

**LegCo Panel on Administration of Justice and Legal Services Meeting
On 21 March 2000**

Item IV : Prosecutions conducted by staff of law enforcement departments

In her letter of the 18th February 2000 to the Secretary for Justice, the clerk to the Panel advised that at its meeting on the 21st March 2000, the Panel wished to be briefed on the :

- Existing policy and practice on prosecutions conducted by staff of law enforcement departments who are not qualified legal practitioners;
- Nature and number of such prosecutions;
- Role played by the Department of Justice in such prosecutions; and the safeguards in place to ensure that such prosecutions are justified and properly conducted.

2. The Department of Justice advises that it has been a long established practice in Hong Kong (and in other jurisdictions by the competent department) for the Secretary for Justice, through the Director of Public Prosecutions, to delegate, pursuant to Sections 12 and 13 of the Magistrates Ordinance, Chapter 227, the authority to prosecute in the Magistrates Court for specified offences to officers of certain ranks of other government departments. At present, there are 21 such delegations - Appendix A. The form of each delegation authorizes officers of specified ranks to initiate and prosecute proceedings before a Magistrate in respect of particular Ordinances.

3. These departments, which include the Commissioner of Customs and Excise, Director of Immigration, Director of Planning, Director of Fire Services, etc., have direct responsibility to enforce a very broad range of regulatory and criminal offences. A random selection of the types of cases prosecuted by officers from these departments is attached - Appendix B.

4. These prosecutions account for approximately $\frac{1}{3}$ of all cases dealt with in the Magistrates Court. In 1999, for example, there were 291,914 cases of which 104,032 were prosecuted by persons within the categories specified in the Panel request. The balance of the cases are prosecuted by Court Prosecutors, Government Counsel and Counsel on Fiat.

The Role Played by the Department of Justice

5. The Department of Justice retains overall responsibility for all such prosecutions. Section 12 of the Magistrates Ordinance, Chapter 227 provides that :

“The Secretary for Justice is hereby entrusted with the duty and discretion of conducting the prosecution of all offences cognizable by a Magistrate”

and can, by virtue of same, step in at any time to assume control of any such prosecution which might be initiated by an officer authorized by the aforementioned delegation. This includes the power to terminate, or to continue, or amend the prosecution, or to amend the charges.

6. All departments so empowered are provided with access to qualified practitioners in the Department of Justice on a case by case needs basis. There are 7 counsel in Section 9 headed by a Senior Assistant Director of Public Prosecutions, and their responsibility is to advise on departmental prosecutions. (The Customs and Excise Department are separately advised, as is the Labour Department.)

7. In the case of many of these departments, specific prosecution guidelines are formulated by the Department of Justice in consultation with the law enforcement agencies. Included in such guidelines will be recommendations as to investigation procedures and authorization to prosecute guidelines.

8. All departments are provided with copies of the Department of Justice Prosecution Policy booklet, the Prosecution Manual and any relevant divisional legal circulars and judgments.

9. The Department of Justice provides training programmes for departmental prosecutors. These programmes include lectures and mock trials. The topics are “tailor made” to suit the needs of each department and tend to focus on the elements of the specific offences within the responsibility of each department, the sufficiency of evidence and its admissibility and the role of the prosecutor. Relevant judgments and advices are disseminated. Mock trials are conducted and appropriate course materials provided.

10. In 1998, 89 training days were provided with 1,543 officers attending these courses and, in 1999, 112 training days were provided with 1,249 officers attending courses.

11. Due to the complexity of the legislation which comes within the parameters of the Labour Department’s responsibilities, separate arrangements are in place. In August 1997, a specific section was established in the Prosecutions Division to oversee all prosecution-related matters referred by the Labour Department. Section 10 (5 qualified practitioners), headed by a Senior Assistant Director of Public Prosecutions, is now responsible for advising and are involved in the training of departmental prosecutors from the Labour Department. They are available to advise as and when required on evidential and legal issues, provide in-house training of departmental prosecutors and to exercise general supervision of cases conducted by departmental prosecutors. They are also responsible for taking charge of the prosecution in cases which involve legal arguments or are of a complicated nature.

The team has organised seminars for prosecutors of Prosecutions Division and Legal Services Division of the Labour Department on various matters relating to their prosecution work. Workshops have been organised for field officers on techniques of evidence collection and presentation of evidence in court. In addition, a digest of relevant authorities is prepared and updated by Government Counsel.

12. As with the Labour Department, the Customs and Excise Department refer requests for assistance to two dedicated sections within the Department of Justice (Section 12 for copyright and related matters. Section 14 for other customs and excise investigations). Each of these sections is headed by a Senior Assistant Director of Public Prosecutions and are available on a case by case needs basis to advise at all stages of prosecutions. (The more serious narcotics cases handled by the Department are referred to the Trial Preparation sections.)

13. In practice, there is, for the most part, no need for departmental prosecutors to seek assistance from the Department of Justice in simple, straightforward cases. If any issues as to the sufficiency or weight of the evidence or as to the law arise in the course of the preparation of a case, or if there are any other difficulties, the department concerned will seek legal advice. In appropriate cases, requests for Government Counsel to prosecute are made, and these are almost invariably acceded to. The Department of Justice may itself decide that a particular case should be prosecuted by a Government Counsel or Counsel on Fiat.

14. In general, departmental prosecutors are specifically provided with instruction on the component elements of relevant charges/summons and the type and sufficiency of evidence required to justify a prosecution. In the course of training programmes, sample charges are considered and mock trials conducted.

List of Departments Authorized to Prosecute Cases

1. Director of Agriculture, Fisheries and Conservation.
2. Director of Buildings.
3. Commissioner of Customs and Excise.
4. Director of Electrical and Mechanical Services.
5. Director of Environmental Protection.
6. Director of Fire Services.
7. Director of Food and Environmental Hygiene.
8. Director of Health.
9. Director of Home Affairs [Prosecutors seconded from 2 and 6]
10. Director of Immigration.
11. Commissioner of Inland Revenue.
12. Director of Lands.
13. Commissioner for Labour.
14. Director of Marine.
15. Director of Planning.
16. Director of Water Supplies.
17. Director of Housing.
18. Commissioner for Transport.
19. Office of the Telecommunication Authority.
20. Companies Registry (prosecuted by their solicitors).
21. Official Receiver (prosecuted by their solicitors)

Type of Cases Prosecuted by Officers of Law Enforcement Departments

1. Importing or exporting unmanifested cargo under s. 18 of the Import and Export Ordinance, Chapter 60.
2. Possession of forged documents under s. 42 of the Immigration Ordinance, Chapter 115.
3. Undertaking or continuing development under s. 21 of the Town Planning Ordinance, Chapter 131.
4. Non-compliance with a fire hazard abatement notice under s. 9 of the Fire Services Ordinance, Chapter 95.
5. Non-compliance with a nuisance notice under s. 127 of the Public Health and Municipal Services Ordinance, Chapter 132.
6. Importing scheduled species under s. 4 of the Animals and Plants (Protection of Endangered Species) Ordinance, Chapter 187.
7. Commencement of building works without consent under s. 40(1) of the Buildings Ordinance, Chapter 123.
8. Failure to disconnect electricity supply under s. 55 of the Electricity Ordinance, Chapter 406.
9. Failure to comply with air pollution abatement notice under s. 10 of the Air Pollution Control Ordinance, Chapter 311.

10. Selling food which is not of the nature, substance or quality demanded by the purchaser under s. 52 of the Public Health and Municipal Services Ordinance, Chapter 132.