

**Speech by the Hon. Elsie Leung, GBM, JP
Secretary for Justice
at the Legislative Council AJLS Panel Meeting on
17 October 2005**

**Presentation of the Policy Agenda of
the Department of Justice for the Year 2005/06**

Madam Chairman, Hon. Members,

I have the pleasure of presenting to you, Hon. Members, the Policy Agenda of the Department of Justice for the Year 2005/06 which is set out in the paper circulated through your Secretariat. I wish to speak on how the Policy Agenda supports the Policy Address delivered by the Chief Executive last Wednesday.

2. The Chief Executive's 2005-06 Policy Address outlined the Government's plans for 2005/06 in three main areas, namely: 'Pursuing Excellence in Governance', 'Fostering Harmony in the Community' and 'Helping the Economy to Power Ahead'. The work of the Department of Justice centers on these themes.

Pursuing Excellence in Governance

Strengthening the relationship with the Central Authorities and the Mainland

3. In the section on Pursuing Excellence in Governance, the Chief Executive spoke of strengthening our relationship with the central authorities and the Mainland. The Department of Justice has entered into Co-operation Agreements with the Ministry of Justice, and

7 provincial and municipal justice bureaux and departments¹ which provide platforms for exchanges of information on Hong Kong and Mainland law, the two legal systems and the two legal professions. Attachment of officials is now a two way arrangements: apart from training courses which we provide for the Mainland legal officials, 3 of our Counsel have been attached to the Justice Bureaux of Chongqing, Shanghai and Qingdao to acquaint themselves with the Mainland law and practice, and two more attachments will be arranged later this year. Apart from learning from their hosts, they were also invited to and gave lectures on Hong Kong law and practice.

4. The training scheme in Common Law for Mainland Legal Officials sponsored by my Department has gone into its 7th years, the current one commenced in September 2005. In April, 2005, the Department co-organized the Symposium on the Forensic Examination Systems of Hong Kong and Chongqing. In addition, I refer to paragraphs 19 and 21 of our paper before you, which provide information on the co-operation we plan to continue in the year ahead.

5. Apart from participating in the 22nd Congress on the Law of the World in Beijing and Shanghai between the 4th and 9th September, 2005 which was also attended by some of the Honourable Members here, the Director of Public Prosecutions and I were part of the Chinese Delegation that attended the 2nd China–Asean Chief Prosecutors General Conference in Bangkok between the 14th-16th of last month. During that Conference, I had the opportunity of explaining to the Chief Prosecutors and Attorneys-General of

¹ They are Qingdao, Chongqing, Beijing, Nanjing, Shanghai, Zhejiang and Shenzhen.

10 ASEAN countries our ability to enter into agreements for mutual legal assistance with other jurisdictions.

6. All these programmes, I hope, will facilitate better communication and understanding between ourselves and our Mainland counterparts in the legal systems and practice of the two jurisdictions, enhance co-operation between Hong Kong and the Mainland in mutual legal assistance and provide opportunities for us to promote the rule of law. (Please see Para. 7 of our paper).

Improving our relationship with Legislative Council

7. In paragraphs 7 and 10 of the Policy Address, the Chief Executive also spoke about strengthening co-operation with the Legislature and better communication with Honourable Members, listening to their views in the formulation of policy and legislative affairs, and respect for their respective functions under the Basic Law.

8. The Department of Justice has made every effort in establishing a good working relationship with the Legislature, in particular, this Panel. We appreciate the onerous burden placed on Honourable Members in scrutinizing bills and government policies. We shall do all we can to put before this Panel our proposed legislative and other measures as early as possible before their formal introduction, and to take on board suggestions of Honourable Members in improving bills and policies. The enactment of the Statute Law (Miscellaneous Provisions) Bill 2005 was an example. The bill comprised 6 Parts, 27 Divisions and 224 clauses. Yet, within a period of 4 months of its introduction into Legislative Council, it was passed. A job which was described by you, Chairman, as "done expeditiously

and with pleasure." Colleagues of my Department were much encouraged by such remarks.

9. There are pending 16 bills introduced by the Administration, and 15 Bills Committees have been formed. There are 279 initiatives contained in the Government's Policy Agenda for 2005-06, about 26 of which will involve legislation. It is anticipated that the Legislative Council will have a heavy legislative schedule in the session ahead. We shall continue our efforts in getting prepared when attending before this Panel or any Committee, and be receptive and responsive to the suggestions of Honourable Members. Other efforts include the initiatives described in paragraphs 2 and 3 of our paper, namely, the enhancement of the law drafting skills of law draftsmen through an in-house mentorship programme, and short-term attachments to broaden the exposure of draftsmen.

Constitutional Development

10. I refer to paragraph 8 of our paper concerning my role as a member of the Constitutional Development Task Force which will be publishing its Fifth Report shortly. It would be premature for me to speak of the contents of the Report, but it is the Government's intention to democratize to the farthest extent possible within the limits of the Basic Law provisions and the Interpretation and the Decision of the NPCSC of the 6th and 26 April 2004 respectively.

Enhancing the quality of criminal justice

11. The Chief Executive has promised higher efficiency, more transparency, staunch commitment to uphold the rule of law and social justice, and protection of fundamental rights and freedoms of

the citizens. Those commitments straddle the objectives of Pursuing Excellence in Governance as well as Fostering Harmony in the Community, because a harmonious society must be an orderly society in which the rule of law is upheld: the Government abides by law and citizens observe the laws. Our Prosecutions Division will implement 3 new initiatives and 2 ongoing initiatives to improve the quality of criminal justice and to strengthen our ties with other jurisdictions. Please refer to paragraphs 2, 4 to 7, and 11 to 13 of our paper.

12. It is essential that those concerned with the prosecution and investigation of crime should make proper disclosure of relevant material to the defence. This is part-and-parcel of the right of an accused to a fair trial. The law in relation to disclosure is constantly evolving, and has posed challenges to law enforcers throughout the common law world. We are determined that the law enforcement agencies in Hong Kong should have access to the best possible guidelines to assist them in discharging their obligations in this difficult area. The Prosecutions Division will therefore be liaising with the Police, the ICAC and the Customs with a view to ensuring that their internal guidelines conform to the requirements of the law and adequately reflect the latest legal developments. This is an area in which prosecutors and investigators must work in tandem in order to safeguard the interests of those accused of crime.

Fostering Harmony in the Community

Promoting the Basic Law and the rule of law

13. As I said, social harmony must be underpinned by the rule of law. One of our objectives is to promote understanding of the Basic

Law, which forms the skeleton of our legal system. In this regard, may I refer to the initiatives contained in the 2nd and 6th bullet points in paragraph 7 and paragraphs 9, 10, 14, 20, and 22 of our paper. We assist in promoting public awareness and understanding of the Basic Law through publication of the Basic Law Bulletin and the work of the Basic Law Promotion Steering Committee, and through articles, speaking engagements, briefings and other activities. CLIC, the bilingual legal information website, has been available to the public since May this year, and is hoped to be fully developed by April 2007. The two-year study into the supply of, and demand for, legal services in the community is progressing well, and hopefully its results may assist the Government and others in formulating policies in respect of legal services, including the possible establishment of community legal service centres advocated by some Honourable Members. I shall deal with the development of the legal profession under the heading "Vibrant Economy".

Helping the Economy to Power Ahead

Optimising human resources

14. The Chief Executive placed much emphasis on optimising human resources. The rule of law must be founded on an independent judiciary, competent and impartial prosecutors and government counsel, efficient practitioners and dedicated law enforcement agencies. The Department provides training for its Government Counsel to improve their bilingual skills, and takes part in the work of the newly formed statutory Standing Committee on Legal Education and Training. Paragraphs 15 and 25 of our paper are relevant.

Legal Services

15. Since the coming into operation of CEPA I and CEPA II, there are expanded opportunities for Hong Kong lawyers to gain entry into the Mainland market. Last month, the Ministry of Justice conducted its State Judicial Examination in Hong Kong for the first time. 278 local residents took part in the examination, the administrative arrangements for which were undertaken by the Hong Kong Examinations and Assessment Authority. I do hope that the success rate will be better than last year, when the passing rate was less than 1%. In this respect, I would refer to paragraph 24 of our paper. The Department will review what courses can be organized to assist candidates sitting for the examination after the result of the latest examination comes out.

Arbitration

16. To enhance the competitiveness of Hong Kong as an international disputes resolution centre, we consider it necessary to review our law on arbitration with a view to making it more user-friendly. Hence the setting up of the working group to take forward the unofficial report prepared by the Committee on Hong Kong Arbitration Law, the work of which this Panel is familiar with. I refer Honourable Members to paragraph 18 of our paper.

REJ with the Mainland

17. As part of the development of Hong Kong as regional centre for legal services and dispute resolution, we have continued our discussions with Mainland authorities over the Reciprocal Enforcement of Judgment in Civil and Commercial Matters, having

regard to the draft Hague Convention on Exclusive Choice of Court Agreements. I am glad to report that a preliminary agreement has been reached on the basis of a draft text of the proposed arrangement. The draft has taken into account the suggestions made by Members of this Panel in the meeting on the 22 November 2004, and its main features will soon be submitted to this Panel. After that, and subject to the approval of the Executive Council, we hope to sign the agreement in the near future.

Conclusion

18. Hon. Members will see that we have a heavy schedule ahead of us. I wish to thank Members for their support of the work of the Department of Justice in the past year and hope that such co-operation will continue in the year ahead. Thank you.