
Post Title	<u>Director of Administration and Development (Ag)</u>
Date	<u>16 March 2001</u>

Bureau Serial No.

SJ007

Question Serial No.

0957

Examination of draft Estimates of Expenditure 2001-02
**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question : What is the reason for publishing a new Prosecution Manual? What is the difference between the previous and the new manuals?

Asked by : Hon Mrs Miriam LAU Kin-yee

Reply : The Prosecution Manual is a useful reference for counsel and court prosecutors in the Prosecutions Division and departmental prosecutors in various departments. It contains guidance on all areas of prosecutorial responsibility. It examines and explains the role and functions of the public prosecutor. It deals with issues of principle, practice and procedure. Specific pieces of legislation and aspects of the criminal law are also analysed.

As criminal law and practice change from time to time, the Manual needs to be updated. The previous edition of the Manual was published in 1998. An updated version has just been published. The major changes are the updating of the legislation and case law. Information which is out-of-date has been deleted and new information and material have been added or replaced.

Name in block letters Peter H K Cheung
Director of Administration
Post Title and Development (Ag)
Date 16 March 2001

Bureau Serial No.

SJ008

Question Serial No.

1122

Examination of draft Estimates of Expenditure 2001-02

**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (2) Civil

Controlling Officer : Director of Administration and Development

Question :

1. As regards the right of abode cases, what is the number of proceedings instituted by the Department of Justice and how many of them were represented by the Department as defence in the years 1999-2000 and 2000-01? How many of them received legal aid and what were the expenses involved? In how many of these cases were senior counsel instructed by the Government? How many of these cases were won or lost by the Government and how many of them are pending?
2. In 2001-02, what is the provision allocated for the above proceedings?

Asked by : Hon Albert HO Chun-yan

Reply :

1. In 1999-2000, 177 judicial review proceedings (including three appeals) on right of abode were instituted against Government whereas Government instituted one judicial review application and three appeals. Senior counsel were engaged by Government in 19 cases. Government won in 165 cases, lost in four cases whilst 12 cases are pending.

In 2000-01 (up to 12 March 2001), 2 090 judicial review proceedings (including 1 008 appeals) on right of abode were instituted against Government whereas Government instituted one appeal. Senior Counsel were engaged by Government in 13 cases. Government won in 1 056 cases, lost in one case whilst 1 034 cases are pending.

For information on legal aid cases, please refer to Director of Legal Aid's answer to question Serial No. 1123.

2. In 2001-02, a sum of \$23.6m has been earmarked for briefing out proceedings on right of abode.

Name in block letters Peter H K Cheung

Director of Administration

Post Title and Development (Ag)

Date 16 March 2001

Bureau Serial No.

SJ009

Question Serial No.

1313

Examination of draft Estimates of Expenditure 2001-02

**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

What were the titles and details of each of the 9 law reform projects handled in 2000?

What are the titles and details of each of the 9 law reform projects to be handled in 2001?

Asked by : Hon LAU Chin-shek

Reply :

(A) The titles and details of the nine law reform projects handled by the Law Reform Commission (LRC) in 2000 were as follows -

1. **The minimum age of criminal responsibility** - The minimum age at which children in Hong Kong may be held criminally responsible is seven, which is one of the lowest applied in the common law world. In May 2000, the Commission issued a final report on this subject, recommending that the minimum age be raised to 10.
2. **The procedure governing the admissibility of confession statements in criminal proceedings** - This reference was prompted by concern at the amount of court time devoted to the existing *voir dire* procedure in criminal jury trials to determine the admissibility of confession statements. The Commission's final report, recommending limited change to the relevant procedures, was published in July 2000.
3. **Privacy: stalking** - This is one aspect of the LRC's comprehensive review of the law relating to privacy. The Commission's final report, recommending the creation of a new offence of stalking, was published in October 2000.
4. **Guardianship and custody of children** - Hong Kong's law relating to the custody and guardianship of children has fallen behind developments taking place in other common law jurisdictions and the LRC is undertaking a comprehensive review of the law in this area. An extensive consultation paper was published in December 1998. A final report is being prepared.
5. **Privacy: regulation of media intrusion** - As part of the Commission's comprehensive review of the law relating to privacy, the Privacy sub-committee issued a consultation paper on the regulation of media intrusion in August 1999. A final report will be drafted in the light of the responses received.
6. **Privacy: civil liability for invasion of privacy** - As part of the Commission's comprehensive review of the law relating to privacy, the Privacy sub-committee issued a consultation paper on civil liability for invasion of privacy in August 1999. A final report is being prepared.

7. **Debt collection** - In Hong Kong, concern has been expressed at the improper practices adopted by some debt collection agencies to recover sums due. The existing law does not appear to be adequate to prevent these abuses. A sub-committee appointed by the LRC in July 1998 to consider this topic published a consultation paper in July 2000. A final report will be drafted in the light of the responses received.
 8. **Contracts for the supply of goods** - Hong Kong has a scheme of statutory implied terms to cover contracts for the sale of goods and contracts for the supply of services. However, there are no statutory implied terms which cover goods supplied under contracts other than sale. A consultation paper on this subject was published in December 2000. A final report will be drafted in the light of the responses received.
 9. **Description of flats on sale: local completed residential properties** - Hong Kong has a particular problem with inadequate regulation of the descriptions applied to residential property put up for sale. A consultation paper on the sales descriptions of completed residential property in Hong Kong was issued in December 2000. A final report will be drafted in the light of the responses received.
- (B) The titles and details of the nine law reform projects to be handled by the LRC in 2001 are as follows -
1. **Guardianship and custody of children** (see (A)4 above)
 2. **Privacy: regulation of media intrusion** (see (A)5 above)
 3. **Privacy: civil liability for invasion of privacy** (see (A)6 above)
 4. **Debt collection** (see (A)7 above)
 5. **Contracts for the supply of goods** (see (A)8 above)
 6. **Description of flats on sale: local completed residential properties** (see (A)9 above)
 7. **Hearsay in criminal proceedings** - Hearsay evidence is generally excluded from criminal proceedings in Hong Kong, but the rules are complex and uncertain. The law has been reviewed in a number of other common law jurisdictions. A consultation paper is being prepared.
 8. **Domicile** - Preliminary work has begun on a review of the rules for determining domicile.
 9. **Privity of contract** - It is expected that work will begin in 2001 on a review of this area of law.

Name in block letters	<u>Peter H K Cheung</u>
Post Title	<u>Director of Administration and Development (Ag)</u>
Date	<u>16 March 2001</u>

Bureau Serial No.

SJ010

Question Serial No.

1314

Examination of draft Estimates of Expenditure 2001-02
**CONTROLLING OFFICER'S REPLY TO
WRITTEN QUESTION**

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question : As regards the legislation work on the implementation of Article 23 of the Basic Law, what were the expenses, the staffing arrangement and the outcome in 2000-01? What will be the expenses, the staffing arrangement and the outcome estimated for 2001-02?

Asked by : Hon LAU Chin-shek

Reply : In 2000-01, the Department of Justice carried out preliminary work in relation to the offences listed in Article 23 of the Basic Law to assist Security Bureau. This concerned research into the laws and reform proposals of other jurisdictions and advice on the relevant legal and human rights principles. The work involved officers of the Basic Law and Human Rights Units and was carried out under the supervision of directorate officers in the Legal Policy Division within existing resources.

In 2001-02, the department will continue to advise and assist Security Bureau in its work in this subject in a similar manner.

Name in block letters	<u>Peter H K Cheung</u>
Post Title	<u>Director of Administration and Development (Ag)</u>
Date	<u>16 March 2001</u>