

LegCo Panel on Administration of Justice and Legal Services

Meeting on 28 April 2008

The Law Drafting Division of the Department of Justice

Purpose

This paper updates Members on the latest position with respect to the issues that Panel Members have raised in respect of the Law Drafting Division of the Department of Justice.

Role of Law Drafting Division

2. The Law Drafting Division is responsible for drafting all legislation (Ordinances and subsidiary legislation) proposed by the Government. It also vets all non-Government Bills and all subsidiary legislation put forward by non-Government bodies to ensure compliance with the form and style of Hong Kong legislation. Drafting counsel also assist in steering legislation through the legislative process by attending Executive Council meetings, Bills Committee meetings and the meetings of any sub-committee formed to consider an item of subsidiary legislation. The Division is also responsible for ensuring that the published version of Hong Kong's legislation is kept up to date.

Staffing position of Law Drafting Division

3. As at 1 April 2008, the Law Drafting Division had a total Government Counsel Grade strength of 34, with an increased overall experience level of counsel compared to that prevailing over the preceding 11 years (see Appendix). The average years of experience now stands at 12.1 years and there are 16 counsel (47.1%) with 12 or more years of legislative drafting experience. The Division will continue to be well-placed in terms of experience level of counsel as, over the 10 year period from 1 April 2008, it is anticipated that only 4 counsel will depart because of age retirement. While a significant number of departures can be expected in the following 10 year period, the vastly increased experience level of the

continuing counsel and the on-going process of recruitment should result in the Division continuing to be well-placed in terms of experience level of counsel.

Mentorship Scheme and training programmes

4. The Law Drafting Division attaches great importance to the training and development of its staff. The Mentorship Scheme, under which each counsel in the Senior Government Counsel or Government Counsel rank is assigned a mentor at the directorate rank, continues in operation. Panel members were informed about the history and operation of this Scheme by an Information Paper prepared in April 2006 (LC Paper No. CB(2)1755/05-06(03)). The Scheme is kept under review to determine whether any change is desirable to enhance its effectiveness as a learning and development tool.

5. The Law Drafting Division will continue to provide an intensive and comprehensive in-house legislative drafting course to all counsel at the Government Counsel rank. The next course is scheduled to begin in May 2008 and will run for 24 weeks. In addition, a number of in-house seminars will be provided to all counsel in 2008-2009 and subsequent years.

6. Participation in International Drafting Conferences also provides colleagues in the Department with the opportunity to broaden their exposure and exchange experience with their counterparts in other jurisdictions. In 2008, officers in the Law Drafting Division will take part in the 5th Australasian Drafting Conference. It is expected that over 100 drafters from Australia and New Zealand will attend, and it is likely that the United Kingdom and Singapore drafting offices will also be represented. An IT Forum is also being held in conjunction with this Conference. The latter event would give the attending counsel the opportunity to hear about, and see demonstrations of, the latest technology being used in drafting offices to facilitate both drafting work and office administration.

7. The next conference of the Commonwealth Association of Legislative Counsel will be held in Hong Kong in April 2009. All available counsel in the Law Drafting Division will attend this conference at which a range of papers on all aspects of legislative drafting will be presented. It is anticipated that in excess of 150 legislative drafters will be in attendance.

The conference will also give Hong Kong counsel the opportunity to network and get to know drafting counsel from many other countries.

Drafting of bilingual legislation

8. It is the policy of the Law Drafting Division to draft, in plain language, legislation that accurately reflects the policy intent. With all legislation being drafted and enacted bilingually, the objective is for there to be no discrepancy in meaning between a provision in one language and the corresponding provision in the other language. While every effort is made to match the Chinese and English texts, an exact match is not always practical having regard to the syntactic and grammatical differences between the two languages.

9. Both texts are by law equally authentic and are presumed to have the same meaning (s.10B of the Interpretation and General Clauses Ordinance (Cap. 1)). It is important, therefore, for legislation to be drafted consistently with that presumption. Section 10B(3) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that if there is a difference in meaning between the texts that cannot be resolved by the application of the ordinary rules of statutory interpretation, the meaning which best reconciles the texts, having regard to the object and purposes of the enactment as a whole, is to be adopted. This may involve giving a word or phrase a strained construction in one or both texts. However, the objective in drafting is to avoid any need for such a process of construction.

Policy on the Chinese language proficiency requirement in the recruitment of law drafters

10. It is a policy objective of the Government to develop and maintain a biliterate civil service that is able to operate efficiently in both Chinese and English. Accordingly, all applicants for Government Counsel posts must, as a general rule, have attained Level 2 in the Use of English paper in the Common Recruitment Examination (or Grade "C" or above in the Use of English of the Hong Kong Advanced Level Examination) and Level 1 or above in the Use of Chinese paper in the Common Recruitment Examination (or Grade "D" or above in the Chinese Language and Culture or the Chinese Language and Literature of the Hong Kong Advanced Level Examination). Nonetheless, in the light of recruitment difficulties and taking into account the views expressed by Panel members at its meeting in April 2007, the Department of Justice has sought the agreement of the Civil

Service Bureau, in the context of the 2007 Government Counsel recruitment exercise, to exempt a small number of new recruits from the Chinese language proficiency requirement. This will ensure, that the general policy on civil service notwithstanding, exceptionally meritorious monolingual counsel will not be precluded from being appointed as Government Counsel. Furthermore, in relation to recruitment into the directorate Government Counsel posts, the Chinese language proficiency requirement may be waived where there is a need to do so. There have been occasions when such requirements were waived. The system allows adequate flexibility for the Law Drafting Division. This is exemplified by the fact that candidates who do not have Chinese language proficiency will be considered in the Deputy Principal Government Counsel recruitment exercise now underway.

Law Drafting Division
Department of Justice
April 2008

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Appendix

Years of legislative drafting experience of Counsel in the Law Drafting Division as at 1 April 2008

Legislative drafting experience	1 Apr 97	1 Apr 98	1 Apr 99	1 Apr 00	1 Apr 01	1 Apr 02	1 Apr 03	1 Apr 04	1 Apr 05	1 Apr 06	1 Apr 07	1 Apr 08
16 years or more	4	5	5	5	5	4	5	5	5	4	4	8
12 to less than 16 years	2	2	2	3	4	4	4	5	5	6	10	8
8 to less than 12 years	5	4	6	6	8	8	13	11	13	13	8	11
4 to less than 8 years	8	9	13	15	14	14	7	11	7	6	8	3
Less than 4 years	23	21	13	10	7	8	9	3	3	2	3	4
Total*	42	41	39	39	38	38	38	35	33	31	33	34
Average years of experience	6 yrs	7 yrs	7.3 yrs	8 yrs	9 yrs	8.6 yrs	9.3 yrs	10 yrs	10.4 yrs	11.3 yrs	10.9 yrs	12.1 yrs

* Excluding officers on final leave.