

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 92 - DEPARTMENT OF JUSTICE Subhead 001 Salaries

Members are invited to recommend to Finance Committee the creation of the following posts in the Civil Division of the Department of Justice -

(a) up to 31 March 2000

1 Deputy Principal Government Counsel
(supernumerary)
(DL2) (\$110,000 - \$116,800)

and

(b) from 1 April 1998

1 Deputy Principal Government Counsel
(permanent)
(DL2) (\$110,000 - \$116,800)

PROBLEM

The Civil Division of the Department of Justice requires additional support at the Deputy Principal Government Counsel (DPGC) level to meet increasing demands for translation of legal documents and to cope with increasing workload in the Civil Litigation Unit (CLU) of the Division.

PROPOSAL

2. The Secretary for Justice proposes the creation of -
- (a) one supernumerary DPGC post up to 31 March 2000 in the Lands and Works Unit (LWU) of the Division to head a dedicated translation team for the translation of documents into Chinese; and
 - (b) one permanent DPGC post with effect from 1 April 1998 to cope with increasing workload in the CLU of the Division.

JUSTIFICATION

Creation of a supernumerary DPGC post in the LWU

3. Article 9 of the Basic Law provides that : “In addition to the Chinese language, English may also be used as an official language by the executive authorities of the HKSAR.” The Division has been under increasing pressure to assist all government bureaux and departments in the issue of bilingual legal documents. This is a new requirement which, without additional resources, the Division is unable to meet.

4. The documents to be translated include the following categories -
- (a) contracts
 - (i) works contracts involving five sets of standard conditions of contract (civil engineering, building works, electrical and mechanical engineering, design and build and term maintenance) together with standard specifications and Bills of Quantities;
 - (ii) non-work contracts including consultancies, procurement of government’s supplies, specialist forms of contracts such as marine procurement and information technology contracts, and government form contracts;
 - (b) public broadcasting, telecommunication, satellite and transportation franchises and licences;

- (c) legal documents such as certificates, forms and notes from government departments like Trade Department, Marine Department, Civil Aviation Department, and Television and Entertainment Licensing Authority; and
- (d) court documents in civil proceedings including summons, notice of appeal, notice of opposition, particulars of claims, affidavit/affirmation.

An estimate of the volume of documents to be translated up to March 2000 is at Enclosure 1.

5. The legal work involved in the translation process is complex. We propose to create a DPGC post and a team comprising one Senior Government Counsel (SGC), one Senior Law Translation Officer and two Law Translation Officers to conduct the additional translation work. The leader of the translation team must have an in-depth knowledge of construction law, commercial law, public franchises and litigation procedures. He/She must also be proficient in Chinese language in order to ensure that the translation is accurate. For these reasons, we consider it necessary to rank the post at DPGC level. The job description of this post is at Enclosure 2. We propose to create the DPGC post on a supernumerary basis for two years initially as we expect that the workload of the DPGC and his/her team will be relieved when the translated documents have built up in the first two years which will provide a pool for future reference and use. We will review the continued need for the translation team in two years' time.

Creation of a permanent DPGC post in the CLU

6. The work of the CLU is divided into two parts, the main CLU caseload and the caseload of the Debt Collection Sub-Unit (DCU). The CLU cases are conducted by counsel directly and the DCU cases, being debt collection cases, are mainly conducted by Senior Law Clerks (SLCs)/Law Clerks (LCs). The CLU caseload has increased tremendously since 1993 as shown in the table at Enclosure 3. As at the end of 1993, one DPGC supervised between 539 and 1,045 cases. However, the number of cases supervised by each DPGC has increased significantly to between 945 and 1 544 as at end of 1997.

7. Apart from the increase in number of cases, the complexity of these cases has also increased significantly. For example, the number of

judicial review proceedings and appeals has increased from 67 in 1994-95 to 96 in 1996-97 (more than 40%). We expect that it will increase to more than 175 in 1997-98. Judicial review proceedings are proceedings whereby decisions of Government or of the inferior courts and tribunals could be challenged. Such proceedings have included constitutional challenges. The important challenges that we have faced in the last two years include applications raising issues such as the propriety of the functional constituencies of the Legislative Council, town planning applications relating to the Mai Po marshland, Government's policy on localisation, the screening and repatriation of Vietnamese and, more recently, the right of abode of mainland children. These proceedings touch on issues which are important and complex. Much of this litigation requires directorate officers, assisted by one or more SGC or Government Counsel (GC), to handle. Even for cases which are not handled by directorate officers directly, they require varying degrees of supervision by directorate officers. As at end 1997, there were 354 judicial review proceedings outstanding.

8. In the last two years, the value of personal injuries claims has gone up significantly as a result of the courts' judgment in a number of landmark cases with the result that some of these litigation have become very contentious and complex. Some of the more difficult cases and high value claims are handled by directorate officers. Since April 1996, the Judiciary has issued a new Practice Direction in respect of personal injuries cases with a view to speeding up the resolution of these cases. The new Practice Direction requires defendants, like the Government, to take an active role in bringing the proceedings to trial or settlement. This results in having to prepare all cases ready for trial at an early stage of the proceedings. In order to comply with the court's directions on these cases, we will need directorate officers to closely monitor handling of these cases. As at end 1997, there were 410 personal injuries claims outstanding.

9. The DCU is responsible for collecting debts for the Government in the Small Claims Tribunal, District Court and Court of First Instance. In the last few years, there have been significant increase in the number of cases referred to the DCU with the consequential increase in amounts recoverable. The workload statistics of the DCU from 1992 to 1997 is at Enclosure 4. The files are mostly managed by the SLCs/LCs. We have increased the number of SLCs/LCs to cope with the increase in the DCU caseload. With the increase in caseload, amount recoverable, and number of staff, senior officers have to spend more time and effort to monitor the recovery work to ensure the speedy recovery of Government debts in accordance with our departmental policy commitment.

10. The existing three DPGC in the CLU are unable to absorb the additional work as they are already fully committed. In order to undertake the additional duties which have arisen over the years, and to ensure the maintenance and improvement of the quality of service provided, we consider it necessary to create an additional DPGC to undertake the duties.

11. The ratio of DPGC to SGC/GC (including the consultant) in the Unit also illustrates the need to create an additional DPGC. At present the ratio is 1 : 10. We consider that this ratio is much too low to maintain effective supervision level in litigation work, particularly having regard to the higher percentage of junior counsel in the CLU. We require at least an additional DPGC post to improve the ratio in the CLU to maintain an adequate level of directorate supervision as well as to discharge other management functions. Taking into account the following changes, the establishment of CLU will be 12 SGC, 13 GC posts and one consultant -

- (a) redeployment of two SGC posts to the Mutual Legal Assistance Unit;
- (b) creation of one SGC and one GC posts in 1998-99; and
- (c) redeployment of one SGC and two GC posts to the Legal Adviser's Division of Works Bureau.

Provision of the additional DPGC post will improve the ratio of DPGC to SGC/GC to 1 : 8.7.

12. The proposed additional DPGC will head a team of seven or eight counsel. The DPGC will undertake major litigation with emphasis on personal injuries claims and disciplinary enquiries relating to medical council, dental council, nursing and supplementary medical professions, including judicial review arising from such proceedings. The DPGC will also assist the Principal Government Counsel (PGC) of the CLU to monitor and review the work of the DCU. The job description of the proposed DPGC post and the revised job descriptions of the existing three DPGC posts in the CLU are at Enclosures 5 to 8.

13. The existing and revised organisation charts of the Civil Division are at Enclosures 9 and 10 respectively.

FINANCIAL IMPLICATIONS

14. The additional notional annual salary cost of the proposal at MID-POINT is -

	\$	No. of posts
New permanent post	1,360,800	1
New supernumerary post	1,360,800	1
Additional cost	2,721,600	2

15. The additional full annual average staff cost of the proposal, including salaries and staff on-costs, is \$4,941,288. In addition, this proposal will necessitate the creation of two additional Personal Secretary I (PSI) posts at an additional notional annual mid-point salary cost of \$551,760 and an additional full annual average staff cost of \$858,792.

16. We have included sufficient provision in the 1998-99 draft Estimates to meet the cost of this proposal. However, no provision has been included in the 1997-98 Estimates to meet the cost of proposed supernumerary DPGC post and one PSI post, which is estimated at \$53,000 for the remainder of the financial year. Subject to Members' approval, we shall provide the supplementary provision required under delegated authority.

BACKGROUND INFORMATION

17. The Civil Division provides legal advice on civil law to all Government bureaux and departments and the CLU of the Division represents, both as solicitors and barristers, the Government and certain other public bodies in litigation and arbitration proceedings. The Unit comprises one PGC, three DPGC, 14 SGC, 14 GC and 16 SLCs/LCs (SLC/LC). There is also a consultant ranked at SGC level. The number of DPGC posts in the CLU has remained unchanged since the third DPGC post was approved by Finance Committee on 14 January 1994.

18. The LWU of the Division advises Government on a wide range of matters, including construction contracts, town planning, environment protection, control of building operations, housing, resumption of land, rating and building management matters. Although planning and environmental matters are becoming an increasingly significant element of the workload of the Unit, the largest single component remains public works contracts. The Unit comprises one PGC, two DPGC, seven SGC and seven GC.

CIVIL SERVICE BUREAU COMMENTS

19. Having regard to the increasing demand for translation of legal documents into Chinese and the need to cope with the increasing workload in the Civil Litigation Unit, the Civil Service Bureau supports the creation of the proposed supernumerary directorate post in the Lands and Works Unit and the proposed permanent directorate post in the Civil Litigation Unit of the Civil Division. The grading and ranking of the proposed posts are considered appropriate.

ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE

20. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposed for the permanent post of the DPGC in CLU would be appropriate if the post were to be created. As the post of DPGC for translation of legal documents is proposed on a supernumerary basis, its creation, if approved, will be reported to the Standing Committee on directorate Salaries and Conditions of Service in accordance with the agreed procedures.

Department of Justice
January 1998

Estimated Total Volume of Documents to be Translated up to March 2000

Item Description	Approximate Number of Pages
(a) works contracts	2 000 to 3 000
(b) government form contracts & terms commonly found in consultancy agreements	50
(c) various public broadcasting, telecommunication, satellite and transportation franchises	300
(d) court documents for civil proceedings	1 500
(e) legal documents from some government departments	3 000 to 4 000

Note : Estimated volume for other items not shown in the above table is not available.

**Proposed Job Description for the
DPGC Post in the Translation Team**

Post : Deputy Principal Government Counsel

Rank : DL2

Responsible to : Deputy Law Officer (Civil Law) (DL3)

Duties :

1. final vetting of Chinese translation of contracts, public franchises and other legal documents from government departments.
2. co-ordinating the work of bilingual Counsel and Law Translation Officers working in the dedicated team, staff in other units of the Civil Division and staff in the Works Bureau.
3. compilation of a legal glossary of terms commonly used in contracts and franchises.
4. giving advice on the translation of contracts and franchises and court documents written in Chinese.
5. supervising the work of Counsel in the dedicated team.

Civil Litigation Unit - Workload By Team

	1993 (as at 31.12.93)		1997 (as at 31.12.97)	
	No. of Staff	No. of Cases	No. of Staff	No. of Cases
Team 1				
DPGC	1	110	1	169
SGC/GC	7	637	15	997
TS/Legal Trainee	3	22	1	36
Law Clerk	-	-	2	139
Sub-total	11	769	17	1 341
Team 2				
DPGC	1	31	1	56
SGC/GC/Consultant	8	498	7	837
TS/Legal Trainee	1	10	1	28
Law Clerk	-	-	1	24
Sub-total	10	539	10	945
Team 3				
DPGC	1	425	1	307
SGC/GC	8	594	10	1 169
TS/Legal Trainee	2	26	1	32
Law Clerk	-	-	2	36
Sub-total	11	1045	14	1 544
Total	32	2 353	41	3 830 *

Legend : DPGC = Deputy Principal Government Counsel
SGC = Senior Government Counsel
GC = Government Counsel
TS = Trainee Solicitor

* excluding 542 cases handled by Principal Government Counsel and Senior Law Clerks

Workload Statistics of Debt Collection Sub-Unit

	1992	1993	1994	1995	1996	1997
Total Number of claims received	849	1 118	1 052	1 607	3 275	2 561 *
Total amount of claims received (\$)	6,006,946.75	5,799,566.77	25,070,075.04	18,509,464.19	72,943,022.86	54,939,086.57
Number of claims against Department of Justice	25	24	20	26	29	29 *
Total amount recovered (\$)	4,237,428.37	3,137,489.71	4,882,024.33	9,325,743.86	12,430,949.96	31,954,678.38

* There were 5 014 cases current on 31 December 1997 in Debt Collection Sub-Unit

**Proposed Job Description for the
additional DPGC Post in the CLU**

Post : Deputy Principal Government Counsel (Civil Litigation) 4

Rank : DL2

Responsible to : Deputy Law Officer (Civil Law) (DL3)

Duties :

1. preparing and conducting the more important civil litigation for the Government (in particular those relating to personal injury claims and Medical Council enquiries) in the Court of Final Appeal, Court of Appeal, High Court and Tribunals;
2. directing and supervising the work of a team within the Civil Litigation Unit;
3. directing and supervising the work of the Debt Collection Sub-Unit;
4. preparing instructions and briefs for outside counsel representing the Government of the Hong Kong Special Administrative Region in complicated civil litigation cases;
5. advising the Unit on matters of civil litigation, practice and procedure; and
6. carrying out such other tasks as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Civil Litigation).

**Revised Job Description for the
DPGC Post in the CLU**

Post : Deputy Principal Government Counsel (Civil Litigation) 1

Rank : DL2

Responsible to : Deputy Law Officer (Civil Law) (DL3)

Duties :

1. preparing and conducting the more important civil litigation for the Government (in particular those relating to administrative law) in the Court of Final Appeal, Court of Appeal, High Court and Tribunals;
2. directing and supervising the work of a team within Civil Litigation Unit;
3. preparing instructions and briefs for outside counsel representing the Government of the Hong Kong Special Administrative Region in complicated civil litigation cases;
4. advising the Unit on matters of civil litigation, practice and procedure in complicated civil litigation cases;; and
5. carrying out such other tasks as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Civil Litigation).

**Revised Job Description for the
DPGC Post in the CLU**

Post : Deputy Principal Government Counsel (Civil Litigation) 2

Rank : DL2

Responsible to : Deputy Law Officer (Civil Law) (DL3)

Duties :

1. preparing and conducting the more important civil litigation and arbitration work for the Government (in particular construction cases) in the Court of Final Appeal, Court of Appeal, High Court and Tribunals;
2. directing and supervising the work of a team within Civil Litigation Unit;
3. preparing instructions and briefs for outside counsel representing the Government of the Hong Kong Special Administrative Region in complicated civil litigation cases;
4. advising the Unit on matters of civil litigation, practice and procedure; and
5. carrying out such other tasks as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Civil Litigation).

**Revised Job Description for the
DPGC Post in the CLU**

Post : Deputy Principal Government Counsel (Civil Litigation) 3

Rank : DL2

Responsible to : Deputy Law Officer (Civil Law) (DL3)

Duties :

1. preparing and conducting the more important civil litigation for the Government (in particular tax cases) in the Court of Final Appeal, Court of Appeal, High Court and Tribunals;
2. directing and supervising the work of a team within Civil Litigation Unit and co-ordinating the Unit's training functions;
3. preparing instructions and briefs for outside counsel representing the Government of the Hong Kong Special Administrative Region in complicated civil litigation cases;
4. advising the Unit on matters of civil litigation, practice and procedure; and
5. carrying out such other tasks as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Civil Litigation).

Existing Organisation Chart of the Civil Division

Law Officer (Civil Law)
1 LO, DL6

<u>Consultant</u>	<u>Litigation Unit</u>	<u>Lands & Works Unit</u>	<u>Advisory Unit</u>	<u>Commercial Unit</u>
1 Consultant	1 PGC, DL3	1 PGC, DL3	1 PGC, DL3	1 PGC, DL3
	3 DPGC, DL2	1 DPGC, DL2	2 DPGC, DL2	1+1# DPGC, DL2

Legend : # = Supernumerary post
LO = Law Officer
PGC = Principal Government Counsel
DPGC = Deputy Principal Government Counsel

Proposed Organisation Chart of the Civil Division

Law Officer (Civil Law)
1 LO, DL6

<u>Consultant</u>	<u>Litigation Unit</u>	<u>Advisory Unit</u>	<u>Planning, Environment, Lands Housing Unit (PELH)</u>	<u>Commercial Unit</u>
1 Consultant	1 PGC, DL3	1 PGC, DL3	1 PGC, DL3	1 PGC, DL3
1 DPGC, DL2	1 DPGC, DL2* 1 DPGC, DL2	1 DPGC, DL2	2 DPGC, DL2	1 DPGC, DL2 1# DPGC, DL2 1+1# DPGC, DL2

<u>Legend</u>	:	LO	=	Law Officer
		PGC	=	Principal Government Counsel
		DPGC	=	Deputy Principal Government Counsel
		*	=	Post to be transferred to Works Bureau
		#	=	Supernumerary post
			=	Proposed posts

Checklist for ESC Submissions

(a) Necessity to go to the ESC

ESC/FC's endorsement is necessary for the creation of directorate posts.

(b) Authority

The Secretary for Justice considers it necessary to create two DPGC posts (one permanent and one supernumerary) to cope with the increasing workload in the Civil Division.

(c) Funding

Funding for the posts was supported in the 1997 RAE.

(d) Political Assessment

There are no potentially negative political implications for the proposals.

(e) Consultation with Provisional LegCo Panel

The Provisional LegCo Panel on Administration of Justice and Legal Services will be briefed at its meeting on 9 February 1998.

(f) Lobbying Requirement

(To be confirmed)

(g) Fallback

To withdraw, revise and re-submit the paper at a later stage.

(h) Attendance at ESC Meeting

Mr Ian Wingfield, Law Officer (Civil Law)
Mr Stephen Lam, Director of Administration and Development
Mr Peter H K Cheung, Deputy Director (Administration)

(i) Special Consideration

The workload of the Division has built up significantly, it is necessary to create the posts as soon as possible.