

**For discussion
on 10 February 1999**

EC(98-99)19

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 92 - DEPARTMENT OF JUSTICE Subhead 001 Salaries

Members are invited to recommend to Finance Committee the creation of the following permanent post in the Prosecutions Division of the Department of Justice -

1 Principal Government Counsel
(DL3) (\$127,900 - \$135,550)

PROBLEM

The Department of Justice (the Department) lacks dedicated legal input at the Principal Government Counsel (PGC) level to cope with the burgeoning work of the Court of Final Appeal (CFA) in criminal cases and to accord a proper level of representation for the Hong Kong Special Administrative Region (HKSAR) Government in these criminal proceedings.

PROPOSAL

2. The Secretary for Justice (SJ) proposes to create a permanent post of PGC (DL3) in the Prosecutions Division to head a new Sub-division to provide the necessary legal input and co-ordination for CFA work, and to develop expertise and advocacy of the highest standard to conduct criminal proceedings in the CFA.

/JUSTIFICATION

JUSTIFICATION

Existing Organisation

3. At present, the Director of Public Prosecutions (DPP) [ranked at Law Officer (DL6)] is supported by three PGC, each of whom is responsible for supervising several of the 16 sections within the Division. These sections are headed by Deputy Principal Government Counsel (DPGC) (DL2) and are mainly responsible for trial preparation, conduct of trials, training and development of bilingualism, vice, obscenity and gambling cases, complaints against Police, appeals, the Basic Law and human rights, immigration cases, coroners' inquests, labour cases, Independent Commission Against Corruption cases, Customs and Excise cases, commercial crime cases and miscellaneous advice. We set out the existing organisation chart of the Prosecutions Division at Enclosure 1.

4. Given the new challenges arising from the setting up of the CFA and the increased scope and level of responsibility of the sub-divisional heads, SJ considers it necessary to revamp the organisational structure of the Prosecutions Division and to create a new Sub-division headed by a PGC to deal with CFA and related cases.

Court of Final Appeal

5. Prior to 1 July 1997, we engaged London Queen's Counsel acting on behalf of the Hong Kong Government to conduct the bulk of criminal proceedings in 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.

6. Upon reunification with the Mainland on 1 July 1997, the CFA is being used to a far greater extent than was the Privy Council. Between July 1997 and December 1998, there were no fewer than 64 CFA and CFA-related cases heard in criminal matters with another 14 cases pending and seven others withdrawn after processing by the Prosecutions Division. We expect that each year the Department will need to handle at least 35 CFA criminal cases and 25 applications for certificates to the High Court. The amount of work generated by CFA not only poses a real challenge to but also drains the limited resources of the Prosecutions Division. At present, we have to redeploy counsel working in the Prosecutions Division from their regular duties to cope with the increase in workload generated by the CFA in a way which could be detrimental to the efficiency of the Division.

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7. The present situation is unsatisfactory. In this respect, it is worth pointing out that 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 decision 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. It is therefore important to have a dedicated team headed by an officer of the right calibre and at the appropriate level to ensure that the quality of the Government's representation will not be compromised due either to the lack of expertise or insufficient strength to attend to these matters to the required degree.

8. Although the Prosecutions Division is heavily committed to briefing out its work to the private sector, it cannot resolve the present problem by briefing out because the head of the proposed dedicated team would, in addition to appearing in the more complex CFA cases, be responsible for the co-ordinated approach of the Prosecutions Division to all CFA and CFA-related cases. Whilst we may still need to brief out certain selected CFA cases in future, they would remain subject to direct referral to the proposed team head as to matters of supervision, procedure, legal approach and policy considerations. As stated in paragraph 7 above, the responsibilities contemplated go far beyond experienced skills in advocacy and impact on matters directly affecting the administration of the legal system in the HKSAR at the highest levels. We therefore need a dedicated officer to conduct CFA cases himself and to develop the appropriate level of in-house expertise in this area.

Expanded Scope and Span of Control at PGC Level

9. The third PGC post of the Prosecutions Division was created in November 1983. Since then, the complexity of cases prosecuted by counsel of the Division at different level of courts has steadily increased due to crime trends, sophistication of the modern criminal, new areas of activity and the need to service new government departments. While the three PGC had to supervise a total of seven DPGC in 1983, they now have 16 DPGC under their supervision, representing an increase of 129%. Moreover, the establishment of the Division as a whole has also grown by 123% in the past 15 years (from 207 in 1983-84 to 461 in 1998-99). As there has been no corresponding increase in the establishment of

PGC, the three existing PGC are now required to exercise a degree of supervisory responsibility wholly out of proportion to that envisaged 15 years ago when the establishment was far smaller, and far more manageable than is the case today.

10. Furthermore, given the large number of counsel engaged in prosecutions work, it is necessary to have an effective organisational structure in place to advise the SJ and DPP on matters such as the need for appeals and reviews of sentence, the response to issues of policy, the categories of crimes, the trends of crime and the progress of cases. This arrangement is important so as to facilitate the due administration of justice and to provide sufficient and accurate information to SJ and DPP for their responses to policy issues, to practical difficulties, to queries from the Legislative Council and the Administration, etc; and generally to ensure that the Administration is properly briefed and prepared. To achieve these aims, we need to restructure the Prosecutions Division so that the areas of responsibility of each Sub-division are kept within manageable limits.

Need for an Additional PGC Post

11. In view of the increasing volume and complexity of CFA cases and taking into consideration the excessive span of control of the existing PGC, SJ considers it necessary to create an additional PGC post to assume overall responsibility in the Prosecutions Division as head of a specialist unit to handle CFA work. The proposed PGC will report to DPP and will be responsible for conducting CFA and CFA-related cases, which could ensure that savings of at least \$2.55 million in briefing out expenses would be achieved. He will also be responsible for devising and implementing a co-ordinated structure within the Prosecutions Division whereby all cases which are or potentially may be referred to the CFA are identified, assessed, prepared, assigned and prosecuted, and for advising SJ and DPP both generally and in relation to appeals to CFA which the Department itself may need to initiate. Given that judgments of the Court of Appeal are generally binding on the courts and the Administration, the implications of such judgments require expert analysis. If it is considered that a judgment is in error, and that this will have an impact upon the prosecution of criminal offences, this will normally have to be rectified by an appeal to the CFA or by legislative amendment. In these cases, the proposed PGC may have to advise the DPP, initially, and the SJ, thereafter, on the appropriate course of action to be taken by the Department. For these reasons, the consequences of a judgment, and the approach to be adopted, necessitate examination and advice by an officer at the appropriate level. In so sensitive an area as the due administration of public justice, there is no scope for error. In addition, the proposed PGC will take charge of a Sub-division comprising the following sections -

(a) Appeals and Narcotics Policy Co-ordination;

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- (b) Research, General Advice and Immigration; and
- (c) Advocacy and Labour.

Encl. 2 We set out the proposed organisation chart of the Prosecutions Division at
 Encl. 3 Enclosure 2. The main duties and responsibilities of the proposed PGC post are at
 Enclosure 3.

12. Whilst the existing PGC will devote much of their time and energy to supervising the work of counsel within their respective Sub-divisions, we envisage that the new post would be dedicated to the more specialized development of appellate expertise within the Prosecutions Division. This will ensure for the future that more junior counsel are provided with a measured and supervised introduction into appellate advocacy together with appropriate in-house support and training. Notwithstanding that a significant number of trial cases are briefed out to the private sector, the Government counsel must be trained to the highest standards, and properly supervised so that the level of representation of the Administration at **all** appellate levels will be enhanced. The three existing PGC will thereby be better able to concentrate on their respective duties.

FINANCIAL IMPLICATIONS

13. The additional notional annual salary cost of this proposal at MID-POINT is -

	\$	No. of Post
New permanent post	1,580,400	1

14. The additional full annual average staff costs of the proposal, including salaries and staff on-cost, is \$2,688,084.

15. In addition, the proposal will necessitate the creation of a Personal Secretary I (MPS 16-21) post at a notional annual mid-point salary cost of \$291,840 and a full annual average staff cost of \$451,884.

16. We will be able to meet most, if not all, of the additional costs through savings in briefing out expenses as mentioned in paragraph 11.

/BACKGROUND

BACKGROUND INFORMATION

17. The Prosecutions Division is responsible for both advocacy and advisory duties. It has to represent on one hand the HKSAR Government in criminal appeals and trials and on the other, to give legal advice on all criminal law matters to government departments and law enforcement agencies. The law enforcement agencies it serves include the Hong Kong Police Force, the Customs and Excise Department and the Independent Commission Against Corruption.

18. In terms of establishment, Prosecutions Division is the largest Division within the Department. Its counsel grade staff account for 36.8% of the total establishment of the grade in the Department.

19. The Chief Executive announced in his 1998 Policy Address that the Administration is committed to improving our ability to conduct criminal cases which go to the CFA, by strengthening the Prosecutions Division of the Department.

CIVIL SERVICE BUREAU COMMENTS

20. Having regard to the increase in volume and complexity of CFA cases, the level of responsibility to develop expertise for CFA work and the expanded span of control of existing PGC in the Prosecutions Division, Civil Service Bureau supports the creation of the proposed permanent directorate post in the Prosecutions Division. The grading and ranking of the proposed post are considered appropriate.

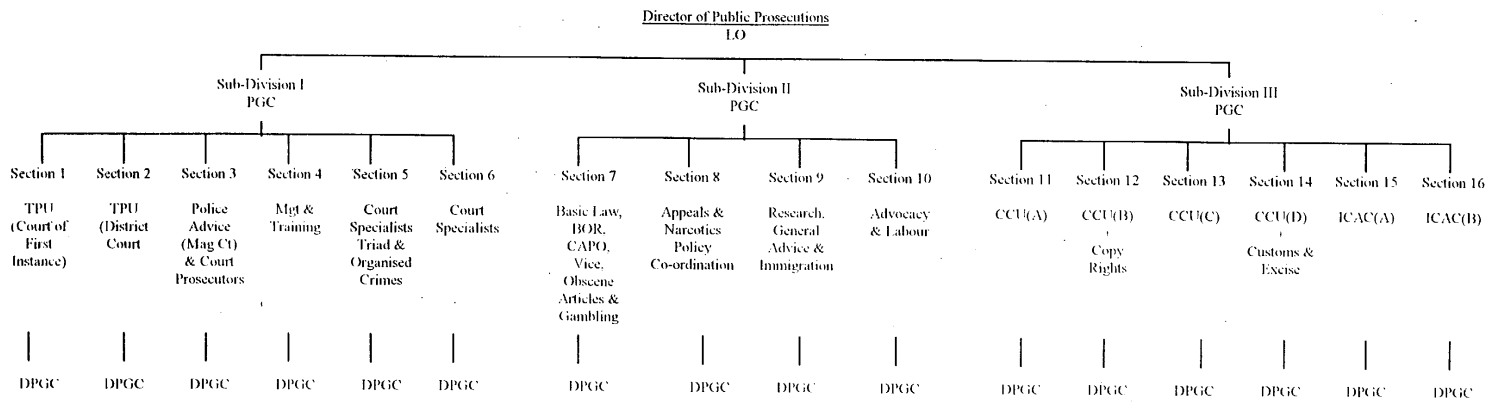
ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE

21. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposed for the post would be appropriate if the post were to be created.

Department of Justice
February 1999

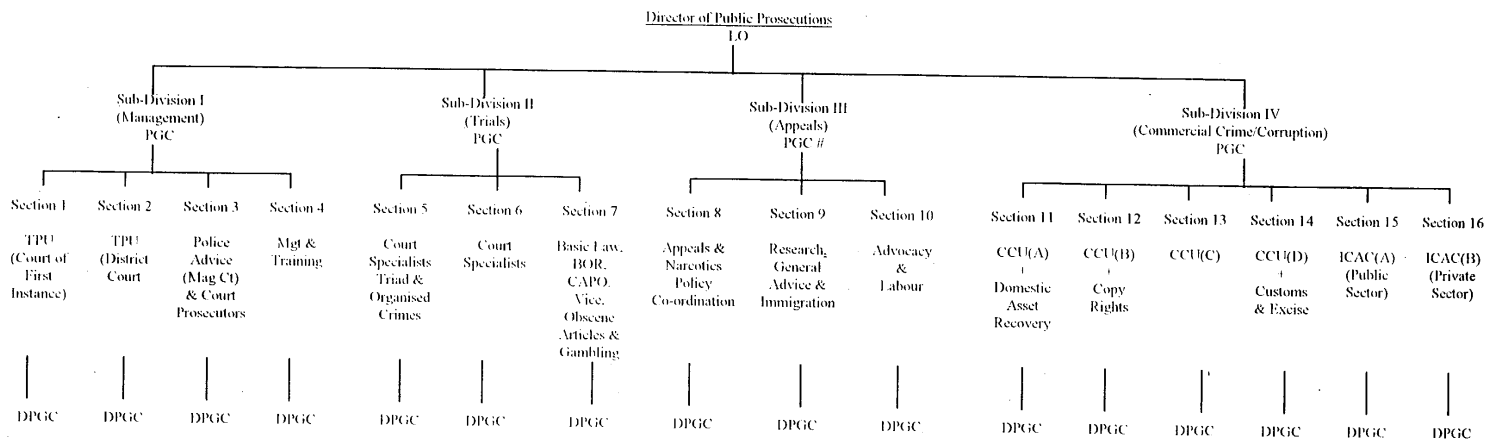
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Existing Organisation Chart of the Prosecutions Division



- Legend :**
- LO - Law Officer (DL.6)
 - PGC - Principal Government Counsel (DL.3)
 - DPGC - Deputy Principal Government Counsel (DL.2)
 - TPU - Trial Preparation Unit
 - Mag Ct - Magistrates Court
 - BOR - Bill of Rights
 - CAPO - Complaints Against Police Office
 - CCU - Commercial Crimes Unit
 - ICAC - Independent Commission Against Corruption

Proposed Organisation Chart of the Prosecutions Division



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- LO = Law Officer (DI.6)
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 - # = Proposed Principal Government Counsel Post

**Main Duties and Responsibilities
of the Proposed Principal Government Counsel, Sub-division III (DL3)**

Responsible to the Director of Public Prosecutions (DL6) for -

- (1) appearing on a regular basis in the difficult and complex cases; and supervising and assisting with the preparation of cases handled by assigned counsel;
- (2) ensuring that the Court of Final Appeal (CFA) is provided with the highest standards of preparation and advocacy and ensuring consistency in the approach of the Administration in each case;
- (3) identifying and pursuing appeals considered to be properly initiated on behalf of the Secretary for Justice and in this vein monitoring and assessing developing trends in the judgments of the Court of Appeal and Court of First Instance and where necessary, seeking clarification or direction by way of appeal;
- (4) ensuring strict compliance by the Department of Justice with the CFA Act and the rules made thereunder, and liaising with practitioners and the Registrar, CFA as to the approximate length of cases listed;
- (5) liaising with the Registrar, CFA from time to time on matters arising from the regulations including any proposed amendments to same; and
- (6) performing the management duties and functions of a Deputy Director of Public Prosecutions, including the supervision, and training of Deputy Principal Government Counsel, Senior Government Counsel and Government Counsel in his/her Sub-division.