

For discussion on  
15 December 2009

**LEGISLATIVE COUNCIL  
PANEL ON  
ADMINISTRATION OF JUSTICE AND LEGAL SERVICES**

**Proposal for Creation of Two Permanent Posts of  
Deputy Principal Government Counsel  
in the Department of Justice**

**PURPOSE**

This paper invites Members' views on the proposed creation of the following directorate posts in the Department of Justice (DoJ) with effect from 1 April 2010 –

- (a) one Deputy Principal Government Counsel (DPGC) (DL2) post in the Civil Division (CD) to head a dedicated legal team in CD to cope with the new and additional workload arising from Government's obligation to screen the claims lodged under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in compliance with the various Court judgments, and to tackle legal challenges mounted against the torture claim screening mechanism; and
- (b) one DPGC (DL2) post in the Prosecutions Division (PD) to lead a team of court specialists for conducting trials and providing legal advice on triad and organised crime matters.

**JUSTIFICATION**

**Creation of a DPGC post in CD**

**Sharp rise in the number of torture claims**

2. The United Nations' Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been applied to Hong Kong since 1992. From 1992 to 2004, in total, only 44 torture claims were made under Article 3 of the CAT against repatriation from Hong Kong. In June 2004, the Court of Final Appeal (CFA) ruled in a judicial review (JR) case

that the screening of torture claims should be conducted by the Government independently, and the procedures for screening torture claims should meet high standards of fairness and allow every reasonable opportunity for the claimant to establish his claim. Thereafter, the number of torture claims has surged from 186 in 2005 to 2 198 in 2008. In the first ten months of 2009, 2 761 new claims were received. The outstanding cases pending screening stood at 6 203 as at the end of October 2009. There is currently a monthly intake of about 300 new cases.

### The screening of torture claims

3. The Administration has been reviewing the torture claim screening mechanism from time to time with a view to achieving effective screening, ensuring procedural fairness and preventing abuse. However, in December 2008, the Court of First Instance's (CFI) judgment in the *FB & Others* ruled that the screening procedures put in place by the Administration were not able to meet the high standards of fairness and requires that the screening mechanism for torture claims should be improved, among others, on the following aspects:

- (a) publicly-funded legal assistance to needy claimants should be provided;
- (b) the decision-maker on a claim should be the officer who has interviewed the claimant; and
- (c) oral hearing of a petition should be arranged where required.

4. The screening of torture claims has been suspended since the handing down of the judgment. Since then, steps have been taken to revise the screening mechanism to ensure that it will meet the standards of fairness stipulated in the CFI judgment. The Security Bureau (SB) intends to resume screening under an administrative mechanism with enhanced measures in December 2009, and to introduce legislation to underpin the screening mechanism as well as to provide for a statutory tribunal to handle appeals lodged by unsuccessful torture claimants. The Legislative Council Security Panel was briefed on the proposed enhancements on 1 December 2009. A copy of the relevant Panel paper is at **Annex 1**. With the implementation of the enhanced administrative mechanism, it is expected that issues on CAT and related matters will more frequently be raised by claimants or their lawyers on the screening of torture claims. Where an oral hearing is to be conducted at the petition stage, the Administration would require legal representation before the petition adjudicator, given that a torture claimant will normally be legally represented at such a hearing.

### The legal challenges

5. Under the old screening system, there have been legal challenges on various aspects of the screening procedures and treatment of torture claimants including JR cases challenging the lawfulness of detention of torture claimants, obligation to screen refugees under the customary international law, fairness of the screening procedures, the provision of publicly-funded legal assistance to torture claimants and the power to prosecute torture claimants released on recognisance for taking up illegal employment in Hong Kong. While the Administration would ensure that the processing of cases under the enhanced administrative procedures and the future statutory mechanism fulfils its legal obligations, it is likely that some refusal decisions made under the new system would be brought to test before the courts. Such new challenges would come on top of the existing multiple litigation already mounted by torture claimants.

6. Furthermore, from experience, torture claims are made in the context of challenges of other immigration decisions. The applicants in these JR cases who mount challenge to the relevant immigration decisions, e.g. removal, deportation, etc. would normally argue their case on the basis that the relevant decisions were made unlawfully at the level of constitutional law, domestic law and the relevant international law or conventions which apply to Hong Kong. Such cases are invariably complicated and tread into new legal territories. An average JR case may run up to three years after leave for JR is obtained in CFI before its final disposal by the CFA.

### Other immigration cases

7. Apart from torture claim cases, there are a whole series of other immigration cases handled by DoJ. The cases often hinge on Hong Kong's broader immigration as well as population and social welfare policies and invariably involve complex legal issues. For instance, there are challenges brought against the policy to levy obstetric charges against Mainland pregnant women as non-eligible persons and the policy to grant comprehensive social security assistance subject to residence requirements. This is in addition to appeals before the Immigration Tribunal on removal issues and Registration of Persons Tribunal concerning right of abode issues made by different groups of people in Hong Kong who claim to have satisfied the ordinary residence requirement. The workload generated from immigration or immigration-related cases either raising direct challenges to immigration decisions or indirect challenges through other areas has increased significantly in numbers and complexity.

Dedicated team for torture claim cases

8. CD is headed by the Law Officer (Civil Law) (LO(C)) (DL6) who is supported by four Deputy Law Officers (DLO), ranked at Principal Government Counsel (PGC) (DL3), heading each of the four units in the Division respectively, namely Civil Advisory Unit (CAU), Civil Litigation Unit (CLU), Commercial Unit and Planning, Environment, Lands and Housing Unit. Each of the four units comprises two to three Senior Assistant Law Officers (SALO), ranked at DPGC. CAU provides legal advice on civil matters to all Government bureaux and departments and CLU is responsible for all civil proceedings involving the government and statutory bodies. The CLU and CAU each have three SALOs.

9. Hitherto, torture claims and other immigration related cases were handled in the same manner as other advisory and litigation civil cases by three levels of counsel, i.e. DPGC, Senior Government Counsel (SGC) and Government Counsel (GC) in CAU and CLU. The counsel handling torture claims and other immigration-related claims were required to take on other types of advisory and litigation cases. This arrangement was premised on the assumption that torture claims and other immigration-related cases and issues were few and far between. However, the increasing workload and the growing specialisation required to perform the tasks now demand a more focused approach. In this regard, there is an urgent need to set up a dedicated team within the CD with a DPGC to lead a team of non-directorate staff with a view to –

- (a) providing legal advice for the purpose of ensuring that the new administrative screening arrangements and procedures are fully compliant with the standards of fairness stipulated by the Court;
- (b) analysing the various legal issues pertaining to the proposed statutory screening mechanism and providing advice thereto;
- (c) providing advice on other matters relating to torture claims, e.g. detention, welfare, data access requests, legal aid applications, the Administration's correspondence with torture claimants' lawyers, etc.;
- (d) providing a "one-stop" legal support in relation to torture claim cases, from the commencement of a torture claim including advice on the new procedure, legal representation at oral hearings before tribunals and in JR cases before CFI and any ensuing appeals; and

- (e) assisting Immigration Department (ImmD) in clearing its backlog cases and coping with the increase of new cases which are to be processed by the department.

10. Upon the creation of the DPGC post, the incumbent will work under the supervision of DLO(C)(CLU) in leading the dedicated team which comprises SGC and GC. The non-directorate counsel grade staff in the team will be required to give advice on all matters arising from screening and any ensuing legal challenges in addition to giving advice on proposed legislative amendments. The DPGC would be required to act as the team leader providing guidance and necessary support to counsel in the advisory work and litigation cases and taking up complex cases as appropriate.

11. As torture claim cases have a wide spectrum of legal issues such as customary international law and references may be required to the relevant laws and practices in overseas jurisdictions, the incumbent will lead the dedicated team to conduct legal research having regard to new developments in other jurisdictions.

12. The DPGC will also be responsible for the supervision and co-ordination of the multitude of torture claim related litigation from tribunal level to CFA. Given the diversity of the issues that may be raised (straddling civil advisory and litigation matters) and the generally tight legal schedule, it is necessary to pitch the co-ordinator at the DPGC level so that the team would have adequate steer and leadership to work independently.

13. For important litigation in respect of torture claims, the DPGC is required to closely monitor its progress and in suitable cases, he/she may have to take up the advocacy role and represent the Administration in court. The preparation in providing legal representation involves substantial work and is often urgently required, e.g. in habeas corpus proceedings or applications for injunctive reliefs sought against deportation or removal of torture claimants. This often calls for immediate action by the very nature of the decisions under challenge or at the request of the court.

### Ranking

14. The complexity of the nature of the work calls for the reinforcement of directorate staff in CLU through the creation of a dedicated post. The issues arising from implementation of the torture claim mechanism involve those at international law, constitutional and domestic law levels, and call for solid understanding of the relevant law and policies. Many of the cases will likely go through court proceedings from the CFI to CFA. The post to be created should therefore be pitched at DPGC level in recognition of the knowledge and experience required and the level of responsibility.

### Alternative

15. There is no viable alternative. Other than the creation of a DPGC post, the alternative of staff redeployment has been considered but found not feasible. In fact, the workload of CAU and CLU has increased by about 20% over the past five years, from some 28 200 cases in 2004 to some 33 700 cases in the first ten months of 2009. Also, the complexity and time spent particularly for mega cases or major projects have increased. It should be noted that the respective DPGC in CAU and CLU who have been responsible for torture claim cases are tasked with a host of other directorate supervision and management duties which are not delegable, in addition to other non-CAT related professional work assigned to them. It is therefore not possible to further stretch the manpower at DPGC level to absorb the extensive new work generated by torture claim cases.

### Interim measures

16. During the run-up to the resumption of torture claim screening in December 2009, a supernumerary DPGC post has been created on 19 October 2009 for a period of six months to head the dedicated team of a smaller scale comprising five SGC and GC. This is intended to be a tide-over arrangement for providing legal support to SB and ImmD in their preparation for the scheduled resumption of torture claim screening. The supernumerary DPGC post will lapse on 31 March 2010 subject to the approval of the DPGC post in this paper by the Finance Committee. Under this interim arrangement, the DPGC is engaged in providing legal support to the SB and ImmD on revising the relevant guidelines on the torture claim screening procedures and the petition procedures, assisting in the process of formulating the publicly-funded legal assistance scheme for torture claimants, arranging for research work to be done on torture claims and related issues, and giving advice on issues relating to the proposed legislation to create a statutory torture claim mechanism. Following the resumption of the screening process, the workload of the team is expected to increase and the support of a full-fledged team will be needed on a long-term basis.

\_\_\_\_\_ 17. The job description of the proposed DPGC post is at **Annex 2**.  
\_\_\_\_\_ The organisation chart of CD showing the proposed post is at **Annex 3**.

## **Creation of a DPGC post in PD**

### Directorate set-up of Prosecutions Division

18. At present, the Director of Public Prosecutions (DPP) (ranked at Law Officer (DL6)) is supported by four PGC. The PGC oversee the operation of the four sub-divisions which, in turn, comprise 15 specialist sections, each

headed by a DPGC. Each DPGC leads a team of SGC and GC, and is responsible for specific areas of criminal advisory and advocacy work.

19. Sub-division I comprises four DPGC who advise and prepare cases to be tried at different levels of courts, organise training for prosecutors and law enforcers, handle cases involving allegations of criminal misconduct on the part of police, specialise in dealing with vice cases and undertake administrative duties of the Division. Sub-division II comprises three DPGC who advise on organised crime and triads cases, provide legal advice to the Customs and Excise Department and prosecute serious and complicated trials. Sub-division III comprises three DPGC, who advise on bookmaking and gambling cases, narcotics policy, matters related to the Basic Law and the Hong Kong Bill of Rights Ordinance, appear in cases of JR, specialise in dealing with obscenity cases, handle immigration and labour cases, advise on departmental prosecutions, deal with all appeals and review of sentence cases, review and recommend changes in criminal law practice and procedure. Sub-division IV comprises five DPGC who handle commercial crime, computer crime and copyright crime cases, advise on and prosecute cases investigated by the Independent Commission Against Corruption, advise the Inland Revenue Department, deal with restraint and confiscation of proceeds of crime in domestic cases, advise on anti-terrorism and handle market misconduct cases.

#### Supernumerary post

20. There are a total of 15 DPGC posts in PD comprising 14 permanent posts and one supernumerary post. There were unique circumstances leading to the creation of this supernumerary post. In 1994, the modified arrangements were made to overseas agreement officers who are permanent residents to transfer to local agreement terms applicable. This applied to agreements expiring on or before 1 September 1995. Under this arrangement, transferees were subject to a demotion scheme; a transferee so demoted (demotee) would receive a salary at the lower rank. In 1996, the Court of Appeal ruled that the above demotion scheme was unlawful. To address the claims of the 'demotees' for tangible loss in salaries and increments, the Finance Committee of Legislative Council approved on 20 June 1997 the creation of supernumerary posts to accommodate them in their original ranks. Such supernumerary posts would be retained until the demotees' promotion to the next higher rank above the original rank, or until they leave the service, whichever is the earlier.

21. In DoJ, two such supernumerary DPGC posts were created on 1 August 1997 to accommodate two counsel at DPGC level who were transferred to local agreement terms. Notwithstanding their status, since 1997, these two counsel have carried out duties at DPGC level. At that time, there were 16 sections in PD. In May 2002, one of the occupants of the supernumerary DPGC post left the service. The opportunity was then taken to review the

organisational structure of PD and it was re-organised into 15 sections with the work redistributed amongst the other directorate officers. The remaining supernumerary DPGC post, with the incumbent heading a section which prosecutes serious and complicated trials and advises on organised crime and triad matters, will lapse in February 2010 when the incumbent retires.

#### Changing scope of work and area of responsibilities

22. Since the re-organisation in 2002, consistent efforts have been taken to redeploy resources within PD to meet new challenges and increase in service demands, and the 15 DPGC have taken on an increasing workload and new areas of work. The incumbent of the supernumerary post has been performing the full range of duties of a DPGC. Because of the growing demands and rapid expansion in the portfolios at the directorate level, re-distribution of the incumbent's work to other directorate officers is not possible. A further reduction in manpower will adversely affect the Division's ability to effectively perform its role. We need to have a dedicated directorate officer to take up the incumbent's existing portfolio.

23. Workload apart, there has been growing complexity and diversity in the PD's work in the past ten years. A new constitutional order has been in place since 1997. Other factors which have increased the complexity and diversity of the Division's work derive from the replacement of the Privy Council by the CFA; the implementation of the Basic Law as a written constitution; the increasing demands imposed by the courts; the rapid changes in technology; and the globalisation of crime. The number of requests for legal advice has steadily increased, and the timeframe within which advice needs to be given has tightened; the subject matter has become diverse, branching into new areas of law. Such changes resulted in increasing pressure on the Division. This has increased the workload and burden of the directorate counsel who take on the strategic role of leading PD through these new challenges.

24. Upon unification with the Mainland on 1 July 1997, the CFA is being used to a far greater extent than was the Privy Council. In 1995, there were eight petitions and appeals in criminal cases from Hong Kong to the Privy Council. The corresponding numbers in 1996 and the first six months of 1997 were 23 and nine respectively. Between July 1997 and December 1998, there were no fewer than 64 CFA and CFA-related cases heard in criminal matters. The Division created a PGC post in 1999 to deal with CFA related cases. The number of CFA related cases has continued to increase from 69 in 1999 to 121 in 2008. The CFA is empowered to consider appeals only where a point of law of great and general importance is involved, or it is shown that substantial and grave injustice has been done. In either case, the decisions of the CFA will almost inevitably have significant implications for the development of the HKSAR's common law, the interpretation of its ordinances and the administration of justice generally. An appreciation of the short and long-term



implications arising from each such case is essential and must be determined at the earliest stage. Short of legislative amendments, the decisions of the CFA are final and, as such, any position adopted will need to be based on a full understanding of the overall implications for the Administration. These cases require much input from the directorate level.

25. Judicial challenges are growing rapidly on various fronts. The number of JR proceedings involving criminal causes or matters has experienced an exponential growth in the past few years from two cases in 2004 to 15 cases in 2008. JR cases have to be dealt with on an urgent basis, and it is common for these cases to proceed to the CFA. The subject matters of, and the arguments involved in JR proceedings vary greatly. An accused's rights under the Basic Law and the Hong Kong Bill of Rights Ordinance, are usually engaged in arguments. Such challenges involve highly specialised and complicated arguments which need to be thoroughly researched and carefully presented. Relevant case law from the other common law jurisdictions and, where human rights arguments are involved, the decisions of the European Court of Human Rights will invariably need to be studied and examined in order that relevant principles can be discerned.

26. The implementation of the Basic Law and its interpretation by the courts give rise to a large number of novel and complex issues particularly in relation to human rights and political development. Some of the human rights issues had been foreshadowed by the enactment of the Hong Kong Bill of Rights Ordinance in 1991, which impact upon the trial and appellate work of the Division. In trials, we are faced with applications to stay proceedings or to exclude evidence and the basis of these applications will frequently be human rights principles derived from UK, Canada and Europe.

27. The increase in the number of sophisticated and complex crimes as well as the high demands of the courts have added to the burden on PD. Prosecutors are required to observe more stringent rules and guidelines on various prosecution matters. Directorate officers need to take the lead in reviewing the related policy, procedures and guidelines, as well as implementing solutions to meet new demands and requirements. Specific initiatives pursued include reviewing the procedures for disclosure of unused material by law enforcement agencies, drawing up measures to promote the position of crime victims and witnesses, preparing the guidelines for prosecuting case involving domestic violence, and implementing measures to fast-track cases involving vulnerable witnesses.

28. Significant areas of criminal activity are now computer and Internet based. Computer and Internet crime embraces a variety of offences. These include fraud, theft, pornography, criminal damage, access to computer with dishonest intent, copyright infringement and unlawful gambling. By its very nature, computer crime is becoming sophisticated and transnational. The

increase in this area of work has generated substantial new work for the Division.

29. The work of PD in the area of fraud and corruption cases has also increased significantly over the years. Fraud cases have become more sophisticated and complex. The legal advice for some of the large cases takes over one year and the final advice may run to 200 pages. Many of the fraud cases involve publicly listed companies, frauds practised on overseas institutions and the movement of funds outside Hong Kong. These are often complicated and necessitate the extradition of offenders from countries where they are located. It is common for these cases to involve large scale money laundering offences. The number of persons prosecuted for money laundering offences increased from 38 in 2001 to 364 in 2008.

Need for a DPGC post

30. As explained above, the four Sub-divisions and their 15 specialist sections are fully stretched. The incumbent of the supernumerary post has all along been carrying out the full duties of a DPGC and has been leading a section. The post holder is the Policy Co-ordinator on Triad and Organised Crime, and provides expert advice to prosecutors as required. He heads the Court Specialists and Triad & Organised Crime Section, which consists of four SGCs. The section deals with syndicated crime and the pursuit of enhanced sentences. Syndicated crime activity involves extortion, loan sharking, vice, illegal gambling and money laundering and much of the crime is triad-related. The number of cases prosecuted for triad society offences in the past few years are set out below -

<b>Year</b>	<b>Number of Cases</b>
2004	2 346
2005	2 304
2006	2 396
2007	2 259
2008	2 376

The incumbent and his team members also conduct trials of a serious and complicated nature in the CFI, cases of importance in the District Court and Magistrates Courts, handle advisory work in relation to triad and organised crime, and conduct appeals.

31. The workload of PD has increased in breadth and depth. The other sections and sub-divisions simply do not have the capacity to absorb the work of the triad and organised crime sub-division at the directorate level. There is an obvious need to retain this specialised section headed by a supervising directorate officer with extensive experience in these types of cases to deal with the increasing work in this area. The job description of the

proposed DPGC post is at **Annex 4**. The organisation chart showing the proposed change is at **Annex 5**.

#### Alternative

32. Other than the creation of the DPGC post, the alternative of staff redeployment has been considered but found to be not feasible. Other DPGC in PD are tasked with and fully tied up with their respective directorate supervision and management functions. Coupled with the professional work assigned to them, it is not possible to further stretch the manpower at DPGC level to absorb the additional work.

#### **FINANCIAL IMPLICATIONS**

33. The proposed creation of two DPGC posts in DoJ will bring about an additional notional annual salary cost at mid-point of \$3,036,000. The full annual average staff cost, including salaries and on-cost, is \$4,384,992. We will include the necessary provision in the 2010-11 draft Estimates to meet the cost of this proposal.

#### **ADVICE SOUGHT**

34. Members are invited to comment on the proposal. Subject to Members' support, we will seek the approval of Establishment Subcommittee/Finance Committee.

Department of Justice  
December 2009

For information  
1 December 2009

## **Panel on Security of the Legislative Council**

### **Torture Claim Screening Mechanism: Enhanced Mechanism and Way Forward**

#### **Purpose**

This paper aims to report to Members the latest progress of the enhancements to the torture claim screening mechanism put forth by the Administration, and to brief Members on the proposed legislative framework for a statutory screening mechanism.

#### **Background**

2. The number of torture claims has continued to increase. From 2005 to 2008, there were 186, 541, 1,583 and 2,198 claims received in the respective years. From January to October 2009, there were 2,761 claims received. The screening of torture claims has been suspended after the ruling on *FB and Others*<sup>1</sup> was handed down last December. As at the end of October 2009, there were 6,203 claims pending screening.

3. At the meetings of the Panel on Security held on 6 July and 29 September, Members were briefed on enhancements to the torture claim screening mechanism to be implemented by the Administration, including:

- (i) Training and support for screening officers be strengthened;

---

<sup>1</sup> The Court of First Instance of the High Court ruled in this case that the previous screening procedures put in place by the Administration did not meet high standards of fairness, for reasons including (i) the Administration had not provided publicly-funded legal assistance to needy claimants; (ii) the officer who decided whether a claim was substantiated was not the one who interviewed the claimant; and (iii) the Administration had not provided for oral hearings of the petitions lodged by claimants who were dissatisfied with the result of the screening.

- (ii) Screening procedures be revised including that immigration officers responsible for conducting screening interviews would decide whether the claims are substantiated;
- (iii) Petitions against the result of screening will be decided by independent persons with a legal background, and hearings will be conducted in the petition process if required; and
- (iv) Legal assistance will be provided to claimants who lack economic means.

At the above meetings, Members were also informed that the Administration planned to introduce legislation on the screening procedures of torture claims, such that the procedures will be based on clear statutory provisions.

#### **Enhancing the Screening Mechanism**

4. The Administration and the Duty Lawyer Service (DLS) have reached agreement on launching a pilot scheme in December to provide publicly-funded legal assistance to torture claimants who meet the means-test requirements. Duty lawyers will provide legal advice in the screening process in respect of the grounds of claims and petitions as appropriate, and will represent eligible claimants at petition hearings. The remuneration for duty lawyers will be based on current payment rates under the Duty Lawyer Scheme. DLS has started the recruitment of qualified lawyers for the pilot scheme. As at 20 November, about 400 duty lawyers have enrolled for the scheme. Separately, with funding from the Administration's Professional Services Development Assistance Scheme, the Law Academy (set up by the Law Society) is organising a training programme in mid-December for lawyers interested in joining the scheme.

5. The screening of torture claims will resume before the end of the year. The screening mechanism will be reviewed with experience gained in practice.

#### **Legislative proposals**

6. We propose to put in place a statutory regime for handling torture claims lodged under Article 3 of the United Nations' Convention against Torture

and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>3</sup>. Through legislation, the screening procedures will be based on clear statutory provisions. We also believe that the deliberations of the Legislative Council will be conducive to the building of community consensus on the handling of torture claims.

7. Our preliminary proposal for the legislative framework covers the following:

- (a) to provide that a claimant whose claim has not been screened will not be repatriated to his place of origin where there is a claimed torture risk;
- (b) to provide for the procedures of making a claim, including the time limits for lodging a claim or an appeal, the onus of proof, etc.;
- (c) to provide that torture claims are to be assessed by immigration officers, and to establish an independent tribunal, for appeals lodged against the result of screening to be handled by non-officials with a legal background and relevant experience;
- (d) to provide for the provision of publicly-funded legal assistance to eligible claimants in the screening process;
- (e) to provide for the handling of situations where claimants abscond or procrastinate or refuse to attend screening interviews without reasonable excuse, and the detention power exercisable by the relevant authority;
- (f) to provide for the authority to effect removal/deportation against those torture claimants who have failed to substantiate their claims;
- (g) to provide that a claimant will not be repatriated to his place of origin where there is a substantiated claim of torture risk, until such risk has dissipated. During the transitional period when removal/deportation is suspended, the claimant will not be

---

<sup>3</sup> The Article provides that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

regarded as ordinarily resident in Hong Kong, and will not automatically become a permanent resident of Hong Kong; and

- (h) to provide for the offence of aiding and abetting the making of false claims.

8. The above legislative proposals aim to ensure effective and fair screening procedures and deter abuse of torture claims, so that Hong Kong will be able to maintain effective immigration control while fulfilling our Convention obligations.

9. In formulating the legislative proposals, we have made reference to the relevant systems in other common law jurisdictions (summary table at Annex). We also note some comments that the United Nations' 1951 Convention relating to the Status of Refugees should apply to Hong Kong, and that the Administration should process applications for refugee status in addition to screening torture claims. In this regard, we reiterate that our position on the Refugee Convention remains unchanged, i.e., the Convention does not apply to Hong Kong and the Administration has no obligation to handle applications for refugee status.

#### **Advice Sought**

- 10. Members are invited to note the content of this paper.

Security Bureau  
November 2009

**Mechanism for Screening Torture Claims/Refugees**  
**in some State Parties to the Convention Against Torture<sup>1</sup>**

Country		United States	Canada	United Kingdom	New Zealand
Number of applications <sup>2</sup> (in 2008)		About 47,500	About 37,000	About 26,000	About 250
Setting time limits	Lodging claims after arrival	Within 1 year of arrival, with supporting evidence	Soonest available opportunity or else adverse inference	Soonest available opportunity or else adverse inference	Soonest available opportunity or else adverse inference
	Submitting evidence	(As above)	File specified form and supporting evidence within 28 days of the application	Soonest possible or at screening interview (normally takes place within 2 weeks of the application)	Soonest available opportunity; evidence submitted after determination will not be considered
	Lodging appeals	30 days	15 days	10 working days (5 working days for claimants under detention)	10 working days (5 working days for claimants under detention)
Provisions for detention power		Yes	Yes	Yes	Yes
Offences for misrepresentation/abetting misrepresentation		Yes	Yes	Yes	Yes

<sup>1</sup> These countries are signatories to the Convention Against Torture as well as the 1951 Convention relating to the Status of Refugees and/or the 1967 Protocol of the Refugee Convention.

<sup>2</sup> Figures tabulated refer to all asylum applications. (There are no separate figures for torture claims.)



**Job Description**  
**Deputy Principal Government Counsel (Civil Litigation Unit) 4**

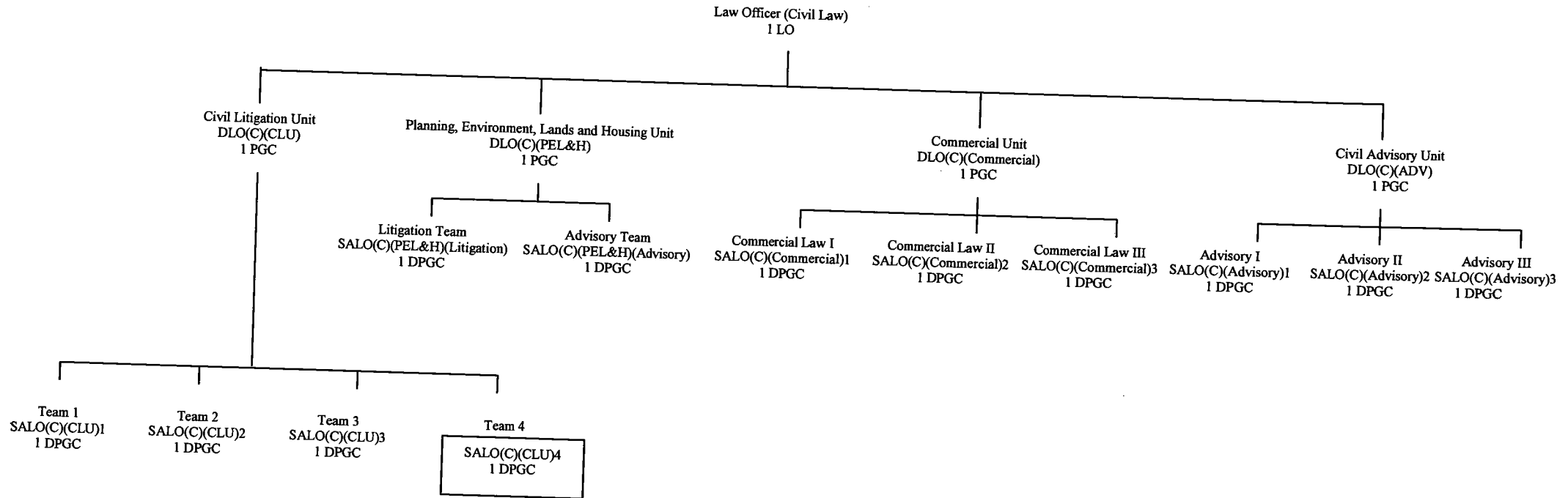
**Rank** : Deputy Principal Government Counsel (DL2)

**Responsible to** : Deputy Law Officer (Civil Law) (Litigation)

**Main Duties and Responsibilities –**

1. To direct and supervise the day to day work of a team dedicated (“the Dedicated Team”) to provide legal support in relation to matters arising from claims made under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) and other immigration related matters.
2. To provide legal advice in more complex and sensitive matters arising from the processing of claims made under CAT and to advise on legal issues relevant to policies on CAT and other immigration related matters.
3. To provide legal advice in relation to formulation of policies, legislative proposals and drafting instructions.
4. To appear before Executive Council and Legislative Council committees or panels, Working Groups and Committees.
5. To prepare and conduct the more complex and significant civil litigation cases relating to CAT claims and other immigration related matters.
6. To supervise and provide guidance and training to counsel of the Dedicated Team.
7. To be responsible for the general administration of the Dedicated Team.

### Existing and Proposed Organisation Chart of the Civil Division



**Legend :**

- LO - Law Officer (DL6)
- DLO(C)(CLU) - Deputy Law Officer (Civil Law) (Civil Litigation Unit)
- DLO(C)(PEL&H) - Deputy Law Officer (Civil Law) (Planning, Environment, Lands & Housing)
- DLO(C)(ADV) - Deputy Law Officer (Civil Law) (Advisory)
- PGC - Principal Government Counsel (DL3)
- DPGC - Deputy Principal Government Counsel (DL2)
- SALO - Senior Assistant Law Officer

- Proposed DPGC post

**Job Description**  
**Deputy Principal Government Counsel**  
**(Court Specialists and Triad & Organised Crime)**

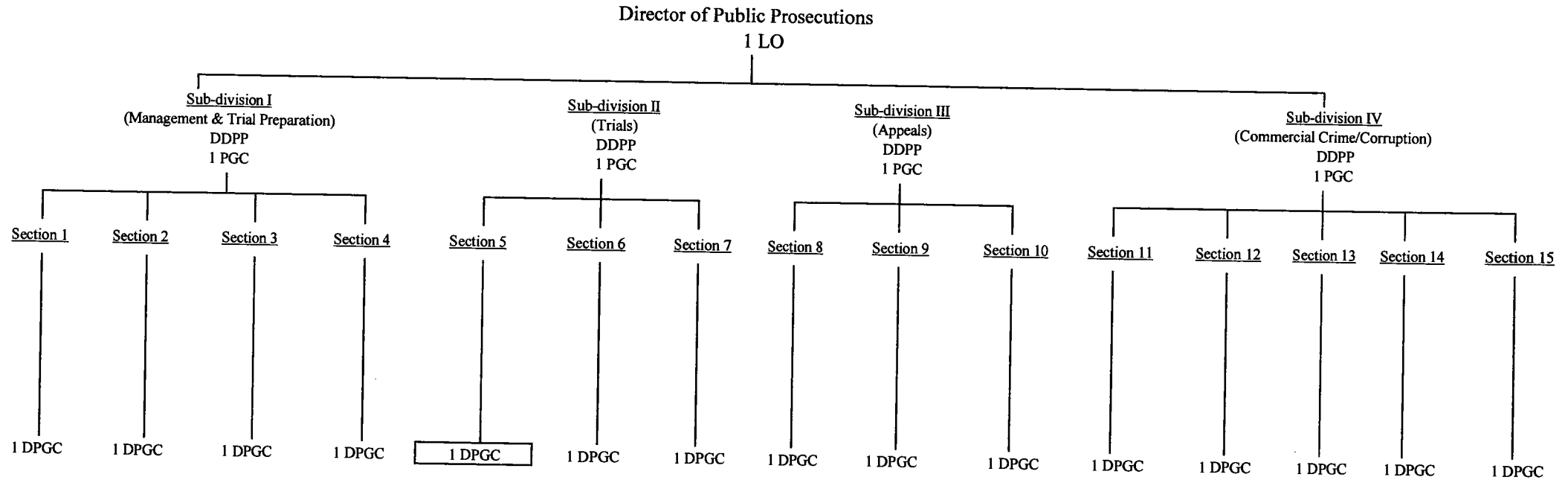
**Rank** : Deputy Principal Government Counsel (DL2)

**Responsible to:** Principal Government Counsel (PGC) of Sub-Division II of the Prosecutions Division

**Main Duties and Responsibilities -**

1. To advise the law enforcement agencies in relation to triad and organised crime.
2. To appear in court proceedings, both trials and appeals, in connection with serious and complicated cases.
3. To advise the Secretary for Justice and the Director of Public Prosecutions on triad and organised crime issues, prosecution policies, legislative proposals and amendments.
4. To discharge the managerial functions and duties of a Directorate Officer in the Court Specialists and Triad & Organised Team, including supervising the work of Senior Government Counsel and Government Counsel.

**Existing and Proposed Organization Chart  
of the Prosecutions Division**



**Legend :**

Post

- LO - Law Officer (DL6)
- PGC - Principal Government Counsel (DL3)
- DPGC - Deputy Principal Government Counsel (DL2)

- Supernumerary DPGC Post (DL2) proposed to be made permanent

Section

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>1 Trial Preparation Unit (Court of First Instance)</li> <li>2 Trial Preparation Unit (District Court)</li> <li>3 Court Prosecutors, Police Advice (Magistracy Court) &amp; Vice</li> <li>4 Management &amp; Training + Complaints Against Police</li> <li>5 Court Specialists + Triad &amp; Organised Crime</li> <li>6 Court Specialists + Customs &amp; Excise</li> <li>7 Court Specialists + Special Duties</li> </ul> | <ul style="list-style-type: none"> <li>8 Appeals &amp; Narcotics Policy Co-ordination</li> <li>9 Policy, Research &amp; Departmental Prosecutions</li> <li>10 Basic Law &amp; Bill of Rights, Judicial Review, Obscene Articles &amp; Child Pornography, Gambling</li> <li>11 Commercial Crimes Unit(A) + Domestic Proceeds of Crime &amp; Anti-Terrorism</li> <li>12 Commercial Crimes Unit(B) + Computer Crime &amp; Copyright</li> <li>13 Commercial Crimes Unit(C) + Market Misconduct &amp; Inland Revenue</li> <li>14 ICAC(A) + (Public Sector)</li> <li>15 ICAC(B) + (Private Sector)</li> </ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|