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Panel on Administration of Justice and Legal Services
Background brief for the meeting on 24 November 2008
Court Prosecutors System

Purpose

This paper summarises the past discussions of the Panel on Administration of Justice and Legal Services (the Panel) on issues relating to the Court Prosecutors (CP) system.

Background

2. The CP grade was created in 1976 in connection with a pilot scheme to take over the prosecution work in the Magistrates' Courts from Police Inspectors. The scheme was subsequently made permanent in 1979. By 1994, CPs had replaced Police Inspectors in all Magistrates' Courts. A large amount of prosecution cases at the summary level are now handled by CPs. Apart from police cases, CPs also conduct prosecution for cases investigated by various bodies, such as the Customs and Excise Department, Leisure and Cultural Services Department, Education Department, Independent Commission Against Corruption and the Mandatory Provident Fund Schemes Authority.

3. The CP grade comprises four ranks, namely, Chief CP, Senior CP I, Senior CP II and CP, and their respective pay scales are as follows -

| Rank | Pay Scale (Master Pay Scale) | Monthly Salary (with effect from 1 April 2008) |
|--------------|---------------------------------|--|
| Chief CP | Points 40 - 44 | \$66,060 - \$77,675 |
| Senior CP I | Points 34 - 39 | \$50,475 - \$63,335 |
| Senior CP II | Points 28 - 33 | \$38,470 - \$48,400 |
| CP | Points 13 - 27 | \$18,885 - \$36,740 |

The entry qualification to the CP rank is matriculation. New CPs undergo nine months of full-time training. At the end of the training, they are required to pass written and practical examinations in law, court procedures and prosecution techniques before taking up the job.

4. As at July 2008, the CP grade has an establishment of 102 and a working strength of 92 (i.e. 2 Chief CPs, 8 Senior CP Is, 29 Senior CP IIs, and 53 CPs).

Discussions of the Panel

Work performance of CPs vis-à-vis legal professionals

5. The Panel exchanged views with the Administration on the CP system at its meeting on 25 November 2002. Some members expressed the view that legally qualified practitioners were better able to handle prosecution work than unqualified persons. They were concerned that most of the prosecution cases in Magistrates' Courts were conducted by CPs who were, for the most part, not legally qualified. The Panel invited the Administration to consider the proposal of the Hong Kong Bar Association that greater use should be made of professionally qualified persons instead of CPs to undertake prosecution work in the Magistrates' Courts, particularly in cases in which the likely consequence of conviction was a sentence of imprisonment.

6. The Administration advised that although legal qualification was not a job requirement, the qualifications of CPs were high and improving. The majority of CPs were degree holders, some had acquired legal qualifications and some were studying law with a view to getting themselves qualified. It was the Administration's view that the CP system had served Hong Kong well since its inception. CPs were well trained and properly supervised. The types of cases they handled were limited. If cases involved difficult points of law, Government Counsel or counsel briefed from the private practice would be employed in the prosecution. CPs did a fair job as reflected not only on their day-to-day work, but also on the low appeal rate.

7. The Administration further advised that the Department of Justice (DoJ) had a policy of briefing out some of its summary level prosecutions to junior barristers and solicitors, thus providing them with exposure to prosecution work at an early stage of their career. Its primary obligation, however, was to provide a high quality, efficient and cost-effective prosecution service.

Cost-effectiveness of the CP system

8. Regarding the costs of using legal practitioners to take charge of prosecutions in the Magistrates' Courts vis-à-vis that of CPs, the Panel noted from the Administration that based on the relevant figures in 2001, the average cost, including the accommodation cost, of a CP grade officer conducting prosecutions was \$3,045 per court day, whereas the fees for counsel prosecuting on general fiat was \$5,670 per

court day. If all the 14 537 court days conducted by CPs in 2001 were briefed out to private counsel, it would cost about \$82 million, which was 86% more than the \$44 million cost of CPs. The Administration considered that the service of CPs was not only professional but also cost-effective.

9. According to DoJ's reply to Dr Hon Margaret NG's written question on the Estimates of Expenditure 2008-2009 dated 28 March 2008, the average cost of a CP conducting prosecutions at Magistrates' Courts in 2007 was \$2,787 per court day (inclusive of staff cost and accommodation cost), while the fees for fiat counsel was \$5,430 per court day.

Review of the CP grade

10. When the subject of staff wastage in the Prosecutions Division (PD) of DoJ was discussed at the meeting on 26 November 2007, some members considered that it was opportune to review the CP grade, the so called lay prosecutor scheme, with more and more law students graduating. The review should include how it compared with the practices in other jurisdictions, whether it was justified to have unqualified persons for prosecution before any court if the liberty of a person was at stake, etc.

11. The Administration advised that its prime concern was to provide the best prosecution services available. Members noted that at present about 50% of the CPs had some legal qualification. On the practice of overseas jurisdictions, the Administration advised that England and Wales had introduced a similar system of using non-qualified persons to deal with summary cases, whereby "designated case workers" were engaged to handle prosecutions in the lower courts. In Australia, most of the prosecution work in the magistrates' courts were carried out by police prosecutors.

12. In response to members' suggestions of recruiting fresh law graduates as CPs, and creating "Assistant Public Prosecutor" posts to recruit newly qualified members of the Bar, the Administration advised that there was a trainee system in PD to recruit newly qualified solicitors and barristers every year. The trainees were eligible to become Government Counsel later on. The Administration further advised that DoJ previously had "Assistant Crown Counsel" posts and the need for the creation of similar posts would be reviewed.

13. At the request of the Panel, the Administration undertook to provide a paper on the review of the CP grade. The Administration's response [LC Paper No. CB(2)2634/07-08(01)] was issued to members on 17 July 2008, and re-issued vide LC Paper No. CB(2)309/08-09 on 18 November 2008.

Latest developments

14. When the Panel was briefed on the Chief Executive's 2008-2009 Policy Address at its meeting on 20 October 2008, members noted from the Secretary for Justice (SJ) that a recruitment exercise for CPs would be conducted shortly to fill the 10 vacancies in the grade. The Panel also noted that the Administration endorsed in principle that the bulk of prosecutions ought ideally to be conducted by the legally qualified, if not in the short term, then in the medium to long term. The newly recruited CPs would, unless they were legally qualified, generally concentrate on general court and administrative duties. The Administration also advised that the Bar Association and the Law Society of Hong Kong were agreeable to the above principles and did not object to the recruitment exercise.

Relevant papers

15. A list of relevant papers is in the **Appendix** for members' easy reference. The papers are available on the Council's website at <http://www.legco.gov.hk/english/index.htm>.

Council Business Division 2
Legislative Council Secretariat
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Court Prosecutors System

List of relevant papers

| Meeting | Date of meeting | Papers/minutes |
|---|------------------|---|
| Panel of Administration of Justice and Legal Services | 25 November 2002 | <p>Administration's paper on "Recruitment of Court Prosecutors" [LC Paper No. CB(2)435/02-03(04)]</p> <p>Extract of Report of Finance Committee on the examination of the Draft Estimates of Expenditure 2001-2002 [LC Paper No. CB(2)435/02-03(01)]</p> <p>Extract of speech by Secretary for Justice at the resumption of the Second Reading of the Appropriation Bill 2001 at the Council meeting on 4 April 2001 [LC Paper No. CB(2)435/02-03(02)]</p> <p>Administration's response to questions raised at the Special Finance Committee meeting on 26 March 2002 [LC Paper No. CB(2)435/02-03(03)]</p> <p>Minutes of meeting [LC Paper No. CB(2)968/02-03] (paragraphs 40 to 57)</p> |
| | 26 November 2007 | <p>Minutes of meeting [LC Paper No. CB(2)673/07-08] (paragraphs 25 to 37)</p> <p>Administration's response to information requested by the Panel at its meeting on 26 November 2007 [issued vide LC Paper No. CB(2)2634/07-08(01) on 17 July 2008]</p> |
| | 20 October 2008 | <p>Speaking note of the Secretary for Justice [LC Paper No. CB(2)94/08-09(01)] (the penultimate paragraph) (<i>Chinese version only</i>)</p> |