

**Replies to supplementary questions raised by Finance Committee Members  
in examining the Estimates of Expenditure 2003-04**

**[Controlling Officer : Director of Administration and Development]  
[Session No. : 11] [File name : S-SJ-e1.doc]**

<b>Reply Serial No.</b>	<b>Question Serial No.</b>	<b>Name of Member</b>	<b>Head</b>	<b>Programme</b>
<a href="#">S-SJ001</a>	Oral	Hon. NG Margaret	92	(1) Prosecutions
<a href="#">S-SJ002</a>	Oral	Hon. NG Margaret	92	(2) Civil
<a href="#">S-SJ003</a>	Oral	Hon. HO Chun-yan, Albert	92	(2) Civil
<a href="#">S-SJ004</a>	Oral	Hon. LEE Chu-ming, Martin	92	(1) Prosecutions (2) Civil

Examination of Estimates of Expenditure 2003-04  
**CONTROLLING OFFICER'S REPLY TO  
SUPPLEMENTARY QUESTION**

Reply Serial No.

S-SJ001

Head : 92 Department of Justice      Subhead (No. & title) :

Question Serial No.

Programme : (1) Prosecutions

Oral

Controlling Officer : Director of Administration and Development

Question :

Would the Department of Justice (D of J) provide statistics quoted in the reply given by the Secretary for Justice to Hon Margaret Ng's question concerning the estimated decrease in the number of court days undertaken by fiat counsel to prosecute Magistrates' Court?

Asked by : Hon. NG Margaret

Reply :

The estimated number of cases to be briefed out in 2003 is worked out on the basis of our assumptions of the likely workload, the nature of the cases, the availability of in-house counsel and the desirability of employing outside counsel for a particular case. On this basis we estimate the number of cases to be conducted by Government Counsel will be marginally increased from 4,318 in 2002 to 4,320 and the number of cases to be conducted by counsel instructed to prosecute will be slightly decreased from 980 in 2002 to 850 in 2003.

At the Magistrates' Court, the number of court days to be undertaken by Court Prosecutors in 2003 is estimated to increase from 14,015 in 2002 to 14,300 in 2003. The number of court days to be undertaken by counsel instructed to prosecute in place of Court Prosecutors is estimated to reduce from 691 in 2002 to 340 in 2003, and this estimated reduction is due to two factors:

- (i) the 7 new Court Prosecutors recruited in 2002 have completed their training, and started to prosecute on 2 January 2003; and
- (ii) there is expected to be a decrease in the number of prosecutions in the Magistrates' Court in 2003, based on recent trends.

As to (i) above, Court Prosecutors provide a cost effective service to the community. The average cost, including the accommodation cost, of a Court Prosecutor conducting prosecutions is about \$3,044 per court day. This compares favourably with the fees for prosecuting on general fiat which are \$5,670 per day. If all the estimated 14,300 court days to be conducted by Court Prosecutors in 2003 were briefed out to private counsel, it would cost as much as \$81 million – which would be \$37.5 million or 86% more than the \$43.5 million cost for Court Prosecutors ie:  $\$5,670 \times 14,300 - \$3,044 \times 14,300 = \$37,551,800$ .

Regarding (ii) above, according to figures provided by the Judiciary, the total number of cases filed and disposed of in the Magistrates' Courts decreased in the past years, as follows:

	<b>Total No. of Cases at Magistrates' Courts</b>	
	<b>Filed</b>	<b>Disposed of</b>
1999	427,060	427,087
2000	381,956	374,667
2001	341,644	339,696
2002 (up to 30 Sept 2002)	227,521	232,563

In the case of the Prosecutions Division of D of J, the numbers of court days undertaken by Court Prosecutors and fiat counsel in the past years are set out as follows:

	<b>No. of Court Days Undertaken by</b>		
	<b>Court Prosecutors</b>	<b>Fiat Counsel</b>	<b>D of J Total</b>
1999	15,230	73	15,303
2000	14,852	140	14,992
2001	14,537	797	15,334
2002	14,015	691	14,706

Our estimated workload is based on the information now available to us. The actual amount of work to be briefed out at different levels of court will necessarily be determined by the actual workload, the nature of the cases, the availability of the in-house counsel and the desirability of employing outside counsel for a particular case when it comes up. Whenever cases are listed by the court for trial/appeal, we have a duty to provide prosecutors of the appropriate experience, either from D of J or from the legal profession.

As to the financial provision for 2003-04, our Controlling Officer's Report has made it clear that we are now seeking a total provision of \$228.279 million for hire of legal services and related profession fees and for construction dispute resolution. This is slightly (3.6%) higher than the revised estimate of \$220.325 million we made for 2002-03.

Signature	_____
Name in block letters	Miss Annie Tam
Post Title	Director of Administration and Development
Date	31 March 2003

Examination of Estimates of Expenditure 2003-04

**CONTROLLING OFFICER'S REPLY TO  
SUPPLEMENTARY QUESTION**

Reply Serial No.

S-SJ002

Head : 92 Department of Justice

Subhead (No. & title) :

Question Serial No.

Programme : (2) Civil

Oral

Controlling Officer : Director of Administration and Development

Question :

Would the Department of Justice provide the cost involved in the employment of Non-Civil Service Contract staff in the Civil Division in 2003-04?

Asked by : Hon. NG Margaret

Reply :

In accordance with the guidelines issued by the Civil Service Bureau, staff may be engaged on Non- Civil Service Contract (NCSC) terms to meet service needs of a time limited duration or service needs under review. The overall remuneration package for NCSC staff should not be higher than that offered to the comparable staff employed on civil service terms.

There are 34 NCSC staff working in the Civil Division of the Department of Justice. These include 3 Temporary Senior Government Counsel, 13 Temporary Government Counsel, 7 Contract Legal Clerks, 7 Contract Clerks and 4 Contract General Assistants. The full year cost of retaining these 34 NCSC staff in 2003-04 is estimated to be \$13.531 million. We also propose to provide for an additional \$0.811 million for employment of additional NCSC staff by the Civil Division in 2003-04.

Signature \_\_\_\_\_

Name in block letters \_\_\_\_\_

Miss Annie Tam

Post Title \_\_\_\_\_

Director of Administration  
and Development

Date \_\_\_\_\_

31 March 2003

Examination of Estimates of Expenditure 2003-04  
**CONTROLLING OFFICER'S REPLY TO  
SUPPLEMENTARY QUESTION**

Reply Serial No.

S-SJ003

Head : 92 Department of Justice    Subhead (No. & title) :

Question Serial No.

Programme : (2) Civil

Oral

Controlling Officer : Director of Administration and Development

Question :

Would the Department of Justice (D of J) –

- (a) provide the present workload of the Senior Government Counsel (SGC) in the Home Affairs Department (HAD); and
- (b) advise if any performance pledge has been made that the transfer of the SGC post from HAD to D of J will not adversely affect the implementation of the Building Management Ordinance (BMO)?

Asked by : Hon. HO Chun-yan, Albert

Reply :

- (a) Since the post was created in HAD in July 2002, the SGC has been heavily engaged in advising on several pieces of proposed legislative amendments, on the review of BMO, and on the interpretation and application of the provisions of BMO on a regular basis which enhances the legal support for HAD's building management staff, and providing guidance for HAD staff in answering general enquiries from the public on legal matters and procedures relating to BMO. Much of the work involved is of complex legal nature. This SGC is the only legal professional working on HAD's establishment. It has been difficult to provide leave cover, and the supervision of this SGC has been split between HAD and the Civil Division of D of J.
- (b) It is now proposed that the SGC post should be transferred from HAD to the Civil Division of D of J on 1 April 2003. This would mean an SGC post will be created on the establishment of D of J, to be offset by the deletion of an SGC post on HAD's establishment and as such it would be a cost neutral transfer for the Government as a whole. The transfer will enable the Civil Division to achieve better deployment of counsel, more direct supervision of, and better leave cover for, the SGC assigned to the implementation of BMO. After the transfer of the post, the whole Civil Division will ensure that the legal support to be provided for the implementation of BMO would not be reduced or adversely affected.

Signature \_\_\_\_\_

Name in block letters

Miss Annie Tam

Post Title

Director of Administration  
and Development

Date

31 March 2003

Examination of Estimates of Expenditure 2003-04  
**CONTROLLING OFFICER'S REPLY TO  
SUPPLEMENTARY QUESTION**

Reply Serial No.

S-SJ004

Head : 92 Department of Justice    Subhead (No. & title) :

Programme : (1) Prosecutions                      (2) Civil

Controlling Officer : Director of Administration and Development

Question Serial No.

Oral

Question :

Does the Department of Justice critically review cases that do not result in a conviction or where the appeal is allowed, to ensure that the decision to prosecute or appeal was the correct one?

Asked by : Hon. LEE Chu-ming, Martin

Reply :

The decision to prosecute a case is based on the criteria detailed in the *Statement of Prosecution Policy and Practice*, the most recent edition of which was published in October 2002. These are criteria which are well known to all our counsel. The decision is based on the evidence which is available at the time the decision is made.

An advice as to a prosecution given by our junior prosecutors, whether it is to the effect that a prosecution should ensue, or that there should be no prosecution, is checked and countersigned by more senior and experienced prosecutors. In other words, every effort is made to ensure that the decision to prosecute, in accordance with established principles, is the correct one.

It is not the aim of the prosecutor to achieve a conviction at all costs. Prosecutors, whether they are Government Counsel, Court Prosecutors, or fiat counsel, are expected to prosecute cases fairly and firmly, with the ultimate decision as to whether there is a conviction or not being made by the Court.

There are many reasons why a prosecution may not result in a conviction, such as, a vital witness failing to appear, or a witness not giving evidence in accordance with his or her witness statement, or the witness giving evidence which is not credible or the defence producing a witness or other evidence which casts doubt on the credibility of a prosecution witness.

Every prosecutor is expected to prepare a case report in respect of each case, irrespective of the result, and these reports are considered by the prosecutor's supervisor, or in respect of fiat counsel, by a senior prosecutor from the Department of Justice. If a case results in an acquittal then the reasons for that acquittal will be reflected in the report, and if an error has been made, then this will be discussed with the prosecutor concerned to ensure that a similar error will not occur again. If the acquittal was as a consequence of an error on the part of the judge or Magistrate that also will be reflected in the case report, which will alert senior prosecutors to the need to consider a review of the decision of a Magistrate [section 104 of the Magistrates Ordinance] or an application to state a case.

For civil appeals, each case is carefully considered by the senior officers of the Department of Justice. The opinion of an outside senior counsel is also sought and considered if deemed necessary and appropriate.

Evaluation of cases is also conducted between the Secretary for Justice, Director of Public Prosecutions and Law Officer (Civil) respectively in their regular meetings she has with the two Divisions.

Signature \_\_\_\_\_

Name in block letters \_\_\_\_\_

Post Title \_\_\_\_\_

Date \_\_\_\_\_

Miss Annie Tam

Director of Administration  
and Development

31 March 2003