

AJLS Panel on Policy Agenda

Our missions

- The missions of this Department are to uphold the rule of law, to conduct criminal prosecutions fairly and independently, to give good advice on criminal, civil, commercial, constitutional and international law matters, to conduct civil litigation on behalf of the Government in a fair and effective manner, to draft sound legislation, and to contribute towards the development of the legal system and of the legal profession.
- It is of fundamental importance that the Government abides by the law and makes decisions in accordance with the law. For this purpose, the Secretary for Justice, as legal adviser to the Chief Executive and a member of the Executive Council, and the Department, as legal adviser to the other bureaux and departments, give legal advice on all aspects of government work. It is our aim to ensure that legislation proposed and policy decisions formulated do not violate the Basic Law, particularly the fundamental rights protected by the Basic Law; we ensure that the decisions to prosecute are made independently and that the conduct of criminal prosecutions adheres to our prosecutions policy and procedures; and we contribute towards the healthy development of our common law legal system by developing the standards of departmental counsel through training and other programmes, by providing access to legal knowledge, by facilitating the expansion of business opportunities for the legal

profession, and by promoting Hong Kong as a legal services centre.

Work in 2004

- I have with me figures of the matters handled by each of the Prosecutions Division, Civil Division, Law Drafting Division, Legal Policy Division and International Law Division, but I do not wish to burden Members with them. I shall be glad to provide you with such information if you are interested in them. As in previous year, the Department of Justice came before this Panel from time to time and reported on the work which Members are interested. Hence, I believe, you are conversant with the progress of the various issues, like solicitors' indemnity scheme, right of audience, etc. I would just highlight some of the less popular issues.
- During 2004, there were 1,313 civil proceedings (including non-construction arbitrations) brought by the government, and 1,962 civil proceedings were brought against the government. Our success rate in respect of the cases concluded in 2004 was 73%. There were 15,284 items of civil legal advice provided, and 603 commercial tenders, consultancy briefs, contracts, licences and franchises were drafted and vetted by us. Some of the heavier commercial transactions handled by the Department in 2004 were the issuance of Government bonds [totaling \$26 billion], the sale of some 260 civil service loans, the proposed merger of MTRCL and KCRC, the proposed privatization of the Airport Authority and the proposed development of the West Kowloon

Cultural District. Major civil law work also included the Deposit Protection Scheme and Clearing Settlement Bill in the banking sector. Considerable advice was given on amendments to the Companies Ordinance as part of the Government's corporate governance initiatives.

- In 2004, the Legal Policy Division of my department prepared one bill (which we will be promoting this year), handled 54 petitions, and gave over 2,600 items of legal, and legal policy, advice [i.e. 642 items of advice on general legal policy issues, 793 items on human rights issues, 201 items on Mainland law and related matters, 918 items on Basic Law and 93 items on other constitutional matters].
- We advised on the proposed arrangements with the Mainland for the reciprocal enforcement of judgments. We participated in 131 regional and local conferences, organized talks, seminars and visits in order to develop and enhance mutual understanding of the legal systems in the HKSAR and the Mainland; and facilitated the publication of two reports and three consultation papers by the Law Reform Commission.
- We participated in the negotiation of five international agreements [i.e. MLA & TSP agreements with Spain, SFO agreement with Finland, MLA agreements with Malaysia and with India] which were initialed during the year 2004. We also participated as legal advisers in 25 rounds of negotiations of other bilateral and multilateral agreements covering air services, double taxation, CEPA and Hague conference conventions. We

handled 32 outgoing requests and 158 incoming requests for mutual legal assistance. We also gave 8,333 items of legal advice on international law.

- I hope that these figures give Members an idea of the work dealt with by my Department last year, and of the volume of work which we will have to carry out during the current year, even though only a few items appear on our Policy Agenda. I would remind Members that general civil service recruitment freeze policy applies to the Department of Justice. We have not recruited during the past three years, and our resources are stretched. We are, however, addressing this issue and have recently obtained special approval from the Panel co-chaired by CS and FS, with SCS as a member, to proceed with the open recruitment of 12 Government Counsel in 2005/06.

The Year Ahead

- The year 2005 will be a year of consolidation and evaluation for the Department of Justice. The reform of legal education is being implemented and is on the right path. The review of the supply of and demand for legal services in Hong Kong has taken its first step, with the commissioning last year of consultants who will conduct socio-legal research into the unmet need of the community in this respect. The implementation in respect of legal services of CEPA and CEPA II has been smooth, and the effectiveness of the arrangements is being reviewed with a view to formulating proposals for CEPA III.

- In our Paper on the Policy Initiatives of the Department of Justice, we have outlined six ongoing initiatives under the heading of “Effective Governance”. These involve participating in the constitutional review, implementing “one country, two systems”, promoting understanding of the rule of law and improving the legal system, promoting transparency in public prosecutions, improving the administration of criminal justice, and promoting bilingualism in the law and accessibility to the laws of Hong Kong.
- Under the heading “Vibrant Economy”, we have one new initiative and four ongoing initiatives. The new initiative is to explore further opportunities to access the Mainland legal market that might be granted under CEPA III. The four ongoing initiatives involve overseeing the research being conducted into the supply of and demand for legal services in the community, co-operation and exchanges with Mainland counterparts, development of a bilingual legal services information website, and development of Hong Kong as a regional centre for legal services and dispute resolution. I am glad to report that the bilingual community legal information website known as “Community Legal Information Centre” or “CLIC” (“社區法網”) is being developed by the China Information Technology and Law Centre of the University of Hong Kong (China IT Law Centre), with the Department of Justice contributing most of the initial cost for the project as well as overseeing the implementation of the project. The agreement was signed on the 17th March 2004. The website will be launched later this

year, although it will take about three years to complete the project.

- Our paper also sets out one ongoing initiative under the heading of “Enlightened People with a Rich Culture”, namely to continue to oversee and promote reforms in legal education. The paper also sets out how these ongoing and new initiatives will be taken forward. My colleague Mr. John Reading, DDPP, will answer your questions regarding public prosecutions and criminal justice, my colleague Mr. Robert Allcock, Solicitor General, will be able to answer your questions regarding legal services and legal education, my colleague Miss Annie KL Tam, Director of Administration & Development will be able to answer your questions concerning resources, manpower and training. I, of course, am accountable for the Department’s work in general.
- We do not have spectacular plans for development in the next 2½ years. Basically, our work is to give advice and support to other bureaux and depends very much on their legislative requirements, the legal challenges they have to meet, and the problems that arise from their day-to-day management. In relation to the Policy Agenda, there are 37 items that probably require legislative measures for their implementation. There are pending before the Court of the First Instance 94 applications for judicial review and 391 legal actions involving the government. There are 74 civil cases pending before the Court of Appeal, and 14 cases pending before the Court of Final Appeal. Some cases pending in the Court of First Instance are potentially Court of Appeal cases and those pending in the Court of Appeal will

become potentially Court of Final Appeal cases. Insofar as criminal cases related to the Court of Final Appeal are concerned, there are 25 criminal cases arising from 2004 which are pending. Of these, 9 are full appeal hearings, 11 are applications for leave, and 5 are applications for a certificate that points of law of great and general importance are involved. All in all, 2005 will be a busy year for my department.

Conclusion

- My colleagues and I will be happy to answer any questions that Members may have on the work of my department.

Annex

During 2004, a total of 192,163 matters were prosecuted by Court Prosecutors, and 587 cases were conducted by Counsel in the Magistrates' Courts. Counsel also conducted 1,573 cases in the District Court and 477 cases in the Court of First Instance. These were contested or initially contested cases. The conviction rates in the Magistrates' Courts, the District Court and the Court of First Instance were, respectively, 77.3%, 90.1% and 89.1%. 122 Court of Final Appeal related criminal matters were concluded [these included applications to the Court of First Instance and to the Court of Appeal for certificates to appeal to the Court of Final Appeal, applications to the Appeals Committee of the Court of Final Appeal for leave to appeal, and appeals heard by the Court of Final Appeal]. 581 appeals were heard in the Court of Appeal and 1,106 Magistracy appeals heard in the Court of First Instance. The details of the results of appeal related applications and appeals at all levels are as follows:

Appeals by Defendants to the Court of Final Appeal

	Allowed	Dismissed	Withdrawn	Pending
Certificate	2	41	0	5
Leave	19	48	1	11
CFA	9	2	0	9

Appeals by Defendants to the Court of Appeal

	Against C & S	Against C	Against S
No. of Appeals	133	91	385
	21.84%	14.94%	63.22%

Results of Appeals by Defendants to the Court of Appeal

	Allowed	Dismissed	Abandoned
No. of Appeals	115	254	323
	16.6%	36.7%	46.7%

Appeals by Defendants to the Court of First Instance

	Against C & S	Against C	Against S
No. of Appeals	224	532	554
	17.1%	40.6%	42.3%

Results of Appeal by Defendants to the Court First Instance

	Allowed	Dismissed	Abandoned
No. of Appeals	270	596	448
	20.5%	45.4%	34.1%

Appeals by the Prosecution to the Court of Final Appeal

NIL

Applications by the Prosecution to review sentences to the Court of Appeal

	Allowed	Dismissed	Pending
No. of Appeals	4	1	1
	66.6%	16.7%	16.7%

Applications by the Prosecution by way of case stated

	Allowed	Dismissed	Pending
No. of Appeals	1	0	2
	33.3%	0%	66.7%