

LCQ13: Court Prosecutors

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Following is a question by Hon Chan Kin-por and a written reply by the Secretary for Justice, Mr Rimsky Yuen, SC, in the Legislative Council today (July 8):

Question:

At present, for the majority of the cases heard at Magistrates' Courts, prosecutions are undertaken by Court Prosecutors (CPs) from the Prosecutions Division of the Department of Justice, with the exception of important cases or cases involving difficult points of law. The minimum entry requirement for the CP grade is an attainment of Level 3 or equivalent in five subjects in the Hong Kong Diploma of Secondary Education Examination or matriculation, or equivalent. After joining the service, each CP is required to attend a nine-month full time training course on advocacy techniques, rules of evidence, criminal law, court procedure, etc. In this connection, will the Government inform this Council:

(1) of the number and the profile of academic qualifications of the newly recruited CPs in the past ten years and, among them, the number of those who hold relevant legal qualifications; of the numbers, the profiles of academic qualifications, the numbers of those who hold relevant legal qualifications and the turnover rates of CPs in various ranks at present;

(2) whether it has plans to recruit CPs in the next three years; if it does, whether it will raise the minimum entry requirement for the grade to possession of relevant legal qualifications (e.g. a professional law degree), strengthen the on-the-job training and adopt a more stringent appraisal system; if it will, of the details;

(3) for cases heard at Magistrates' Courts in which the

defendants are represented by senior counsel with rich advocacy experience, whether a mechanism is currently in place to ensure that these cases are heard under the condition that the strength of both the prosecution and the defence is similar; if so, of the details; if not, the measures adopted by the authorities to ensure that the performance of CPs meets the professional standard required for handling such cases; and

(4) whether a mechanism is in place at present for handling complaints lodged by members of the public about the performance of CPs; if so, of the details, including the arrangement for assigning another CP to handle the case concerned; if not, whether the authorities will consider establishing such a mechanism so as to ensure that the performance of CPs is appropriately monitored by the public?

Reply:

President,

(1) In the past ten years, the Department of Justice (DoJ) conducted one Court Prosecutor (CP) recruitment exercise in 2008 and a total of 13 CPs were recruited. One of them was fully legally qualified at the time of appointment, five were holders of Bachelor of Laws degrees or degrees of equivalent standing, while the other seven held other master's/bachelor's degree qualifications.

To date, there are a total of 80 CPs in the DoJ. A breakdown by rank, academic qualification and relevant legal qualifications is tabulated in the Annex.

Over the past ten years, 31 members of the CP Grade (including eight recruited in 2008) left the service, averaging three per year.

(2) Legal qualification is not a basic requirement for

appointment to the rank of CP. However, some officers already held such qualification when they joined the Grade, while some others obtained the qualification (with various forms of support provided by the management) after joining the service.

The current approach is that CPs are recruited from different disciplines of academic studies. They are then provided with the necessary training and development opportunities after joining the Grade. Such an approach offers a flexible way to open the Grade to a wider pool of talents and to maintain its competitive advantage. As such, we do not see a practical need to change the recruitment qualifications of the Grade at this point in time. On the other hand, the management is looking into the long term development of the CP Grade and how the prosecution work in the Magistrates' Courts can be better handled. The purpose is to achieve greater professionalism and efficiency in the Magistrates' Courts, and to improve the overall quality of our prosecution service. The Secretary for Justice and the Director of Public Prosecutions have met CPs to understand their working situation and to gather views from them on the future development of the CP Grade. Further consideration is also being given towards the formulation of proper long term planning in this regard. We have hence no plan to recruit CPs in the interim.

Notwithstanding the above, we will continue with our efforts to encourage CPs to obtain legal qualifications and seek career advancement. We will also continue to instruct fiat counsel to conduct prosecution work as need requires.

(3) Under existing arrangement, CPs handle prosecutions in the Magistrates' Courts, most of which are relatively straightforward.

When law enforcement agencies seek legal advice from the DoJ on cases to be heard before the Magistrates' Courts, for cases which are complicated or expected to involve

complicated legal issues in the court proceedings, the advising counsel will in their advice recommend the cases to be prosecuted by counsel (including in-house or fiat counsel). The Senior Court Prosecutors I (SCP Is) stationing at the Magistrates' Courts responsible for case assignment will take note of such instructions and refer the cases to the DoJ for assignment of prosecuting counsel after plea having been taken.

For cases which are directly taken to a court by law enforcement agencies without having sought prior legal advice from the Prosecutions Division (PD), SCP Is in each Magistrates' Court responsible for case assignment will vet each case before passing it to individual CP Grade officers for handling. Where cases which, for reasons of complexity, sensitivity or seniority of the defence counsel, are identified as requiring to be handled by in-house or fiat counsel, the SCPI will alert the PD headquarters to arrange the cases to be handled by counsel instead.

In addition to the above arrangements, if questions arise in the course of prosecution, CPs will also immediately report them to senior CP Grade officers or counsel of the PD headquarters for instructions or legal advice to ensure proper handling of the case concerned.

(4) The DoJ attaches great importance to the professional qualities of prosecutors (inclusive of both counsel and CPs). Apart from providing continuing education and training to them, a Complaints and Feedback Unit is also in place under the Office of the Director of Public Prosecutions to handle public complaints, including complaints against the performance of prosecutors. These complaints will be handled by a Senior Public Prosecutor who will examine the complaints carefully and make reference to the case materials, including the case files, the case reports and if necessary the court transcripts for proper assessment. After making the assessment and recommendation on the complaints, the

complaint-handling officer will seek the approval of a directorate grade officer before replying to the complainants. If the trial of the case concerned is still ongoing, and should there be genuine practical need, we do not rule out the possibility of arranging a senior CP Grade officer or counsel to render assistance. To ensure continuity in the prosecution of the case concerned, change of prosecutor will be considered only in very exceptional circumstances (such as health problems of the original prosecutor). Besides, where specific legal issues arise, we will also consider arranging additional counsel to appear in court to deal with the legal issues concerned.

Ends/Wednesday, July 8, 2015

| <b>Rank</b>                | <b>Strength</b> | <b>Number of officers who have obtained full legal qualification</b> | <b>Number of officers in traineeship/ pupillage for obtaining full legal qualification</b> | <b>Number of officers who have obtained a Postgraduate Certificate in Laws or Bachelor of Laws degree or a degree of equivalent standing</b> | <b>Number of officers who hold other master's / bachelor's degree qualifications</b> |
|----------------------------|-----------------|--|--|--|--|
| Chief Court Prosecutor     | 2               | 1  | 0  | 0  | 1  |
| Senior Court Prosecutor I  | 7               | 1  | 0  | 3  | 2  |
| Senior Court Prosecutor II | 29              | 2  | 0  | 17   | 6  |
| Court Prosecutor           | 42              | 2  | 3  | 11   | 20   |
| <b>Total</b>               | <b>80</b>       | <b>6</b>   | <b>3</b>   | <b>31</b>  | <b>29</b>  |