

For Information

LegCo Panel on Administration of Justice and Legal Services

Court Prosecutors System

Purpose

At the AJLS Panel meeting held on 26 November 2007, Members considered the Administration’s paper on Staff Wastage in the Prosecutions Division, Department of Justice [LC Paper No CB(2) 404/07/08(06)] and requested the Administration to provide past statistics on the workload of the Prosecutions Division and the number of back-to-back cases handled by Government Counsel. The Chairman also requested the Administration to provide a paper on the review of the Court Prosecutor grade. This paper sets out the relevant information for Members’ reference.

Workload Statistics in the Prosecutions Division

2. Whilst specific back-to-back statistics are not maintained, as prosecutors now discharge both court and advisory functions, the workload statistics in the Prosecutions Division in the past five years are :

| | <u>2003</u> | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> |
|--|-------------|-------------|-------------|-------------|-------------|
| cases conducted by Government Counsel | 4 436 | 4 474 | 4 463 | 3 901 | 4 090 |
| court days undertaken by Government Counsel# | | | 5 456 | 3 998 | 3 838 |
| average number of court days for court specialists | 93 | 97 | | | |
| number of court days undertaken by Government Counsel who are not court specialists..... | 4 513 | 3 649 | | | |
| number of court days undertaken by Court Prosecutors in Magistrates’ Court..... | 13 851 | 13 743 | 13 705 | 12 571 | 12 023 |
| number of trials prepared in the Court of First Instance | 337 | 377 | 326 | | |
| number of trials prepared in the District Court | 608 | 658 | 613 | | |

| | <u>2003</u> | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> |
|---|-------------|-------------|-------------|-------------|-------------|
| number of cases prepared for the Court of First Instance@ | | | | 263 | 312 |
| number of cases prepared for the District CourtΩ..... | | | 1 361 | 1 177 | 1 242 |
| items of legal advice provided..... | 16 820 | 16 034 | 14 707 | 14 895 | 14 404 |
| number of appeals conducted..... | 1 607 | 1 795 | 1 720 | 1 468 | 1 580 |

In 2006-07 COR, the two indicators on “average number of court days for court specialists” and “court days undertaken by Government Counsel who are not court specialists” had been combined because court specialists who were previously deployed exclusively to conduct complex trials have also taken up advisory duties in particular those relating to complex criminal matters.

@ In 2007-08 COR, changes have been made to the wording in this indicator which originally referred to “trials” instead of “cases”. The revisions better reflect Counsel’s actual preparation work.

Ω In 2007-08 COR, changes have been made to the wording in this indicator which originally referred to “trials” instead of “cases”. The revisions better reflect Counsel’s actual preparation work. Actual figures for 2005 has been updated to tie in with the revised description of the indication

While there are some fluctuations on above workload statistics, it should be noted that there is growing complexity in respect of the cases handled by the Prosecutions Division.

Court Prosecutors

3. The Court Prosecutors (CPs) grade was first established in 1976, at a time when there was a limited number of law graduates locally. It was introduced as a pilot scheme to take over prosecution work in the Magistrates’ Courts from Police Inspectors. The scheme proved to be successful and, in 1979, it was decided to implement the scheme on a permanent basis. In the audit review of the Court Prosecutor grade, the Director of Audit, in his report for the year ending 1993, expressed concern over the substantial amount of prosecution work briefed out to private counsel at substantially higher cost than if the work was carried out by the Department’s own Court Prosecutor grade staff. The Director of Audit recommended improving the career prospects of the grade. Subsequently, with the approval of the Finance Committee of the Legislative Council, the structure and size of the grade was expanded. Over the years, the CPs, many of whom now hold legal qualifications, have risen up to the challenges admirably, and provided excellent services at very good value.

Of those who have left the CPs grade, 20 have been recruited as Magistrates and 17 have joined the Government Counsel grade.

4. At present, the CPs grade has an establishment of 102 and working strength of 92. Of these 92 serving CPs, 31 hold law degrees, seven obtained PCLL, six are admitted as barristers (one fully qualified, five others have not fulfilled the pupillage requirement) and two are studying for law degrees. The entry qualification to the Court Prosecutor rank is matriculation and the starting salary is \$17,935 per month. New CPs undergo nine months of full-time comprehensive training before they take up their duties in the Magistrates Court.

5. We note that views have been expressed in different quarters on the need to review the CPs system. We have taken the opportunity to revisit the matter and communicated with the Bar Association in the process. The development of the CPs system is a complicated matter which involves important principles including the standards of prosecution, the development of the criminal justice system, the deployment of public revenue and staffing issues.

The Guiding Principles

6. In considering the issue of the CPs, we are guided by the following principles –

- The bulk of prosecutions ought ideally be conducted by the legally qualified, if not in the short term, then in the medium to long term.
- The standards of prosecution must be maintained.
- Although the costs of prosecuting cannot be determinative of the issue, the impact of prosecuting upon the public purse cannot be ignored.
- DoJ has a role to play in assisting junior barristers to develop, but this is ancillary to its primary duty of upholding the standards of prosecution.
- The position of the current CPs must be respected.

7. There are currently 10 vacancies in the CP grade (with an establishment of 102). The last recruitment exercise was conducted in 2001, and prior to that, in 1997. As mentioned above, as a matter of

principle, the bulk of prosecutions ought to be conducted by the legally qualified in the medium to long term. However, on the operation front, we are faced with the immediate problem of a large number of vacancies in the CP grade (10 out of an establishment of 102) against the background of mounting workload. This lack of adequate manpower is not sustainable, to the extent that it is affecting the time serving CPs can devote to general court and administrative duties. In the light of such tight manpower situation, we intend to conduct a recruitment exercise later this year. As a matter of allocation of work, the new recruits will, after training, unless they are legally qualified, generally concentrate upon general court and administrative duties, i.e., –

- Case management and administration.
- Traffic courts.
- Plea courts.
- Miscellaneous hearings, including remands, bail applications, pre-trial reviews and hawking and littering cases.
- Liaison work with law enforcement agencies, victims, witnesses and court staff.

8. As a result of these work allocation arrangements, the recruitment exercise will not reduce the cases to be briefed out to counsel on fiat and we expect that the number of cases prosecuted by counsel on fiat in lieu of CPs would increase by 20% (from \$8.11m to \$9.77m) in 2008-09 when compared with the total expenditure in 2007-08. Where caseload so justifies, there is also scope for further increasing the cases briefed out.

Workload left by departing Court Prosecutors

9. It has been suggested that the workload left by departing Court Prosecutors should be taken over by either Government Counsel or briefed out. It would not be feasible for GC to take over the work of departing CPs. DoJ has encountered difficulties in recruiting GC and it would not be possible for GC to branch into another area of work, at least at this stage. As regards briefing out to the private Bar, the reality is, with an increasing workload, more cases have been briefed out to counsel on fiat in recent years; the number of court days undertaken by counsel instructed to prosecute in Magistrates Court in place of Court Prosecutors increased from 969 in 2006 to 1,493 in 2007. The estimated figure for

2008 is 1,800, and as indicated above, this may be further increased depending on demand. As newly recruited Court Prosecutors will not, unless legally qualified, be conducting general trial cases, we expect that the number of court days undertaken by counsel on fiat will continue to rise.

Further enhancing the standards of counsel on fiat

10. We understand that the Bar is considering measures to enhance the training of its junior members and we welcome any such initiatives. If practicable, DoJ will do what it reasonably can to assist that process. We, like the Bar Association, are committed to high standards of prosecution at the summary level.

11. Both our systems and our service delivery are subject to periodic review. The Court Prosecutor system is no exception. Since we are liaising with the Bar Association over its proposals to consolidate the training of its junior members, we expect we would re-visit the CP system after the Bar's proposed training arrangements have been implemented, and its effectiveness has been evaluated. It remains our guiding principle that the bulk of prosecutions ought ideally be conducted by the legally qualified, if not in the short term, then in the medium to long term.

Department of Justice
July 2008