

LegCo Panel on Administration of Justice and Legal Services Policy Initiatives of the Department of Justice

Introduction

The 2005-06 Policy Agenda lists the Government's new and ongoing initiatives of the Second Term Government of the Hong Kong Special Administrative Region under the new Chief Executive for the period from July 2005 to June 2007. This paper describes the initiatives that relate to the Department of Justice.

Effective Governance

2. We have four new initiatives and seven ongoing initiatives under the heading of "Effective Governance". The four new initiatives are as follows.

- Enhancing the law drafting skill of law draftsmen through an in-house mentorship programme and enriching their drafting experience through short-term attachments to other common law jurisdictions.
- Enhancing the quality of criminal justice by conducting a comprehensive review of the disclosure arrangements of the law enforcement agencies in relation to material which requires to be revealed to the defence to ensure the fair and proper conduct of criminal cases.
- Developing the standards of appellate advocacy and preparation in criminal cases through the compilation of a Criminal Appeals Manual.
- Strengthening liaison with the International Association of Prosecutors in order to facilitate its work in the Asia/Pacific Region and to promote co-operation amongst prosecutors at the

global level in the combat of crime.

3. Under the Law Drafting Division's mentorship programme, six directorate counsel each take on two or three non-directorate counsel as his or her "mentees". The directorate counsel oversee the drafting work of their mentees by giving guidance or advice throughout the drafting stage, clear the final draft of legislation prepared by the mentees, and require the mentees to do research or drafting work of the directorate counsel. Discussion between the directorate counsel and their mentees of the more complex legislation done by the directorate counsel also takes place. Under the Law Drafting Division's short-term attachment programme, two SGC draftsmen have recently started a three months' attachment with the legislative drafting offices in the UK and Canada in order to gain wider drafting experience.

4. The rules relating to the disclosure to a defendant of unused materials obtained by law enforcement agencies have developed in recent years. In order to ensure that those agencies fully understand their duty of disclosure, and that their disclosure guidelines are up-to-date, the Prosecutions Division will provide comprehensive advice and guidance on the current legal requirements.

5. The Prosecutions Division will compile a Criminal Appeals Manual, which will cover the practice and procedure of appeals in criminal cases and provide proforma documents and precedents on common topics and issues. The standards of appellate advocacy and preparation in criminal cases will also be developed through the provision of high level training and by ensuring that relevant counsel are aware of the latest developments in the criminal law.

6. Prosecutions Division will strengthen liaison with the International Association of Prosecutors by –

- liaising closely with prosecutors and law enforcers in other jurisdictions to develop the means to prosecute crime effectively
- working closely with the Asia Crime Prevention Foundation in the

formulation of regional anti-crime strategies

- co-operating with our counterparts to promote high standards and principles of criminal justice.
- hosting the annual conference of the International Association of Prosecutors in Hong Kong in September 2007.

7. The seven ongoing initiatives under the heading of “Effective Governance” are as follows.

- Continuing to take forward constitutional development after 2007.
- Continuing to facilitate the implementation of “One Country, Two Systems” and to demonstrate its success; and to facilitate the promotion of public awareness and understanding of the Basic Law.
- Promoting understanding of the rule of law in and outside Hong Kong and considering reforms to improve the legal systems.
- Promoting transparency in the area of public prosecutions and implementing practical steps to avoid miscarriages of justice.
- Liaising with our justice partners to enhance the quality of criminal justice and taking of measures to secure a better deal for victims of crime and witnesses.
- Continuing the Bilingual Law Information System to provide easy access to our bilingual laws of Hong Kong and improving the standard of government lawyers in respect of bilingualism in law.
- Continuing discussions with the Mainland and other jurisdictions on bilateral co-operation relating to Mutual Legal Assistance in Criminal Matters, Surrender of Fugitive Offenders, and Transfer of Sentenced Persons, and in Reciprocal Enforcement of Judgments in

Civil and Commercial Matters.

8. With regard to constitutional development, the Secretary for Justice is a member of the Task Force that has, so far, published four reports. The Fifth Report will soon be published and will set out a comprehensive package of reforms which are considered to stand the best chance of achieving consensus among the various parties, having regard to the nine factors stated in the Report submitted by the previous Chief Executive to the NPCSC in April 2004 and the Decision of the NPCSC of 26 April 2004. The Task Force will strive to gain the support of the public and the Legislative Council. We very much hope that a consensus on the way forward will emerge by late 2005 and that work on local legislation can commence by early 2006.

9. The Department of Justice will continue to provide legal advice to all Government bureaux and departments to ensure that their policies and legislative initiatives comply with the Basic Law. It will also provide legal assistance whenever any of those policies or initiatives are challenged in court. This advice and assistance will help to ensure that the concept of “One Country, Two Systems” is faithfully implemented. The department will also continue to assist in promoting public awareness and understanding of the Basic Law by participating in the publication of the Basic Law Bulletin and in the work of the Basic Law Promotion Steering Committee, and through speeches, briefings and other activities.

10. The promotion of the rule of law will continue to be achieved in numerous ways – such as through articles, speaking engagements, conference attendances and briefings, both in Hong Kong and elsewhere. The department’s ongoing work in considering ways to improve the legal system will include participating in the Chief Justice’s Working Party on solicitors’ rights of audience, and considering the implementation of Law Reform Commission proposals concerning the law of domicile and privity of contract. The Commission published its report on domicile in April this year and is about to publish its report on privity of contract.

11. As a responsible prosecuting authority, we recognise the importance of explaining our work to the community. Through the

publications of the Prosecutions Division and a policy of openness, we will continue to promote transparency and accountability in respect of public prosecutions. Awareness of latest developments in the criminal law will also be furthered.

12. Recent initiatives to avoid miscarriages of justice will continue to be taken forward. These include –

- implementation of a code of practice to regulate the conduct of expert witnesses engaged by the prosecution, published in early 2005
- application of new guidelines on the use of prisoner informants, and the publication of detailed guidance to prosecutors and police regarding participating and ordinary informants
- reshaping of cultures and practices amongst frontline enforcement personnel through the provision of briefings and seminars
- retention of case materials to facilitate reviews of convictions in light of forensic advances
- post-exoneration reviews of cases which have miscarried.

13. Recent initiatives to promote the interests of persons involved in criminal cases are ongoing. These include –

- implementation of new prosecution guidelines on the treatment of victims and witnesses, published in April 2004
- improved guidance for witnesses at court, and pre-court
- better treatment at court of victims in sexual cases
- improved guidance on the description of victims in blackmail and other sensitive cases.

14. As an effort to further improve public access to the Bilingual Laws Information System (“BLIS”), an additional feature allowing those who gain access to the BLIS through the Internet to download all or selected provisions of an Ordinance or a piece of subsidiary legislation in one go has been added to the system since May 2004. This feature relieves a user who would like to download all or a substantial number of selected provisions of a piece of legislation of the trouble of downloading and printing the provisions one by one.

15. The department will continue to take various steps to improve the bilingual skills of counsel. These include provision of special Chinese courses at Sun Yat-sen University, the development of bilingual legal glossaries and sample bilingual documents and charges, and the translation of significant judgments.

16. With regard to bilateral legal co-operation with the Mainland and other jurisdictions, the discussions with Mainland authorities over the Reciprocal Enforcement of Judgments in Civil and Commercial Matters have been fruitful and the Administration will soon be reporting the proposed arrangements to this Panel.

Vibrant Economy

17. We have one new initiative, and five ongoing initiatives, under the heading “Vibrant Economy”.

18. The new initiative is a review of the law of arbitration with a view to making it more user-friendly and thereby attract more international arbitrations to Hong Kong. At present, the Arbitration Ordinance contains two regimes, one for international arbitrations (based on the UNCITRAL Model Law) and one for domestic arbitrations. An unofficial report, prepared by the Committee on Hong Kong Arbitration Law, has proposed that the law should be simplified by applying the UNCITRAL Model Law to all types of arbitration. Following consultation with the AJLS Panel, a working group was established by the Department of Justice in September 2005 to consider and take forward

this reform proposal. Representatives of the legal profession, arbitration experts and others have been appointed to the working group.

19. The five ongoing initiatives under the heading of “Vibrant Economy” are as follows.

- Overseeing socio-legal research being conducted by consultants into the supply of, and demand for, legal services in the community.
- Facilitating further discussions with Mainland authorities on legal co-operation; implementing legal co-operation agreements with individual Mainland Justice Department or Justice Bureau; enhancing exchanges between the Hong Kong legal profession and the Mainland counterparts; and promoting greater understanding among Hong Kong lawyers of business opportunities in the Mainland.
- Contributing to the development of a legal services information website.
- Assisting in the development of Hong Kong as a regional centre for legal services and dispute resolution.
- Exploring with the Hong Kong legal profession, and discussing and concluding with Mainland authorities, further market access opportunities for legal services under CEPA III.

20. In July 2004, the Department of Justice commissioned consultants to undertake a two-year study into the supply of, and demand for, legal services in the community. The results of this socio-legal research can help in shaping future policies in respect of legal services and dispute resolution. The department has established an advisory committee, consisting of members of the legal profession, legislators, academics and others, which will monitor the work of the consultants. The study is progressing well : on the supply side, the questionnaires have been developed and tested, and the survey is now being

conducted; on the demand side, the pilot tests of the questionnaires are being conducted.

21. The department will continue to develop co-operation, mutual legal understanding and business opportunities in respect of the Mainland by implementing legal co-operation agreements between itself and justice departments and bureaux in various Mainland provinces and cities; by facilitating exchanges between members of the Hong Kong legal profession and their Mainland counterparts; and by promoting greater understanding among Hong Kong lawyers of the business opportunities in the Mainland.

22. In March 2004, the Department of Justice commissioned experts at the University of Hong Kong to establish a bilingual legal information website. This will enable members of the community to have free access, via the Internet, to user-friendly information in respect of legal problems that commonly arise. It will also help them to find legal advisers, and to obtain information about financial help and the costs of legal services. The website is now operational, although not yet fully completed. Its address is <www.hkcliv.org>. The department will continue to monitor the development of this website, which will take about three years to complete.

23. The development of Hong Kong as a regional centre for legal services and dispute resolution will continue to be promoted through speeches, articles and briefings of visiting delegations, as well as by ongoing discussions on the proposed reciprocal enforcement of Hong Kong and Mainland judgments and on the Hague Convention on Choice of Court Agreements.

24. With regard to legal services being provided in the Mainland, CEPA III will contain two further benefits for Hong Kong lawyers. The first relates to additional associations that may be formed between Hong Kong and Mainland law firms, and the second to the ability of lawyers who are qualified to practise in both Hong Kong and the Mainland to continue to practise in Hong Kong. Details of these new benefits will be announced in the near future.

Enlightened People with a Rich Culture

25. We have one ongoing initiative under the heading of “Enlightened People with a Rich Culture”, which is to continue to participate in the work of the Standing Committee on Legal Education and Training to oversee and promote reforms in legal education. A new statutory Standing Committee on Legal Education and Training has taken over the work previously done by the ad hoc Steering Committee on Legal Education and Training, and by the statutory Advisory Committee on Legal Education. A representative of the Department of Justice is a member of the new Standing Committee, and the Solicitor General has been appointed as its chairman. The Committee is determined to ensure that the momentum of reform continues in the years ahead.

Comments

26. The Department of Justice welcomes comments by members of the Panel on these initiatives and will continue to co-operate with the Panel as it takes the initiatives forward.

Department of Justice
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