

# THE LAW REFORM COMMISSION OF HONG KONG

## REPORT

### CRITERIA FOR SERVICE AS JURORS

#### EXECUTIVE SUMMARY

*(This Executive Summary is an outline of the report. Copies of the report can be obtained either from the Secretariat of the Law Reform Commission, 20/F, Harcourt House, 39 Gloucester Road, Hong Kong, or on the internet at <http://www.hkreform.gov.hk>)*

#### PREFACE

1. The existing legislative rules and administrative practices that apply to the appointment of jurors require that, among other things, a juror must be a resident of Hong Kong, between 21 and 65 years of age, not afflicted by blindness, deafness or other disability preventing him from serving as a juror, be of good character, and have "a sufficient knowledge of the language in which the proceedings are to be conducted to be able to understand the proceedings."<sup>1</sup> The legislation is silent as to how that linguistic competence is to be measured, but the administrative practice has been to exclude from the jury pool those with an educational attainment below Form 7, or its equivalent. The legislation also provides no guidance as to what constitutes "good character" or "residence" for jury purposes.

2. The question of whether the existing criteria for jury service are appropriate was raised by members of the Legislative Council in April 1997, and has been subsequently raised by both the Law Society and the Hong Kong Bar Association. The question also arises as to whether the criteria should be set out with greater clarity and precision.

3. Accordingly, in June 2003 the Law Reform Commission was asked:

*"To review the present criteria for service as jurors in relation to:*

- (a) education requirement;*
- (b) age requirement;*
- (c) residency requirement;*
- (d) good character; and*
- (e) exemption on disability grounds*

*set out in section 4(1) of the Jury Ordinance (Cap 3), and to review the exemptions from jury service set out in section 5 of that Ordinance, and to*

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<sup>1</sup> Section 4(1)(c) of the Jury Ordinance (Cap 3).

*recommend such changes in the law and practice as may be considered appropriate."*

4. In October 2003, a Law Reform Commission sub-committee was appointed to examine and advise on the present criteria for service as jurors and to make proposals for reform. The members of the sub-committee were:

<b>Hon Mr Justice Woo, GBS, V-P</b> (Chairman)	Vice President Court of Appeal of the High Court
<b>Hon Mr Justice Stock, V-P</b>	Vice President Court of Appeal of the High Court
<b>Hon Mr Justice Pang</b>	Judge Court of First Instance of the High Court
<b>Hon Mr Justice Tong</b>	Judge Court of First Instance of the High Court
<b>Mr Lawrence Lok, SC</b>	Senior Counsel
<b>Mr Jonathan Midgley</b>	Partner Haldanes, Solicitors
<b>Mr Arthur Luk, SC</b>	Senior Counsel Deputy Director of Public Prosecutions
<b>Ms Alice Chung</b>	Assistant Director of Legal Aid
<b>Mr Jason Yeung</b>	Company Secretary Bank of China Hong Kong Limited
<b>Mr Andrew Tse</b>	Former Principal of the John F Kennedy Centre

5. On 28 January 2008, in order to seek views and comments from the community, the sub-committee issued a consultation paper setting out its initial proposals on the reference. Sixty-eight written responses were received, many making substantive comments on the issues addressed in the consultation paper. With the exception of one recommendation,<sup>2</sup> the proposals were generally supported, subject to some reservations in relation to particular proposals.

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<sup>2</sup> Six hundred pro-forma submissions were received from members of the medical profession, objecting to the proposal in the consultation paper to remove medical practitioners and dentists from the list of those currently automatically excluded from jury service.

## **CHAPTER 1**

### **EXISTING LAW AND PRACTICE IN HONG KONG**

#### **The history of the jury system in Hong Kong**

6. The jury system was introduced to Hong Kong in 1845 by an Ordinance for the Regulation of Jurors and Juries. This adopted the features of the English criminal justice system and, like all subsequent legislation, required jurors to be residents of Hong Kong.

#### **The jury system today**

7. The jury is most commonly used in criminal trials. All criminal trials in the Court of First Instance must be held with a jury. Jury trial is not available for offences designated as summary offences which are usually minor offences. Thus, the most serious offences are tried in the Court of First Instance, and not in an inferior court. These offences that must be tried in the Court of First Instance are listed in Part III of the Second Schedule to the Magistrates Ordinance (Cap 227). The usual characteristics of an offence triable with a jury are that it is an offence of the most serious kind which is prescribed by statute to be heard in the Court of First Instance, or that the likely sentence upon conviction exceeds seven years' imprisonment, or that it is in the public interest that the case should be tried before a judge and a jury.

8. The Coroners Ordinance (Cap 504) also provides for a death inquest to be held with a jury in specified circumstances. Where a person dies whilst in official custody, a coroner must hold an inquest with a jury.

#### **Qualifications and disabilities**

9. The criteria for service as a juror are set out in section 4 of the Jury Ordinance (Cap 3). A person is liable to serve as a juror if he:

- has reached 21 years of age, but not 65 years of age;
- is a resident of Hong Kong;
- is of sound mind and not afflicted by blindness, deafness or other disability preventing him from serving as a juror;
- is of good character; and
- has a sufficient knowledge of the language in which the proceedings are to be conducted to be able to understand the proceedings.

10. The requisite length of residence or stay in Hong Kong is not specified. In practice, the Commissioner of Registration or his deputy (or an assistant commissioner of registration) will place the name of any person who satisfies the other criteria (and who is not exempted under section 5 of the Jury Ordinance) on the provisional list of jurors as long as that person is at that time resident in Hong Kong.

11. Any person who is eligible for inclusion in the list as a potential juror will be presumed by the Commissioner to be of sound mind, unless there is evidence to the contrary.

12. The "good character" requirement in section 4 is not defined in the Ordinance and no mechanism is provided for determining whether a juror is of "good character" or not.

13. In relation to the language requirement for service as a juror, any person who has obtained a grade of pass in "*an English language examination*<sup>3</sup> or a *Chinese language examination*<sup>4</sup> or part of such examination as may be so specified"<sup>5</sup> would be identified by the Commissioner of Registration<sup>6</sup> as a potential juror.

14. Section 5 of the Jury Ordinance specifies the categories of persons to be exempted from jury service. Those exempted include the following persons:

- Members of the Executive Council or Legislative Council;
- Justices of the Peace;
- Public officers, including judges, Government legal officers, officers in the law enforcement agencies, officers in the Correctional Services Department, etc;
- Consuls, vice-consuls, etc
- Barristers and solicitors in actual practice and their clerks;
- Registered doctors and dentists;
- Daily newspaper editors, chemists, and members of the clergy;
- Full-time students; and
- Members of the crew of ships or aircraft.

## **CHAPTER 2**

### **THE LAW IN OTHER JURISDICTIONS**

15. This chapter discusses the position in Australia, Canada, England and Wales, Ireland, New Zealand, Scotland and the United States. Over the years, most of these jurisdictions have made amendments to their statutory provisions governing the qualifications of jurors, either reducing the minimum age or lifting the upper age limit for jury service; or modifying the requirements on "good character". Exemptions from jury service for persons in particular employment or professions have also been reduced to a greater or lesser extent. The issues of disability, residency requirement, and education requirement have also been looked at in some jurisdictions.

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<sup>3</sup> Section 4(A)(4)(a) defines "*an English language examination*" to mean "*an examination of English language or an examination conducted in the English language*".

<sup>4</sup> Section 4(A)(4)(b) defines "*a Chinese language examination*" to mean "*an examination of Chinese language or an examination conducted in the Chinese language*".

<sup>5</sup> Section 4(A)(1)(a), Jury Ordinance (Cap 3).

<sup>6</sup> Appointed under section 2 of the Registration of Persons Ordinance is empowered by section 7 of the Jury Ordinance to compile a provisional list of jurors

## **CHAPTER 3**

### **COMMON LAW POSITION**

16. This chapter looks at the common law position in relation to the various qualifying criteria for jury service, and the exemptions from service on disability grounds. The residency requirement for jury service dates back at least as far as 1828, and this issue was considered by the court in a Hong Kong case in 1990. The issues of "good character" and "disability" have also been raised in some cases on the grounds that one of the jurors was disqualified from jury service. The education standard required of jurors was addressed in a US case, where it was argued that the length and complexity of the case required jurors with at least a high school education.

## **CHAPTER 4**

### **ISSUES FOR CONSIDERATION AND REFORMS IN OTHER JURISDICTIONS**

17. This chapter looks at each of the criteria currently applied to qualification for jury service and the issues which those criteria raise. The chapter also looks at proposals for reform which have been made in a number of other jurisdictions.

#### **Age requirement**

18. There are two broad strands of opinion in relation to the appropriate minimum age for jury service. On the one hand, there are those who argue that the responsibilities of jury service require a level of maturity and experience which precludes those of young age. On the other hand, there are others who argue that the age for jury service should be the same as, for instance, that at which persons are considered mature enough to exercise their electoral rights and vote. In New Zealand, the Juries Amendment Act 2000 reduced the minimum age for jury service from 20 to 18 years and removed the maximum age limit of 65 years. Registrars were given the power to excuse persons over that age. The Victorian Law Reform Committee also recommended that there should be no upper age limit for jury service, but persons aged 70 years and over should be entitled to elect not to be eligible for selection for jury service. In England and Wales, the upper age limit for jurors is 70 years, and jurors over 65 years of age can be excused as of right.

#### **Residency requirements**

19. In most common law jurisdictions, a prospective juror must be enrolled as an elector (eg New South Wales, Victoria, New Zealand, Ireland), or a resident or citizen of the jurisdiction in question (eg Alberta, USA). In the United Kingdom, a prospective juror must be registered on the parliamentary or local government electoral roll and have been ordinarily resident in the UK, the Channel Islands or the Isle of Man, for any period of at least five years since attaining the age of 13.

20. As with the application of other qualifying criteria which restrict the entry of a person's name to the jury list, it may be said that the imposition of a residency requirement reduces the representativeness of the jury pool.

## **Good character**

### ***Criminal records***

21. In its report on *Juries in Criminal Trials*, the New Zealand Law Commission concluded that the current provisions excluding persons with certain convictions from jury service should be retained, and said that "*considerations of possible bias, the need for the appearance of a neutral jury, and the potential distraction of a juror with recent convictions outweigh the desire for more prompt reintegration*".

### ***Undischarged bankrupts***

22. The Victorian Law Reform Committee, following their review of the jury system, concluded that the law in Victoria should be changed so that undischarged bankrupts should no longer be ineligible for jury service there. The committee noted that all categories of disqualification, other than undischarged bankrupts, excluded persons who had committed fairly serious criminal offences and the committee considered it inappropriate to associate undischarged bankrupts with criminals in regard to jury service.

## **Education requirements**

23. The idea of a literacy requirement for jurors was discussed and rejected by the Victorian Law Reform Committee. In contrast, in England the 1986 Fraud Trials Committee Report considered that members of the jury in any fraud trial should be able to read, write speak and understand English without difficulty.

## **Disability**

24. The New South Wales Law Reform Commission considered that the right of an accused to a fair trial took precedence over any entitlement of a deaf or blind person to serve as a juror. The Commission also examined the issue of disability in its study of jury service and recommended in its final report that:

*"The current specific categories of ineligibility from jury service relating to persons with mental, intellectual and physical disabilities should be repealed in favour of a general category which renders ineligible a person who has a physical, intellectual or mental disability that makes the person incapable of effectively performing the functions of a juror."*

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<sup>7</sup> Victorian Law Reform Committee, *Jury Service in Victoria* (1996, Vol 1), at para 3.140, Recommendation 33.

## CHAPTER 5 PROPOSALS FOR REFORM

### Qualifications for jury service

***"A person who has reached 21 years of age, but not 65 years of age"***

#### *Lower age limit*

25. The arguments in favour of retaining the existing minimum age of 21 are:
- The duties and responsibilities of jury service require a level of maturity and experience which could not reasonably be expected from a younger person.
  - While the legal age of majority is for most purposes set at 18, the particular requirements of jury service justify a higher age. The determination of a person's guilt or innocence is an issue of a greater magnitude than most other functions which a person is legally competent to perform at 18.
  - The right to stand as a candidate in elections in Hong Kong has been maintained at 21, notwithstanding the reduction of the legal age of majority for most other purposes (including the right to vote) to 18. Jury service is a civic duty of similar importance to which the age of 21 should also apply.
  - Unlike most other decisions which a person can legally make at 18, the jury's findings of fact cannot readily be overturned, and the defendant and the victim have little recourse if those findings are wrong. This justifies a requirement that jurors satisfy a higher minimum age.
26. The Commission is not aware of any calls to raise the minimum age for jury service above 21.
27. Those who favour a change in the existing minimum age for jury service generally argue that it should be reduced to 18 to match the legal age of majority. Other arguments for a reduction in the existing minimum age to 18 are:
- The existing minimum age of 21 excludes from jury service a significant section of the community. It also dilutes the principle of *"trial by one's peers"* by denying to defendants aged between 18 and 21 the opportunity of a jury which includes jurors from a similar age group.
  - The legal age of majority for most purposes is 18, based on the belief that persons of that age are sufficiently mature to, for instance, enter into enforceable contracts or make a will.
  - A reduction in the minimum age for jury service would widen the jury pool.
28. While the trend in other jurisdictions should not be disregarded, the Commission believes that adopting a cautious approach to reform of the minimum age for jury service in Hong Kong is in line with the approach which Hong Kong has followed generally in relation to age of capacity. In the absence of any substantial body of opposition, the Commission confirms the provisional view expressed in the consultation paper that the existing minimum age for jury service should be maintained at 21.

### *Upper age limit*

29. The existing upper age limit for jury service is 65. The arguments in favour of retaining that upper age limit are:

- Jury service is an important civic duty which can be onerous. It would be unreasonable to impose this burden on elderly persons who are likely to be less resilient and more prone to ill-health than younger persons.
- The risk of dementia increases with age and the early stages of this may be difficult to detect, but it would be sufficient to impair the individual's ability to function properly as a juror.

30. There have been no serious suggestions to lower the upper age limit below 65. Arguments to raise the upper age limit include:

- Raising the upper age limit would enhance the jury's representativeness of the community.
- Raising the upper age limit would widen the jury pool and lessen the burden on others.
- Life expectancy has steadily increased over the years. An upper age limit of 65 may previously have been appropriate but it no longer reflects the demographics of the population.

31. Taking into consideration the strong support for raising the upper age limit, and the Commission's earlier expressed view that change should be cautious, the Commission has concluded that the upper age limit should be raised to 70, with persons over 65 having an automatic right to "opt out" of liability for jury service if they so choose.

### **Recommendation 1**

**We recommend that the existing requirement for jury service that an individual has attained 21 years of age should be retained, but the upper age limit for jury service should be raised from 65 to 70. We also recommend that an individual who has attained 65 years of age should be entitled as of right to exemption from jury service upon his application.**

### ***"A person who ... is a resident of Hong Kong"***

32. In defining what constitutes the community in Hong Kong for these purposes, the Commission thinks it reasonable to exclude those who are merely transients, or those whose time in Hong Kong has been so short as to preclude them from acquiring some understanding of local norms, values and culture.

33. The Commission thinks it important that a juror should have some understanding of what behaviour the general public would regard as, for instance, decent/indecent or reasonable/not reasonable. The Commission has reservations as to whether a newcomer would be able to apply the "*reasonable man*" test in the context of local standards and culture. The Commission therefore prefers that a person should have



resided in Hong Kong long enough to acquire sufficient knowledge of local culture and social values so that he may properly assess the witnesses' evidence, which is also in line with the approach in other common law jurisdictions.

34. Having taken these considerations into account, the Commission thinks that a minimum period of actual residence in Hong Kong should be required before a person is eligible for jury service. That period of residence should not be so long as to exclude all but permanent residents, but should be sufficient to ensure that the juror has a reasonable connection to Hong Kong, and the Commission concludes that the appropriate minimum period of residence should be three years.

35 Taking account of the responses to the consultation paper,, the Commission has concluded that a simple test of residence for the purposes of section 4 of the Jury Ordinance should be adopted, tied to the possession of an identity card for three years and residence in Hong Kong at the time that a notice of jury service is issued to the individual. Under this formulation, there is no need for a presumption, with the attendant uncertainties as to its method of rebuttal, and long-term residents remain eligible for jury service notwithstanding absences from Hong Kong within the three years preceding issue of the notice of jury service. By focusing on the date of issue of an identity card and residence at the time the notice of jury service is issued, the Commission believes the task of determining residential eligibility for jury service will be made simpler. At the same time, the Commission does not think this proposal will preclude from jury service on residence grounds any persons who might be thought suitable for jury service, as it would be difficult to identify persons who might fall into that category who would not have held an identity card for three years.

## **Recommendation 2**

**We recommend that, to be eligible to serve as a juror, a person must have been issued with a Hong Kong identity card three years or more prior to his being issued with a notice of jury service and be resident in Hong Kong at the time the notice is issued.**

### ***"The person is of good character"***

#### *Undischarged bankrupt*

36. The Commission does not think that an undischarged bankrupt should be automatically excluded from jury service. Bankruptcy does not necessarily imply a lack of integrity, but may be the result of misfortune or poor financial or investment judgement.

#### *Previous criminal convictions*

37. The function of the jury is to determine the guilt or innocence of the defendant, based on its assessment of the evidence led. It is, in the Commission's view, essential to public confidence in the administration of justice that there should be no grounds for questioning the integrity of the jury system.

38. One option would be to adopt provisions similar to those governing candidates for election to the Legislative Council, which disqualify persons who have within

the preceding five years been convicted and sentenced to imprisonment for a term exceeding three months. An alternative would be for the length of the "quarantine period" to relate to the length of the term of imprisonment to which the individual has been sentenced, or to the nature of the offence for which he has been convicted. A further alternative would be that any exclusion could relate to the nature of the particular offence, rather than the sentence imposed.

39. In light of the responses to the consultation paper, the Commission has revisited the issue and revised its conclusion. In doing so, the Commission has sought to balance the need to safeguard the integrity of the jury system and the need for easy application. The Commission has also considered the resources implications on administration in ascertaining the up-to-date criminal records. The Commission recommends that a person, otherwise fully eligible, should be barred for life from jury service if he has (in Hong Kong or any other place) been convicted of an offence for which he has been sentenced to imprisonment, whether suspended or not, for a term exceeding three months without the option of a fine. If his sentence of imprisonment was for three months or less, he should be qualified to serve as a juror if the conviction took place more than five years before he is summonsed to serve as a juror. For these purposes, to accord with the spirit of the Rehabilitation of Offenders Ordinance any conviction treated as spent under that Ordinance should be disregarded.

*Charged with an indictable offence and not yet tried*

40. The Commission appreciates that it would be wrong automatically to classify persons falling within this category as anti-social but there is an inherent risk that they may be perceived as sympathetic to the defendant, which may undermine public confidence in the administration of justice. Persons falling within this category are also excluded from jury service in Victoria. The Commission agrees with that approach and recommends that persons awaiting trial for an indictable offence should be excluded from jury service.

*Charged with any offence and remanded in custody*

41. The Commission thinks that persons charged with an offence and remanded in custody should be excluded from jury service for the same reasons as the Commission has advanced in respect of persons awaiting trial for an indictable offence.

42. The Commission thinks it essential in order to safeguard public confidence in the administration of justice that the Administration should ensure that any person who has previous criminal conviction(s) other than a spent conviction, or who is charged with an indictable offence and has not yet been tried, or charged with any offence and remanded in custody, should not be included in the jury list or jury panel. Relating to this issue, the Commission notes the safeguards that are provided in section 6 of the Jury Ordinance (Cap 3) where want of qualification of a juror is a ground of challenge but is not a ground for impeaching the verdict given by a jury on which such a person has served. The Commission considers it important that section 6 should be retained.

### **Recommendation 3**

**We recommend that section 4(1)(b) of the Jury Ordinance (Cap 3) should be replaced by a provision to the effect that a person is not eligible to serve as a juror if he:**

- (a) has been convicted at any time in Hong Kong or elsewhere of a criminal offence for which he has been sentenced to imprisonment (whether suspended or not) exceeding three months, without the option of a fine;**
- (b) has been convicted within the previous five years of a criminal offence for which he has been sentenced to imprisonment (whether suspended or not) for three months or less;**
- (c) is awaiting trial for an indictable offence; or**
- (d) is remanded in custody pending trial for any offence,**

**provided that a spent conviction under the Rehabilitation of Offenders Ordinance (Cap 297) should not be regarded as a criminal conviction for the purposes of (b).**

***"The person has a sufficient knowledge of the language in which the proceedings are to be conducted to be able to understand the proceedings"***

43. The Commission does not think it desirable that the existing educational standards required for jury service should be lowered. The Commission realises that there is something of a mismatch between the reference in section 4(1)(c) of the Jury Ordinance to "*sufficient knowledge of the language*" and the longstanding administrative practice of requiring attainment of a general educational level (Form 7), rather than a specific language qualification. The application of the Form 7 requirement was originally intended as a means of ensuring an adequate level of English language competence, but it would also have resulted in a jury pool whose members could be expected to have a higher level of comprehension than if no such general educational level were applied. The view of members of the Hong Kong judiciary who have conducted jury trials both in Hong Kong and overseas is that jurors here appear to have a higher level of understanding of the issues before them and that this is highly beneficial to the administration of criminal justice.

44. The increasing complexity of the directions which the trial judge is required to give to the jury (quite apart from the complexity of the evidence itself) make it more important than ever that jurors should have the requisite powers of comprehension. Removing or lowering the education requirement would have the advantage of widening the jury pool and would include more members of the community in the administration of justice. The Commission considered but rejected this option, instead recommending the retention of the existing requirement that only those who have attained an educational standard of Form 7 or its equivalent should be included in the jury list.

45 The Commission considers that what is at present an administrative practice should be given a statutory basis and that a requirement for attainment of Form 7 or an equivalent general educational standard replace the existing reference in section 4(1)(c) to knowledge of the language in which the proceedings are to be conducted. Section 4(2) would continue to allow the court or the coroner to discharge any person summoned to serve as a juror who had satisfied the general educational requirement but *“who is unable to satisfy the court or the coroner that the person’s knowledge of the language in which the proceedings are to be conducted is sufficient to enable the person to understand the proceedings.”*

46. The introduction of a new academic structure in Hong Kong means that the Form 7 syllabus will no longer be offered from 2012. . Under the new system, three years in lower secondary school (the current Form One to Form Three) will be followed by a further three years in senior secondary school. The consultation paper therefore recommended that, while the existing administrative practice of requiring a potential juror to have attained an education standard of Form 7 or its equivalent should be stipulated in the legislation, this should be supplemented in 2012 by an alternative requirement that a potential juror have completed Secondary Six and achieved Level 3 in both English and Chinese languages in the Hong Kong Diploma of Secondary Education or the equivalent. On reconsidering this recommendation the Commission has concluded that it would be inconsistent to propose that once the new academic structure is in place jurors be required to have passed a language exam to a prescribed level, while no similar requirement is proposed under the old academic structure. The Commission has accordingly revised its original recommendation and now proposes that under the new academic structure persons should be included in the jury pool if they have completed Secondary Six, or an equivalent level of education. Just as with the Form 7 requirement under the existing education system, there should be no requirement for a specific language examination qualification.

#### **Recommendation 4**

##### **We recommend that:**

- (1) Section 4(1)(c) of the Jury Ordinance (Cap 3) and the existing administrative practice of requiring a potential juror to have attained an education standard of Form 7 (being the minimum entrance requirement for entry to a university in Hong Kong), or an equivalent standard, should be replaced with a statutory requirement that the prospective juror have completed: (a) Form 7; (b) Secondary Six; (c) the IB Diploma; or (d) such other secondary education as the Registrar of the High Court considers equivalent.**
- (2) If our proposal is adopted to abolish the existing exemption from jury service for full-time students, the Commissioner of Registration should in future consider requesting annually from Hong Kong’s universities and tertiary education institutions lists of persons admitted as students, rather than lists of graduates.**

***"The person is of sound mind and not afflicted by blindness, deafness or other disability preventing the person from serving as a juror"***

*"... of sound mind ... "*

47. The Commission does not think it appropriate for persons with mental impairment or mental handicap to serve on a jury for the obvious reason that they would have difficulty properly performing their functions as jurors. The established practice is for the trial judge in the empanelling procedure to invite the prosecution or defence to ask any juror to stand down if the juror's unsoundness of mind becomes apparent on his taking the oath or affirmation. The Commission thinks this is an effective way to exclude the mentally impaired from jury service.

*"... afflicted by blindness, deafness ..."*

48. The consultation paper pointed out that it could be argued that the underlying principle that a jury should be representative of the community which it serves would suggest that those suffering from disabilities should be included in the jury pool if that were viable from a practical point of view. At the same time, however, it would not be right to include in the jury pool persons who, by reason of their disability, were unable to participate fully in the jury's work. In the end, enhancing the representativeness of the jury pool must give way to ensuring that a defendant receives a fair trial before a jury comprised of persons who can fully discharge their functions as jurors. The consultation paper therefore took the provisional view that the existing provisions should be retained which exclude blind and deaf persons from jury service.

49. The Commission shares the view with many who responded to the consultation paper that, in principle, jury service should be inclusive, so that citizens with disabilities, who are otherwise qualified, should be allowed to serve as jurors. However, as there are different kinds and various degrees of disabilities, in practical terms, the establishment may not at the moment be able to accommodate and assist all who may require assistance. Nevertheless, the Commission believes improvements should be made in order to give effect to this important objective.

*"... other disability preventing the person from serving as a juror ..."*

50. The key consideration here is that the disability must be of such a nature or degree that it would mean that the person could not fulfil his functions as a juror. While the nature of some disabilities may render jury service impossible, others may not. Taking account of the responses to the consultation paper, and bearing in mind the general desirability of an inclusive jury pool, the Commission considers that the existing wording of section 4(1)(a) of the Jury Ordinance provision should be amended to make clear that disability, of whatever kind should only preclude a person from jury service if it would prevent him from fulfilling the obligations of a juror. It should therefore only exclude those whose disability would prevent them from serving as jurors, rather than exclude generally anyone who is deaf, blind or suffering from other disabilities.

## **Recommendation 5**

**We recommend that:**

- (1) Section 4(1)(a) of the Jury Ordinance (Cap 3) concerning disabilities in relation to jury service should be amended to make clear that blindness or deafness should only exclude a person from jury service where it prevents him from fulfilling his duty as a juror. We therefore recommend that section 4(1)(a) should be amended to read:**

***"(a) the person is of sound mind and not afflicted by:***

- (i) blindness, or***
- (ii) deafness, or***
- (iii) other disability***

***preventing the person from serving as a juror; and"***.

- (2) The Registrar of the High Court should consider making such changes to the physical configuration of the High Court Building and coroners' courts as would facilitate jury service by those confined to wheelchairs.**

## **Form of Notice of Jury Service**

### **Recommendation 6**

**We recommend that the form of notice of jury service should be amended to include:**

- (a) the principal justifications for excusal from, or deferral of, jury service; and**
- (b) a box to be marked by the person served with the notice confirming that he has no criminal conviction (and a spent conviction under the Rehabilitation of Offenders Ordinance (Cap 297) is not regarded as a criminal conviction for these purposes), is not awaiting trial for an indictable offence, and is not remanded in custody pending trial for any offence.**

**The completed form should be returned to the Registrar of the High Court for verification.**

## **Exemptions from jury service under section 5 of the Jury Ordinance**

51. The existing list of persons exempted from jury service are set out in section 5 of the Jury Ordinance. These may be categorised as follows:

- (a) Where substantial inconvenience to the public may result.**

- (b) Where undue hardship or extreme inconvenience may be caused to the person.
- (c) Where the person is involved in the administration of justice, so that unfairness may result or may be perceived to result.
- (d) Those for whom jury service is incompatible with their tenets or beliefs.
- (e) Those who are conferred consular privileges and immunities.
- (f) Those officers whose relationship with the Government of the Hong Kong Special Administrative Region are governed by the national laws listed in Annex III of the Basic Law and promulgated in the Promulgation of National Laws (no 2) 1997.

52. The Jury Ordinance uses the term "exemption", without differentiating between different types of exemption. The consultation paper proposed that different terms should be adopted in different situations so that the reasons for the individual's exemption or exclusion might be more readily understood. The consultation paper suggested the following terminology should be used:

- (i) "*ineligible for jury service*" when a person is not qualified to be a juror because of age, unsoundness mind, or illiteracy, etc;
- (ii) "*excluded from jury service*" when a person is excluded on a point of principle;
- (iii) "*exempt*" for those categories of persons whose services are much needed and in respect of whom there would be substantial inconvenience to the public if they were required to serve on a jury;
- (iv) "*excused*" when an eligible juror is excused from serving on a particular occasion upon application being made to the Registrar or the trial judge, but his service would be required for future cases.

53. On reconsidering this recommendation in the light of the responses received, the Commission has concluded that no practical purpose would be served by seeking to classify the various categories of persons excluded from the jury pool. The practical consequences are the same regardless of the classification under which a particular category is placed: the members of that category are not entitled to, or liable for, jury service. The disadvantage of creating these additional classifications is that it would become necessary to distinguish one category from another, a process which is not without difficulty and potential controversy. The Commission accordingly proposes to maintain the existing terminology used in the Jury Ordinance and to use the term "exempt" from jury service to apply to any category of persons who, though qualified to serve, will not be included in the jury list.

54. The Commission proposes that the guiding principles for the consideration of applications for excusal from, or deferral of, jury service should be spelt out in the Jury Ordinance to assist the Registrar or the trial judge in determining whether or not to grant an excusal or deferral.

55. The consultation paper recommended that one of the justifications for excusal from jury service should be "*that undue hardship or extreme inconvenience may be caused*

to the person". Some respondents suggested (a) that "extreme" inconvenience was too high a threshold and (b) that the hardship or inconvenience should not be restricted to the person himself but should include, for instance, his employer. On reconsidering this point, the Commission has concluded that these concerns would be met if the justifications for excusal or deferral included the fact that "*undue hardship or undue inconvenience*" may be caused to the person "*or any person under his care or supervision.*"

### **Recommendation 7**

**We recommend that the guiding principles for the consideration of applications for excusal from, or deferral of, jury service should be spelt out in the Jury Ordinance to assist the Registrar or the trial judge in determining whether or not to grant such applications. The justifications for excusal or deferral should include:**

- (a) that substantial inconvenience to the public may result;**
- (b) that undue hardship or undue inconvenience may be caused to the person or any person under his care or supervision;**
- (c) that the person is involved in the administration of justice so that bias may result or may be perceived to result;**
- (d) that jury service is incompatible with the person's tenets or beliefs; or**
  
- (e) that it is in the interests of justice to do so.**

**We also recommend that guidelines should be drawn up for the determination of applications for excusal or deferral, including specific examples of applications that should ordinarily be granted and examples of applications that should ordinarily be rejected.**

56. The Commission has reviewed the exemptions granted to the various categories of persons listed in section 5 of the Jury Ordinance and has set out its conclusions in Recommendation 8.

### **Recommendation 8**

**We recommend that:**

- (1) The following categories of persons should be exempt from service as jurors:**
  - (a) members of the Executive or Legislative Council;**
  - (b) any public officer who is:**
    - (i) a member of staff within the Judiciary;**
    - (ii) a legal officer within the meaning of section 2 of the Legal Officers Ordinance (Cap 87);**
    - (iii) serving in the Department of Justice, the Legal Aid Department, the Official Receiver's Office or the Intellectual Property Department;**



- (iv) a member of the Hong Kong Police Force, the Immigration Service, the Customs and Excise Service or the Fire Services Department including any post specified in the Seventh Schedule to the Fire Services Ordinance (Cap 95);
  - (v) an officer of the Correctional Services Department;
  - (vi) a member of the Government Flying Service;
  - (vii) the Commissioner, Deputy Commissioner or an officer of the Independent Commission Against Corruption;
  - (viii) carrying out duties in the Hong Kong Police Force, the Immigration Department, the Customs and Excise Department, the Fire Services Department, the Correctional Services Department, the Government Flying Service or the Independent Commission Against Corruption;
  - (ix) appointed as the principal probation officer, or as a probation officer, under the Probation of Offenders Ordinance (Cap 298);
  - (x) a social worker employed full-time in any reformatory school established under the Reformatory Schools Ordinance (Cap 225), any place of detention appointed under the Juvenile Offenders Ordinance (Cap 226), or any approved institution within the meaning of the Probation of Offenders Ordinance (Cap 298);
- (c) consuls, vice-consuls, and officers of equivalent status, of governments of foreign states and such salaried functionaries of such governments as are nationals of such governments and are not carrying on business in Hong Kong, and the spouses and dependent children of such persons;
  - (d) barristers-at-law and solicitors in actual practice, and their employees;
  - (e) persons duly registered as or deemed to be medical practitioners under the Medical Registration Ordinance (Cap 161), persons duly registered as dentists under the Dentists Registration Ordinance (Cap 156), persons duly registered under the Veterinary Surgeons Registration Ordinance (Cap 529), and persons duly registered as Chinese medicine practitioners under the Chinese Medicine Ordinance (Cap 549);
  - (f) persons duly registered as registered nurses under the Nurses Registration Ordinance (Cap 164) and persons duly enrolled as enrolled nurses under the Nurses Registration Ordinance (Cap 164);

- (g) officers employed on full pay in the naval, military or air services of the Hong Kong Garrison, together with the spouses of such officers;
  - (h) officials or employees of the Central People's Government and their spouses and dependants;
  - (i) members of the Hong Kong Auxiliary Police Force and persons summoned to act or enrolled or appointed as special constables under any enactment, provided that any person claiming exemption under this paragraph may be required by the Registrar to produce a certificate from the Commissioner of Police in proof of such exemption;
  - (j) Government chemists and members of the Laboratory Specialist Services Officer Grade serving in the Forensic Science Division of the Government Laboratory;
  - (k) the Legal Adviser of the Legislative Council Secretariat and any of his assistants who is in the full time employment of the Legislative Council Commission and is a barrister or a solicitor as defined in the Legal Practitioners Ordinance (Cap 159);
  - (l) investigators appointed by the Securities and Futures Commission and the Ombudsman's office.
- (2) Any public officer who is serving as:
- (i) a judge, deputy judge, District Judge, deputy District Judge, Registrar, Senior Deputy Registrar, Deputy Registrar, Assistant Registrar, coroner or magistrate; or
  - (ii) a presiding officer, adjudicator or member of any tribunal established by law,
- should be exempt from service as a juror and should continue to be exempt for 10 years after the termination of their judicial office.
- (3) The exemption from jury service currently granted to the following categories of persons should be discontinued:
- (a) any public officer who is serving in a training or apprentice rank;
  - (b) editors of daily newspapers in Hong Kong and such members of their staffs in respect of whom the Registrar is satisfied that jury service would disrupt the publication of such newspapers;
  - (c) registered pharmacists actually carrying on business as such;

- (d) clergymen, priests, and ministers of any Christian congregation or Jewish congregation functioning in Hong Kong;**
  - (e) imams of and persons holding similar positions in any Muslim congregation functioning in Hong Kong;**
  - (f) priests of and persons holding similar positions in any Hindu congregation functioning in Hong Kong;**
  - (g) full time students of any school, college, university, polytechnic, technical institute, industrial training centre or other educational (including vocational education) institution;**
  - (h) pilots licensed under the Pilotage Ordinance (Cap 84), and the master and members of the crew of any ship;**
  - (i) pilots, navigators, wireless operators and other full-time members of the crews of passenger or mail or commercial aircraft;**
  - (j) persons who are vowed and full-time members of any religious orders living in monasteries, convents or other such religious communities;**
  - (k) the spouse of:**
    - (i) the Chief Justice;**
    - (ii) a judge of the Court of Final Appeal;**
    - (iii) the Chief Judge;**
    - (iv) a Justice of Appeal;**
    - (v) a judge of the Court of First Instance; and**
    - (vi) a coroner;**
  - (l) justices of the peace.**
- (4) Subject to and without limiting the general applicability of Recommendation 7, the Registrar or the trial judge, as the case may be, may defer jury service required of the persons listed at Recommendation 8(3) who have been summoned, or excuse them from jury service upon their application, if satisfied with the merits of their applications.**