

**For discussion
on 10 February 1999**

EC(98-99)

DRAFT

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 one 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

3. At present, the Director of Public Prosecutions (DPP) 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)(DL 2) 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, ICAC cases, Customs & Excise cases, commercial crime cases and miscellaneous advice. The existing organization chart of the Prosecutions Division is at Enclosure 1.

Encl. 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, it is considered necessary to revamp the organization 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, the bulk of criminal proceedings in Privy Council were conducted by London QCs acting on behalf of the Government. In 1995, there were eight 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 nine.

6. With the change of sovereignty on 1 July 1997, the CFA is being used to a far greater extent than was the Privy Council. Between July 1997 and 31 December 1998, no fewer than 64 CFA and CFA-related cases were heard in criminal matters, another 14 cases are pending, and seven cases were withdrawn after processing by the Prosecutions Division. It is expected that each year, on average, the Department will need to handle 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, counsel working in the Prosecutions Division have to be deployed from their regular duties to cope with the increase in workload generated by the CFA in a way which is detrimental to the efficiency of the Division.

7. 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. The Prosecutions Division is heavily committed to briefing out its work to the private sector. It accepts the need not only to assist the junior Bar, but also to promote a strong experienced and independent Bar. It also briefs out its work to members of the Law Society. In the year of 1998, 33.65% of its cases were briefed out to flat counsel. This trend is expected to continue, and the DPP has arranged for more cases in the Court of First Instance to be briefed out. However, the present problem cannot be resolved by briefing out because the proposed PGC would, in addition to appearing in the more complex of CFA cases, be responsible for the co-ordinated approach of the Prosecutions Division to all CFA and CFA-related cases. Whilst it may be that certain selected cases in the CFA have to be briefed out in the future, they would remain subject to direct referral to the PGC 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. An additional PGC is required, firstly, to conduct CFA cases himself and to develop the appropriate level of in-house expertise in CFA cases and, secondly, to relieve the burden of supervisory responsibility currently borne by the three existing PGC.

Expanded Scope and Span of Control at PGC Level

9. The last PGC post of the Division was created in 1983-84. Since then, due to crime trends, sophistication of modern criminality, new areas of activity, and the need to service new government departments, the complexity of cases prosecuted by counsel of the Division at different level of courts has

steadily increased. Compared to 1983-84 when the three PGC had to supervise a total of seven DPGC, the same number of PGC now has to supervise 16 DPGC, an increase of 129%. The establishment of the Division 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 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. Moreover, the large number of counsel engaged in prosecutions work necessitates an organizational structure effective in advising 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 trend of crimes 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 LegCo and the Administration, etc; and generally to ensure that the Administration is properly briefed and prepared. To achieve these aims, a restructuring of the Division is called for so that the areas of responsibility of each sub-division are kept within manageable limits.

Need for a new PGC Post

11. In view of the volume and complexity of CFA cases and taking into consideration the excessive span of control of the existing PGC, SJ considers that an additional PGC post is necessary to assume overall responsibility in the Prosecutions Division as head of a specialist unit to cater for the expansion of cases referred to the CFA. The proposed PGC will report to DPP 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 SJ and DPP both generally and in relation to appeals to CFA which the Department itself may need to initiate. In addition, the proposed PGC will also oversee a sub-division, which will comprise the following sections:-

- (a) Appeals and Narcotics Policy Co-ordination;
- (b) Research, General Advice and Immigration; and

(c) Advocacy & Labour.

Encl. 2 A proposed organization chart of the Prosecutions Division is at Enclosure 2. The main duties
 Encl. 3 and responsibilities of the proposed PGC post are at Enclosure 3.

12. Whilst the existing PGC devote much of their time and energy to supervising the work of counsel within their respective sub-divisions, it is contemplated 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. 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. As mentioned in paragraph 6 above, it is expected that each year, on average, the Department will need to handle 35 CFA criminal cases and 25 applications for certificates to the High Court. Without creation of the new PGC post, these cases will have to be briefed out to the private counsel at the estimated expenditure of \$2.55 million.

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

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

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

16. 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.

17. We will be able to meet all the additional costs through savings in briefing out expenses as mentioned in paragraph 13.

BACKGROUND INFORMATION

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

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

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

CIVIL SERVICE BUREAU COMMENTS

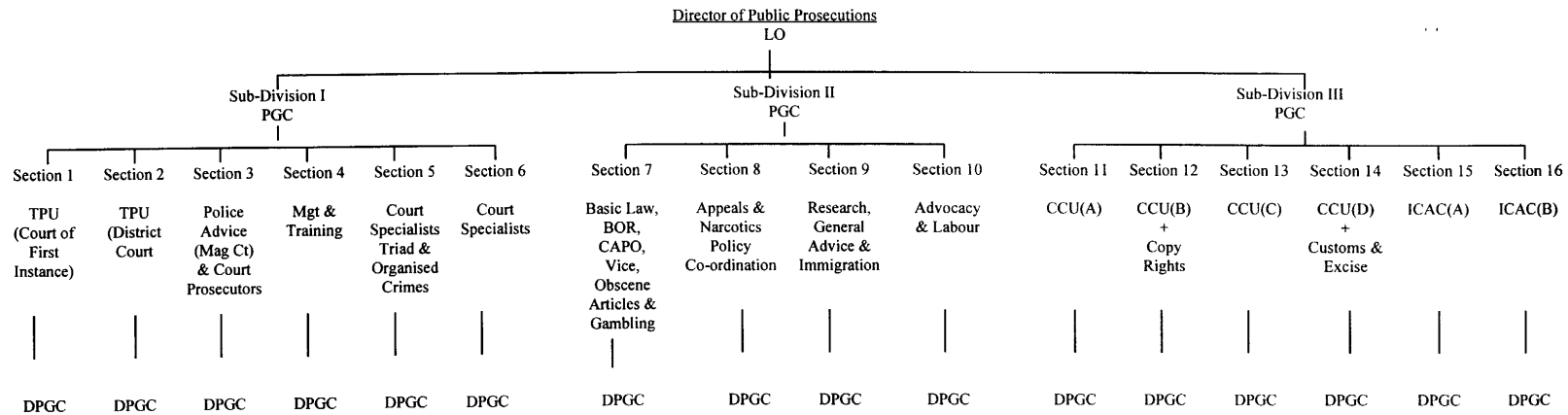
21. [To be advised by CSB].

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

22. [To be advised by CSB].

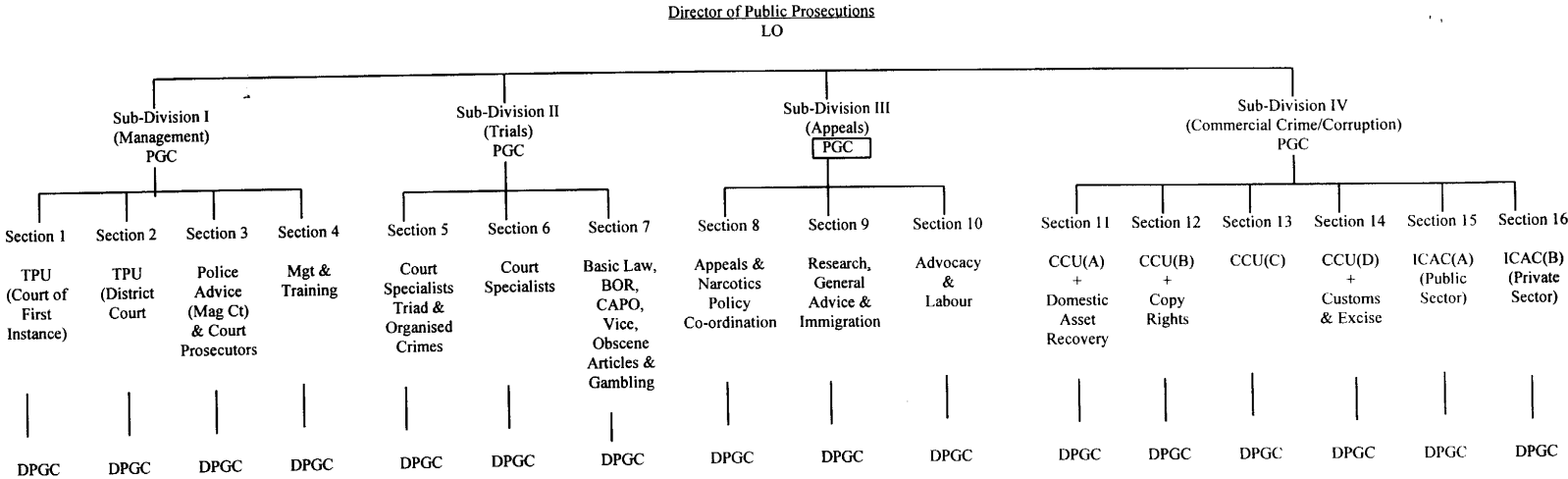
Department of Justice
January 1999

Existing Organisation Chart of the Prosecutions Division



- Legend :** LO = Law Officer (DL6)
 PGC = Principal Government Counsel (DL3)
 DPGC = Deputy Principal Government Counsel (DL2)
 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



- Legend :**
- LO = Law Officer (DL6)
 - PGC = Principal Government Counsel (DL3)
 - DPGC = Deputy Principal Government Counsel (DL2)
 - 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 Principal Government Post

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

Responsible to the Director of Public Prosecutions (DL 6) 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 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.