



## **PROSECUTION WORKS IN THE MAGISTRACY: DIRECTION FOR THE FUTURE**

### **SUBMISSION**

1. The Law Society has reviewed a consultation paper on “*Prosecution Works in the Magistracy: Direction for the Future*” released in June 2016 (the “Consultation Paper”) by the Department of Justice (“DOJ”).

#### The Consultation Paper

2. The Consultation Paper is lengthy with directives and policy justifications. To assist this submission, we set out the following which we understand are the proposals being put forward:

#### *Retention of CP Grade*

- 2.1. The DOJ proposes to have a permanent team of lay prosecutors but supplemented by lawyers from within the DOJ and outside. This is said to be an ideal mix for the prosecution team at the magistracy level (§16 of the Consultation Paper).
- 2.2. Thus, the Court Prosecutors (“CP”) Grade is to be retained on a long term basis (§21).

#### *Assignment of cases to CP*

- 2.3. Those relatively more difficult duties (called “Scheduled Duties”) are to be removed from the responsibilities of CPs (§23).

2.4. The “Scheduled Duties” include (§24):

- (a) a broad category of cases by the nature of which should be handled by the legally qualified;
- (b) specific offences or types of offences the complexity of which require handling by qualified lawyers.

The “Scheduled Duties” will be reviewed and adjusted from time to time (§26).

2.5. While the “Scheduled Duties” will be handled by Government Counsel (GC) or fiat counsel, CPs are still to be involved by providing support to the GC or fiat counsel (§23, 24).

2.6. “Non-scheduled Duties” will continue to be undertaken and shared by all CPs and lawyers on the Magistracy Courts “B” List (§24). Those will considerably be wider than the duties currently assigned to new CPs without legal qualifications but not amounting to a full range of prosecutorial duties (§25).

#### *Creation of CP Posts*

2.7. Four SCP II posts are to be created (using part of the resources from the currently vacant CP posts) (§33):

- (a) two for West Kowloon Magistrates’ Courts (now known as Tsuen Wan Magistracy) (§33(a));
- (b) one for Kowloon City Magistracy (§33 (b));
- (c) one for Fanling Magistracy (§33(c)).

#### *Involvement of GC*

2.8. One Senior Government Counsel (SGC) is to be posted to each of the seven Magistrates’ Court (§31) to

- (a) handle Scheduled Duties;
- (b) provide “on-the-ground” advice and guidance to CPs;
- (c) assist in the handling of Non-scheduled Duties on ad hoc basis;

- (d) render advice to Senior Court Prosecutors (SGC), if so required, on administrative and case management duties (§32).

*Acting Appointment*

- 2.9. If legally qualified CP Grade officer are available and willing, they can fill the above SGC post by short-term acting appointments not exceeding six months on each occasion to meet operational needs while the CP Grade post at promotional ranks so vacated can be filled by CPs at lower ranks, thus creating additional acting opportunities for CPs (§32).

*Training and Development*

- 2.10. DOJ will encourage CPs to obtain legal qualifications and arrange training courses for in-house prosecutors from the GC and CP Grades (§34).

*Recruitment of new CPs*

- 2.11. Subject to reviews after the implementation of the above, the recruitment of new CPs could be resumed – at least 10 new CPs are to be recruited (§35).

Retention of CP Grade

- 3. We had a meeting on 7 July 2016 with the Secretary of Justice and representatives of the Hong Kong Bar Association to discuss the above.
- 4. With those proposals made in the Consultation Paper, we in principle agree to the policy directive of retaining the CP Grade. Our members on various occasions observe that, generally speaking, CPs are helpful in administrative and case assignment duties in magistracies. They are usually knowledgeable in handling simple and routine cases. However, in light of the increased volume and complexity of prosecution work (§9 and 15), notwithstanding the retention of CP Grade, we ask that the DOJ extend briefing out cases to junior

solicitors who are willing, ready and able to accept such briefs to prosecute on fiats in the Magistracy courts.

5. In this regard, we disagree with the suggestion that “merely increasing the engagement of fiat counsel cannot address the issues concerning the long term policy towards the CP grade” (§9(d)). To the contrary, when the CPs are satisfied with their grade, the job and career development, the mixing of CPs and fiat counsel (§16) could help enhance the prosecution and team spirit. This should also help maintain the quality of prosecution (§12).
6. We add that, where appropriate and relevant, solicitor-advocates should be considered for and be engaged in the prosecution work in magistracy, including the offences to be listed in the “Scheduled Duties”.

#### Enrichment of Job Contents and Career Development

7. At the moment, the Consultation Paper has yet to confirm on what the “Scheduled Duties” and “Non-scheduled Duties” are to encompass (§24 and 25). As no details are available at this stage, we would only remark that, generally speaking, when devising these “Duties”, the DOJ should consider the career development and the morale of the CP grade, and where possible, whether more meaningful cases and also duties may be assigned to the CPs. The offering of a reasonably attractive remuneration should also be considered as an incentive to attract and to retain the CP pool.
8. A clear picture on the promotion prospects (e.g. by reference to the years of work experience) should be presented to the CPs. That should help enhance transparency and identify a career pathway for the CPs and thus raise their morale.
9. Apart from the above, at this stage we have no further comment on the proposed “Duties”. We look forward to further discussion in this regard.

## Recruitment and Manpower deployment

10. The Consultation Paper is silent on any reform to the recruitment qualification of the CP Grade. Currently, legal qualification is not a basic requirement for appointment to the rank of CP<sup>1</sup>. We do not agree.
11. We share the views of some LegCo members on the recruitment qualification, when this issue was discussed some time ago, i.e. legally qualified practitioners are better able to handle prosecution work than unqualified persons.<sup>2</sup>. These views remain relevant.
12. We consider that new CP recruits should at least be holders of a law degree (or equivalent) in order that they can demonstrate a basic legal knowledge and an *interest* and *commitment* to the law.
13. Hong Kong has three local tertiary institutes offering law degree courses (or equivalent). The DOJ should have no difficulty in tapping into the pool of available talents.
14. With respect to the encouragement by the DOJ to CPs to obtain legal qualification *after* their entry to the grade (§34), this is with respect not satisfactory. This is tantamount to asking the Magistracies to educate the new CPs recruits. This is unfair to the Magistracies, the defence, and the public generally.
15. As for the deployment of a SGC to the seven magistracies, we generally are in support of this proposal. Among other things, a government lawyer of certain seniority in a magistracy could respond to urgent and unforeseen circumstances in time and thus should enhance the efficiency of proceedings in the magistracies. However, before this proposal is put in practice, the DOJ may need to consult with stakeholders as regards a more specific duties list, e.g. could the SGC be asked to plea bargain.
16. Lastly, there should be a definite time table to implement the above policies.

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<sup>1</sup> See the written reply by the Secretary for Justice to a question by Hon Chan Kin-por in the Legislative Council on July 8 2015.

<sup>2</sup> See paragraph 5 of *LC Paper No. CB(2)309/08-09/06*

## Conclusion

17. Subject to the above and in view of the proposals made in the Consultation Paper, we in principle support the policy of retaining the CP grade. We look forward to further discussions and consultation on those issues we have identified.

**The Law Society of Hong Kong  
2 August 2016**