17.1 At the invitation of the Chairman, the Secretary for Justice (SJ), Ms Elsie LEUNG, and the Judiciary Administrator (JA), Mr Wilfred TSUI, each gave a presentation to highlight the work priorities within their respective purview for the year 2001-02 (Appendices V-16a & V-16b).

Court Prosecutor

17.2 Referring to the Administration's written reply on the number of Court Prosecutors (CP) in the Department of Justice (D of J), Ms Audrey EU pointed out that the performance of CPs would have a direct bearing on whether or not a case would be proceeded with. Ms EU referred to a recent highly publicized case and a similar case involving a young female student. The Director of Public Prosecutions had written to her to say that a different treatment was given in the latter case because the request for disposal of prosecution was put forward by defence counsel on the day of trial. She concluded that the inability of CPs to make a decision there and then had led to unfairness since matters that had to be considered, such as young age and clear record of the accused as well as the minor nature of the offence, were the same in both cases and yet the request in the latter case was rejected. She thus expressed concern about the qualifications of the CPs and asked whether the Administration had plans to require CPs to obtain a law degree.

17.3 SJ advised that although a law degree was not a pre-requisite for appointment as CPs, at present, out of 109 CPs in 2000, nine of them had been admitted to the Bar and 24 had obtained a law degree. The Deputy Director of Public Prosecutions (DDPP) added that at present, some 86% of the CPs possessed a university qualification while 24 had a law degree. About 20 CPs were undertaking some form of legal training. Some former CPs had been appointed as government counsel or magistrates; some had joined private practice. The overall calibre of CPs was therefore quite high. DDPP confirmed that at present, there was no plan to require serving CPs to acquire legal qualifications by a specified date, nor to make the possession of a law degree an entry requirement for CPs. Nevertheless, lawyers who were interested in becoming CPs could always apply for the job.

17.4 SJ further confirmed that the response to a bind over request and D of J's decision not to proceed with prosecution in certain cases had nothing to do with the qualification of CPs and each case had to be considered on its own merits. For instance, where psychiatric reports were required, a CP might not be

in a position to make an immediate decision on a bind over request and had to seek advice from senior officers in the department.

17.5 On the training available to CPs, DDPP said that for recruits in 1979 and thereafter, a nine-month pre-service training had been provided to cover the key areas of criminal law, evidence law and court procedures. At the end of the training, CPs had to pass an examination before they could take up the job. Furthermore, on-the-job training was also provided to CPs.

17.6 Miss Margaret NG urged the Administration to review the CP scheme and related arrangements, having regard to concerns about the quality of public prosecution, as well as flexibility and effectiveness in the use of resources. She noted that despite a decrease in the number of court days undertaken by CPs in Magistrates' Court from 15 230 in 1999 to 14 860 in 2001, there was no corresponding reduction in manpower. Miss NG considered that it might be more cost-effective to brief out prosecution cases.

17.7 In response, SJ explained that taking into consideration the comments made by the Director of Audit that briefing out costs were high and that resources at the level of the lower courts should have been more effectively deployed, the number of CPs had been gradually increased since 1984. DDPP supplemented that if there was a change in policy to use government counsel in place of CPs, the estimated costs would be about two times the existing level amounting to some $115.6 million. As regards the cost per court day undertaken by a CP, a senior CP and a counsel prosecuting on fiat, the Director of Administration and Development, D of J (D of AD) advised that such cost was about $1,513.20, $2,921.20 and $5,670 respectively. Miss Margaret NG said that she would raise a supplementary question on the basis of that calculation as it might not have reflected the cost required for supervising the work of CPs. At her request, D of AD undertook to provide information on the average number of court days attended by a CP on a yearly basis and the number of occasions that more than one prosecutor was attending the same court hearing.

17.8 As regards the staffing situation of CPs, SJ explained that no CPs had been recruited following the freeze on civil service recruitment in 1998 and the number of CPs had actually decreased since 1998. DDPP supplemented that where appropriate, the D of J would instruct private counsel to take up prosecution. In fact, the costs for briefing out prosecution work at Magistrates' Court had increased by over 40% from $2.72 million in 1999 to $3.86 million in

2000.

17.9 Miss Margaret NG remained concerned about the quality of prosecution and said that according to her knowledge, the defendants in certain cases had been discharged after cross examination by CPs. In reply, SJ said that it would not be appropriate to comment on individual cases but assured members that the performance of CPs was subject to regular review. She was also given to understand that CPs' performance at Magistrates' Court had been commented upon positively by Magistrates.

Prosecution policy

17.10 Miss Emily LAU said that an independent and consistent policy on prosecution was essential in the public's perception of fairness and equality before the law. Referring to a number of cases in recent years in which the D of J had apparently adopted different considerations in deciding whether or not to prosecute, Miss LAU asked whether the department had earmarked provision in 2001 for assessing public confidence in the legal system and for reviewing prosecution decisions which deviated from established prosecution policy.

17.11 While refraining to comment on individual cases, SJ nevertheless referred members to the booklet entitled "Prosecution Policy" issued in 1998 to enable the community to better understand the policy, principles and practices for public prosecution. The Legislative Council Panel on Administration of Justice and Legal Services had also been briefed on 16 January 2001 on the general prosecution policy and issues related to bind over orders. She advised that where circumstances permitted, the D of J would explain its position to the parties involved and the reasons for the decision to prosecute. While the D of J normally would not explain its position on a case in which it had decided against prosecution, it had already tried to provide as much information as it could to address members' concerns.

17.12 SJ confirmed that the review of prosecution policy was an on-going exercise for which no additional resources had been earmarked. She did not subscribe to the view that public confidence in the legal system had dropped and stressed that while the D of J was prepared to listen to the views of the public, it must not allow its decision to prosecute or otherwise to be influenced by political, media or public pressure.

Law drafting

17.13 Referring to the "Chinese-English Glossary of Legal Terms", Mr Henry WU asked about the provision for 2000 and 2001. In the light of the concerns expressed over the discrepancies between the Chinese and English texts of the Securities and Futures Bill, Mr WU asked whether a working group had been set up to study the English and Chinese texts of laws.

17.14 In response, SJ said that since the work on "Chinese-English Glossary of Legal Terms" had been completed in 1999, no estimates had been provided for 2000 and 2001. The Bilingual Laws Advisory Committee, which was responsible for authenticating Chinese texts of legislation which was then in English only, had already been dissolved upon completion of its work. Meanwhile, the Committee on Bilingual Legal System was studying how judgments in either language could be rendered into the other language. The Committee had completed a pilot project on translation of judgments into Chinese and the outcome had been forwarded to the relevant departments for follow up action.

17.15 As regards the Chinese and English version of the Securities and Futures Bill, SJ reported that at the meeting of the Panel on Administration of Justice and Legal Services on 20 March 2001, the Law Draftsman had explained that the objective of bilingual parallel drafting was to draft legislation that could accurately reflect the policy intent and the text must be clear and concise. There must not be any discrepancies in meaning between the Chinese and English texts. However, given that the two languages were different, the Chinese and English text would each be subject to its own syntactic and grammatical structures. SJ pointed out that after discussion, the Panel had suggested and the Law Draftsman had agreed that in drafting legislation, consideration should be given to a further factor that the Chinese and English texts should match as far as practicable.

Labour Tribunal

17.16 Noting that the time taken from appointment to delivery of judgment of the Labour Tribunal had increased from 91 days in 1998 to 114 days in 2000, Mr LAU Chin-shek expressed concern that protracted proceedings would add to the hardship of the workers. He asked whether practical measures would be taken to expedite the process and whether targets would be set in this respect.

17.17 In reply, JA advised that before formal trial, the Tribunal Officers of the Labour Tribunal would conduct conciliation between the claimants and defendants. As a result, most of the cases filed at the Labour Tribunal were either settled or withdrawn before trial, and the claimants had thus obtained their entitlements much earlier. The percentages of cases which eventually proceeded to trial were 43.5%, 36.3% and 28% for 1998, 1999 and 2000 respectively, indicating a rising success rate in conciliation. The remaining cases scheduled for trial were therefore relatively complex cases which might necessitate longer hearing. JA stressed that once a hearing had started, it would not be proper to take any administrative action to bring about its early conclusion, otherwise the independence of the Judiciary would be affected.

17.18 As regards shortening the waiting time for the first hearing at the Labour Tribunal, JA said that improvements had been made to streamline the procedures. The waiting time for the first hearing had been shortened from 24 days in 1998 to 21 days in 2000.

Lands Tribunal

17.19 Referring to the performance pledge that the target waiting time in the Lands Tribunal for compensation and building management cases in 2001 would be 80 days, Mr Albert HO urged the Judiciary to further reduce the waiting time. In reply, JA said that the target waiting time in 2000 was 100 days. Given that the actual waiting time achieved last year ranged from 26 to 29 days, the Judiciary was confident to set the planned waiting time for 2001 at 80 days. He stressed that the planned waiting time was the target performance pledge and the Lands Tribunal would try to achieve as short an actual waiting time as possible without compromising quality.

Application of information technology

17.20 Mr SIN Chung-kai asked whether judgments of the High Court and above would be uploaded onto the Public Information System to be implemented in 2001 and be made accessible to the public.

17.21 In reply, JA advised that with the Public Information and Payment Systems, the public would be able to access information such as the daily case activities of the various courts by electronic means instead of from the notice boards at court premises. At present, the public could access all the judgments

of the Court of Final Appeal and selected judgments of the High Court on cases of public concern at the Judiciary's website on the Internet.

17.22 Pointing out that the number of judgments made by the Court of Final Appeal a year was small, Mr SIN reiterated his view that a wider scope of court judgments should be made available on the Internet. In response, JA advised that time was needed to design an effective searching mechanism to deal with the large volume of sometimes quite lengthy judgments , it was only possible at present to upload judgments which were of wide public concern. However, consideration would be given to uploading a wider scope of judgments in the long term.

Attachment of Income Order

17.23 Mr Albert HO expressed concern about the long time taken from filing of application to approval in respect of Attachment of Income Orders.

17.24 JA explained that one of the reasons for the long time was because applicants very often were not inclined to continue with the proceeding. In the circumstances, the court was unable to take the initiative to pursue the matter further. However, once the required evidence was received from the applicant, the court would be able to make a ruling within 30 days.