

LC Paper No. CB(2)454/02-03(01)

SUBMISSION OF THE HONG KONG BAR ASSOCIATION

LegCo Panel on Administration of Justice and Legal Services **Meeting on 25 November 2002**

Item IV – Court Prosecutors

1. The Hong Kong Bar Association is concerned that, as evidenced by its recent recruitment of Court Prosecutors, the Department of Justice appears committed to a system of prosecution in the Magistracy by non-professionally qualified persons.
2. The comparison in the March 2002 Department of Justice's paper at paragraph 19 with the introduction of "... a not dissimilar system" introduced by the Crown Prosecution Service in 1998 is not to compare like with like. The sentencing powers, and hence the seriousness of the cases brought in the two jurisdictions, are quite different. In England and Wales the maximum sentence that may be imposed in respect of any one offence is six months imprisonment with a maximum aggregate sentence in respect of multiple offences of twelve months. In contrast, in the Magistracy in Hong Kong a permanent magistrate may impose a maximum sentence of 2 years imprisonment under section 92 and 92A of the Magistrates Ordinance, 3 years imprisonment under section 8 of the Dangerous Drugs Ordinance, 5 years imprisonment under the Public Order Ordinance and 7 years imprisonment under s. 20(2) of the Firearms and Ammunition Ordinance.

Cost

3. In light of correspondence with the Department of Justice, in respect of the means by which it was calculated (and asserted at paragraph 14 of their paper) that the average cost of a Court Prosecutor grade officer conducting prosecutions was \$3,045 per court day, it is clear that figure is an underestimate given that

“Initial training costs are not included” (letter of John Reading S.C. to the Chairman of the Special Committee on Criminal Law of the Hong Kong Bar Association 24th April 2002)

It is to be noted that in her address to the Legislative Council on 4th April 2001 the Honourable Ms. Elsie Leung described that initial training as being,

“a nine month full-time training course, including advocacy, rules of evidence, court procedure, court procedure, prosecutorial ethics and substantive criminal law.”

No doubt, the attendant costs are significant.

4. The Hong Kong Bar Association is of the view that greater use ought to be made of professionally qualified prosecutors in the Magistracy, in particular in those cases in which the likely consequence of conviction is a sentence of imprisonment. We believe that there is a pool of well qualified young barristers, trained at considerable expense to the Community, ready and willing to undertake that work and we invite the Department of Justice to make full use of them.

Hong Kong Bar Association
22nd November 2002