

## **Chapter XVII : Administration of Justice and Legal Services**

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17.1 At the invitation of the Chairman, the Secretary for Justice (SJ), Ms Elsie LEUNG, and the Judiciary Administrator (JA), Mr Wilfred TSUI, each gave a presentation to highlight the work priorities within their respective purviews for the year 2000-01 (Appendices V-16a & V-16b).

### **The Labour Tribunal**

17.2 Mr LAU Chin-shek referred to the performance indicators of the Judiciary and questioned whether it was realistic to forecast a decrease in caseload for the Labour Tribunal in 2000-01. In response, JA advised that the estimate had been made on the basis of the average caseload of the past ten years. He however assured members that the Judiciary was fully aware that the future caseload of the Labour Tribunal might remain high and would closely monitor the situation. Where necessary, internal deployment of staff resources and other measures, such as the introduction of night courts in 1999 and additional day courts in early 2000, would be implemented to cope with the caseload.

17.3 Noting that the average waiting time from first hearing to trial at the Labour Tribunal was 81 days in 1999 because of the increase in caseload, Mr LAU Chin-shek enquired if the recent deployment of additional staff (including Temporary Presiding Officers) to the Labour Tribunal would reduce the waiting time. In reply, JA confirmed that with the additional staff, the Judiciary was planning to reduce the 81-day average waiting time to around 60 days so that the whole process from appointment to trial could be reduced from the 133 days in 1999 to 100 days. Mr LAU considered the progress in improving waiting time for hearings at the Labour Tribunal unsatisfactory. He stressed the importance of making an accurate estimate of the caseload for 2000-01 for the propose of deploying sufficient resources to handle the cases and shorten the waiting time.

17.4 Noting that on average, over 60% of the claims were settled or withdrawn at or before the first hearing at the Labour Tribunal in the past few years, Mr LAU Chin-shek was concerned whether these cases had been fairly dealt with. In response, JA explained that settlement by mutual consent had always been an acceptable way of concluding a civil case and would save the time and money of the parties concerned. He also pointed out that the percentage of cases settled at the District Court or at the High Court was even higher. JA assured members that in proposing the option of settlement without a full hearing,

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the Tribunal Officer or the Presiding Officer concerned would always explain to both parties the pros and cons of continuing legal proceedings or otherwise. Every settlement must be mutually agreed and entirely voluntary. At Mr LAU's request, JA agreed to provide after the meeting a comparison between the amounts under claim and the amounts settled at the Labour Tribunal.

### **Bilingualism at court proceedings**

17.5 Mrs Miriam LAU noted that only 19.8% of the prosecution cases at the District Court had been conducted in Chinese. She considered the percentage on the low side and asked whether there were plans to promote the wider use of Chinese at the District Court level. Mrs LAU also opined that to save translation resources, the parties to a case should be informed as early as practicable of whether their case would be tried in Chinese or not.

17.6 In reply, the Director of Public Prosecutions (DPP) and JA explained that with the exception of the Court of Appeal, which was obliged to use the same language being used when the case was tried at the Court of First Instance, the decision on whether to grant an application by the defendant for the use of a certain language in proceedings rested with the judge concerned who would take into account the preference of the parties and whether the case was amenable to trial in Chinese having regard to its complexity and the volume of legal translation involved. JA further pointed out that certain Common Law concepts might not be capable of being effectively expressed in Chinese and that it would take some time before Chinese could be widely used in court proceedings. His views were shared by the Chairman, who was concerned about the precision of the Common Law concepts when being translated into Chinese.

17.7 Miss Margaret NG referred to cases where barristers representing clients in court were discouraged from using English. She was keen to ensure that the principle of promoting the development of bilingualism was not to coerce as many people to use Chinese in proceedings as possible but to give the parties a choice. Miss Emily LAU concurred and stressed that whilst the wider use of Chinese in court should be promoted, there should not be any compulsion and cases should be conducted in Chinese only where it was practicable and appropriate to do so. She further cautioned that the development of bilingualism should not be unduly accelerated to the detriment of legal practitioners who had yet to adapt to the use of Chinese in proceedings or persons who engaged the

service of expatriate legal practitioners.

17.8 Miss Margaret NG pointed out that the development of bilingualism would also be subject to the number of bilingual judges at District Courts. In response, JA informed members that there were 15 expatriate judges and 17 local judges in District Courts. As requested by Mrs Miriam LAU, the Administration would advise members after the meeting on the number of civil cases conducted in Chinese.

### **Quality of law drafting**

17.9 Referring to the programme area of Law Drafting under the Department of Justice (D of J), some members expressed the view that the current standard of law drafting had declined and they highlighted the following problems

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- (a) In the case of some bills on monetary and financial matters and the recent District Court (Amendment) Bill, the drafting reflected insufficient understanding of the subject matters and members of Bills Committees could not obtain adequate information to enable them to understand the rationale behind certain provisions of the bills.
- (b) The drafting of certain bills showed that there was a need for more research into related ordinances to ensure that the proposed provisions would be consistent with existing provisions of related ordinances.
- (c) Due to staff changes, there had been occasions when the law draftsman attending the meetings of the Bills Committee was not the one who drafted the bill. As such, he might not be able to answer all questions related to the drafting of the bill.

17.10 Members considered that it might be necessary to allocate more resources to D of J for providing sufficient training to the staff responsible for law drafting, and where necessary, to engage the service of experts in the professions concerned to assist in the drafting of bills of a highly technical or specialized nature. In particular, Miss Emily LAU stressed the need for an internal

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mechanism to monitor and ensure the quality of law drafting. She said that the Administration should also actively seek comments from the relevant professions or industries on the drafting of the bills. In this regard, the Chairman commented that sometimes, the relevant professions objected to a bill because of its proposed amendments, not because of the drafting in question. He also noticed that in some cases, the problem was not due to the drafting per se, but to the drafting instructions given to the D of J.

17.11 In addressing members' concerns about the quality of law drafting, SJ and the Solicitor General (SG) made the following points -

- (a) The work involved in reviewing finance-related legislation was both substantial and complex. In the wake of the 1997 financial turmoil, there was an urgent need to improve existing legislation and D of J had to work within a very tight time frame. Nevertheless, relevant bureaux had already been urged to allow D of J sufficient time to complete law drafting assignments. Moreover, complex and controversial bills such as the Securities & Futures Bill would be gazetted as white bills for public consultation before being finalized as blue bills.
- (b) In general, D of J had sufficient in-house expertise to handle law drafting in specialized policy areas. The Legal Policy Division in D of J would be consulted on aspects of a bill which might raise issues relating to the Basic Law or Bill of Rights Ordinance.
- (c) Special attention was given to the training on law drafting. This included the hiring of an experienced draftsman to conduct in-house training for draftsmen. Local and overseas training activities included one plain language workshop attended by 30 lawyers, three workshops on legal translation and law drafting in Chinese attended by 51 staff of whom 33 were lawyers, and a training course in law drafting attended by six lawyers.
- (d) On monitoring the quality of law drafting, all draft bills, at both the initial and final stages, had to be cleared by either the

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Law Draftsman or the Deputy Law Draftsman. Moreover, law drafting work done by a relatively junior draftsman would be overseen by a more senior draftsman.

17.12 SJ and SG further assured members that whilst the existing arrangements had been working satisfactorily, the Administration was prepared to consider suggestions for improvements and any specific concerns raised by members on a particular bill. Moreover, staff of D of J would continue to participate actively in the discussions of Bills Committees to provide the necessary advice and assistance.

### **Work of the Basic Law Unit of the Department of Justice**

17.13 Mr TSANG Yok-sing enquired about details of major tasks expected to be performed by D of J in 2000-01 in relation to the provision of legal advice in respect of the implementation of the Basic Law and the development of Hong Kong's new constitutional order. In reply, SJ reported that where Basic Law issues were concerned, cases pending appeal hearings included right of abode appeal cases and an appeal case relating to rural elections. A Basic Law Litigation Committee had already been set up to handle such cases. Besides, legal advice was sometimes required on the compatibility of certain Government policies with the Basic Law, e.g., on whether adjustments to the salaries and conditions of service of the civil service could be proposed notwithstanding Article 100 of the Basic Law, which stipulated that civil servants' conditions of service should be no less favourable than before.

17.14 On recent initiatives by D of J to promote public discussion on Basic Law issues and the new constitutional order, SJ informed members of the Constitutional Law Conference to be jointly organized with the University of Hong Kong in April 2000. She however stressed that constitutional development was an on-going process during which new issues might emerge. As such, the Basic Law Unit might need to organize activities in the light of new developments.

17.15 Regarding resource provisions for undertaking the aforesaid tasks, SJ reported that resources for providing Basic Law advice had already been included under the programme area of Legal Policy in the 2000-01 Estimates. In this connection, SG supplemented that when the Establishment Subcommittee

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discussed the proposed creation of a permanent DL2 post to head the Basic Law Unit in the Legal Policy Division of D of J in January 2000, views had been expressed that it might be necessary to consider whether the post should be pitched at a more senior level. The Administration had noted members' views for consideration.

### **Criminal investigation practices**

17.16 Mr James TO urged that to prevent abuse, proactive investigative practices by law enforcement agencies such as the use of under-cover agents to obtain evidence should be closely monitored and regularly reviewed, particularly in the light of comments by judges during trial. In response, DPP confirmed that the Police would normally seek legal advice from the Prosecutions Division of D of J before they took such investigative action to collect evidence in sensitive cases. Under existing practice, a Police Superintendent and the case officer must be present to explain the need to use undercover agents when seeking the Division's advice. While highlighting the need for such investigative measures to deal with some serious crimes, DPP assured members that such need was carefully considered to safeguard against abuse.

### **Staff costs of the Department of Justice**

17.17 Miss Margaret NG referred to the increase in the size of the establishment of D of J from 1 099 in 1998 to 1 199 in 2001 and sought further details on the considerable increase. The Deputy Director (Administration), D of J (DD(A), D of J) agreed to provide after the meeting detailed information including the establishment and strength position, and the savings achieved by D of J in its Enhanced Productivity Programme (EPP). He also confirmed that the total expenditure including the on-cost involved in the estimated 15 250 court days undertaken by some 120 Court Prosecutors in Magistrates' Court was \$66.6 million.

### **Appointment of expatriate legal professionals**

17.18 Mr Albert HO was keen to ensure that notwithstanding the localization policy, the Judiciary and D of J would continue to recruit well

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qualified expatriate legal professionals to maintain and improve the quality of Hong Kong's legal system. In response, SJ assured members that the qualifications and competence of candidates were of prime consideration in the recruitment of professional staff. For example, she referred to the appointment of Mr Jonathan DAW, former Legal Adviser of the Legislative Council (LegCo), as Legal Adviser on Legislative Affairs in view of Mr DAW's former experience in LegCo and related constitutional issues. Where the Judiciary was concerned, JA also assured members that in recruiting judges, consideration would be given to their qualifications and credentials rather than focusing only on the need for localization. At present the ratio of expatriate to local judges was 1.17 to 1.

17.19 As to whether the EPP would give rise to cost considerations in the appointment of expatriate legal professionals, SJ and SG reiterated that if new staff were to be recruited, initial consideration would be given to local candidates conversant in both Chinese and English. However, for very specialized posts, which could not be filled by local candidates, consideration might be given to recruiting overseas candidates. In addition, the briefing-out arrangement would continue where in-house resources and expertise were not available for handling important cases requiring specialized legal advice or expertise. JA also emphasized that the implementation of EPP would not affect the quality of judges or the service provided by the Judiciary.

### **Legal education**

17.20 Mr Martin LEE referred to reports that the University Grants Committee (UGC) planned to withdraw funding for the Postgraduate Certificate in Laws (PCLL) programme, which was regarded by the profession as an integral part of professional training. He requested assurance from SJ that she would do her best to ensure that the programme would continue to be subsidized. He also enquired about the role of the Executive Council and the Chief Executive, if any, in the said plan. Miss Margaret NG however considered it inappropriate that LegCo Members should seek SJ's assurance about a decision of the UGC as LegCo should not interfere in the independence of the UGC. In response, SJ advised that D of J was represented on the Advisory Committee on Legal Education which had reached a consensus that subsidy to the PCLL programme should not be cut. The Committee had already conveyed its position to UGC in writing.