

CB2/PL/AJLS
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30 November 2004

Mrs Percy Ma
Clerk to Panel on Administration of Justice
and Legal Services
Legislative Council Building
8 Jackson Road Central
Hong Kong

Dear Mrs Ma,

**Panel on Administration of Justice and Legal Services
Drafting Counsel in the Department of Justice**

Thank you for your letter of 12 November 2004 addressed to the Secretary for Justice who has directed me to respond to it. The Panel's concerns about the manpower position of the Law Drafting Division (LDD) are deeply appreciated.

I must stress at the outset that at present we have sufficient experienced law drafters in LDD to cope with the demand for legislative drafting service of the Government Secretariat. We are able to complete all drafting assignments within the agreed timeframe and embark on new initiatives such as the upgrading of our Bilingual Laws Information System and the provision of Committee Stage Amendments in the form of marked-up drafts.

The information as requested in (a) - (c) of your letter is set out below for transmission to the Panel.

- (a) Present staffing position of the Law Drafting Division (LDD) of the Department of Justice, including the number of drafting counsel, their years of service and experience in law drafting

As at 1 November 2004, there are a total of 102 staff in LDD, including:

- (i) 33 Government Counsel (GC) Grade officers in the ranks of Law Officer (LO), Principal Government Counsel (PGC), Deputy Principal Government Counsel (DPGC), Senior Government Counsel (SGC) and Government Counsel (GC);
- (ii) 18 Para-Legal Grade officers in the Law Clerk Grade and in the Law Translation Officer Grade; and
- (iii) 51 General Grades officers including Executive Officers, Secretarial and Clerical staff and Calligraphists.

Appendix I shows the present staffing position of all grades of staff in LDD. There are also 2 charts showing the years of service and drafting experience of the 33 counsel in active service in the Division.

- (b) Training on law drafting provided by the Department of Justice

Although actually doing the job over a long period of time is the most effective means to develop the highly specialised skill required of a competent law drafter, classroom-type training can provide new drafters with a solid foundation to build on. Training on selected topics benefit drafters with various experience. Overseas training helps to bring in new ideas and foster interflow with drafters from other common law jurisdictions. LDD spares no efforts in providing training opportunities to its counsel. A list of the training programmes

in legislative drafting provided to counsel of LDD since the Reunification is attached at Appendix II. A wide range of training programmes in other legal subjects as well as management training has also been provided.

(c) Measures taken to avoid a succession of gap among drafting counsel in order to ensure the quality and efficiency in drafting of legislation

Besides offering training opportunities, several measures have been taken to ensure that there is no gap in succession.

Since November 2001, LDD has been implementing a Mentorship Programme under which every Senior Government Counsel and Government Counsel is assigned a mentor at the directorate level. The mentor vets drafts prepared by the mentee and provides guidance throughout the drafting process. The mentee assists the mentor in the drafting of the latter's own English items. The arrangement allows junior drafters to gain exposure to more complicated work at an early stage of their career and enables them to acquire knowledge more conveniently from the experienced colleagues.

Experience in litigation and advisory work equips legislative drafters with useful practical insight. LDD has been very ready to send SGC and GC to other divisions of the Department of Justice on 6-month attachment to broaden their horizons.

LDD provides professional service to the policy bureaux in the implementation of public policies. Acquaintance with the policy formulation process and the Administrative Officers who issue drafting instructions to us help drafters to work more smoothly with clients because they can approach drafting problems from the policy proposers' perspective. LDD is a keen supporter of the Government Secretariat Attachment Programme under which officers from various departments are seconded to policy bureaux to undertake the work of Assistant Secretaries.

At present, we have enough experienced law drafters in LDD to cope with the demand for legislative drafting service. The great majority (26 out of 33) of the counsel in LDD are below the age of 45 and the wastage (in terms of resignations and retirements) is not expected to be high in the coming decade. As such I do not envisage that there would be any problem in succession planning in the foreseeable future. Our focus will remain on training of our drafting counsel to help them sharpen their legislative skills and enhance their drafting capabilities. On job experience and legislative drafting training will continue to be made available to our drafting counsel to safeguard the quality and efficiency in drafting of legislation.

The general civil service recruitment freeze also applies to GC grade in the Department of Justice. There is a general concern in the Department as a whole about the possible impact of the present recruitment freeze, if sustained, on succession planning of GC grades officers in the different legal divisions. We are addressing this issue in our discussions with the Civil Service Bureau as any special recruitment exercise is subject to exceptional approval being obtained through the Bureau from a panel co-chaired by the Chief Secretary and the Financial Secretary with the Secretary for the Civil Service serving as member.

I shall be happy to provide further information if Members of the Panel see fit.

Yours sincerely,

(Tony Yen)
Law Draftsman
Department of Justice

c.c. Hon Margaret Ng (Chairman)

Present staffing position of the Law Drafting Division (as at 1 November 2004)

(1) Government Counsel Grade : 33

	<u>Number</u>
<i>Law Officer (LO)</i>	1
<i>Principal Government Counsel (PGC)</i>	1
<i>Deputy Principal Government Counsel (DPGC)</i>	10
<i>Senior Government Counsel (SGC)</i>	14
<i>Government Counsel (GC)</i>	7

Statistics on legislative drafting experience

Years of Service in LDD	Number	Breakdown by rank				
		LO	PGC	DPGC	SGC	GC
16 years or above	4	1	1	2		
12 – 16 years	5			4	1	
8 – 12 years	12			4	8	
4 – 8 years	9				5	4
0 – 4 years	3					3
Total	33	1	1	10	14	7

Statistics on average years of legislative drafting experience of legislative drafters (excluding LO & PGC)

Rank	Average Years of Service in LDD	Average Years of Experience in Legislative Drafting
DPGC	13.1 years	14.6 years*
SGC	8.3 years	8.3 years
GC	4.5 years	4.5 years

* Two DPGC have acquired legislative drafting experience before joining LDD.

(2) Para-Legal Grades : 18

	<u>Number</u>
<i>Senior Law Translation Officer</i>	1
<i>Law Translation Officer</i>	1
<i>Senior Law Clerk I</i>	1
<i>Senior Law Clerk II</i>	4
<i>Law Clerk</i>	11

(3) General Grades : 51

	<u>Number</u>
<i>Executive Officer</i>	1
<i>Secretarial staff</i>	23
<i>Clerical staff</i>	17
<i>Calligraphist</i>	10

TRAINING PROVIDED

I. In-house Training**In-house Legislative Drafting Course (Note¹)**

Time	Number of counsel trained
10/1999 to 05/2000	6
07/2000 to 03/2001	6
07/2002 to 02/2003	6

Other in-house training (Note²)

Time	Number of counsel trained
1999	30
11/2000 to 02/2001	24
12/2001	26
09/2003	30

II. Overseas Legislative Drafting Courses for SGC

Time	Number of counsel trained	Place
09/1997 to 11/1997	1	UK
03/1998 to 05/1998	1	UK
09/1998 to 11/1998	1	UK

III. Overseas Legislative Drafting Conferences

Time	Number of counsel attending	Place
06/1998	1	USA
06/2000	1	USA
10/2000	1	Ireland
11/2000	1	Canada
06/2001	1	USA
07/2002	1	UK
09/2002	3	Canada
07/2003	1	Jamaica

IV. Overseas Training Attachment

Time	Number of counsel trained	Place
08/2001 to 11/2001	1	Canada

¹ This is a tailor-made 24-week full-time legislative drafting course commissioned by the Law Drafting Division to replace the overseas legislative drafting courses which are much more costly. An outline of the course is annexed hereto.

² The training includes 8 workshop sessions on plain English, 5 training sessions on various drafting topics, a seminar on draft drafting instructions and a seminar on plain language drafting.

Department of Justice, Law Drafting Division

Outline of Legislative Drafting Course

The course will have three components. These are—

- Seminars on topics relating to legislation (including subsidiary legislation), legislative drafting and statutory interpretation;
- Legal writing workshops; and
- Drafting exercises and seminars to discuss your returns on those exercises.

The course outline for seminars relating to legislation, legislative drafting and statutory interpretation is as follows:

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|--------|--|
| Week 1 | What statute law is; who legislates; restrictions on the legislature; institutional arrangements for the preparation of legislation; the preparation and implementation of the legislative program; the condition of the statute book; the role of the legislature; the legislative stages; legislative procedures; the demands of government. |
| Week 2 | Origins of legislation and legislative drafting; who does what in the preparation of legislation. The drafting of legislation (general outline); the drafting objectives and constraints; a broad outline of the drafting process; the pre-legislature stages, including the preparation of legislative proposals and drafting instructions. |
| Week 3 | The purposes of legislation; the importance of getting ‘the big picture’; ‘style’ in legislative drafting; the functions of particular kinds of provisions; miscellaneous matters of style (e.g. provisos and why they should not be used). |
| Week 4 | The drafting process; five stages of the drafting process: <ul style="list-style-type: none">• understanding the policy and instructions,• analysis,• design,• composition,• scrutiny. Formalities and arrangement. Numbering, lettering and indenting (tabulating) legislative provisions. Headings to Parts, sections and Schedules etc. Tables of contents. |

Week 5	The importance of communication in legislative drafting; words and syntax in the legislative context; traditional grammar. Factors that block readers' comprehension and what might be done to avoid them.
Week 6	Writing legislative sentences. Sentence length. Syntactic and grammatical pitfalls. The uncertainty and vagueness of words; ambiguity; instability of words (mobile and static meanings)
Week 7	The semantics of legislative drafting: miscellaneous words and expressions; the importance and significance of punctuation; words and expressions to avoid; expressing time; the use of 'must' rather than 'shall'. Writing 'gender neutral' legislation and avoiding patronising or demeaning language.
Week 8	Doubt factors (1): <ul style="list-style-type: none">• ellipsis,• the broad term,• political uncertainty,• the unforeseeable development.
Week 9	Doubt factors (2): <ul style="list-style-type: none">• how drafting errors arise,• how they might be avoided.
Week 10	Drafting the preliminary provisions - short and long titles, commencements; definition clauses; application provisions; binding the Government etc.; objects clauses.
Week 11	Substantive provisions: The significance of functions, powers, rights, authorities, duties and obligations; setting up a statutory corporation; setting up a licensing or registration system; setting up a court or tribunal.
Week 12	Supplementary provisions - enforcement: creating offences, vicarious liability, offences by corporations; powers of entry, search, seizure and inspection of documents; power to ask questions; forfeiture of seized property; injunctions, penalty notices and other means of enforcement.
Week 13	Drafting evidentiary provisions, taxing and financial provisions and validating provisions.
Week 14	Drafting the closing provisions, including savings and transitional provisions; repeals; expiry of temporary legislation; Schedules. Drafting amending legislation, including different amending techniques.

- Week 15 Drafting provisions to enable the making of subordinate legislation. What is 'subordinate legislation'? When does a document have legislative effect? Particular problems relating to subordinate legislation, including making, publishing and tabling such legislation. Quasi-legislation.
- Week 16 Subordinate legislation continued: validity, repugnancy and inconsistency; improper purpose; uncertainty.
- Week 17 Subordinate legislation continued: unreasonableness and proportionality; subdelegation of the legislative power; ousting of judicial review; incorporation of material by reference; effect of revocation of subordinate legislation; retrospective operation of subordinate legislation.
- Week 18 Statutory interpretation: Its relevance to legislative drafting. The different approaches to interpreting legislation.
- Week 19 Statutory interpretation: The importance of context; the associated words rule; the limited class rule; the implied exclusion rule; and other rules of construction.
- Week 20 Statutory interpretation: The relationship between legislation and the common law; presumptions of legislative intent; strict and liberal construction (penal and fiscal legislation); presumptions about mens rea and strict liability; other presumptions used to construe legislation.
- Week 21 The temporal operation and application of legislation (e.g. retroactivity). Interpretation of subordinate legislation. The Interpretation and General Clauses Ordinance (Cap. 1).
- Week 22 Provisions of the Basic Law to be aware of in drafting legislation. Other relevant laws such as the Hong Kong Bill of Rights Ordinance; the Public Finance Ordinance, the Criminal Procedure Ordinance and the Administrative Appeals Board Ordinance.
- Week 23 Statute consolidation, codification and revision, reprints etc. The importance of drafting coherent and informative explanatory notes, particularly for amending legislation.
- Week 24 Drafting laws in the English and Chinese languages; the need to draft to facilitate translation; communications between anglophone and Sinophone counsel; the Official Languages Ordinance. An overview of the course.