

DRAFT

**For discussion
on 9 December 1998**

EC(98-99)

**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 new rank in the Court Prosecutor Grade -

Chief Court Prosecutor
(MPS 40-44) (\$62,780 - \$73,815)

PROBLEM

The present support provided to the Senior Assistant Director of Public Prosecutions (Police Advice (Magistrates' Court) & Court Prosecutors) (SADPP) [ranked at Deputy Principal Government Counsel (DL2)] in respect of the management of the Court Prosecutor (CP) grade in the Department of Justice is inadequate.

PROPOSAL

2. The Secretary for Justice (SJ) proposes to create a new rank of Chief Court Prosecutor (CCP) with a pay scale of MPS 40-44.

JUSTIFICATION

Existing organization

3. At present, the CP grade comprises three ranks, namely, Senior Court Prosecutor I (SCP I) (MPS 34-39), Senior Court Prosecutor II (SCP II) (MPS 28-33) and CP (MPS 15-27). The management of the CP grade is part of the responsibility of the SADPP who is the head of Section 3 of the Prosecutions

Division. The SADPP is assisted by one SCP I, designated departmentally as Senior Court Prosecutor I (Administration) [SCP I (Adm)], in dealing with the more routine CP grade management matters including recruitment, staff planning, training and development and other day-to-day administrative matters pertaining to the grade.

Expansion of the CP grade

4. To address the staff retention problem of the CP grade and to reduce the briefing out of prosecution work to private counsel at higher costs, the Director of Audit recommended in his Report No. 21 to revise upwards the manning scale of the front-line officers in the CP grade. Consequently, we created in 1995-96 23 net additional posts in the CP grade, including six SCP Is, 12 SCP IIs and five CPs. The current establishment of the grade compared to that in 1995 is as follows -

Rank	Establishment as at 31.3.1995	Establishment as at 31.10.1998	% increase
SCP I	3	9	200
SCP II	16	28	75
CP	85	90	6
Total	<u>104</u>	<u>127</u>	<u>22</u>

5. The two-fold increase in the number of SCP Is from three to nine has rendered it inappropriate for the SADPP to involve SCP I (Adm) in grade management matters concerning colleagues of the same rank. As a result, the SADPP has to directly supervise and give guidance to all the nine SCP Is working in the headquarters and the magistracies to ensure the proper conduct of prosecution work in magistracies. The grade management responsibilities of the SADPP have increased to such an extent that they have had an effect on his other professional duties. It is therefore necessary to have a full-time manager at a rank senior to SCP I to assist the SADPP in the overall supervision and management of the CP grade.

Growing responsibilities of the SADPP

6. With the growing caseload and pressure of work in the past years, the Prosecutions Division has rescheduled areas of responsibilities among sections and re-deployed staff to supervise new areas of work which deserve priority treatment. Since September 1996, the SADPP has taken on the responsibility for giving advice to the police in respect of all magistracies' court cases and lay court

prosecutors. With the publication of the Victim's Charter in January 1997, prosecuting officers have to comply with a set of duties and obligations. Owing to the lack of a CP grade manager supervising all the SCP Is, the duty of ensuring general compliance with these provisions by CPs falls on the SADPP though the work could be carried out by an officer below his level.

7. As the SADPP continues to be responsible for all administrative and management matters of the CP grade and for overseeing the operation of ten magistracies, involving 127 court prosecutors and 88 clerical officers, it is increasingly difficult for him to devote sufficient time to the many subjects under his control. SJ therefore considers it necessary to release the SADPP from duties which do not require his level of professional knowledge so that he can spend more time on the supervision of Government Counsel grade officers, determination of legal proceedings, advisory work and court appearances.

Need for a new rank of CCP

8. Having regard to the above, SJ considers that there is a functional need for a new rank of CCP (MPS 40-44) to provide the necessary legal and administrative support to the SADPP in the management of the CP grade. The incumbent will release the SADPP of those grade management responsibilities which do not require professional input at his level. The proposal will also rectify the present anomaly where SCP I (Adm) is involved in the management of other SCP Is.

9. Apart from assisting the SADPP in managing the CP grade, the proposed CCP will also relieve the SADPP of the following duties which we consider to be more appropriately carried out by a CCP -

- (a) regular court inspections of the ten magistracies so as to monitor the work of the SCP Is and to provide them with on-site guidance and advice;
- (b) sorting of prosecution cases according to their level of complexity and the importance of the legal issues involved and assigning appropriate cases for prosecution by CP grade officers in lieu of Government Counsel and counsel on special fiat;
- (c) re-deployment of CP grade officers in various magistracies in response to workload fluctuations, so as to optimise the use of manpower resources and reduce the need to brief out cases to counsel on special fiat;

- (d) holding regular meetings with SCP Is to share experience in administrative and operational matters of common interest and monitoring their performance;
- (e) acting as the management's representative in consultative meetings with the CP Association; and
- (f) assisting in the formulation of practice and procedures in enforcing the provisions of the Victim's Charter.

10. Upon the creation of the CCP post, the existing SCP I (Adm) post will be deleted. In addition, one SCP II and one Personal Secretary II (PS II) posts will be created to provide the necessary administrative and secretarial support to the CCP. The duty list of the proposed CCP is at Enclosure 1 and the existing and proposed organization chart showing the CP grade officers in the Prosecutions Division is at Enclosure 2.

Encl 1

Encl 2

Other alternatives considered

11. SJ has considered the following alternatives to the creation of the CCP but found them not viable -

(a) Creation of an additional post at SCP I level to assist the SADPP

The additional SCP I would only assist in administrative duties but not the supervisory duties. It would be inappropriate for an SCP I to assist in the management of colleagues of the same rank and the SADPP would still be required to supervise the nine SCP Is himself.

(b) Deployment of a general grade officer to assist the SADPP

A general grade officer who is not familiar with the semi-professional nature of CP work and the operational needs of the CP grade could only assist in recruitment and career planning. It would not be suitable for him/her to undertake duties in relation to management, training and operational deployment of CP grade. He/she would also not be in a position to discuss the day-to-day operational problems with SCP Is, nor to deal with queries and complaints against CP grade officers.

FINANCIAL IMPLICATIONS

12. The additional notional annual salary cost of the proposed creation of one CCP, one SCP II and one PS II posts, offset by the deletion of the SCP I (Adm) post, at MID-POINT is -

	\$	No. of Posts
New permanent post	1,510,500	3
Less Permanent post deleted	<u>660,000</u>	<u>1</u>
Additional cost	<u><u>850,500</u></u>	<u><u>2</u></u>

13. The additional full annual average staff costs of the proposed creation and deletion of posts, including salaries and staff on-cost, is \$1,173,362.

14. We have included the necessary provision in the 1998-99 Estimates and the 1999-2000 draft Estimates to meet the cost of this proposal.

BACKGROUND INFORMATION

15. CPs are deployed in the Prosecutions Division of the Department of Justice to undertake prosecution of criminal cases in magistracies. The CP grade is a matriculation grade. When the grade was first created in 1976, it was a one-rank grade. Upon the recommendation of the Standing Commission on Civil Service Salaries and Conditions of Service, Members approved in 1983 the creation of a new rank of Senior Court Prosecutor (SCP) to provide supervision to CPs and to undertake the prosecution of more complicated cases not handled by Government Counsel. Following the 1989 Review on the Court Prosecutor Grade Restructuring, Members approved in 1991 the creation of a new higher rank of SCP I to further improve the structure of the grade. The former rank of SCP was subsequently retitled as SCP II. The new rank structure and pay scales of the CP grade have remained unchanged since then.

16. In the Audit Report published in 1993, the Director of Audit observed that the high staff wastage rate of the CP grade in 1992-93 and 1993-94 had resulted in the briefing out of a substantial amount of prosecution work to private counsel at much higher costs. The Report recommended a restructuring of the grade with an upward revision in the manning scale of the front-line officers in the grade. A working group subsequently set up in the then Legal Department recommended, amongst other things, the creation of a new CCP rank.

CIVIL SERVICE BUREAU COMMENTS

17. (To be advised by CSB)

**ADVICE OF THE STANDING COMMISSION ON CIVIL SERVICE
SALARIES AND CONDITIONS OF SERVICE**

18. (To be advised by CSB)

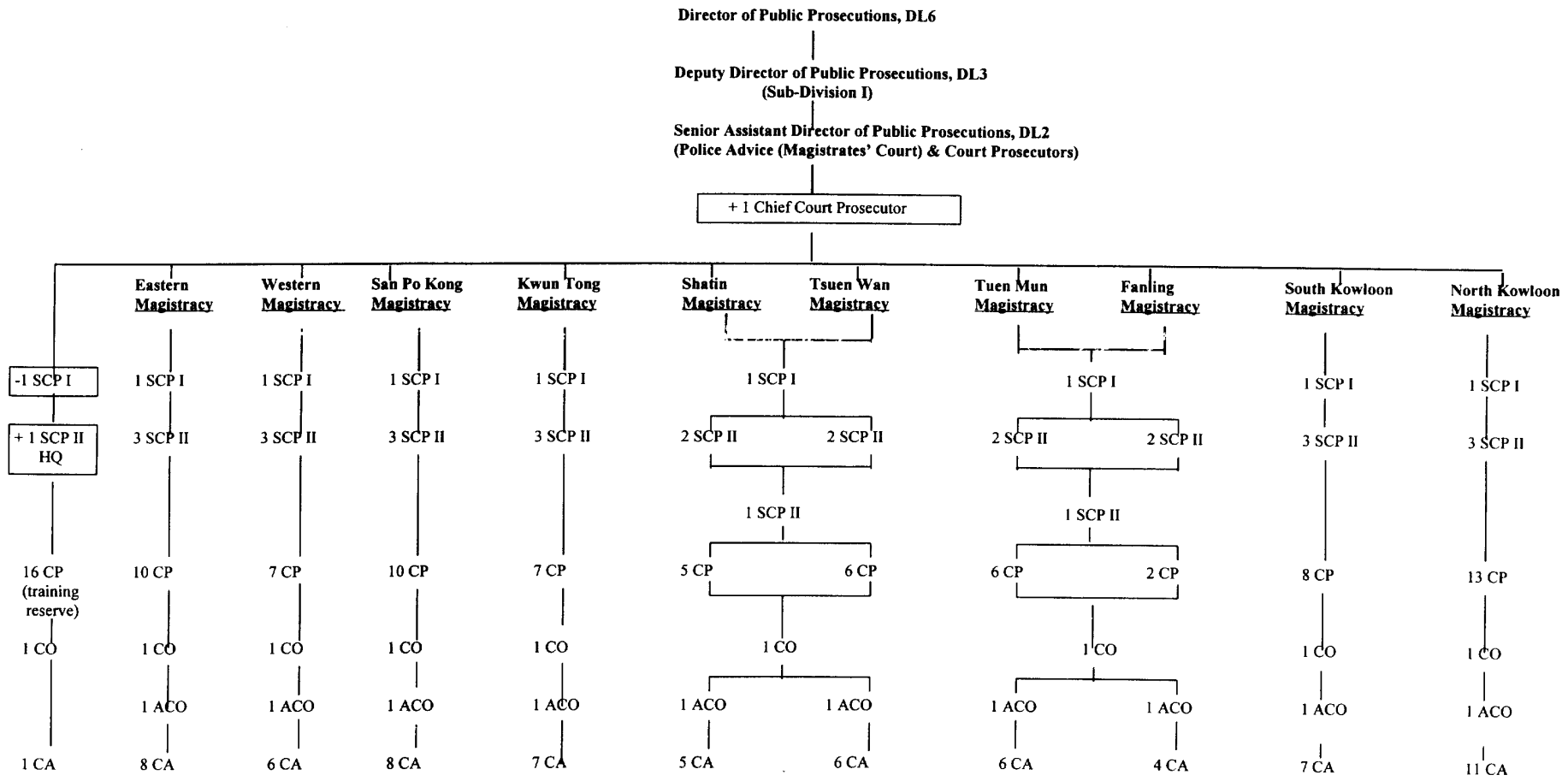
Department of Justice
November 1998

**Main Duties and Responsibilities
of the Proposed Post of Chief Court Prosecutor**

To be responsible to the Senior Assistant Director of Public Prosecutions (Police Advice (Magistrates' Court) & Court Prosecutors) (SADPP) for the following duties -

1. Undertaking human resource functions including recruitment, training, posting, staff planning, career development and discipline matters of Court Prosecutors and Senior Court Prosecutors I and II;
2. Recommending to SADPP whether a Government Counsel or a Senior Government Counsel or Court Prosecutor should be assigned to prosecute the more complicated magistracy cases and where appropriate liaising with the Senior Law Clerk I of the Prosecutions Division in arranging counsel-on-fiat as substitution for Court Prosecutors;
3. Chairing regular meetings with Senior Court Prosecutors I and II and supervising them in the carrying out of their duties, arranging leave relief for the Court Prosecutor Grade and conducting reviews on the allocation of work by paying regular visits to the magistracies;
4. Acting as management's representative and adviser in consultative meetings with the Association of the Court Prosecutors and communicating management's policies and views to the Association and issuing divisional guidelines, circular and directives to all Court Prosecutor Grade officers and ensuring that all amendments to the Laws of Hong Kong and important judgements of the Courts relevant to the cases dealt with in the Magistrates' Courts are properly disseminated to all Court Prosecutors;
5. Overseeing administrative matters such as acquisition of office furniture and equipment, planning of office accommodation; and
6. Assisting in the formulation of practice and procedures in enforcing the provisions of the Victim's Charter.

**Existing and Proposed Organization Chart
of the Court Prosecutor Grade Officers in the Prosecutions Division
(Court Prosecutor and Clerical Grades)**



Legend : = Proposed creation/deletion of posts
 SCP I = Senior Court Prosecutor I
 SCP II = Senior Court Prosecutor II
 CP = Court Prosecutor

LETTERHEAD OF Hong Kong Bar Association

6th November 1998

Miss Margaret Ng,
Room 116, New Henry House,
Ice House Street,
Hong Kong.

Dear Margaret,

**Legco Panel on Administration of Justice and Legal Services: Meeting
17.11.1998 & D.P.P.'s 'Year to the Day' Release**

On 3.11.1998 the Special Committee on Criminal Law and Procedure met. I chaired the meeting in the absence of Lawrence Lok. We discussed the proposed agenda items for the Legco Panel on 17.11.1998 and the D.P.P.'s 'Year to the Day' release. I have been asked to write to you setting out members' views.

Agenda Items for 17.11.1998

Creation of New Post in DOJ

Members felt that they could not really make any really useful comments on the proposal to establish a new rank of Chief Court Prosecutor. It is for the DOJ to demonstrate that there is a need for the new post. It is perhaps surprising that a new post is being created now when we are told that crime rates have fallen over the past couple of years. It also occurs to me that the Panel may wish to be satisfied that the creation of the new post does not mean that Government Counsel will be relieved of some of their duties supervising the work of lay prosecutors. Our comments on the next agenda item are relevant on this point.

THE HONG KONG BAR ASSOCIATION

Prosecution Policy

Members read the booklet “Prosecution Policy: Guidance for Government Counsel” a few months ago shortly after it was published. The Special Committee approved the contents and gave the DOJ credit for publishing the booklet. However, we all noted that the title indicated that the ‘target’ readership comprised professional officers working in the same office as the D.P.P. and who might be expected to have some idea of policy in this area anyway. The Special Committee was concerned that the booklet was read and understood by law enforcement officers who made decisions to commence proceedings in the magistrates’ courts and also by lay prosecutors who implemented those decisions. I wrote to the D.P.P. asking him what steps he had taken to make sure that the booklet would be read and, even more important, understood by members of these groups. He replied saying that lay prosecutors have been given copies of the booklet and that he intended to speak to the Police about it. I attach copies of the correspondence.

We think that the Panel might wish to question DOJ closely about how prosecution policy as outlined in the booklet is implemented at the ‘grassroots’. I think every member of the Special Committee could relate at least half a dozen horror stories of prosecutions that should never have seen the light of day but, for a short time at least, ‘lived’, rather like Frankenstein’s creature. In the short time (not so short, some of them) these legal chimerae stalked the courts they seriously inconvenienced members of the public who were caught up in their toils. Will the new Chief Court Prosecutor make sure that prosecutions started by law enforcement bodies really do pass muster under these guidelines? (You may also want to ask DOJ whether Immigration and Customs and Excise and other law enforcement bodies know about the booklet. The D.P.P.’s letter to me seems to suggest that he was focusing on the police only.)

‘A Year to the Day’

Some subconscious urge makes me want to refer to this publication as ‘A Year and a Day’ which was the limitation period under the common law for homicide cases. Is the D.P.P. under threat of pains and penalties if he does not produce such a document within 366 days of his appointment?

The Special Committee believes that, as is often the case with statistics, the information provided by the D.P.P. about briefing out does not present an accurate picture of what is going on.

We reckon that there are about 50 magistrates dealing with summary offences each day (10 courts each with minimum of 5 magistrates working on criminal cases: some places have 10-12 courtrooms, some only 4 or 5). That means that there are about 250 court days each week. A maximum of 1000 court days each month. 12000 court days a year. The figures given by the D.P.P. about briefing out are hardly impressive in this context. What would be interesting to know is not how many court days were taken up with Government Counsel prosecuting before magistrates but how many court days were taken up by lay prosecutors. The impression that

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members of the Special Committee have is that briefing out has dropped. I think that members appreciate though that with the growth of the very junior bar that it may be the case that the DOJ is simply distributing the same number of briefs on a wider basis.

On the figures for briefing out in the CFI I think that you may recall that about 18 months ago the DOJ sought to 'reclaim' the CFI for its own counsel. The effect of putting relatively junior counsel in the CFI to prosecute straightforward cases of drug trafficking and sexual crimes has been that the senior juniors who used to do this work are now prosecuting what are often more complex crimes in the District Court. It might be worth seeing if DOJ will admit that the cases which it retains in the District Court are those where it is known that guilty pleas will be entered. This means that the bulk of the trial work in this court is being briefed out.

It is a feature of most of the statistics in the papers that no distinction seems to be made between prosecutions and prosecutions leading to a trial and prosecutions which are disposed of with a guilty plea acceptable to the DOJ and the court. In this connection you might like to ask the DOJ more about the 75% average conviction rate in all courts. What would be interesting to know is what is the conviction rate after trial. (As I recall, such statistics can be collected. I have seen them in the Lord Chancellor's report on the Crown Court in England & Wales.)

Yours sincerely,

Philip J. Dykes, S.C.
Vice-Chairman
Special Committee on
Criminal Law and Procedure

Encl.

cc: Ms. Audrey Eu, S.C.

LETTERHEAD OF DEPARTMENT OF JUSTICE

本司檔號 Our Ref.: **PROS/P/3/2**

來函檔號 Your Ref.:

電話號碼 Tel. No.: **2867 2300**

29 June 1998

Mr Philip J Dykes SC,
Vice Chairman,
Special Committee on Criminal Law and Procedure,
The Hong Kong Bar Association,
LG2 Floor,
High Court,
38 Queensway,
Hong Kong.

Dear Philip,

Re: Prosecution Policy - Guidance for Government Counsel

Thank you for your letter of 5th June 1998. It awaited me on my return from leave.

Court Prosecutors have all been supplied with copies of the booklet. They are expected to be familiar with its contents.

The police - and other law enforcement agencies - have been sent copies of the booklet. In light of the concerns expressed as to scrutiny of cases, I will ask the Director of Crime and Security, when I meet him on Friday, to ensure that police personnel are aware, in particular, of paragraphs 13 - 18 of the booklet.

Yours sincerely,

(I Grenville Cross, QC, SC)
Director of Public Prosecutions

LETTERHEAD OF Hong Kong Bar Association

5th June 1998

Director of Public Prosecutions,
Department of Justice,
Prosecutions Division,
5th-7th Floors, High Block,
Queensway Government Offices,
66 Queensway,
Hong Kong.

Dear

Re: Prosecution Policy - Guidance for Government Counsel

The booklet "Prosecution Policy: Guidance for Government Counsel" was discussed recently at a meeting of the Special Committee on Criminal Law. Members noted that it was a very comprehensive document but wondered what steps have been taken by the Department of Justice to see that its contents are known and understood by decision-makers in the prosecution process who are not Government Counsel. In particular, the Committee would be interested to know whether police officers who have charge of routine prosecutions in the magistrates' courts are required to be familiar with the contents of the booklet. Based on their own experiences, members felt that the thorough scrutiny of cases described in paragraphs 13-18 of the booklet does not take place in most cases that are tried by magistrates.

Members would also like to know whether they can assume that lay prosecutors, who are obviously not Government Counsel, are familiar with contents of the booklet.

Yours sincerely,

Philip J. Dykes, S.C.
Vice Chairman
Special Committee on Criminal Law
and Procedure