

**Extract of Report of Finance Committee on the examination
of the Draft Estimates of Expenditure 2001-2002**

Chapter XVII : Administration of Justice and Legal Services

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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.

Chapter XVII : Administration of Justice and Legal Services

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

Chapter XVII : Administration of Justice and Legal Services

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.

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