



The Law Society's Submissions on Law Reform Commission's Juries Subcommittee Consultation Paper on Criteria for Service as Jurors

Recommendation 1: *Upper Age Limit*

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.

The Law Society supports the recommendation

Recommendation 2: *"A person who ... is a resident of Hong Kong"*

We recommend that, to be eligible to serve as a juror, a person must have been resident in Hong Kong for a period of three years or more immediately before he is issued with a Notice of Jury Service, and if he has been issued with a Hong Kong identity card three years or more prior to his being issued with the Notice, he should be presumed unless the contrary is proved to be a resident of Hong Kong for the purposes of section 4 of the Jury Ordinance.

The Law Society supports the recommendation

Recommendation 3: *"The person is of good character"*

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 liable to serve as a juror if he has no criminal conviction (and a spent conviction under the Rehabilitation of Offenders Ordinance (Cap 297) should not be 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 Law Society supports the recommendation

Recommendation 4: *"The person has a sufficient knowledge of the language in which the proceedings are to be conducted to be able to understand the proceedings"*

We recommend that 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 stipulated in legislation. However, this should be amended in 2012 to require a person to have completed Secondary Six and achieved Level 3 in both English and Chinese in the HKDSE or the equivalent.

The Law Society supports the recommendation but notes the general delay in implementing Law Reform Commission recommendations thus the reforms may not even be considered by 2012.

Recommendation 5: *"The person is of sound mind and not afflicted by blindness, deafness or other disability preventing the person from serving as a juror"*

We do not recommend any change to the existing provisions of section 4(1)(a) of the Jury Ordinance (Cap 3) concerning disabilities in relation to jury service. We recommend that 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.

The Law Society supports the recommendation.

Recommendation 6: *Form of Notice of Jury Service*

We recommend that the form of Notice of Jury Service should be amended to include a list of exemptions and a list of disqualifications for individuals to tick if applicable, and this should be returned to the Registrar of the High Court for verification.

The Law Society supports the recommendation.

Recommendation 7: *Exemptions from jury service under section 5 of the Jury Ordinance*

We recommend that different terms should be adopted for different types of exemption, as follows:

- (i) *"ineligible for jury service"* when a person is not qualified to be a juror because of age, unsoundness of 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; and
- (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.

The Law Society supports the recommendation.

Recommendation 8

We recommend that the guiding principles for the consideration of exemption applications should be spelt out in the Jury Ordinance to assist the Registrar or the trial judge in determining whether or not to grant an exemption, exclusion or deferral. The justifications for exemption, exclusion or deferral should include:

- (i) where substantial inconvenience to the public may result;
- (ii) where undue hardship or extreme inconvenience may be caused to the person;
- (iii) where the person is involved in the administration of justice so that bias may result or may be perceived to result; and
- (iv) where jury service is incompatible with the person's tenets or beliefs.

The Law Society supports the recommendation.

Recommendation 9

The list of persons currently exempt from jury service under section 5(1) of the Jury Ordinance (Cap 3) should be amended as follows:

- (A) 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 the Fire Services Department, including a person holding any post specified in the Seventh Schedule to the Fire Services Ordinance (Cap 95)
 - (ii) a member of the Government Flying Service
 - (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) officers employed on full pay in the naval, military or air services of the Hong Kong Garrison, together with the spouses of such officers
 - (e) 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)

The Law Society supports the recommendations in 9 (A)

- (B) The following categories of persons should be **excluded** from service as jurors:
- (a) any public officer who is –
 - (i) a judge, deputy judge, District Judge, deputy District Judge, Registrar, Senior Deputy Registrar, Deputy Registrar, Assistant Registrar, coroner or magistrate – should be excluded for life
 - (ii) a presiding officer, adjudicator or member of any tribunal established by law
 - (iii) a member of staff within the Judiciary
 - (iv) a legal officer within the meaning of section 2 of the Legal Officers Ordinance (Cap 87)
 - (v) serving in the Department of Justice, the Legal Aid Department, the Official Receiver's Office or the Intellectual Property Department
 - (vi) a member of the Hong Kong Police Force, the Immigration Service, the Customs and Excise Service
 - (vii) an officer of the Correctional Services Department

- (viii) the Commissioner, Deputy Commissioner or an officer of the Independent Commission Against Corruption
 - (ix) 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
 - (x) appointed as the principal probation officer, or as a probation officer, under the Probation of Offenders Ordinance (Cap 298)
 - (xi) 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)
- (b) barristers-at-law and solicitors in actual practice.
- (c) 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.
- (d) Government chemists.

Subject to the following comments, the Law Society supports the recommendations listed in Paragraph in 9(A):

(i) Exclusion of legally qualified persons

Barristers and solicitors not in actual practice engaged in other fields such as law lecturers and professors, and in-house lawyers should be excluded as should lawyers qualified in common law jurisdictions.

(ii) Members of the Hong Kong Police Force, Immigration Service, and Customs and Excise Service and Officers of the Correctional Services Department

In relation to the category of persons listed in Paragraph 9(B) (vi) and (vii) the Law Society suggests adoption of the recommendation in the judgment dated 14 March 2008 by the English Court of Appeal, Criminal Division in Regina v Khan (Bakish Alla) that:

“the trial judge should be made aware at the stage of jury selection if any juror in waiting was or had been a police officer, or a member of the prosecuting authority, or was a serving prison officer”.

(Reported in The Times:

<http://business.timesonline.co.uk/tol/business/law/reports/article3694911.ece>)

- (C) The Registrar or the trial judge, as the case may be, **may defer** jury service required of the persons in the following categories who have been summoned, or exclude or excuse them from jury service upon their application, if satisfied with the merits of their applications:
- (a) any public officer who is serving in a training or apprentice rank
 - (b) 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) and persons duly registered under the Veterinary Surgeons Registration Ordinance (Cap 529)
 - (c) 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
 - (d) chemists and druggists actually carrying on business as such
 - (e) clergymen, priests, and ministers of any Christian congregation or Jewish congregation, functioning in Hong Kong
 - (f) imams of and persons holding similar positions in any Muslim congregation functioning in Hong Kong
 - (g) priests of and persons holding similar positions in any Hindu congregation functioning in Hong Kong
 - (h) full time students of any school, college, university, polytechnic, technical institute, industrial training centre or other educational (including vocational education) institution
 - (i) pilots licensed under the Pilotage Ordinance (Cap 84), and the master and members of the crew of any ship
 - (j) pilots, navigators, wireless operators and other full-time members of the crews of passenger or mail or commercial aircraft
 - (k) persons who are vowed and full-time members of any religious orders living in monasteries, convents or other such religious communities
 - (l) justices of the peace

The Law Society's supports the recommendations in Paragraph 9(C).

- (D) **Exemption from jury service currently granted to the following categories of persons should be discontinued:**
- (a) the clerks of barristers-at-law and solicitors in actual practice
 - (b) 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

The Law Society supports the recommendations in 9 (D)

The Law Society of Hong Kong
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