

Letterhead of DEPARTMENT OF JUSTICE Prosecutions Division

Our Ref.: (3) in PROS S/15
Your Ref.:
Tel. No.: 2867 2300

7 January 1999

The Honourable Margaret Ng
Room 116, New Henry House
10 Ice House Street
Hong Kong

Dear

Criminal Cases in the Court of Final Appeal

In my letter of 17 December 1998, I mentioned the pressing need for a post in my Division to handle and to co-ordinate CFA and CFA-related criminal cases. This was touched upon by the Chief Executive in the policy address, when he made reference to the need *'to improve our ability to conduct criminal cases which go to the Court of Final Appeal, by strengthening the Prosecutions Division of the Department of Justice'*.

After a quiet start, the work of the CFA in criminal cases has mushroomed. This, in turn, has placed considerable demands upon my Division. The volume of cases we are now processing and conducting greatly exceeds the number that used to proceed to the Privy Council.

In 1995 there were 8 petitions and appeals in criminal cases from Hong Kong to the Privy Council. In 1996 the figure was 23. In the first six months of 1997 the figure was 9. However, between July 1997 and December 1998, no fewer than 64 CFA and CFA-related - by which I mean cases in which a certificate is sought in the High Court - criminal cases were heard. A further 14 cases are in the pipeline. [An additional seven cases were withdrawn after processing by my staff.]

The amount of work generated by the CFA not only poses a real challenge for the Prosecutions Division, but places a serious strain on our limited resources at a time when we are seeking to cope with a dramatic upsurge in fraud, corruption, electronic crimes, and intellectual property cases, and also in some areas of general crime. This, you will appreciate, is very much a new area of work for us, and, at present, I am having, on an *ad hoc* basis, to deploy counsel from their regular duties in a manner which is, frankly, detrimental to the efficient discharge of our responsibilities.

Good thing though it undoubtedly is that people are taking full advantage of the fact that the final court is now, as it were, on the doorstep, it means that my Division requires an additional Principal Government Counsel to conduct, to co-ordinate, and to advise upon the resulting cases. I anticipate that, at the very least, my Division will need in the next twelve months to handle 35 CFA criminal cases and 25 applications for certificates to the High Court. On present trends, the number of cases thereafter will expand further.

I consider it to be in the public interest that there be a dedicated team headed by a lawyer of the right calibre and at the appropriate rank, as this will ensure that we are adequately represented, that the cases are adequately prepared, and that our counsel are properly advised and thoroughly trained.

The proposed PGC will report to the DPP direct and will be responsible for conducting CFA and CFA-related cases, 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 the DPP and the SJ both generally and in relation to any appeals to the CFA which the Department itself may need to initiate. Put bluntly, we need to develop our own in-house expertise, and, although I am pleased that 33.65% of our work was briefed out in 1998, the simple expedient of briefing out the work is not the answer on this occasion. There is also an important supervisory dimension to this proposal.

The last PGC post was created in 1983-1984. At that time, the three PGC were required to supervise seven DPGC. There were then a total of 87 counsel, 53 court prosecutors and 67 support staff in the Division. Since then, the Division's duties and workload have changed and expanded. The Division now comprises 1 LO, 3 PGC, 16 DPGC, 54 SGC, 31 GC, 127 court prosecutors and 229 support staff. The 1983-84 establishment has increased by 254 posts, or 123%. In terms of DPGC posts, the increase has been 129%. In consequence, the three PGC are now required to discharge duties, supervisory and otherwise, wholly out of proportion to those envisaged in 1983-1984. This has produced a situation which is less than satisfactory. It is for that reason that the new PGC will also be required to oversee a sub-division comprising three sections, including the Criminal Appeals Unit.

If the post is created, one PGC will concentrate on CFA work, with some supervisory duties, the second PGC will concentrate on the conduct of major trials, with some supervisory duties, the third PGC will concentrate on management responsibilities, and the fourth PGC will concentrate on supervising the Commercial Crime Unit. This arrangement will promote efficiency, standards and accountability.

If I did not consider the creation of this post to be vital, I would not be seeking such, particularly in these difficult times. However, I frankly feel that I have no option but to seek its creation. The effective operation of my Division leaves me with no other choice. A detailed position paper will be submitted to the AJLS Panel in the near future.

I hope and pray that this proposal will enjoy a fair wind!

Yours sincerely,

(I. Grenville Cross SC)
Director of Public Prosecutions