

律政司



Department of
JUSTICE

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**FOREWORD BY
THE SECRETARY FOR JUSTICE**



This is the seventh periodical review of the work of the Department of Justice. It is the third since I took office as Secretary for Justice in October 2005 and covers the period from 1 January 2008 to 31 December 2009. As with previous editions, this review reflects the wide range of the department's work. It is fair to say that there are few areas within the broad sweep of government activity which have not required legal input from my department's counsel at one time or another.

I spoke in my foreword to the 2008 review of anticipated developments in a number of areas, including mediation, arbitration and reciprocal enforcement of judgments with the Mainland. I am pleased to say that the last two years have seen significant progress in each of these.

On mediation, the cross-sector Working Group I established and chaired held its first meeting in February 2008. Its task was to identify ways in which mediation can be more effectively and extensively applied to resolve both commercial disputes and disputes at the community level. The Working Group's proposals to achieve those ends will be presented in a report to be published in February 2010.

My department has responded to calls that the Arbitration Ordinance should keep pace with the needs of the modern arbitration community, domestically and globally. Following the publication of a consultation paper in December



2007, the department introduced a Bill to the Legislative Council in July 2009 which proposes to reform arbitration law in Hong Kong by creating a single and more user-friendly regime for all types of arbitration, based on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law. The department worked closely with arbitration practitioners in Hong Kong in formulating the proposals embodied in the Bill.

In relation to reciprocal enforcement of court judgments between the Mainland and Hong Kong, the HKSARG and the Supreme People's Court signed an arrangement in July 2006 covering civil and commercial judgments given by courts exercising their jurisdiction under a choice of court agreement. The arrangement has become effective from 1 August 2008 with the passing of the implementing legislation in Hong Kong and the promulgation of a judicial interpretation in the Mainland.

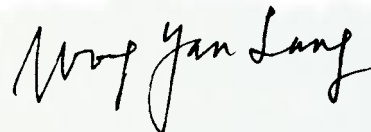
Hong Kong's legal system is rooted in the common law and we can benefit greatly from the mutual sharing of experience with lawyers from other common law jurisdictions. Our legal community also benefits from interacting with other jurisdictions with different legal traditions because of the international character of our city. Opportunities for just such interaction were provided when Hong Kong played host to two important international legal conferences in 2008 and 2009. In September 2008, the department was one of the joint organisers of the Third Asia Pacific Regional Conference of the Hague Conference on Private International Law 2008, while in April 2009 the Law Society of Hong Kong hosted the Commonwealth Law Conference. The Conference of the Commonwealth Association of Legislative Counsel 2009 held in conjunction with that latter conference provided an invaluable opportunity for legislative drafters to exchange experience.

The parameters of the Basic Law and the various rights it enshrines have continued to be tested and clarified in a number of important cases and my department has played a part in assisting the courts in these matters. Basic Law questions considered by the courts included whether the existing restriction on a prisoner's right to vote was unconstitutional, and what amounted to infringement of the right to academic freedom.

In conclusion, I should like to single out two

senior colleagues for special mention. Since his appointment as Law Draftsman in January 2008, the department has benefited greatly from the experience which Eamonn Moran has brought from a distinguished career as a draftsman in the United Kingdom and the State of Victoria, Australia. In October 2009, Grenville Cross, SC, retired from his post as Director of Public Prosecutions after 31 years of service to the department and I express my thanks for his advice and support.

I hope the information contained in this review provides you with some idea of the many aspects of the work of the Department of Justice and its key role within Hong Kong's legal system.



(WONG YAN LUNG, SC)

Secretary for Justice

31 December 2009



**HIGHLIGHTS OF
2008 AND 2009**



Initiatives and reforms

Higher rights of audience for solicitors

In June 2009, the Legal Practitioners (Amendment) Bill 2009 was introduced to the Legislative Council. The Bill is intended to implement recommendations made by the Chief Justice's Working Party on Solicitors' Rights of Audience which would extend rights of audience in the higher courts in Hong Kong to suitably qualified solicitors. Under the proposed scheme, solicitors having at least five years' post-qualification experience and satisfying further eligibility requirements would be able to apply to an assessment board for higher rights of audience before the High Court and the Court of Final Appeal. If enacted, the Bill would provide greater choice to the public by expanding the pool of advocates in the higher courts.

The Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Mainland and Hong Kong

This arrangement was signed on 14 July 2006 between the Supreme People's Court of the People's Republic of China (PRC) and the Department of Justice to permit judgments to be enforced summarily in the other jurisdiction on a reciprocal basis. To implement the arrangement, the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597) was passed by Hong Kong's Legislative Council on 23 April 2008 and, in the Mainland, the Supreme People's Court promulgated a judicial interpretation on 4 July

2008. Both instruments came into effect on 1 August 2008.

Parties who wish to enforce a Mainland judgment may now apply to the Hong Kong Court of First Instance (CFI) for registration of the judgment. The judgment will only be registered if it orders the payment of a sum of money, was given by a "designated court" and the "choice of Mainland court agreement" between the parties was made after 1 August 2008. The judgment must also be final and conclusive and enforceable in the Mainland. A registered Mainland judgment has the same force and effect as if it had been given by the CFI.

The Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)

CEPA allows Hong Kong lawyers easier access to the Mainland legal services market. Since CEPA first came into effect on 1 January 2004, there have been a number of Supplementary Agreements, the latest of which was promulgated on 9 May 2009. These have introduced further measures to make it easier for Hong Kong lawyers to practise as Mainland lawyers and to form associations with Mainland law firms.



Signing of Supplement VI to CEPA in May 2009.

From 1 October 2009, Hong Kong legal practitioners with five or more years practising experience and who have passed the National Judicial Examination will no longer have to undergo a one year internship before applying to practise in the Mainland. Instead, they will only be required to complete a one month intensive training course organised by the Mainland lawyers association. Hong Kong law firms which have set up representative offices in the Mainland may form associations with law firms in Guangdong province if the Mainland law firm concerned has been established for at least a year and one of the lawyers who established the firm has at least five years of professional experience.

As a result of the easing of restrictions, including the removal of a residency requirement for Hong Kong representatives in the Mainland, the number of representative offices set up by Hong Kong law firms in the Mainland has nearly doubled from 34 before the implementation of CEPA to 65 at the end of 2009.

Reform of arbitration law in Hong Kong

On 8 July 2009, the Arbitration Bill was introduced to the Legislative Council. The Bill proposes to reform arbitration law in Hong Kong by creating a single regime for all types of arbitration, based on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law. The existing law has been criticised as complex and difficult to understand and as having failed to keep pace with the needs of the modern arbitration community. If the Bill is enacted, the law relating to arbitration will

become clearer and more certain and accessible to arbitration users.

The introduction of the Bill is the result of several years of cooperative work involving the department and arbitration practitioners in Hong Kong. It is hoped that the enactment of the Bill will make a significant contribution to developing Hong Kong as a hub for international arbitration in the Asia Pacific region.

Working Group on Mediation

In February 2008, the Secretary for Justice set up a cross-sector Working Group on Mediation under his chairmanship, reflecting the pledge by the Chief Executive in his 2007 - 2008 Policy Address to develop mediation services in Hong Kong. The Working Group was tasked to recommend ways to facilitate and encourage the wider use of mediation and to ensure the quality and standard of mediators. The Working Group includes representatives from the Department of Justice, the Judiciary, the Legal Aid Department,



Representatives of trade associations and organisations sign up to the "Mediate First" initiative at a briefing reception.

the Bar Association, the Law Society, Hong Kong's three law schools, the Hong Kong International Arbitration Centre, the Hong Kong Mediation Council and the Hong Kong Mediation Centre, together with other members who are familiar with consumer or community needs.

During the last two years, the Working Group and its three specialist sub-groups have examined issues relating to public education and publicity, the accreditation and training of mediators and the regulatory framework for mediation. In 2009, the Working Group launched "Mediate First", a publicity campaign aimed at encouraging businesses to use mediation as the preferred means to resolve disputes and "Community Venues for Mediation", a pilot scheme using two community centres for community mediation to encourage the wider use of mediation to resolve community disputes. The Working Group also issued a Hong Kong Mediation Code, intended as a voluntary code of conduct for mediators, incorporating a sample Agreement to Mediate.

The Working Group expects to present its recommendations in a report for public consultation in February 2010.

Prosecution policy

The department's prosecution policy guidelines were published in a new and expanded *Statement of Prosecution Policy and Practice* in December 2008. The purpose of the statement is to promote openness and consistency in the area of public prosecutions. In addition to its obvious function of guiding prosecutors at all levels in the proper

discharge of their functions, the statement is intended to make the decision-making process more readily understandable to the public at large.

The Statement on the Treatment of Victims and Witnesses

In September 2009, the Prosecutions Division issued *The Statement on the Treatment of Victims and Witnesses*. The statement sets benchmarks for prosecutors and explains to the public how victims and witnesses should be treated throughout the course of criminal proceedings and the standards of service they may expect to receive. The criminal justice system depends on victims and witnesses to achieve its ends. The statement is a means to promote public trust in the legal system. It is in addition to, and supplements, the Victims of Crime Charter.



*The then Director of Public Prosecutions, Mr Grenville Cross, SC (centre), and Prosecutions Division counsel at the publication of *The Statement on the Treatment of Victims and Witnesses* (September 2009).*

Conference of the Commonwealth Association of Legislative Counsel 2009

In April 2009, counsel in the Law Drafting Division participated extensively in, and enthusiastically provided support for the running of, the Conference of the Commonwealth Association of Legislative Counsel 2009, held in Hong Kong. The conference offered a unique opportunity for legislative drafters from jurisdictions sharing the common law tradition to exchange experience. The theme of the conference was "Whose law is it?" Heads of legislative drafting offices and senior legislative drafters from all over the common law world presented papers on topics such as the tension between consistency and innovation in drafting legislation, the professional obligations of legislative counsel and the electronic publication of legislation. A judicial perspective on legislative drafting was given by the Hon Mr Justice Bokhary, Permanent Judge of the Court of Final Appeal. Dr the Hon Margaret Ng, Member of the Legislative Council, and Mr Jimmy Ma, JP, Legal Adviser to

the Legislative Council, spoke on the legislative process.

A cocktail reception for the participants was hosted by the Secretary for Justice. The conference was attended by some 150 participants and guests from 24 countries.

Third Asia Pacific Regional Conference of the Hague Conference on Private International Law 2008

With the support of the Central People's Government, the department jointly organised with the Hague Conference on Private International Law "The Third Asia Pacific Regional Conference of the Hague Conference on Private International Law" in Hong Kong from 24 - 26 September 2008. Over 100 delegates from 27 countries in the Asia Pacific region participated, including attorneys general, ministers of justice and secretaries of justice. The Commissioner of the Ministry of Foreign Affairs of the PRC in the



About 150 participants from 24 countries attended the Conference of the Commonwealth Association of Legislative Counsel held in Hong Kong (April 2009).

Hong Kong Special Administrative Region (HKSAR), the Secretary for Justice and the Secretary General of the Hague Conference gave speeches at the opening of the conference. Members of the International Law Division also gave presentations on various subjects of international law at the conference. The conference proved to be a success in promoting international legal cooperation and demonstrated the usefulness of Hague Conventions to jurisdictions in the Asia Pacific region.



Enhancement of IT capability

A range of initiatives were undertaken during 2008 and 2009 to enhance the department's information technology (IT) capability. These included:

- the replacement of the Bilingual Laws Information System servers and enhancement of the application to improve its presentation, navigation and search function



- the upgrade of the software for the email system and the Confidential Mail System to an updated version with improved performance and enhanced functions
- the upgrade of the document management software and the replacement of the server and storage hardware of the Bilingual Document Management and Archival system to improve the system's reliability, performance and security
- the implementation of a computerised fiat counsel rotation system in the Briefing Out Unit of the Prosecutions Division to process the assignment of briefing out cases to outside legal professionals
- the setting up of a complaints register in the Work Management System to facilitate the recording of complaint cases, the tracking and monitoring of case progress, and the generation of management and statistical reports
- the introduction of e-appraisal forms for the Government Counsel grade

Notable cases

Criminal

In *HKSAR v Cheung Kwun-yin* (FACC 11/2008), the question of law raised in the Court of Final Appeal related to the interpretation of "any deception" in section 18D(1) of the Theft Ordinance (Cap 210). It was held that in interpreting a statute, the court's task was to ascertain the intention of the legislature as expressed in the language of the statute. The modern approach was to adopt a purposive interpretation. The context of a statutory provision should be taken in its widest sense and certainly included the other provisions of the statute and the existing state of the law.

In light of its context and purpose, deception in this section was not restricted to deception which targeted a bank or deposit-taking company.

In *HKSAR v Lee King-man* (CACC 96/2005), the Court of Appeal dismissed the accused's appeal against his conviction for wounding with intent. The accused contended that the evidence of an undercover police officer, who posed as a prisoner in the detention cell where the accused and his confederate were taken after arrest and heard an incriminatory conversation between them, should be excluded. The court held that as the accused had neither been charged nor questioned, evidence of the conversation between the two suspects was admissible, not least because the officer neither engineered, triggered nor participated in the conversation.



In *HKSAR v Abdallah* [2009] 2 HKLRD 437, the Court of Appeal confirmed the sentencing guidelines applied to trafficking in heroin and cocaine of up to 600 grams and set sentencing guidelines for trafficking in these drugs ranging from 20 to 23 years' imprisonment for trafficking 600 grams to 1,200 grams to from 26 to 30 years' imprisonment for 4,000 grams to 15,000 grams. The presence of any aggravating factors (such as if an international element was involved, or the accused had a previous conviction for trafficking in dangerous drugs, or the accused was shown to be a major player in a syndicate, or a young person had been engaged to assist in trafficking) called for enhancement of the sentence. The new guidelines did not have retrospective effect.

In *SJ v Hii Siew-cheng* [2009] 1 HKLRD 1, the Court of Appeal set new sentencing guidelines for trafficking in ketamine and ecstasy. These drugs were prevalent, targeted at young persons and had serious side effects which impinged not just upon the consumers, but also the community at large. Modern medical expert evidence showed that both drugs were potentially highly dangerous and addictive in their potential for psychological dependence. Save in extreme exceptional circumstances, traffickers pushing these drugs in a discotheque or similar premises should receive a custodial sentence. A non-custodial sentence might be justified when a habitual abuser of these drugs, with no previous convictions for trafficking in a dangerous drug, was caught while supplying a close acquaintance who was also a regular drug consumer. The new tariffs for sentencing traffickers in these drugs ranged from two to four years' imprisonment for one gram to 10 grams to 14 years and upwards for over 1,000 grams. The new guidelines did not have retrospective effect.

Both applications for review in *SJ v Lam Siu-tong* (CAAR 2/2009) and *SJ v Wong Ton-fan* (CAAR 4/2009) involved sentences of imprisonment and periods of disqualification imposed by the District Court in relation to convictions for dangerous driving causing death when the maximum sentence for the offence was still five years' imprisonment. The Court of Appeal reiterated the principles in *SJ v Poon Wing-kay* [2007] 1 HKLRD 660. Older decisions pre-dating *Poon Wing-kay*, in particular those dealt with in the Magistrates' Courts, should be regarded as providing limited assistance to a sentencing court. If the offence occurred at a pedestrian crossing it would be a serious aggravating feature in sentence. For *Lam Siu-tong*, the original sentence of 12 months was not disturbed because of the close proximity of the respondent's original date of release. The original sentence of 20 months' imprisonment in *Wong Ton-fan* was increased to 32 months. The period of disqualification from driving in both cases, three years and 2½ years respectively, remained undisturbed.

In *Huang Nan-hua* (HCCC 11/2009), the accused was charged with the offence of carrying arms and ammunition with intent to commit an arrestable offence. The prosecution case was that the accused was a Mainlander hired to come to Hong Kong in order to commit a serious crime involving violence to one or more prominent local personalities. The crime was foiled at an early stage and no injury was suffered by the intended victim. The accused was convicted by the jury and was sentenced to 16 years' imprisonment. In passing sentence, the judge remarked that anyone guilty of conduct that threatened a public figure because of his participation in either politics or his profession committed a grave crime. When the

threat involved a firearm, an accused would face a long sentence of imprisonment.

In *HKSAR v Wong Kwan-fuk and another* (HCCC 254/2007), two Hong Kong residents were charged with conspiracy to blackmail, criminal damage, theft and assault occasioning actual bodily harm. The prosecution case was that the accused recruited several Mainlanders to come to Hong Kong to carry out a plan to dig up the grave of the wife of a well-known property tycoon in Hong Kong. They did so with a view to stealing the human remains in the grave and blackmailing the property tycoon for payment. Two of the accomplice witnesses, who were then serving sentences in Guangzhou, offered to testify against the accused. A Letter of Request was issued by the Court of First Instance to the High People's Court of Guangdong Province (HPCGDP), requesting the latter to assist in examining the witnesses in the Mainland. Letter of Request proceedings were subsequently conducted in the HPCGDP, with the trial judge appointed to sit as the examiner whereas a judge of the HPCGDP sat as the presiding judge. This was the first case in which evidence was taken in the Mainland for the purpose of a trial in the Court of First Instance and the first occasion for a High Court Judge of Hong Kong to sit as an examiner in the High People's Court at the provincial level. Following a trial, the jury convicted the two accused of theft and criminal damage and they were respectively sentenced to 3½ and 2½ years' imprisonment.

In *Cheung Oi-ping and another* (DCCC 610/2008), a recovery agent and a solicitor were convicted of conspiracy to commit maintenance and champerty. The prosecution case was that as a result of a champertous agreement between the victim and

the recovery agent, the victim paid the agent \$800,000 in cash as service fees, representing 25% of the compensation recovered from a successful personal injuries claim for injuries suffered by the victim's son in a traffic accident. The claim was handled by the solicitor who, in a subsequent application by the victim to be appointed as committee for her son's estate, told the victim to lie to the court in an affirmation that the money was deposited in her safety box. The accused were imprisoned for, respectively, 16 months and 15 months.



HKSAR v Ma Hon-yeung and four others (DCCC 229-240/2008) is the first insider dealing offence to be tried at the District Court since "insider dealing" was "criminalised" under the Securities and Futures Ordinance (Cap 571), which came into effect in 2003. All five defendants were convicted after trial. D1 was at the material times a significant team member of a bank working on the privatisation of a public-listed company, and was alleged to have tipped off his girlfriend (D2), his brother (D3), his brother's wife (D4) and his nephew (D5) with price sensitive and non-public news of the privatisation of the public-listed company, the offering price and the date of suspension of the trading of its shares, etc. On

the basis of that price sensitive information, D2 to D5 were alleged to have bought the shares of the company just before the trading of its shares was suspended pending the announcement of the privatisation scheme. D2 to D5 sold these shares soon after trading resumed and made a substantial profit. D1 and his girlfriend were respectively sentenced to 26 months' and 12 months' imprisonment, while D1's brother, sister-in-law and nephew were each required to undertake 200 hours of community service. All the defendants were fined to the extent that the profits they made were disgorged.

In *HKSAR v Ocean Technology Ltd and five others* (ESS 31207-31211, 36868-36873, 36925-36927/2006) six defendants were convicted after trial of 16 offences relating to the illegal use of a radio frequency for broadcasting purposes. On four occasions in 2006, they had set up equipment and broadcast under the name of "Citizens' Radio". They challenged the constitutionality of the licensing regime under the Telecommunications Ordinance (Cap 106). The trial magistrate accepted the "unconstitutional" argument and dismissed the charges. However, that ruling was unanimously rejected by the Court of Appeal and a retrial was ordered. The defendants' attempt to appeal to the Court of Final Appeal was dismissed by the Appeal Committee. At the retrial, the defendants applied for a permanent stay of the case. The magistrate rejected this application and found the charges proved against each of the defendants. They were fined \$3,000 in respect of each summons and the radio equipment was forfeited. It was evident from the case results that basic rights such as freedom of expression must be exercised within the bounds of the law.

Civil

Constitutional and administrative law

In *Yeung Chung-ming v Commissioner of Police* (FACV 22/2007), the appellant challenged the Commissioner of Police's decision to withhold 7% of his pay under section 17 of the Police Force Ordinance (Cap 232), when he had been interdicted following the laying of criminal charges against him. The sole ground of the appeal was that the withholding of the appellant's pay during interdiction breached the constitutional guarantee of the presumption of innocence under Article 87(2) of the Basic Law and Article 11(1) of the Hong Kong Bill of Rights. The Court of Final Appeal held that the Commissioner's withholding of less than half an interdicted officer's pay did not imply an assumption that the officer was guilty of the criminal offence with which he had been charged. The appeal was dismissed on 25 July 2008.

In *FB v Director of Immigration and another* (HCAL 51/2007), foreign nationals who lodged claims under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment challenged the two-stage screening process established by the Administration as failing to meet the high standards of fairness in handling such claims as required by the Court of Final Appeal in *Secretary for Security v Sakthivel Prabakar* (FACV 16/2003). On 5 December 2008, the Court of First Instance allowed the application and declared certain aspects of the screening process unlawful for breach of the duty to assess such claims in accordance with the high standards of fairness (including the absence of publicly funded legal assistance to needy claimants, the examining officer not being the decision-maker

for the initial screening and the absence of an oral hearing at the petition stage). The court's judgment was reflected in the revised scheme which has been implemented upon resumption of screening in December 2009.

In February 2007, the Chief Executive in Council appointed a Commission of Inquiry under the Commissions of Inquiry Ordinance (Cap 86) to ascertain whether any improper pressure had been applied to, and any improper attack had been made on, the Hong Kong Institute of Education's academic freedom. The Commission, chaired by a Justice of Appeal, found that the then Permanent Secretary for Education's direct approach to an academic of the institute to remonstrate with him constituted an improper interference with his academic freedom. In *SJ v Commission of*



Inquiry, Re Hong Kong Institute of Education (HCAL 108/2007), the Secretary for Education took out a judicial review application to challenge the Commission's findings. In recognising that academic freedom is a self-contained right under Articles 34 and 137 of the Basic Law, the Court of First Instance held that the Permanent Secretary's approach did not violate the institute's right to academic freedom as she had not made any direct or indirect threats of sanction. The judicial review was allowed on 13 March 2009.

In *Chan Noi-heung and others v Chief Executive in Council* (CACV 197/2007 and FAMV 47/2008), one of the applicants appealed against the decision of the Court of First Instance in HCAL 126/2006 (judgment dated 16 May 2007) which upheld the decision of the Chief Executive in Council not to fix minimum rates of wages under the Trade Boards Ordinance (Cap 63). It was contended that the

Chief Executive in Council had failed to carry out the constitutional duty under Article 48(2) of the Basic Law by refusing to consider implementing minimum rates of wages in accordance with the provisions of the Ordinance and by so doing had effectively renounced the Ordinance. On 8 May 2008, the Court of Appeal held that at no stage had the Chief Executive in Council committed the government to a position by which the Trade Boards Ordinance could be said to have been renounced and the appeal was therefore dismissed. Leave to appeal to the Court of Final Appeal was refused on 23 March 2009.

In *Lam Siu-po v Commissioner of Police* (FACV 9/2008), a police constable who had been found guilty of a disciplinary charge brought against him under the 1999 version of the Police General Orders 6-01(8) challenged the constitutionality of regulations 9(11) and 9(12) of the Police (Discipline)



Regulations (Cap 232, sub leg A), which restricted his right to legal representation in disciplinary proceedings. On 26 March 2009, the Court of Final Appeal held that the regulations were inconsistent with Article 10 of the Hong Kong Bill of Rights by excluding the adjudicating officer a discretion to permit the police constable to be legally represented. The disciplinary orders made against the police constable were also quashed.

In *Chan Kin-sum v SJ* (HCAL 79/2008), the Court of First Instance held on 8 December 2008 that the general, automatic and indiscriminate restrictions on prisoners' right to vote and to register as electors under the Legislative Council Ordinance (Cap 542) were inconsistent with the constitutional right to vote under Article 26 of the Basic Law and Article 21 of the Hong Kong Bill of Rights. As far as remanded persons were concerned, there was no provision in the Ordinance which disqualified them from registering as electors or from voting in Legislative Council elections. The court took the view that the constitutional right to vote of remanded persons was not affected by any law, and arrangements should be made to enable remanded persons to vote on election day whilst being held in custody.

Insider dealing and market misconduct

In *Koon Wing-yee v Insider Dealing Tribunal and Financial Secretary* (FACV 19/2007) and *Chan Kin-shing Sonny v Insider Dealing Tribunal and Financial Secretary* (FACV 20/2007), the Court of Final Appeal held in the appeals by the Financial Secretary that section 23(1)(c) of the now repealed Securities (Insider Dealing) Ordinance, which empowered the Insider Dealing Tribunal to impose penalties, was unconstitutional but that the other findings and orders of the Tribunal were valid.

The Market Misconduct Tribunal commenced operation and conducted four inquiries into allegations of market misconduct in relation to shares in *Sunny Global Holdings Ltd*, *QPL International Holdings Ltd*, *China Overseas Land and Investment Ltd* and *Mobicon Group Ltd*. The proceedings were brought by the Financial Secretary following advice from the Civil Division.

Competition law

In *PCCW-HKT Telephone Ltd v Telecommunications Authority* (CACV 300/2008), the Court of Appeal clarified the circumstances in which the Telecommunications (Competition Provisions) Appeal Board might state a case for the opinion of the Court of Appeal. In *i-Cable Webserve Ltd v Telecommunications Authority* (CACV 329/2008) the Court of Appeal confirmed that the power of the Telecommunications Authority under section 36C of the Telecommunications Ordinance (Cap 106) to impose financial penalties in respect of contraventions of section 7M of that Ordinance over misleading or deceptive conduct were regulatory or disciplinary in nature, rather than criminal, and that the standard of proof to be applied was the civil standard.

Land

In *Rank Profit Industries Ltd v Director of Lands* (CACV 94/2007), Rank Profit appealed to the Court of Appeal against the Court of First Instance's judgment refusing its application for judicial review against a decision of the Lands Department concerning a proposed lease modification for a lot owned by Rank Profit in Kowloon Bay. In *Rank Profit Industries Ltd v SJ* (CACV 125/2007), Rank Profit appealed to the Court of Appeal against the Court of First Instance's decision to strike out its claims made against the government for the

return of premia paid, loss of potential profits and abortive expenses arising from the alleged breach of, or derogation from, the land grant as a result of the rezoning of Rank Profit's neighbourhood lots in the Kowloon Bay Industrial Area. Both appeals were dismissed by the Court of Appeal with costs to the government, and the Appeal Committee of the Court of Final Appeal refused to grant Rank Profit leave to appeal further (FAMV 7/2009 and FAMV 8/2009).

Rating and government rent

In *The Hong Kong Electric Company Ltd v Commissioner of Rating and Valuation* (LDRA 358/2004 and LDGA 224/2004), the appellant lodged a rating appeal and a government rent appeal, both in respect of the assessment year of 2004/2005, against the Commissioner of Rating and Valuation's valuation of its tenement which comprised the land, buildings and structures it occupied and used for the generation, transmission and distribution of electricity. There are parallel appeals on both rates and government rent in respect of three other assessment years (2005/2006, 2006/2007 and 2007/2008). Judgment was handed down by the Lands Tribunal on 30 November 2009, upholding the Commissioner's use of the receipts and expenditure method of valuation while agreeing with the appellant that the permitted return under the scheme of control, instead of the weighted average of cost of capital, should be used to determine the hypothetical tenant's share of the divisible balance in the valuation. The Commissioner's application for leave to appeal against the judgment to the Court of Appeal has been fixed for 25 January 2010.

Ongoing cases

In *Dr Chan Hei-ling Helen v Medical Council of Hong Kong* (CACV 403/2006), a registered medical practitioner was found guilty of professional misconduct by the Medical Council in that her name, title, photographs and statements appeared in a health product advertisement in a local newspaper. The Court of Appeal held that the impugned involvement of the legal adviser during the deliberations of the Medical Council raised questions as to whether there had been breaches of natural justice and set aside the order of the Medical Council. Leave was granted by the Court of Appeal for the Medical Council to appeal to the Court of Final Appeal and the hearing is scheduled to commence on 19 April 2010.

In *Fok Chun-wa and another v Hospital Authority and another* (HCAL 94/2007), the Court of First Instance upheld the policy of the Hospital Authority to charge non-Hong Kong resident pregnant women higher rates for obstetric services as being constitutional and not discriminatory. The appeal to the Court of Appeal has been fixed for 2 March 2010.

In *Tong Wai-ting v Secretary for Education* (HCAL 73/2009), the applicant completed his compulsory 12 years of education in a special school which provided education for students with special educational needs due to intellectual disabilities. His application to extend his studies in the school for one more year was rejected by the government on the grounds that students with intellectual disabilities who had reached the age of 18 must leave school unless there were special reasons. The applicant alleged direct discrimination under the Disability Discrimination Ordinance (Cap 487) on the grounds of his disability, claiming that no

similar age restriction was apparently imposed on students studying in mainstream aided secondary schools. His application was dismissed by the Court of First Instance on 24 August 2009. The hearing of the applicant's appeal has not yet been fixed.

In *SJ v Times Square Ltd (formerly known as Zenuna Ltd)* (HCA 1095/2008), the government commenced a writ action against Times Square Ltd claiming damages for its breach of the Deed of Dedication dated 30 July 1992, or alternatively an account of profit regarding its levying of excessive charges on organisers of temporary exhibitions and displays in the dedicated area of Times Square.

Public international law

In *C and others v Director of Immigration* (HCAL 132/2006), the applicants sought declaratory relief that the HKSAR Government was required under customary international law not to expel a refugee to the frontiers of a territory where he or she would face persecution (known as the principle of "non-refoulement of refugees"), and to determine the status of all refugee claimants by way of screening. In refusing the application, the

Court of First Instance considered that, while the principle of "non-refoulement of refugees" had matured into a rule of customary international law, the principle had not been incorporated into the domestic law of the HKSAR. As such, the HKSAR Government was not required pursuant to that principle to conduct a screening of all refugee claimants. The applicants have lodged an appeal to the Court of Appeal (CACV 132-137/2008), which was part-heard on 12 October 2009 and adjourned to January 2010 for further hearing.

In *FG Hemisphere Associates LLC v Democratic Republic of the Congo and others* (HCMP 928/2008), the plaintiff applied for leave to enforce in the HKSAR two international arbitral awards against the Democratic Republic of the Congo. The Secretary for Justice intervened in the proceedings on the grounds of public interest. The Court of First Instance held that the court had no jurisdiction over the Democratic Republic of the Congo in the proceedings as it enjoyed sovereign immunity. The plaintiff lodged an appeal to the Court of Appeal (CACV 373/2008 and 43/2009), which was heard between 28 July and 4 August 2009 and judgment has yet to be given.

People

Mr Robert SK Lee, Deputy Principal Government Counsel, was appointed Senior Counsel in April 2008.

Four members of the department were awarded the Bronze Bauhinia Star: Mr John Reading, SC, Principal Government Counsel, and Ms Alison Cabrelli, Principal Government Counsel, in July 2008, and Ms Nilmini Dissanayake, Principal Government Counsel, and Mr Charles Barr, Principal Government Counsel, in July 2009.

Mr Ian McWalters, SC, was appointed Director of Public Prosecutions in October 2009 in succession to Mr Grenville Cross, SC, who retired from that post after 31 years of dedicated service in the government.



AN OVERVIEW OF
THE DEPARTMENT OF JUSTICE

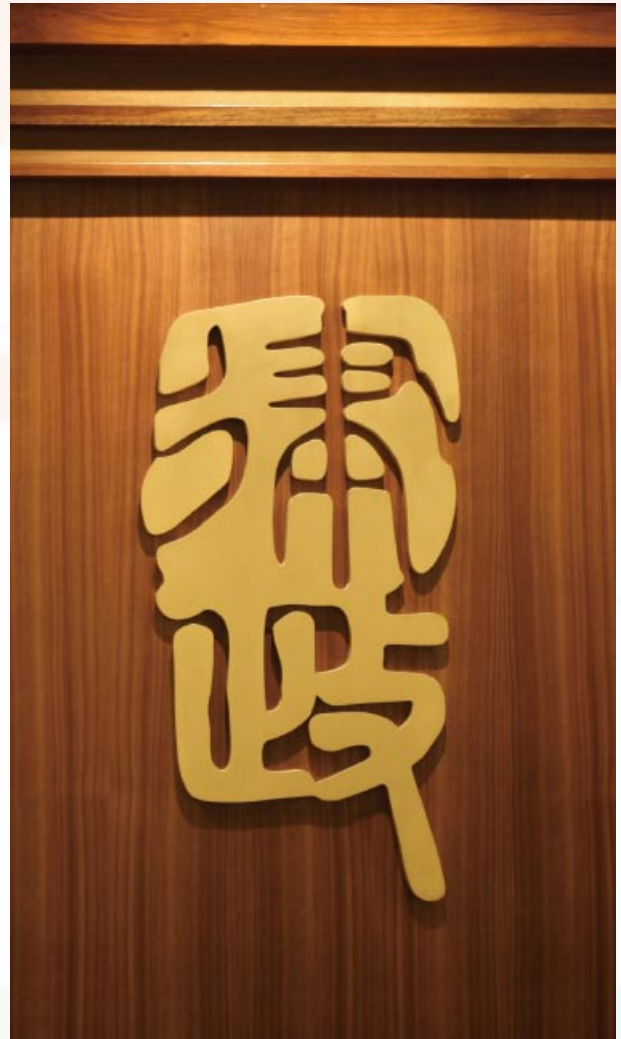


The role of the Secretary for Justice

The Department of Justice is headed by the Secretary for Justice, who fulfils a wide range of duties. Chief among these is to act as the principal legal adviser to the Chief Executive, to the government and to individual government bureaux, departments and agencies. The Secretary for Justice is also a member of the Executive Council.

The decision to prosecute criminal offences is the sole responsibility of the Secretary for Justice who in this respect operates independently, free from any interference. The Secretary for Justice is also the defendant in all civil actions brought against the government and represents both the government and the public interest in the courts.

As guardian of the public interest in a wider sense, the Secretary for Justice may make application for judicial review to enforce public legal rights. The Secretary has a right to intervene in any case involving a matter of great public interest. The Secretary represents the public interest as counsel to tribunals of inquiry. The Secretary is the Protector of Charities and must be joined as a party in all actions to enforce charitable or public trusts. The Secretary for Justice also has a more general public interest role as *amicus curiae* (literally, friend of the court), the most important



example of which is bringing alleged contempts of court to the notice of the courts.

Amongst many other functions, the Secretary for Justice is Chairman of the Law Reform Commission, Vice-Chairman of the Fight Crime Committee, and serves on the Chief Secretary for Administration's Policy Committee, the Judicial Officers Recommendation Commission and the ICAC's Operations Review Committee.



and the media about the work of the department through press releases, press conferences, and arranging for counsel to give media interviews and participate in TV and radio public affairs programmes. Arrangements are also made for counsel to contribute articles to newspapers on a variety of law-related issues. The unit also coordinates the preparation of educational materials and publications to introduce aspects of Hong Kong's legal system and foster commitment to the rule of law.

The Secretary for Justice's Office

The Secretary for Justice's Office provides legal and administrative support in respect of the Secretary for Justice's many functions. This includes assisting the Secretary in all matters related to the Executive and Legislative Councils, be it the promotion of legislation or providing answers to legislators' questions. Members of the Office ensure that the Secretary is fully briefed on the issues which arise, assist in the analysis of those issues, and help to prepare speeches and responses.

Information and public relations

The department considers that part of its role is to promote understanding in the community of Hong Kong's legal system. To that end, the Public Relations and Information Unit of the Secretary for Justice's Office provides information to the public

The divisions

The lawyers in the department work within one of five distinct legal "divisions". These divisions are Civil, International Law, Law Drafting, Legal Policy,



Media sessions are arranged to explain the department's initiatives.

and Prosecutions. The legal divisions are provided with general support by the Administration & Development Division, which is headed by the Director of Administration & Development.

Each of the legal divisions is headed by a "Law Officer" who, as well as directing the work of their respective divisions, assists the Secretary for Justice in the overall management of the department. The Law Officers are the Law Officer (Civil Law) (who heads the Civil Division), the Law Officer (International Law) (heading the International Law Division), the Law Draftsman (who heads the Law

Drafting Division), the Solicitor General (heading the Legal Policy Division) and the Director of Public Prosecutions (heading the Prosecutions Division).

While each of the legal divisions has distinct areas of responsibility, many issues arise where input from more than one division or specialist unit within a division may be necessary. In such cases, lawyers from each of the relevant units will work together to ensure that the client department or bureau is provided with comprehensive legal advice which fully meets the client's needs.



The Secretary for Justice and the department's divisional heads. Front row from left : Law Officer (Civil Law), Mr Benedict Lai; Secretary for Justice, Mr Wong Yan Lung, SC; and Solicitor General, Mr Ian Wingfield. Back row from left : Director of Public Prosecutions, Mr Ian McWalters, SC; Law Draftsman, Mr Eamonn Moran; Law Officer (International Law), Ms Amelia Luk; and Director of Administration & Development, Miss Susie Ho.

CIVIL DIVISION



The Civil Division has a major role in providing legal advice on a wide range of legal issues on civil matters to all government bureaux and departments. The division also represents the government in the conduct of all civil claims and disputes involving the government.

The Civil Division comprises four major units:

- Advisory
- Civil Litigation
- Commercial
- Planning, Environment, Lands & Housing

Advisory Unit

Counsel of this unit advise various government bureaux and departments on civil law issues of a general nature, including statutory interpretation, administrative law issue and legislative proposals in a wide range of areas, including:

- civil aviation, shipping and public transport
- civil service and disciplinary proceedings
- education and social welfare
- election related matters
- electronic transactions related matters
- employment related matters
- matters relating to the police force, fire services and correctional services
- immigration
- protection of personal data
- public finance, inland revenue and customs and excise
- public health and environmental hygiene
- recreation and culture

Matters of particular interest on which the unit advised in 2008 and 2009 included:

Civil service

- issues relating to disciplinary proceedings in the civil service arising from recent court decisions

Elections

- preparation for the 2008 Legislative Council elections and various District Council by-elections
- registration and voting rights of prisoners in various elections
- review of village representative elections arrangements

Employment

- measures to improve enforcement of Labour Tribunal awards
- introduction of a statutory minimum wage

Immigration

- claims made under the *Convention Against*



Law Officer (Civil Law), Mr Benedict Lai (right), with Mr Eric TM Cheung, Assistant Professor, Hong Kong University, at a training session on the Civil Justice Reform.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Public health

- measures to combat avian influenza and influenza A H1N1
- food safety matters such as the prohibition of import and sale of problem food and issue of a recall order, the control of level of melamine in food

Road traffic and shipping

- extension of the probationary driving licence scheme to private cars and light goods vehicles
- amendment to the Road Traffic (Driving-Offence Points) Ordinance (Cap 375) to plug the loophole in law about service of summons for disqualification proceedings
- the new Bunker Oil Pollution (Liability and Compensation) Ordinance (14 of 2009) regulating liability and compensation for contamination caused by bunker oil discharge from ships

Others

- measures to facilitate the East Asian Games held in Hong Kong in December 2009
- matters arising from the Select Committee and Subcommittee set up by the Legislative Council to inquire respectively into matters relating to the post-service work of Mr Leung Chin-man and issues arising from Lehman Brothers-related mini-bonds and structured financial products
- specifying in the Copyright Ordinance (Cap 528) the maximum number of unauthorised copies

of newspapers, magazines, books or journals that can be made for distribution in business without constituting an offence

- making Rules of Procedure for implementing the United Nations (Anti-terrorism Measures) Ordinance (Cap 575)
- extension of the scope of protected persons under the Domestic Violence Ordinance (Cap 189)
- designation of the Hong Kong Geopark and banning of commercial fishing in marine parks
- review of control measures for street management
- management of trees on government lands

Civil Litigation Unit

Counsel in the Civil Litigation Unit and the litigation team of the Planning, Environment, Lands & Housing Unit act as solicitors and barristers in representing the government in the conduct of all civil claims and disputes involving the government, though some of the work is briefed out to private practitioners as may be required.

As in previous years, public law cases have formed a major part of the unit's work. Some of the more important of these are mentioned under "Notable cases" in the "Highlights of 2008 and 2009" chapter.

Over the past two years, one notable phenomenon in public law litigation has been the dramatic increase in cases brought by people who came to Hong Kong and subsequently lodged claims for protection under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Following the decision of the Court

of First Instance in *FB v Director of Immigration* (HCAL 51/2007), a revised administrative screening scheme has been developed by the Administration for handling claims made under the Convention. In October 2009, a dedicated team was set up within the division to provide "one-stop" legal support to deal with Convention-related cases, including advice on the enhanced screening procedure, legal representation at oral hearings before tribunals and in judicial review cases before the Court of First Instance and any subsequent appeals.

Apart from public law litigation, and in addition to the type of cases already referred to, the Civil Litigation Unit handles a wide spectrum of other civil litigation matters on behalf of the government, including personal injury cases, charities and trusts matters, revenue appeals, telecommunications appeals, and general recovery of government debts.

To familiarise Government Counsel and para-legal staff with the new rules and procedures introduced by the implementation of the Civil Justice Reform (CJR), a series of training sessions were commissioned in-house in the run up to its implementation on 2 April 2009. Speakers in these training sessions included academics from the Faculty of Law of the University of Hong Kong and serving judicial officers. They covered a whole range of different topics involved in the CJR and some seats were reserved for practising barristers and solicitors enrolled through their respective professional bodies. Government Counsel also participated in various CJR-related training programmes organised outside the Department of Justice.

In view of the increasing importance of mediation in civil litigation, especially after the implementation of the CJR and in anticipation of the coming into effect of the relevant Practice Directions on 2 January 2010, in-house courses in mediation were organised from late 2007 to early 2008. In the first quarter of 2008, 35 Government Counsel of the Civil Division attended such courses. Another round of in-house courses in mediation took place in November and December 2009. A selected number of counsel also received training for accreditation by the London-based Centre for Effective Dispute Resolution.



Civil Division counsel at a mediation workshop with dispute resolution specialist Mr David Newton (second from right).

Commercial Unit

Work on commercial law is generated by the government's own commercial requirements, by the government's regulation of utilities, franchisees and licensees, and by certain commercial services provided to the community. During 2008 and 2009, counsel in the unit advised on such matters as:

- the rewrite of the Companies Ordinance (Cap 32)
- reform of banking and securities and futures legislation, including implementation of the Basel II recommendations and codification of the disclosure requirements on price sensitive information
- regulation of the Mandatory Provident Fund Schemes and related legislative proposals
- telecommunications, broadcasting and electronic transactions (including the preparation and implementation of legislative proposals on the establishment of the proposed Communications Authority, the consultation on public service broadcasting and the future of RTHK, the legislative proposal on the provision of spectrum for expansion of Second Generation (2G) mobile services, the legislative amendments to the television programme service licence fees, and the government Wi-Fi Programme)
- drafting and advising upon agreements and major project work such as the Disney theme park, the new cruise terminal facilities and the Hong Kong-Zhuhai-Macau Bridge
- the establishment of various trust funds and schemes, including the "Trust Fund in Support of Reconstruction in the Sichuan Earthquake Stricken Areas"
- documentation, rules and related legal advice on the Capital Investment Entrant Scheme (Immigration)
- public-private partnerships and private sector involvement
- project financing of film production
- bank mergers and deposit protection
- government procurement of goods and services and preparation of tender documents/contracts
- a number of major computer contracts, including in some cases their termination
- general competition policy in Hong Kong, including the proposed introduction of a new cross-sector competition law, and initiatives in specific sectors such as telecommunications, broadcasting, electronic trade manifests and the auto-fuel industry
- school service contracts for government, aided and direct subsidy schools
- advising on the regulation of digital television services in conjunction with, and in succession to, analogue television services
- the regulatory functions of government in the West Kowloon Cultural District project
- the regulatory functions of the Insurance Authority and the exercise of his intervention power under the Insurance Companies Ordinance (Cap 41)
- proposed legislation to enhance the anti-money laundering regulatory regime in respect of the financial sectors
- documentation and implementation of Islamic finance initiatives
- advising on, and negotiating, important contracts such as those in relation to Hong Kong's participation in the Shanghai World Expo 2010 and in the ASEAN + 3 Chiang Mai Initiative Multilateralisation regarding the provision of regional USD liquidity support
- advising on the establishment of a government bond programme of up to HK\$100 billion

Cathy Wong Pui-ming, Principal Government Counsel, Civil Division



After graduating from the Chinese University of Hong Kong with a degree in social science in 1976, Cathy Wong joined the government first as a Housing Assistant with the Housing Authority, before serving as a police inspector. In 1982, she won a government legal training scholarship and joined the then Legal Department as a Crown Counsel in 1986 after acquiring her legal qualifications in England.

Apart from a short attachment to the Localisation & Adaptation of Laws Unit of the Law Drafting Division in 1994,

Cathy has worked exclusively on civil law matters since she joined the department. She was promoted to Deputy Principal Government Counsel in 1998 and Principal Government Counsel in 2008. Cathy is now in charge of the Civil Advisory Unit, responsible for providing advice to government bureaus and departments on civil law issues arising from such matters as their formulation of policies, the making of legislative proposals, the exercise of their discretion, and the day-to-day enforcement of the statutory and non-statutory regimes under their charge. With the public's heightened awareness of civil rights, Cathy finds her unit handling more and more requests for urgent advice on matters which have often made the headlines of the daily papers. *"That," says Cathy, "makes life in Civil Division much more exciting and challenging!"*

With the ever increasing expectations on the government and the rapid development of the law, Cathy considers it essential for all government lawyers to be fully prepared and properly equipped to meet the new challenges as they arise. In this regard, Cathy appreciates the training opportunities which have been offered to her by the government over the years. *"Without them, I would never have been able to acquire the exposure and experience which have certainly better equipped me to sustain the pressure and demands of the work," she says.*

Cathy enjoys participating in and watching most types of sports, indoors and outdoors alike. Though she can afford very little time these days to keep up with any of them, Cathy has maintained a keen interest in tai-chi as she finds it gives her inner peace and tranquillity and helps her maintain a proper balance in life.

Planning, Environment, Lands & Housing Unit

The Planning, Environment, Lands & Housing (PEL&H) Unit has two teams, namely, the Advisory Team and the Litigation Team.

Counsel in the PEL&H (Advisory) Team advise the government on a wide range of matters relating to town planning, environmental protection and control, lands, regulatory control of building operations and building management, rating, government rent and declaration of monuments, including a significant number of infrastructure projects and legislative proposals.

In 2008 and 2009, significant matters and projects advised on by the team included:

Town planning

- amendments to the Wanchai North Outline Zoning Plan and the North Point Outline Zoning Plan
- amendments to Outline Zoning Plans in order to impose control on development intensity

Environmental protection

- use of electric vehicles in Hong Kong
- levy on the use of plastic bags
- prohibition against idling vehicles
- Wetland Nature Reserve at Sha Lo Tung and Fung Lok Wai

Land and buildings

- proposed amendments to the Land Titles Ordinance (Cap 585)
- public open space within private developments or on government land
- land-related commercial agreements and tender documents, such as those relating to the Cross-Harbour Tunnel, Tsing Sha Control Area and New Kowloon Bay Vehicle Examination Centre
- proposals for mandatory buildings and windows inspection schemes

Heritage conservation

- heritage conservation projects relating to the Central Police Station, Star Ferry Pier and Queen's Pier



Monuments declared include King Yin Lei (left) and Maryknoll Convent School (right).

Cecilia Siu Wing-sze, Senior Government Counsel, Civil Division



Cecilia Siu graduated from the University of Hong Kong and joined the department as a legal trainee in 2002. After admission as a solicitor in 2004, she entered private practice and obtained an LLM in Public International Law from University College London in 2006. Cecilia rejoined the department that year as a Government Counsel in the Civil Litigation Unit and was promoted to Senior Government Counsel in 2009, the same year she obtained an LLM from the University of Hong Kong.

Cecilia has handled a wide variety of cases in the Civil Litigation Unit in the last three years, including competition law cases, contractual disputes, insider dealing cases, judicial reviews, tax appeals, and trust and charity cases.

"The public element involved in the work of the department gives me a sense of vocation and enthusiasm about the work of a lawyer," says Cecilia. "It's interesting to see the interaction between policy and law and the range of subject matter broadens my horizons and widens my perspectives in looking at things."

"Life in the department is busy and challenging, but it's also gratifying and fun," adds Cecilia. Cecilia was a member of the department's dragon boat team in 2009 and is delighted that the team won the championship in one of the races.

Angela Ho Pui-ye, Senior Government Counsel, Civil Division



Angela Ho graduated from the University of Hong Kong with a degree in law in 1990 and subsequently obtained an MA in language and law from the City University of Hong Kong. Before joining the department as a Government Counsel in 1997, she worked as Deputy Managing Editor of Butterworths, Hong Kong, and was responsible for various legal publications, including *Hong Kong Cases* and *Annotated Ordinances of Hong Kong*.

Angela has been posted to various units since she joined the department. After working in the Lands and Works Unit (later renamed as Planning, Environment, Housing and Lands Unit) of the Civil Division, she was transferred to the IT Management Unit in 2001 where she worked as IT Projects Manager and subsequently IT Manager. There, she assisted in the development of the department's IT security policy and oversaw the implementation of various IT projects, with a view to ensuring that the IT systems and programmes best serve the needs of counsel in the department. Angela was promoted to Senior Government Counsel in 2002.

In June 2005, Angela was transferred to the Independent Police Complaints Council Secretariat and acted as legal adviser in reviewing police complaint cases. After the passing of the Independent Police Complaints Council Ordinance (Cap 604) in 2008, she was transferred back to the Civil Division and worked in the ad hoc team set up to advise on matters arising from the Select Committee formed by resolution of the Legislative Council to inquire into matters relating to the post-service work of Mr Leung Chin-man. Angela joined the Advisory Unit in December 2009.

Angela is happy with her career in the government. *"I find the job very challenging and the department has provided me with opportunities to gain experience in different areas of the law,"* she says.

Outside work, Angela has been a committee member of the Department of Justice Mess and the Staff Club, and taken part in various musical events organised by the department, including Christmas carolling. She also likes practising yoga in her spare time. *"Yoga rejuvenates me both physically and mentally. It helps to recharge my energy so that I can face the challenges each day brings."*

- declaration of important monuments such as Maryknoll Convent School and King Yin Lei under the Antiquities and Monuments Ordinance (Cap 53)
- implementation of the “Revitalising Historic Buildings” scheme
- implementation of the “Revitalisation of Industrial Buildings” scheme

Major infrastructure projects

- West Island Line, Express Rail Link, Tamar Development and Central & Wanchai Bypass
- a new cruise terminal at the former Kai Tak Airport runway
- Hong Kong-Zhuhai-Macau Bridge
- proposed development at Lok Ma Chau Loop
- proposed Shatin-Central Link

The PEL&H (Litigation) Team together with the Civil Litigation Unit represent the government in the conduct of all civil claims and disputes. The team handles many types of litigation cases (both public law cases and private law cases, and at

different court levels and at the tribunal level) with an emphasis on matters relating to land, town planning, building, housing, environment, heritage conservation, rating and government rent, land resumption and other types of statutory compensation claims.

In 2008 and 2009, the PEL&H (Litigation) Team handled a wide variety of litigation cases, including:

- town planning appeal cases and related judicial reviews
- building appeal cases and related judicial reviews
- rating and government rent appeal cases and related judicial reviews
- government rent exemption cases
- statutory compensation cases (including land resumption cases)
- land dispute cases and related judicial reviews
- various environmental protection appeals, such as the Air Pollution Control Appeal Board appeal cases

The image features a stylized world map in the lower half, with continents outlined in a light, textured grey. Above the map is a large, circular graphic composed of concentric, textured rings in shades of blue and purple. The background consists of horizontal bands of color: a light blue band at the top, a white band, a red band, a purple band, a blue band, a white band, and a green band at the bottom. The text "INTERNATIONAL LAW DIVISION" is centered in the upper half of the image, overlaid on the circular graphic and the light blue background band.

**INTERNATIONAL
LAW DIVISION**

The International Law Division comprises the Treaties & Law Unit and the Mutual Legal Assistance Unit. It has three important roles: it provides legal advice on public international law to the government; it negotiates international agreements, or provides legal advisers for such negotiations; and it handles requests for legal cooperation between the HKSAR and other jurisdictions.

Advice

The subjects on which the Treaties & Law Unit gives advice include international trade law, privileges and immunities, civil aviation and maritime matters, international labour conventions, human rights, environment and health, visa abolition and outer space. The unit also advises on the drafting and interpretation of cooperative agreements and arrangements which range from customs and police cooperation to cultural and education cooperation. The Mutual Legal Assistance Unit also performs an advisory role in relation to aspects of international criminal law and international legal cooperation in criminal matters. In addition, the division advises on the enactment of legislation to implement international agreements in the HKSAR. The subject matter includes United Nations Security Council Resolutions, marine pollution, conservation, surrender of fugitive offenders and mutual legal assistance in criminal matters.

Negotiations

Bilateral agreements

Counsel in the division negotiate agreements on behalf of the HKSAR with foreign countries on

the surrender of fugitive offenders, mutual legal assistance in criminal matters and the transfer of sentenced persons. The HKSAR has concluded over 50 agreements on these three areas.

Apart from conducting negotiations, counsel in the division also provide legal support in bilateral negotiations as part of the HKSAR delegation. The subject matter of negotiations includes air services, avoidance of double taxation, customs cooperation, regional trade agreements, agreements on investment promotion and protection and visa abolition. The total number of bilateral agreements to which the HKSAR is a party now extends to over 170.

Mutual legal assistance in criminal matters

These agreements provide for the rendering of assistance in relation to the investigation and prosecution of crimes, and proceedings related to criminal matters. The types of assistance include taking evidence, executing requests for search and seizure, producing documents and confiscating the proceeds of crime.



The Secretary for Justice, Mr Wong Yan Lung, SC (second right), and the Attorney General of Indonesia, Mr Hendarman Supandji (second left), sign an agreement on mutual legal assistance in criminal matters between the HKSAR and Indonesia (April 2008).

Surrender of fugitive offenders

The parties to an agreement for the surrender of fugitive offenders undertake to surrender to each other, subject to conditions, persons who are accused of serious offences, or who have absconded after conviction. The conduct constituting the crime must be criminal according to the laws of both parties. These agreements help to prevent the HKSAR from becoming a haven for criminals from abroad and facilitate the return to the HKSAR of criminals who have fled overseas.

Transfer of sentenced persons

These agreements enable foreign nationals serving a sentence of imprisonment in the HKSAR to return to their home country to serve out the remainder of their sentence. Similarly, people from the HKSAR who are serving sentences of imprisonment imposed in foreign jurisdictions may apply to return to the HKSAR to serve the balance of their sentences here.

Air services

Air services agreements provide the framework for scheduled air services to operate between the HKSAR and its bilateral partners. They are



Counsel from the department participate in air services negotiations with the Government of the Philippines as part of an HKSAR delegation (June 2008).

negotiated on the basis of a balanced exchange of air traffic rights. Negotiations have also taken place to provide for overflight agreements with appropriate countries. The HKSAR has concluded over 60 air services agreements with other jurisdictions.

Avoidance of double taxation

These agreements and arrangements provide for the avoidance of double taxation of persons carrying on cross-border economic activities. The agreements and arrangements may relate to specific income (such as income from international air and maritime traffic), or may provide for comprehensive double taxation avoidance. The HKSAR has concluded over 10 comprehensive double taxation agreements and agreements in respect of shipping and air services income, and has reached substantial agreement with five other jurisdictions on comprehensive agreements.

Investment promotion and protection

An investment promotion and protection agreement creates favourable conditions for greater investment by investors of one contracting party in the area of the other. Such an agreement includes provision for the investments of each party to be accorded fair treatment with no discrimination, and for compensation to be paid for losses caused by revolution, national emergency or riot. Currently, the HKSAR has concluded 16 investment promotion and protection agreements with other jurisdictions.

Visa abolition

These agreements and arrangements provide for mutual dispensation of visa requirements and facilitate travel between the HKSAR and other

jurisdictions. These arrangements are especially important for businessmen and tourists. The number of agreements or arrangements which enable holders of HKSAR passports to enjoy visa-on-arrival or visa-free access to other jurisdictions has reached 140.

Multilateral agreements

Counsel in the division participate in international meetings and diplomatic conferences held by international organisations. Counsel may form part of the "Hong Kong, China" delegation, as in the case of the World Trade Organisation of which the HKSAR is a member. They may also be members of the PRC delegation, as in the case of the Hague Conference on Private International Law, where membership is limited to states.

Very often these meetings and conferences discuss the drafting and conclusion of multilateral agreements or matters arising from their implementation. Currently, over 240 multilateral treaties apply to the HKSAR.

Requests for assistance

The Mutual Legal Assistance Unit discharges the responsibilities of the Central Authority of the HKSAR for the purposes of mutual legal cooperation in criminal matters. The unit coordinates and processes requests to and from the HKSAR for the surrender of fugitive offenders and for mutual legal assistance; and advises the government on applications for the transfer of sentenced persons to and from the HKSAR. The unit also handles letters of requests from overseas jurisdictions pursuant to the Evidence

Ordinance (Cap 8). Since August 2008, the unit has acted as the Central Authority of the HKSAR under the Hague Convention on the Civil Aspects of International Child Abduction and the Child Abduction and Custody Ordinance (Cap 512).

Other work

Financial Action Task Force Against Money Laundering (FATF)

The Mutual Legal Assistance Unit provides legal support to the Financial Secretary and Secretary for Security in relation to the HKSAR's participation in the FATF as a full member, under the name "Hong Kong, China". Counsel attend international meetings of the FATF, participate in expert working groups and act as expert legal assessors in mutual evaluations of fellow members' implementation of anti-money laundering and counter-terrorist financing standards.



Counsel from the department join staff from the HKSAR Office of the Commissioner of the PRC Ministry of Foreign Affairs on an outing in Shatin (December 2009).

International seminars

Counsel in the division contribute to maintaining the HKSAR's international profile by regularly



Counsel from the department were among the participants at a treaty law workshop at Wuhan University (October 2009).

speaking and participating in regional and international seminars organised by other governments and international organisations. Counsel also frequently conduct briefings for local and overseas law enforcement agencies on mutual legal assistance matters and deliver papers in the field of international cooperation in criminal matters such as asset recovery and other forms of mutual legal assistance.

Significant developments and events in 2008 and 2009

FATF Mutual Evaluation of Hong Kong, China

In June 2008, the mutual evaluation report of Hong Kong, China was presented to and adopted by the FATF at a plenary meeting in London. The report assessed the HKSAR's compliance with international standards against money laundering and terrorist financing. Overall, the findings in the report were positive although various areas were identified where further work is required. Counsel in the division were closely involved in the mutual evaluation process and participated in

the discussions on the report during the London plenary meeting.

Hague Conference on Private International Law

The HKSAR currently applies eight conventions on private international law which were negotiated under the Hague Conference. Over the years, the department has established an excellent working relationship with the Hague Conference through active participation in its meetings.

The division completed a report on the consultation on the application of the *Hague Convention on Choice of Court Agreements* to the HKSAR for consideration and decision by the relevant policy unit on the way forward, in the light of the discussions at the Hague Regional Conference held in the HKSAR in September 2008.

Free Trade Agreements (FTAs)

The *Mainland and Hong Kong Closer Economic Partnership Arrangement* (CEPA) reached its sixth anniversary in 2009. With the conclusion of *Supplement VI*, the total number of service areas covered by CEPA has expanded to 42.

Counsel in the division serve as members of the HKSAR team in the CEPA consultations with Mainland authorities, and also advise the Trade and Industry Department on the implementation of CEPA and its supplements in conjunction with other divisions of the department.

Counsel in the division also actively participate in the government's programme of negotiating free trade agreements with the HKSAR's overseas

trading partners, including New Zealand. When concluded, the closer economic partnership agreement between the HKSAR and New Zealand will be the first of its kind with the HKSAR's overseas trading partners. Counsel in the division will provide full legal support in other upcoming negotiations on FTAs.

International Conference on Air Law 2009

Counsel in the division participated in the International Conference on Air Law held under the auspices of the International Civil Aviation Organisation, which took place in Montreal, Canada, from 20 April to 2 May 2009, as a member of the PRC delegation.

The conference adopted the texts of two conventions, namely, the *Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft* and the *Convention on Compensation for Damage Caused by Aircraft to Third Parties*.

The first convention provides for harmonised rules governing compensation for third parties suffering damage caused by an aircraft in flight as a result of an act of unlawful interference. It establishes an International Civil Aviation Compensation Fund to provide further compensation to persons suffering damage to the extent that the total amount of damages exceeds the limits on the operator's liability under the convention. The second convention modernises the 1952 Rome Convention and provides for harmonised rules governing compensation for third parties suffering damage caused by an aircraft in flight other than as a

Wayne Walsh, Principal Government Counsel, International Law Division



Wayne Walsh graduated with an honours degree in Russian and a degree in law, as well as a postgraduate honours degree in law. Having studied in New Zealand, the United States and the Soviet Union, Wayne first came to Hong Kong in 1981 as an Inspector in the Royal Hong Kong Police Force. *"I was looking for some excitement and adventure after years of book study,"* he says.

Following a stay of three years and subsequent work in private practice and then as a prosecutor with the Serious Fraud Office in Auckland, Wayne returned to Hong Kong at the end of 1992 to join the department, where he was posted to Prosecutions Division, initially working in the Trial Preparation Unit before moving to the Commercial Crime Unit to specialise in corruption cases. In 1996 Wayne joined the Extradition and Treaties Unit. *"My first case was the request for the extradition of ex-prosecutor Warwick Reid from New Zealand after it came to light he'd committed further offences whilst serving a prison sentence in Hong Kong. I think I was chosen because I was relatively new to the department – I wasn't allowed to discuss the case with my colleagues, including my immediate bosses."*

In 1998 Wayne joined the newly formed Mutual Legal Assistance Unit of the International Law Division. In 2009 Wayne was promoted to Deputy Law Officer and today he heads the unit, which handles all matters relating to extradition, mutual legal assistance and other forms of international cooperation in criminal matters as well as some civil work under Hague conventions, such as for the taking of evidence abroad and international child abduction cases. *"I find the work tremendously satisfying. It brings a good mixture of hands-on operational work, as well as related policy and negotiation work necessary to build an even better framework for Hong Kong's engagement and active participation in the international legal arena."*

result of an act of unlawful interference. Counsel in the division provided legal support throughout the negotiations on the draft texts of the two Conventions.

Both conventions will require 35 states' ratifications in order to enter into force. In addition, the first convention also requires the number of passengers departing in the previous year from the airports of the ratifying states to have reached a total of 750 million.

Developments regarding negotiations on comprehensive double taxation agreements

The government embarked on a legislative exercise in mid-2009 to amend the Inland Revenue Ordinance (Cap 112) to enable the HKSAR to adopt the 2004 model exchange of information article in the Organisation for Economic Cooperation and Development Model Agreement in concluding comprehensive double taxation agreements or

arrangements. The 2004 model article provides that the lack of domestic tax interest does not constitute a valid reason for refusing to collect and supply the information requested by another contracting party. The HKSAR currently cannot adopt the 2004 model article because the Inland Revenue Ordinance does not permit the collection of any tax information unless it is for domestic tax purposes. Counsel in the division have been closely involved in advising on the legislative exercise.

It is expected that the HKSAR will be able to conclude more comprehensive double taxation agreements subsequent to the conclusion of the legislative exercise. It is hoped that this will in turn encourage business and trade between the HKSAR and its bilateral partners.

LAW DRAFTING DIVISION



Most major public policies are implemented through legislation. The task of keeping pace with the demands of a crowded legislative timetable falls on the Law Drafting Division which is responsible for drafting all legislation, both Ordinances and subsidiary legislation (such as rules and regulations), proposed by the government. It also vets all non-government Bills and all subsidiary legislation put forward by non-government bodies to make sure that they comply with current drafting practice on format and style. The division is also responsible for ensuring that the published version of Hong Kong's legislation is up to date.

Legislation

Where a government proposal for new legislation is put forward, the drafting counsel will need to liaise with those making the proposal to gain a thorough understanding of the background and intended effect of the proposal. The drafting counsel must also analyse the drafting instructions carefully to ensure that the proposal is conceptually sound and legally effective. "Drafting instructions" refers to the document prepared

for the drafting counsel by the responsible government policy bureau which sets out the background to the proposal and what the bureau wishes to achieve with the new legislation. The drafting instructions also specify which existing provisions will need to be amended in order to achieve that end.

After the proposed legislation is drafted, the drafting counsel assists in steering it through the legislative process. In the case of government Bills and subsidiary legislation to be made by the Chief Executive, the legislation will be submitted to the Executive Council for consideration. Drafting counsel attend the Executive Council meetings to provide advice on general legal issues and on questions relating to drafting.

Usually, a Bills Committee (made up of members of the Legislative Council with an interest in the particular policy area or the subject of the Bill) will be established to consider a Bill after it has been introduced into the Legislative Council. The drafting counsel attends the Bills Committee meetings to advise on general legal issues and on drafting-related questions. He or she also drafts all committee stage amendments which are proposed, or agreed to, by the government. These amendments are considered and decided upon (at the stage when the Legislative Council sits as a Committee of the whole Council) before the Bill is put to the vote for its final reading in the Legislative Council meeting. Likewise, if an item of subsidiary legislation should be referred to a sub-committee after it has been laid on the table of the Legislative Council, the drafting counsel will attend the sub-committee meetings and draft any amendments which the government may require.



The Secretary for Justice, Mr Wong Yan Lung, SC, and the Law Draftsman, Mr Eamonn Moran, at a reception for participants at the Commonwealth Association of Legislative Counsel Conference in Hong Kong (April 2009).



The Law Draftsman, Mr Eamonn Moran, receives a delegation from the Guangdong Provincial People's Congress (November 2009).

Apart from drafting legislation for policies initiated by the government, the division also undertakes any drafting work necessary to apply to Hong Kong relevant national laws of the PRC (that is, those listed in Annex III to the Basic Law), including the English translations of those laws.

Hong Kong's legislation is fully bilingual, with all new legislation being drafted and enacted in both Chinese and English. Both language versions of a piece of legislation are equally authentic, and drafting counsel must therefore ensure that the text in each language bears the same meaning and correctly reflects the policy intention.

Compilation and publication of laws

Hong Kong's legislation is published in both a hard copy loose-leaf edition and in electronic form freely available over the internet. For the hard copy version, which contains the bilingual texts of all Ordinances and subsidiary legislation, periodic issues of new or replacement pages incorporating new legislation or amendments to the texts are sent to subscribers, who need only substitute them for the outdated pages. The

hard copy version now comprises 48 volumes, containing 683 Ordinances and 1,377 items of subsidiary legislation. Volume 1 of the loose-leaf edition includes for reference the Basic Law and the national laws that apply to Hong Kong, as well as other constitutional instruments and related decisions.

The on-line legislation database, known as the Bilingual Laws Information System (BLIS), is available free to the public on the internet either directly at www.legislation.gov.hk or through the department's homepage at www.doj.gov.hk. In addition to providing access to the current legislation of Hong Kong, the database also allows the public to retrieve the previous version of any statutory provision which has been repealed or amended since 1 July 1997. A marker placed against a section heading alerts the reader to the fact that that provision has been amended or repealed (and the amendment or repeal has taken effect) but the changes have not yet been incorporated in the text of the database. Changes to the text of the database are usually made within two to three weeks of the commencement of the amendment or repeal.

BLIS has undergone an enhancement and a facelift in 2009 and now provides a more user friendly interface and better navigation functions. A PDF version of the legislation has also now been made available.



Eamonn Moran, Law Draftsman



Eamonn Moran was born in Derry (Londonderry) in Northern Ireland. He graduated in law from Queen's University, Belfast in 1974 and was called to the Northern Ireland Bar in 1975.

Eamonn's first professional employment was in the same field as that in which he is currently employed – law drafting. After just over two very enjoyable years in the Office of the Legislative Draftsmen in Belfast, Eamonn and his wife emigrated to Australia

in 1977. The reason for leaving Northern Ireland was the prevalent violence there in the late 1960s and 1970s. It then didn't seem to be the best place to live and bring up a family.

In Melbourne, Eamonn's first job was as a solicitor in a small firm. However, inevitably he was drawn back to law drafting and spent 30 years in the Parliamentary Counsel Office in Victoria, the last eight of them as Chief Parliamentary Counsel. In September 2007, Eamonn was elected as President of the Commonwealth Association of Legislative Counsel, a role he still holds. In January 2008, Eamonn accepted the challenge of coming to Hong Kong as Law Draftsman.

Eamonn and Anne have three grown-up children and, since November 2009, a granddaughter back in Australia. Outside work Eamonn has a keen interest in art and has a bit of an eclectic collection both here and in Melbourne. He has also been a jogger for many years and has the sore back and sore knees to prove it. Tennis and cricket are also interests as well as supporting an Australian Rules team (Richmond) which hasn't tasted success since the early 1980s. Eamonn's musical tastes range from classical to Leonard Cohen and he was particularly pleased to have been able to attend two Leonard Cohen concerts in 2009, one in Melbourne and one in Belfast.

Leonora Ip Wan-yok, Deputy Principal Government Counsel, Law Drafting Division



Leonora Ip graduated from the University of Southampton with a law degree in 1987 and was admitted as a solicitor in 1990. After two years in private practice in Hong Kong, Leonora decided to widen her horizons and went to business school in Canada, obtaining an MBA degree from the University of Western Ontario in 1995. She then worked in a managerial position with a telecommunications company in Toronto and returned to Hong Kong in 1997 to practise information technology law.

In 1998, Leonora joined the department's Law Drafting Division as a Government Counsel and was promoted to Senior Government Counsel in 2002 and to Deputy Principal Government Counsel in 2009. Leonora has drafted a wide range of legislation, including a number of controversial measures relating to food and health (for example, legislation dealing with avian flu and food recall). She has also been actively involved in the division's various information technology initiatives.

Outside the office, Leonora's strong belief in lifetime learning led her to study PRC law part-time in the evenings and she was awarded a PRC law degree by Peking University in 2001. In her spare time, Leonora likes cooking innovative food. In July 2009, Leonora formed a Law Drafting team to participate in the Caring Cooking Competition, a charitable event organised by the Law Society of Hong Kong. The team won third place amongst 18 teams and raised over HK\$5,000 for charity. Leonora is also a music lover who plays the piano, clarinet and guzheng and finds a wonderful sense of harmony in baroque music. *"Food cooked with passion is always delicious,"* Leonora says, *"and harmonious music gives me a sense of peace."* She adds, *"We need passionate counsel who draft legislation both with their brains and from their hearts for the good and harmony of society!"*



Many facets of the drafting counsel's work

The drafting counsel has become more involved at the initial stages of formulating a legislative scheme. Increasing globalisation, ever more intense global competition and technological advances all call for prompt government responses to changing circumstances. To cope with the shorter time available for drafting legislation, the drafting counsel now takes an earlier opportunity to study and understand the policy thinking behind a proposal, even before it has become definitive, and to raise his or her concerns on it from the drafting perspective. Further, as legislative items are scrutinised more vigorously, the drafting counsel spends more time on assisting in the legislative process as the Bill progresses to enactment.

To reflect the changed role of drafting counsel, the division has adopted from 2004 onwards new performance indicators to measure work undertaken by drafting counsel as the legislative scheme is formulated and in the legislative process. These new indicators are in addition to the indicators that the division has been using for years, namely, the volume of legislation, as

represented by the number of pages of legislation published in the Gazette. The statistics compiled under the various indicators (shown in the statistics section at the back of this review) reflect the different facets of the legislative drafting work undertaken by the division.

Significant legislative items in 2008 and 2009

Legislation was made in 2008 and 2009 to give effect to the various policy initiatives including, in particular:

- implementing recommendations made in the final report of the Chief Justice's Working Party on Civil Justice Reform, which seek to give the court more powers to manage the progress of cases, streamline and improve civil procedures, encourage and facilitate settlement and enable judicial resources to be better distributed and utilised
- in the public health area, bringing the legislation for dealing with public health threats in line with the World Health Organisation's International Health Regulations (2005); prohibiting the import and supply of, and recalling, problem food; a fixed penalty system for smoking offences; and a nutrition labelling scheme for pre-packaged food
- in the environmental protection area, an environmental levy on plastic shopping bags; a mandatory energy efficiency labelling scheme; and capping the emissions of pollutants from power plants in 2010 and beyond
- setting up a statutory body for implementing the West Kowloon Cultural District project
- setting up a statutory body for monitoring and

reviewing investigations into public complaints against members of the police force

- outlawing racial discrimination
- extending the application of certain offence provisions of the Prevention of Bribery Ordinance (Cap 201) to the Chief Executive
- removing disqualification of prisoners from voting in various elections
- a simplified control mechanism for carrying out minor building works
- combating misleading price indications and other undesirable sales practices and enhancing protection for consumers of certain electronic products and jewellery items
- implementing budget proposals (such as the Government Bond Programme and a one-off injection of \$6,000 into employees' Mandatory Provident Fund accounts)
- amendments to the Mandatory Provident Fund legislation to protect employees' interests and to enhance market competition
- random breath tests and other road safety measures
- enhancing the court's powers to protect victims of domestic violence
- providing benefits or compensation to persons suffering from malignant mesothelioma, a disease caused by inhalation of asbestos dust
- public officers' pay adjustment
- extending the application of punishments involving dismissal or compulsory retirement that affect retirement benefits to civil servants who are under the Civil Service Provident Fund Scheme
- enabling subsidiary legislation to be made using the direct reference approach for the timely implementation of marine safety-related international conventions



The Law Draftsman, Mr Eamonn Moran, attends a Bills Committee meeting of the Legislative Council (November 2009).

- giving effect to various agreements for mutual legal assistance, double taxation relief, and surrender of fugitive offenders, and to certain United Nations Security Council Resolutions

Bills of particular interest on which scrutiny by the Legislative Council was still in progress at the end of 2009 were Bills relating to:

- solicitors' higher rights of audience before the courts
- minimum wage
- arbitration
- minimum energy efficiency standards for key building services installations

Plain language drafting initiatives

Changes to drafting practices

The division is systematically examining our drafting practices, primarily to consider how the comprehensibility and the quality of the English and the Chinese texts can be improved. As a result of this ongoing review, a number of changes to our drafting styles and practices have been introduced.

Examples of changes are: firstly, "must" is used to impose an obligation in place of "shall" and "must not" is used to impose a prohibition instead of "shall not" and "no person shall". The word "must" is preferred because it denotes an obligation in ordinary usage whereas "shall" is commonly understood in ordinary language as referring to the future. (Several common law jurisdictions, including Australia and New Zealand, have embraced "must". The United Kingdom is using it increasingly.) Secondly, the division has now officially adopted a policy of gender-neutral drafting. Thirdly, modern alternatives or plain language equivalents will be adopted for certain words and expressions often used in legislation, eg, "despite" instead of "notwithstanding".

In the Chinese text of legislation, we will seek to avoid long sentences and, for that purpose, practise greater flexibility as regards sentence structure so that Chinese provisions are more readily comprehensible.

Document design

The division has been reviewing the format and visual aspects of our legislation. To make our



A delegation led by the Law Draftsman, Mr Eamonn Moran, visits the Macau Court of Final Appeal (May 2008).

legislation more user-friendly and attractive, the division has proposed some changes to its format and visual design, and briefed the Panel on Administration of Justice and Legal Services of the Legislative Council on the proposals in December 2009.

Initiatives for professional development of counsel

In 2008, six counsel of the division at the rank of Senior Government Counsel and Government Counsel completed an intensive in-house legislative drafting course that lasted for 24 weeks.

Counsel of the division participated extensively in the Conference of the Commonwealth Association of Legislative Counsel 2009 held in Hong Kong in April 2009 which was a stimulating and instructive experience for them.

In addition, in-house talks and workshops were held for the sharing of drafting skills. The Mentorship Scheme, under which each counsel in the Senior Government Counsel or Government Counsel rank is assigned to a mentor at the directorate level, also continues in operation and plays a significant role in the training of counsel.

Initiative on access to legislation

The department has commissioned a feasibility study into the establishment and maintenance of a verified and authenticated electronic database of Hong Kong's legislation, with a view to further improving public access to our legislation.

LEGAL POLICY DIVISION





The Solicitor General, Mr Ian Wingfield, addresses the ADR in Asia Conference 2009 (September 2009).

Legal Policy Division advises government departments and bureaus on whether proposed legislation, or a particular policy, is consistent with the Basic Law, international human rights standards, and established principles underlying the legal system. It also has a specialist unit that provides advice on (and promotes understanding of) the law on the Mainland. In addition, the division plays an active part in law reform, both through its responsibility for any new legislation promoted by the Secretary for Justice, and because the lawyers who serve in the Secretariat of the Law Reform Commission are part of the division.

General legal policy

As well as advising on the legality of policies established by the government, the division also assists in formulating policy, particularly in relation to the legal system and the legal profession. The division has assisted the legal profession in exploring the opportunities that China's accession to the World Trade Organisation will offer and in enhancing its opportunities in the Mainland under the Closer Economic Partnership Arrangement (CEPA).

Where the Secretary for Justice has responsibility for a particular piece of new legislation, counsel in the division will take an active part in the preparation of the Bill and its presentation to the Executive and Legislative Councils. This will often include extensive consultation with those with an interest in the matter, both inside and outside the government.

Apart from preparing new legislation, the work of the division includes advising on:

- petitions from prisoners seeking remission of sentences or referral of their cases to the Court of Appeal
- public enquiries and complaints referred to the division
- petitions to the Chief Executive under Article 48(13) of the Basic Law
- statutory appeals to the Chief Executive or the Chief Executive in Council made by members of the public
- statutory appeals or representations from civil servants

Appeals and petitions in the last three of these categories are new tasks for the division which have only emerged since 2008.

The division is also responsible for advising the government on the powers and procedures of the Legislative Council.

Human rights

The division provides specialised human rights advice and assistance within the Department of Justice and to other government bureaus

and departments, reflecting the human rights provisions of the Basic Law. Lawyers in the division advise members of the department's Civil Division on human rights law and issues arising from litigation.

The division also advises on the human rights policy aspects of proposals for new legislation (and practices arising from the implementation of legislation) and ensures their consistency with the human rights provisions of the Basic Law.

The division provides advice and assistance in the preparation of reports to the United Nations under various UN instruments related to human rights that have been extended to Hong Kong. Members of the division attended the hearings in Geneva of the UN Committee against Torture on the second HKSAR periodic report under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *UN Human Rights Council Universal Periodic Review Hearing*, in November 2008 and February 2009 respectively. In August 2009, a representative of the division also attended the Committee on

the Elimination of Racial Discrimination's hearing on the second HKSAR periodic report which formed part of China's combined report under the *International Convention on the Elimination of All Forms of Racial Discrimination*.

The division also advises government bureaus and departments extensively on the interpretation, implementation and implications of the Sex Discrimination Ordinance (Cap 480), the Disability Discrimination Ordinance (Cap 487), the Family Status Discrimination Ordinance (Cap 527) and the newly enacted Race Discrimination Ordinance (Cap 602).

Mainland law and cooperation with the Mainland

Promoting Hong Kong's legal services in the Mainland and legal exchanges

The department continues to work closely with the legal profession in seeking greater access to the



The Secretary for Justice, Mr Wong Yan Lung, SC (centre), visits Guangzhou Intermediate People's Court (October 2009).

Adeline Wan Ping-siu, Deputy Principal Government Counsel, Legal Policy Division



Adeline Wan graduated with an honours degree in law from the University of Hong Kong in 1987 and was admitted as a solicitor in 1990. She worked in private practice as a civil litigator until joining the department as a Crown Counsel in 1994.

Apart from postings to the Secretary for Justice's Office in 1998 and to the Home Affairs Bureau in 2004, Adeline has worked exclusively in the Legal Policy Division, including the China Law Unit and the Basic Law Unit. In 2008, she was promoted to her current post of Senior Assistant Solicitor General, heading the General Legal Policy Unit which is responsible for the promotion

of bills within the Secretary for Justice's policy purview to the Legislative Council and for advising on petitions and appeals.

"I consider myself extremely lucky to be able to work in the Department of Justice, as the nature of work is so different from that in the private sector," Adeline says. "Being a public lawyer, we do not serve a particular client. We have public interest at the forefront of our minds. We know that every advice we give and every decision we make may have a huge impact on the community."

Outside the office, Adeline's keen interest in the development of China law led her to pursue studies in that field and she was awarded a master's degree in PRC law by Peking University in 2004. 2004 is a significant year for Adeline because she was married that year and the child born in the following year is a source of great happiness for her and her family.



Representatives of the Department of Justice, the Law Society of Hong Kong and the Hong Kong Bar Association take part in an event in Shenzhen to promote the rule of law (December 2009).

legal services market in the Mainland within the framework of CEPA. The department maintains regular contact and dialogue with the Mainland authorities to reflect the views and suggestions of the Hong Kong legal profession and to resolve problems arising from the implementation of CEPA. Along with the legal profession, the department attends legal conferences and other activities, both in the Mainland and in Hong Kong, to promote Hong Kong's legal services to the Mainland, especially Hong Kong's strengths as a regional dispute resolution centre.

In April 2009, the Secretary for Justice visited Beijing and met senior officials of the Central Government to discuss closer cooperation on mutual legal assistance, the implementation of CEPA, the development of Hong Kong as a dispute resolution centre and cooperation with the legal profession. In August 2009, the Secretary for Justice visited Chongqing and attended the 8th China Lawyers Forum in Chengdu with representatives of the Law Society and the Bar Association.

The department continues to run programmes to familiarise Mainland officials with the common law system. Under the Common Law Training Scheme, participating officials from the Mainland attend an LLM programme at a Hong Kong university and spend time on attachment to relevant government departments here. Since 2008, the LLM programme has been offered at the Chinese University of Hong Kong as well as the University of Hong Kong. By August 2009, a total of 128 Mainland officials had completed the training scheme.

Cooperation in cross-boundary legal matters

The increase in the flow of both people and goods has resulted in further cross-boundary projects being launched by the HKSAR Government. The department continues to provide assistance to policy bureaus and departments on legal issues arising from the construction of the Hong Kong – Zhuhai – Macau Bridge, the Guangzhou – Shenzhen – Hong Kong Express Rail Link and

the development of the Lok Ma Chau Loop and Qianhai in Shenzhen.

The department has launched discussions with the legal profession and its Guangdong counterparts to explore ways of developing legal services, in line with "The Outline of the Plan for the Reform and Development of the Pearl River Delta" promulgated by the National Development and Reform Commission in January 2009.

Basic Law

The division provides advice to the government on the interpretation of the Basic Law, both in ensuring alignment of existing legislation with the Basic Law and in the formulation of new policies and legislation. Questions concerning the interpretation of provisions of the Basic Law have arisen in a number of important lawsuits. In such cases, counsel in the division work closely with other divisions in the preparation of the

government's case, and provide advice and research on the Basic Law and other related issues.

The division plays a key role in promoting understanding of the Basic Law. It provides support to other government departments and public authorities including the Civil Service Training & Development Institute and the Civil Service Bureau both by providing counsel to give lectures and seminars on the Basic Law and by assisting in the production and revision of self-learning booklets and other training materials for use throughout the civil service. In 2008 and 2009, the division (in conjunction with the Civil Service Training & Development Institute, the Civil Service Bureau and the Constitutional and Mainland Affairs Bureau) published two issues of the Basic Law Bulletin. The Bulletin was first published in 2001 and is intended to promote greater awareness and knowledge of the Basic Law among civil servants.

The division maintains a collection of research materials relevant to the Basic Law and constitutional law generally. This includes reference books and articles, relevant decisions and interpretations of the Standing Committee of the National People's Congress, reports of the Basic Law Consultative Committee and court judgments. The collection is regularly added to and updated as more case precedents and other literature on the Basic Law becomes available.



Significant initiatives and reforms in 2008 and 2009

Survey of legal services

The department has been at the forefront of an initiative to review the supply of, and demand for, legal services in Hong Kong. In November 2001, the Legislative Council called for a comprehensive review of the legal needs of the Hong Kong community and how those needs were being met. This followed similar reviews in the United Kingdom which have led to important proposals there to enhance access to justice.

A Consultative Committee established under the chairmanship of the Solicitor General oversaw the Hong Kong research project. The committee comprised representatives from the Legislative Council, the legal services sector and other professional, academic and community bodies interested in the promotion of access to justice.

A consultancy study on the demand for and supply of legal and related services was carried out, comprising two separate surveys, one focusing on the supply of legal and related services and the other on the demand for those services. On the basis of the supply and demand studies, the consultants provided an assessment of the likely gap in service availability and the potential unmet legal needs in the community.

The consultancy study was completed in January 2008 and its results should assist the government and other stakeholders to make informed policy

decisions on the future provision of legal and related services.

Review of legal education

The department continues to play an active role in legal education and training and, in particular, in the work of the Standing Committee on Legal Education and Training (established by law under the Legal Practitioners Ordinance (Cap 159)). The Standing Committee's functions include keeping under review, evaluating and assessing the system and provision of legal education and training in Hong Kong, as well as monitoring the provision of vocational training of prospective legal practitioners in Hong Kong by organisations other than the Law Society or the Hong Kong Bar Association. A representative from the department serves on the Standing Committee.

Issues considered by the Standing Committee in 2008 and 2009 included the duration of the Bachelor of Laws programme under the "3+3+4" academic reform. The Standing Committee continues to keep under review the LLB, JD and PCLL programmes offered by the University of Hong Kong, the City University and the Chinese University of Hong Kong.

Legislation

During 2008 and 2009, counsel in the division worked on a number of pieces of legislation of which the department had carriage:

- Statute Law (Miscellaneous Provisions) (No. 2) Ordinance 2008 - This made a number of amendments to various Ordinances, including

adding a new section to the Conveyancing and Property Ordinance (Cap 219) to define the extent of a vendor's obligation to deliver title deeds to the purchaser on completion of the sale of land.

- Legal Practitioners (Amendment) Bill 2009 - This Bill was introduced into the Legislative Council on 24 June 2009. It proposes amendments to the Legal Practitioners Ordinance (Cap 159) in order to implement the scheme proposed by the Chief Justice's Working Party on Solicitors' Rights of Audience. Under the proposed scheme, solicitors having at least five years' post-qualification experience and satisfying further eligibility requirements may apply to an assessment board for higher rights of audience before the High Court and the Court of Final Appeal. If the Bill is enacted, the public will have access to a wider choice of capable advocates in the higher courts.
- Arbitration Bill – This Bill was introduced into the Legislative Council on 8 July 2009. It proposes to reform arbitration law in Hong Kong through the creation of a single regime for all types of arbitration on the basis of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law. Its purpose is to make arbitration law more user-friendly and Hong Kong a more attractive place to conduct arbitration.

PROSECUTIONS DIVISION



The role of the Prosecutions Division is to prosecute trials and appeals on behalf of the HKSAR, to provide legal advice to law enforcement agencies upon their investigations, and generally to exercise on behalf of the Secretary for Justice the discretion whether or not to bring criminal proceedings in the HKSAR. In addition, counsel in the division provide advice and assistance to government bureaus and departments in relation to any criminal law aspects of proposed legislation.

The prosecution of offences

A criminal case may be prosecuted in the Magistrates' Courts (for relatively minor offences) or in the District Court or the Court of First Instance where the offence is more serious. The decision whether or not to prosecute, and on what charges, is taken by the Secretary for Justice or by counsel acting on behalf of the Secretary in the Prosecutions Division. The Secretary is ultimately responsible for all prosecution decisions. In the decision-making process, the prosecution policy

guidelines (which were first published in 1993 and updated in 1998, 2002 and 2008) are applied.

The majority of prosecutions in the Magistrates' Courts are conducted by public prosecutors, called Court Prosecutors. They are appointed by the Secretary for Justice under section 13 of the Magistrates Ordinance (Cap 227) and have rights of audience in the Magistrates' Courts. Every Court Prosecutor attends an initial nine-month training course run by counsel in the Department of Justice before starting work. Throughout their careers thereafter as Court Prosecutors, they will participate in a programme of continuing legal education.

Counsel in the Prosecutions Division will sometimes prosecute in the Magistrates' Courts, particularly in cases of significance or where complex points of law are expected to arise. Counsel in the division handle almost all appeals, the majority of prosecutions in the Court of First Instance, and a considerable number of cases in the District Court. Counsel from the private bar and solicitors in private practice are regularly employed to



The Director of Public Prosecutions, Mr Ian McWalters, SC (left), introduces the Hon Justice McMahon at a seminar for Public Prosecutors (October 2009).

prosecute on behalf of the division (referred to as a counsel or solicitor "on fiat").

Before a case goes to trial, there is considerable work to be done by counsel in the division in marshalling and evaluating the evidence and carrying out any necessary legal research. While some counsel in the division specialise in presenting cases at trial, or on appeal, other counsel appear in court less often and instead specialise in the vital work of preparing cases for trial in either the District Court or the Court of First Instance.

Commercial crime

Formed in 1984, the Commercial Crime Unit advises the Commercial Crime Bureau of the Hong Kong Police on combating syndicated and complex fraud. The unit also assists the Independent Commission Against Corruption in its investigations into private and public sector corruption, and conducts its prosecutions. Cases conducted by the unit typically concern frauds which involve losses of at least \$5 million, or which require expert advice in light of their sophistication. The unit contributes much to the reputation which Hong Kong enjoys as a safe business environment which is intolerant of corruption.

Computer crime

The internet is widely used in Hong Kong and criminal activities involving the use of a computer have risen in recent years. Computer and internet crimes embrace a variety of offences. These include fraud, "phishing", pornography, criminal

damage, access to a computer with dishonest intent and copyright infringement. Technology crimes frequently transcend national boundaries.

While law enforcement agencies are responsible for the investigation of such crimes, prosecutors in the Department of Justice provide the legal back-up required for the enforcement of the law in this area.

To make a reality of the commitment to take firm action on this front, a Prosecutions Division counsel was designated as Prosecution Policy Co-ordinator on Computer Crime in 1999 to head a team of specially trained specialist counsel. The team is responsible for the provision of expert legal advice on technology crime and for the conduct of related prosecutions. It also co-ordinates legal action in the HKSAR and promotes co-operation at the international level.



The Director of Public Prosecutions, Mr Ian McWalters, SC (left), meets Mr Vivian Robinson, QC, General Counsel of the UK Serious Fraud Office (April 2009).

William Tam Yiu-ho, Deputy Principal Government Counsel, Prosecutions Division



William Tam graduated from Monash University in 1991 with an honours degree in law. William began his legal career at a Hong Kong solicitors' firm in 1992, primarily engaged in civil litigation, but he grew disenchanted by the fact that most of his cases ended in settlement when he would have liked to see more of them tried in court and resolved on their merits. In 1994, William decided to join the department's Prosecutions Division and he was soon assigned to prosecute criminal trials, initially in the Magistracy and later in the District Court and the

High Court. William found criminal practice very challenging and demanding and at the same time he learned to appreciate the role of the prosecutor as an officer of the court and an essential part of the system of administration of justice.

William has been assigned to various posts within the division, including the Court Specialists Section and the Commercial Crimes Unit. In 2007, William was promoted to the rank of Senior Assistant Director of Public Prosecutions and has since then been the head of the District Court Advisory Unit. William continues to practise his advocacy skills by undertaking appellate work from time to time in the Court of Appeal.

"As prosecutors, we have an important role to play in the criminal justice system and high standards are expected of us," says William. "I take great pride in being a prosecutor and serving the people of Hong Kong in that capacity."

Winnie Ho Wai-man, Senior Public Prosecutor, Prosecutions Division



Winnie Ho graduated from the University of New South Wales with the degrees of Bachelor of Commerce and Bachelor of Laws. She obtained her Postgraduate Certificate in Laws from the University of Hong Kong in 1990 and was admitted as a solicitor in 1992.

Before she joined the department as a Crown Counsel in 1996, Winnie practised as an assistant solicitor in the corporate finance field where she was involved in a number of initial public offerings,

private placing and subscription of shares, bonus issues, company takeovers and mergers as well as Sino-foreign joint ventures.

Winnie was promoted to Senior Government Counsel in 1999 and she is now the Deputy Section Head of the ICAC (Public Sector) Team. Winnie has considerable experience advising the ICAC on public sector corruption cases and in conducting trials and appeals of these cases at various levels of courts. She has also been involved in the prosecution of complex commercial fraud cases and offences relating to computer crime and copyright infringement. Winnie has also appeared in judicial reviews of criminal cases. In 2008, Winnie was the secretary to a working group responsible for reviewing the prosecution policy guidelines and formulating the latest issue of "The Statement of Prosecution Policy and Practice".

"My job as a prosecutor is both challenging and rewarding," says Winnie. "Prosecutors not only help to contribute to the administration of criminal justice in Hong Kong, but the decisions we make have a serious impact upon the lives of others. It's therefore imperative that we strive to do our best at all times."

Winnie enjoys travelling, swimming and scuba diving. She also finds yoga an effective tool to relieve stress.

Copyright crime

A Prosecutions Division counsel was designated as Prosecution Policy Co-ordinator on Intellectual Property in 1998. This counsel heads a team of specialist counsel who advise the Customs and Excise Department on cases of copyright infringement and false trade descriptions, and conducts the prosecutions which result. The division has enhanced the capacity of its existing specialist team to prosecute intellectual property cases through redeployment and training, and through liaison with prosecutors from other jurisdictions.

Obscene articles and child pornography

The Prevention of Child Pornography Ordinance (Cap 579) was enacted in December 2003, and gave effect to the United Nations Convention on the Rights of the Child. A Prosecution Policy Co-ordinator was subsequently appointed to handle cases arising from this Ordinance and the Control of Obscene and Indecent Articles Ordinance (Cap 390), as well as to advise the Television and Entertainment Licensing Authority on the status of objectionable material and to conduct proceedings before the Obscene Articles Tribunal. Since 2004, priority has been given to the effective application of Hong Kong's new anti-child pornography legislation, and the promotion of public understanding of its ambit.



The Director of Public Prosecutions, Mr Ian McWalters, SC, speaks at the opening ceremony of the Centre of Anti-Corruption Studies (April 2009).

A bilingual prosecution system

Until 1997, all proceedings in the High Court (now the Court of First Instance) were conducted in English. Following necessary amendments to the Jury Ordinance (Cap 3), on 29 July 1997 the Court of First Instance heard the first criminal case conducted in Chinese. Since then, an increasing number of trials have been conducted in Chinese where it is agreed that this is the most convenient language for all concerned. In the Magistrates' Court, the majority of cases are now dealt with in Chinese, while a significant number of criminal appeals have also been heard in Chinese in the Court of First Instance and the Court of Appeal.

With the aim of achieving a fully bilingual prosecution system, the division's Bilingual Court Documents Unit arranges for the translation of court documents into Chinese. This ensures that all criminal cases can be heard in either English or Chinese. Bilingual charge sheets, advising the defendant of the precise charges against him, have been provided for all criminal cases heard in the District Court since 1 August 1995.

Samantha Chiu Ping-yan, Public Prosecutor, Prosecutions Division



Samantha graduated from the University of Hong Kong in philosophy and psychology in 2002. She then turned to the law and joined the department as a trainee barrister after completing the Postgraduate Certificate in Laws at the University of Hong Kong in 2005. Samantha was admitted as a barrister in Hong Kong the following year and practised at the private bar before re-joining the department in 2008 as a Public Prosecutor in the Prosecutions Division. *"As much as I cherish the experience of private practice and the friends that I*

have met along the way, I take great pride in my job right now. I am honoured to have a part to play in Hong Kong's criminal justice system," she says.

Samantha is currently attached to the Policy, Research & Departmental Prosecutions Section. Her responsibilities include handling magistracy appeals, district court trials and giving legal advice to various HKSAR government departments, including the Food and Environmental Hygiene Department, the Immigration Department and the Leisure and Cultural Services Department.

Working as a Public Prosecutor is challenging and can sometimes be exhausting. Samantha finds that exercise helps her to cope. She says, *"no matter what, I take a dip in the pool or hit the gym regularly. Exercise helps freshen my mind. And spending quality time with my family and friends is also very important to me. They keep me full of energy and happiness."*

Christopher Koo Chiu-ming, Chief Court Prosecutor, Prosecutions Division



Christopher Koo graduated from Hong Kong Baptist College in 1978 with a Diploma of English Language and Literature, and obtained his Bachelor of Chinese Law degree from Peking University in 1995. He joined the Immigration Department as an Assistant Immigration Officer in 1978 before joining the Department of Justice as a Court Prosecutor in 1986. He was promoted to Senior Court Prosecutor II in 1993, to Senior Court Prosecutor I in 1997 and to Chief Court Prosecutor in 2001.

As Chief Court Prosecutor (Administration), Christopher's main duties are to assist the Senior Assistant Director of Public Prosecutions to supervise eight prosecution teams in the Magistrates' Courts. He oversees the appraisal of Court Prosecutors' performance, plans and arranges their postings taking into account their career development and operational needs, provides them with training programmes on current issues, and issues them with guidelines and instructions. Christopher also liaises with the various law enforcement agencies to find ways to streamline prosecution procedures.

In 2009, Christopher was in charge of a recruitment exercise for new Court Prosecutors. There were over 5,600 applicants and just 13 new recruits were selected.

"The work of a Court Prosecutor in the Magistrates' Courts is tough," says Christopher. "I'm pleased that our colleagues have been able to maintain a high standard of work despite the challenges."

Bilingual indictments have been provided in respect of all criminal cases brought before the Court of First Instance since 2 November 1995. Bilingual summaries of facts (which describe how the particular offences were committed) are now available for all trials which are listed to be heard in Chinese in the District Court. Whenever cases are heard in Chinese in the District Court or the Court of First Instance, the unit provides Chinese versions of all court documents, including immunities, admitted facts and notices to the defence. For appeals in Chinese to the higher courts, court documents in Chinese are filed. The unit also translates important judgments.

Appeals

The division's Appeals Sub-division has responsibility for all appeals and reviews of sentence. Counsel conduct, prepare and advise on appeals from all trial courts to the Court of Appeal and the Court of Final Appeal. Applications to the Court of Appeal to review sentences are usually only made by the Secretary for Justice if it is apparent that the sentence is wrong in principle or manifestly inadequate, or contrary to law. The review procedure also gives the Court of Appeal the opportunity to establish or amend sentencing tariffs or guidelines for certain offences, thus promoting uniformity and continuity in sentencing and assisting the lower courts.



Significant initiatives and reforms in 2008 and 2009

Criminal justice initiatives

Throughout 2008 and 2009, the division sought to enhance the quality of criminal justice available to the community, and prosecutorial techniques were kept under review. Specific criminal justice initiatives pursued by the division included:

- the compilation of a manual on disclosure for the guidance of prosecutors
- the introduction of a manual on advocacy to enhance the preparation and presentational skills of prosecutors engaged in the conduct of criminal cases
- the implementation of measures to fast-track cases of domestic violence and the issuing of guidelines to prosecutors on the handling of these cases
- the introduction of guidelines for expediting juvenile offender cases

The division supported the work of the Law Reform Commission by joining a number of its sub-committees dealing with criminal law issues. These included:

- the review of common law and statute law governing sexual and related offences
- the consideration of the rule against double jeopardy
- the examination of the criminal liability of parents or carers for causing or allowing the death of a child or vulnerable adult
- the use of hearsay evidence in criminal proceedings
- the criteria for service as jurors

ADMINISTRATION & DEVELOPMENT DIVISION



As with any other large organisation, the ability of the Department of Justice to function effectively depends on the work of its administrative staff, who provide essential support services to its professional officers. The department's many administrative requirements are the responsibility of the Administration & Development Division. The administrative staff of the department includes managers, accounting and translation officers, library staff, secretaries and clerical officers, providing services ranging from human resources management to information technology.

Human resources

The people who work for the Department of Justice are its most valuable resource. An important aspect of the division's human resource function is to ensure that the high calibre of the department's staff is maintained. This objective is achieved through:

- effective recruitment of new staff
- continuous training
- proper career planning
- effective performance management
- long-term succession planning for the senior posts in the department
- minimal wastage or loss of experienced staff
- good staff relations.

A key part of this is the department's successful programme of recruitment and training of law graduates. The programme enables graduates from the University of Hong Kong, the Chinese University of Hong Kong (which has provided a PCLL course since 2008) and the City University of



Colleagues have fun at the department's dragon boat practice (May 2009).

Hong Kong to complete within the department the period of practical training required before qualifying as barristers or solicitors. In 2008, 14 law graduates took up trainee places in the department. A total of 10 trainees were taken on in 2009. The number of applications on each occasion greatly exceeded the number of places.

In addition to direct recruitment of law graduates as legal trainees, the department conducted open recruitment exercises in 2007 and 2008 to recruit new counsel on civil service terms to meet service needs. Twenty-three and 20 counsel were successfully recruited in the 2007 and 2008 exercises respectively.

In 2008, the department also conducted recruitment exercises to fill vacancies in the Law Clerk and Court Prosecutor grades.

Financial management

Effective financial management is important to ensure that the available financial resources are put to the best use in enabling the department to carry out its various functions. Annual estimates are prepared taking into account the different needs of the various divisions and financial performance is closely monitored. The exercise of prudent financial principles ensures that the department's services are delivered within budget.

Training

The division plays an important part in organising a wide range of training activities to equip staff with the necessary knowledge and skills to discharge their duties more effectively and to prepare them for career advancement. During 2008 and 2009, a total of 6,164 places on various kinds of training and development programmes were taken up by staff in the department. Legal, management and communication training was organised in-house, as well as being provided by local institutes and the Civil Service Training & Development Institute. Counsel and para-legal officers were also

sponsored to attend law-related courses outside office hours on a course-fee refund basis.

In 2008 and 2009, a total of nine counsel undertook training attachments to justice bureaus in the Mainland. In 2009, one counsel was posted to the Hong Kong Economic and Trade Office in Geneva for two years to widen her experience.

To keep abreast of the latest legal developments, counsel and para-legal officers participated in a range of law seminars, conferences and law-related training programmes. Continuous efforts were made to strengthen understanding of the law and the legal environment in the Mainland. Counsel were nominated to attend national studies courses at Tsinghua University, Peking University and the National School of Administration and foreign affairs study programmes and thematic study programmes in the Mainland. In 2008, one short course on China Law was organised at Sun Yat-sen University for 11 para-legal officers. In addition, in 2009, 10 counsel attended the Mainland Legal Studies Course for Government Lawyers of the HKSAR at Peking University.



Counsel from the department attend the Mainland Legal Studies Course for HKSAR government lawyers at Peking University (September 2009).

Library services

A vital resource in any legal practice is the law library and the Department of Justice library has one of the most extensive legal research collections in Hong Kong. It houses over 95,000 volumes and acquires, on average, a further 2,000 publications each year. The library catalogue is available online, and can be accessed through communal and personal work-stations across the department. The library also has a wide range of legal reference materials available in electronic form, either on CD-ROM or on-line databases. To facilitate legal research work, some of the CD-ROM and on-line databases can be accessed by counsel and para-legal officers from their desk-top computers in the office and at home. Library staff now use computers to process book circulation, acquisitions, cataloguing, stock-taking and other daily routines.

Information technology (IT)

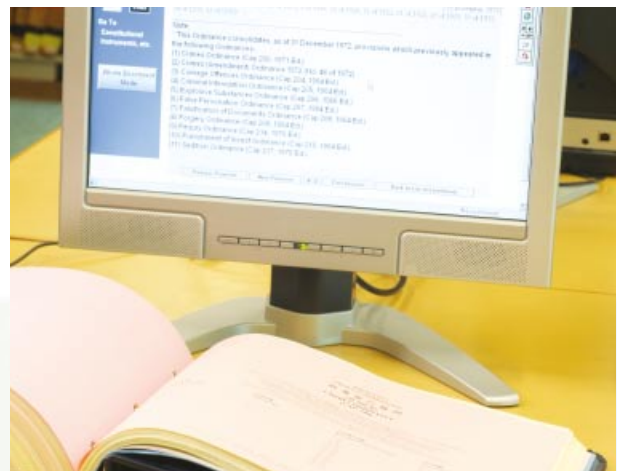
The Information Technology Management Unit is responsible for the management of the department's IT systems and information resources. This includes the maintenance and periodic upgrade of existing IT systems, implementation of new projects and planning for future IT needs. The unit is also responsible for providing help-desk services for handling all kinds of IT related services and requests from users, and training staff in the proficient use of the department's IT systems.

The department's IT facilities

The department's network links around 1,100 users across 24 different floors or separate locations. All permanent staff in the department have access

to either dedicated or shared personal computers equipped with modern office automation functions for word-processing, document management, printing, fax, electronic mail, and internet access. Remote access to the department's network and facilities is also available.

Bilingual Laws Information System (BLIS). This system enables users to view and search Hong Kong's legislation in both Chinese and English. BLIS is available free to the public on the internet, including in a simplified Chinese character version. BLIS has proved very popular since its introduction and now has an average of around 4,200 "hits" per day.



Bilingual Document Management System. This system provides the facility to allow documents created on the system to be easily located, by reference to criteria such as the author's name, the title of the document, its date of creation, or by using the system's full text search facility.

Library Management System. This system automates all the acquisitions, cataloguing, lending and stock-taking of library publications and allows users to access the library catalogue



(Left) Department of Justice staff join a karaoke contest (September 2008).

(Middle) Colleagues from International Law Division display their culinary talents (May 2008).

(Right) Department of Justice staff organise a cookies sale in aid of Sichuan earthquake victims (June 2008).

and to reserve books over the network from their desk-top computers.

Work Management System. This system provides up-to-date information about work assignments, workload and work progress of the cases handled by the department. The system enables counsel more efficiently to adjust work priorities and keep track of the different cases and tasks for which they are responsible. It also provides effective tools for managers to monitor the work of the units under their charge. This system has been extended to incorporate the work-flow and monitoring of progress and the fees of cases briefed out to private practitioners and experts to facilitate the integration and generation of management and accounting information.

Administration System. The system provides improved automated processes and monitoring functions for the management of human resources, personnel records, training, inventory and supplies procurement.

Social activities

Two popular organisations within the department, the Staff Club and the Mess, provide staff with an opportunity to enjoy a range of social activities with their colleagues.

Department of Justice Staff Club

The Staff Club aims to promote friendship and a sense of belonging among serving and former staff of the department. It is open to both lawyer and non-lawyer members of the department.

The Staff Club is run by an Executive Committee composed of representatives from different ranks of officers in the department. It organises various activities every year, including classes covering a range of interests from tai-chi to yoga, as well as karaoke contests, outdoor activities and annual events such as a Christmas lunchtime party and a spring dinner, usually for two to three hundred participants.

In 2008, the Staff Club organised a three-day fund-raising cookies sale to raise funds for victims of the Sichuan Earthquake. Over 900 packs of cookies were sold and HK\$33,311 was raised and sent to the Salvation Army as emergency relief to earthquake victims.

The Department of Justice Mess

Membership of the Mess is confined to counsel and senior officers in the department. The Mess

provides a place for counsel to discuss cases with their colleagues during the working day, and to relax in friendly surroundings after office hours.

There is an active Mess Committee which organises various functions. It is a tradition that counsel members leaving the department are presented with a mug and entertain their colleagues to drinks in the Mess on their departure. The Prosecutions Division organises Mess Nights twice a year, to which judges and lawyers in private practice are invited.

Stella Au Kit-ching, Senior Treasury Accountant, Administration & Development Division



After obtaining a master's degree in economics from Macquarie University in Australia in 1992, Stella Au started her career with Deloitte Touche Tohmatsu before moving to Esprit Hong Kong as the Assistant Accounting Manager.

In 1996, Stella decided to pursue her career in the government sector. In that year, she joined the Social Welfare Department as a Treasury Accountant. She was transferred to the post of Senior Treasury Accountant in the Department of Justice first on an acting basis in 2004 and then promoted substantively in 2006.

Stella heads the Finance and Accounts Unit which, apart from looking after day-to-day accounting functions, also provides advice to management and staff on various issues from the financial and control perspectives.

Outside work, Stella is a keen participant in the Staff Club's social dance classes and says that the experience she has gained in the department has expanded her horizons, both at work and outside. *"My life in the Department of Justice is always challenging. I take great pride in working in this department and playing a part in helping it to function efficiently."*



THE DEPARTMENT'S LINKS WITH OTHER JURISDICTIONS

Hong Kong's legal system has the same roots and applies many of the same principles as other common law systems around the world. Just as lawyers in Hong Kong refer to case law from jurisdictions from Singapore to South Africa, so decisions of Hong Kong's courts can assist lawyers researching overseas.

Since 1997, Hong Kong's status as a Special Administrative Region of the PRC has meant that, in addition to continuing to foster strong links with the common law world, mutual understanding with the Mainland of our two legal systems is also important.

The sharing of experience with lawyers in other jurisdictions plays an important role in legal life, a fact reflected in the composition of Hong Kong's Court of Final Appeal, which at every full hearing has included one judge from another common law jurisdiction.

Visits

The Secretary for Justice and the Law Officers regularly meet visitors from the Mainland and overseas, both lawyers and non-lawyers. The Secretary for Justice personally met 21 visitors or delegations from overseas and 17 from the Mainland during 2008 and 2009. These visitors included senior judges from the Supreme People's Court of the PRC and the Higher People's Court of Guangdong and from Australia, Canada and the USA. The Secretary for Justice also received visits from the Ministers of Justice from Germany and Indonesia, the Advocate General for Scotland, public prosecutors from the Mainland, and counterparts from the Department of Treaties and Law of the Ministry of Foreign Affairs of the PRC



The Secretary for Justice, Mr Wong Yan Lung, SC, calls on the Vice Chairman of the China International Economic and Trade Arbitration Commission, Mr Dong Songgen, in Beijing (April 2009).

and various and Departments of Justice from the Mainland. Other visitors received by the Secretary for Justice included the Secretary-General of the United Nations Conference on Trade and Development, the Secretary-General of the Hague Conference on Private International Law and the heads of a number of arbitration bodies.

The Law Officers personally met a wide range of visitors to the department during 2008 and 2009. These included a delegation of judges from the Supreme Court of Nepal, a delegation from the HK and Macau Affairs Office of the Guangdong Provincial People's Government, the Deputy Premier of Victoria, the President of the German Federal Criminal Police, the General Counsel of the US Department of Commerce and the Head of International Family Justice for England and Wales.

Members of the department also gave briefings on Hong Kong's legal system to many distinguished visitors from the Mainland and overseas, including



Mr Andrew Phelan (third left), Chief Executive and Principal Registrar of the High Court in Canberra, Australia, and the Secretary for Justice, Mr Wong Yan Lung, SC (second left), view exhibits on display at the court (November 2008).

lawyers, legislators, journalists and consular officials.

The Secretary for Justice and the Law Officers themselves from time to time visit their counterparts or undertake duties in other jurisdictions. For instance, in 2008 and 2009, the Secretary for Justice met officials from the Ministry of Justice, the Supreme People's Court, and other departments in Beijing, Shanghai, Hangzhou, Chongqing, Chengdu and Guangzhou to discuss measures to further enhance legal cooperation between Hong Kong and the Mainland. The Secretary for Justice also visited Canberra, Melbourne, Sydney, Ottawa, Toronto and Hanoi, meeting senior government officials, legal practitioners and important contacts in each jurisdiction. The Law Draftsman led a delegation of drafting counsel to visit the Legal Affairs Bureau, the Public Prosecutor's Office and the Court of Final Appeal of the Macau SAR.

Conferences and seminars in the Mainland and overseas

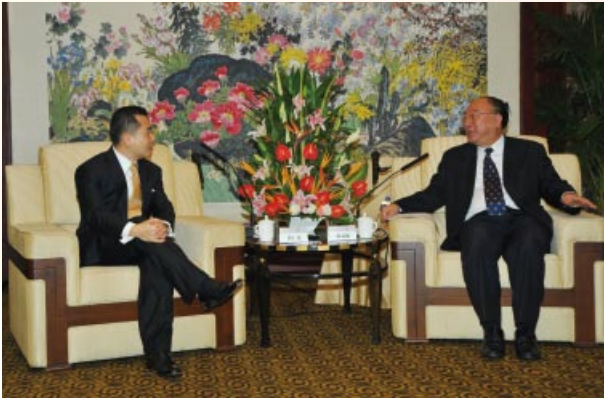
The Secretary for Justice and the Law Officers also regularly attend conferences and seminars in the Mainland or overseas to keep abreast of legal developments and law reform in other jurisdictions and to learn from the experience of others.

In August 2009, the Secretary for Justice attended the 8th Chinese Lawyers' Forum in Chengdu. In November 2009, the Secretary for Justice attended the 6th ASEAN-China Prosecutors' General Conference in Hanoi.

In 2008 and 2009, the Director of Public Prosecutions attended a number of international conferences, including the 13th and 14th Annual Conference of the International Association of Prosecutors in Singapore and Kiev, the 6th Middle East and Asia-Pacific Regional Conference of the International Association of Prosecutors in Dubai, the Singapore Academy of Law Forensics



The Secretary for Justice, Mr Wong Yan Lung, SC, visits the Shanghai Higher People's Court (April 2008).



The Secretary for Justice, Mr Wong Yan Lung, SC, meets Executive Vice-Mayor of Chongqing, Mr Huang Qifan during a visit to Sichuan (August 2009).



The Secretary for Justice, Mr Wong Yan Lung, SC, with the Minister of Justice and Attorney General of Canada, Mr Robert Douglas Nicholson in Ottawa (October 2009).

Conference in Singapore and the 5th and 6th China-ASEAN Prosecutors General Conferences in Manila and Hanoi. The Law Draftsman attended the 5th Australasian Drafting Conference in Brisbane and a conference in Mexico co-sponsored by Clarity, an international organisation promoting plain legal language.

Other major international conferences attended by counsel of the department during 2008 and 2009 included the 3rd Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities in Kiev, the 5th Asia and Pacific Regional Conference of the International Association of Prosecutors in Seoul, the 22nd International Conference of the International Society for the Reform of Criminal Law in Dublin, the 26th and 27th Cambridge International Symposium on Economic Crime in Cambridge, and the 16th Commonwealth Law Conference and the Commonwealth Association of Legislative Counsel Conference 2009 in Hong Kong.

Day-to-day links with other jurisdictions

While the majority of lawyers in the department have completed their legal qualifications in Hong Kong, some have qualified in overseas jurisdictions, including Australia, Canada, England and New Zealand. In addition to this in-house experience of other jurisdictions, every counsel has online access to the wealth of legal resources from around the world available via the internet. The department receives on a regular reciprocal basis reports and papers from law reform agencies and other legal bodies around the world. The department also makes use of the Commonwealth Legal Advisory Service when researching aspects of comparative law, in addition to the regular contacts which members of the department maintain with their counterparts overseas.

STATISTICS



Staff establishment of the Department of Justice (as at 31 December 2009)

Division	Directorate counsel	Non-directorate counsel	Para-legal staff #	Other staff	Total
Secretary for Justice's Office	-	1	-	12	13
Civil	16	108	32	98	254
International Law	7	14	2	11	34
Law Drafting	15	22	16	53	106
Legal Policy	9	23	7	28	67
Prosecutions	19+1*	102	133	201	455+1*
Administration & Development	-	1	-	177	178
Total number of posts	66+1*	271	190	580	1,107+1*

Court Prosecutors, Law Translation Officers and Law Clerks

* supernumerary post

Rank and post title of senior legal staff

Rank \ Post title	Civil Division	International Law Division	Law Drafting Division	Legal Policy Division	Prosecutions Division
Law Officer	Law Officer (Civil Law)	Law Officer (International Law)	Law Draftsman	Solicitor General	Director of Public Prosecutions
Principal Government Counsel	Deputy Law Officer	Deputy Law Officer	Deputy Law Draftsman	Deputy Solicitor General	Deputy Director of Public Prosecutions
Deputy Principal Government Counsel	Senior Assistant Law Officer	Deputy Principal Government Counsel	Senior Assistant Law Draftsman	Senior Assistant Solicitor General	Senior Assistant Director of Public Prosecutions

Total expenditure on departmental activities

	2008 (HK\$ million)	2009 (HK\$ million)
Personal emoluments and personnel related expenses	560.9	584.6
Departmental expenses	69.1	64.2
Court costs	103.3	99.4
Hire of legal services and related professional fees	187.8	225.0
General non-recurrent account	4.4	0.6
Minor plant, vehicles and equipment	0.2	-

Training

(a) Courses attended by Department of Justice staff

	Number of participants (2008)	Number of participants (2009)
Law-related training and conferences		
• Legal Trainee Scheme	20	17
• Law seminars/talks organised by divisions	679	932
• Legal courses and workshops by the Law Society of Hong Kong, Advocacy Institute and other local institutes	434	664
• Courses on criminal law, evidence, procedure & advocacy	408	276
• Workshops and in-house seminars for Court Prosecutors	215	126
• Legislative drafting course	6	0
• Lecture on Chinese writing - fundamentals in Chinese legal writing	0	68
• Training on plain language	0	20
• Seminar on saving and transitional provisions	0	34
• Seminars on law drafting	70	0
• International law conferences	34	31
• Law courses and attachments outside Hong Kong	21	22
• Part-time law studies sponsored by the department	13	7
• Mock appeals in Chinese	6	4
Total	1,906	2,201

Training (Continued)

(a) Courses attended by Department of Justice staff (continued)

	Number of participants (2008)	Number of participants (2009)
National Studies, Foreign Affairs Studies and China Law		
<ul style="list-style-type: none"> National Studies courses for senior staff at Peking University, Tsinghua University and the National School of Administration and thematic study programmes in the Mainland 	9	17
<ul style="list-style-type: none"> Foreign Affairs Studies programme at China Foreign Affairs University, Beijing 	1	1
<ul style="list-style-type: none"> National Studies courses for middle managers at Sun Yat-sen University, Guangzhou, and Peking University, Shenzhen 	4	4
<ul style="list-style-type: none"> China Law course for para-legal officers at Sun Yat-sen University, Guangzhou 	11	0
<ul style="list-style-type: none"> Mainland Legal Studies course for government lawyers 	0	10
<ul style="list-style-type: none"> National Studies seminars 	79	83
Total	104	115
Management training (including training courses outside Hong Kong)		
<ul style="list-style-type: none"> General management courses 	96	76
<ul style="list-style-type: none"> Directorate seminars 	60	48
<ul style="list-style-type: none"> Leadership in Action Programme 	4	2
<ul style="list-style-type: none"> Advanced Leadership Enhancement Programme 	0	1
Total	160	127
Communication and language training		
<ul style="list-style-type: none"> Putonghua courses 	48	26
<ul style="list-style-type: none"> Written Chinese courses 	18	9
<ul style="list-style-type: none"> English and communication courses 	31	14
Total	97	49

Training (Continued)

(a) Courses attended by Department of Justice staff (continued)

	Number of participants (2008)	Number of participants (2009)
Others		
• Induction courses for Government Counsel, Legal Trainees and Law Clerks	48	47
• Computer training courses	523	696
• Visits to government departments and organisations	22	36
• Vocational/induction training for non-counsel grades	15	18
Total	608	797
Grand total	2,875	3,289

(b) Courses provided by Department of Justice staff to others

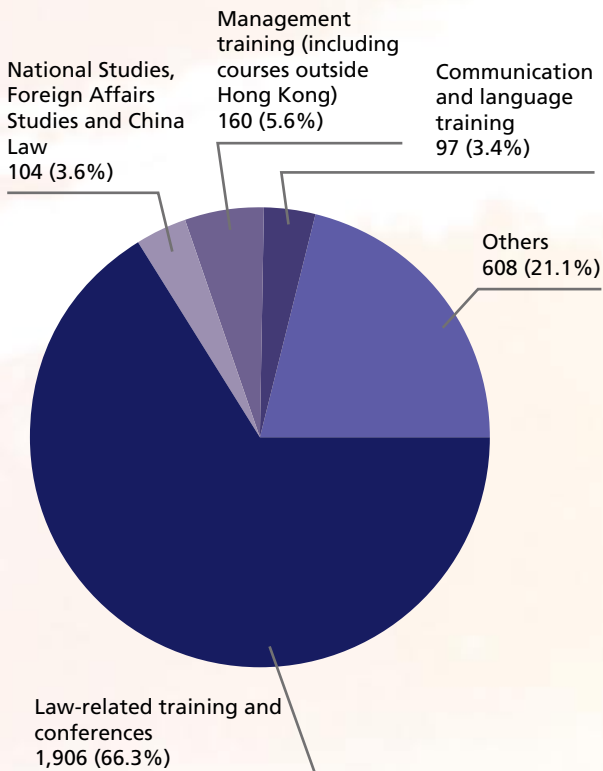
Legal training seminars arranged by divisions for other government departments	Number of participants (2008)	Number of participants (2009)
Civil Division	263	789
International Law Division	130	422
Law Drafting Division	333	147
Legal Policy Division	1,419	1,080
Prosecutions Division	2,534	2,870
Total	4,679	5,308

Distribution of Department of Justice participants in training courses

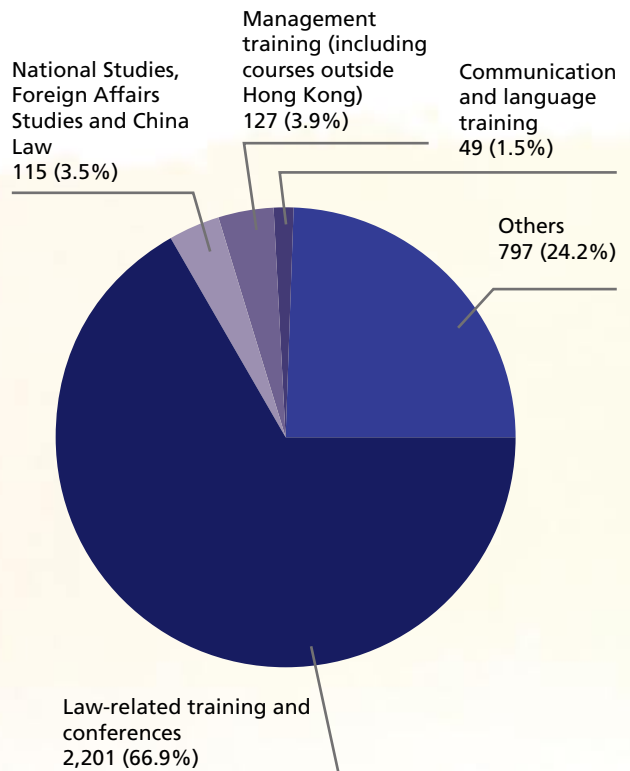
(a) Distribution of participants by content of training

	2008		2009	
	Participants	Percentage	Participants	Percentage
Law-related training and conferences	1,906	66.3%	2,201	66.9%
National Studies, Foreign Affairs Studies and China Law	104	3.6%	115	3.5%
Management training (including courses outside Hong Kong)	160	5.6%	127	3.9%
Communication and language training	97	3.4%	49	1.5%
Others	608	21.1%	797	24.2%
Total	2,875	100%	3,289	100%

2008



2009

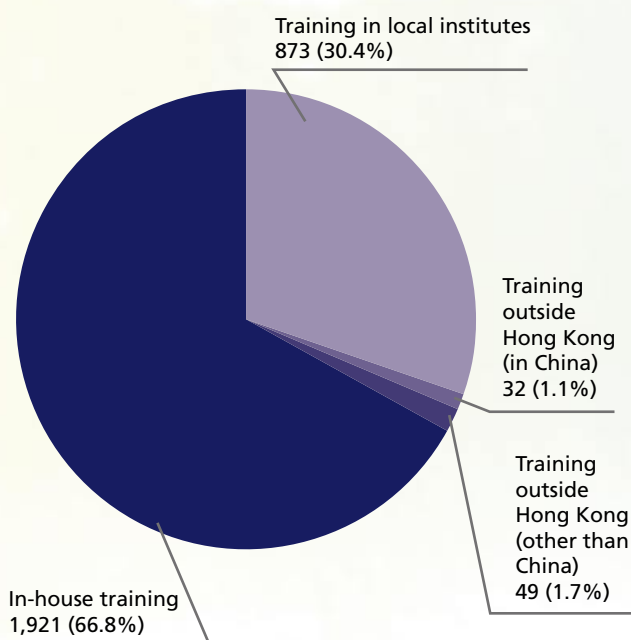


Distribution of Department of Justice participants in training courses (Continued)

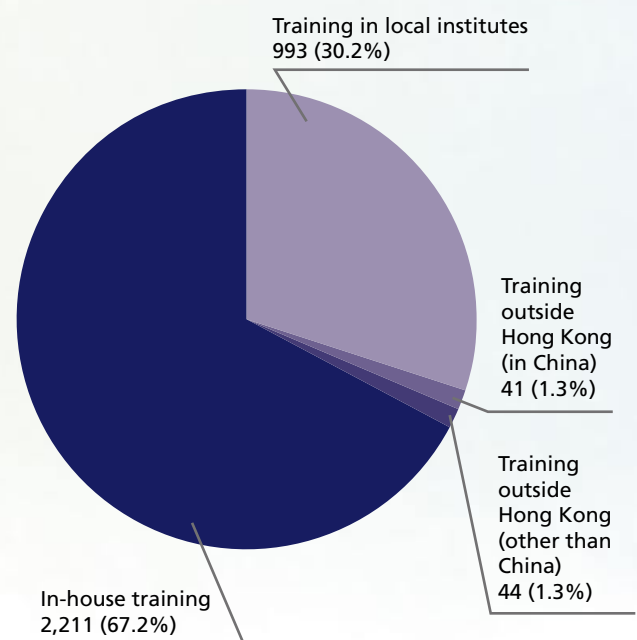
(b) Distribution of participants by place of training

	2008		2009	
	Participants	Percentage	Participants	Percentage
In-house training	1,921	66.8%	2,211	67.2%
Training in local institutes	873	30.4%	993	30.2%
Training outside Hong Kong (in China)	32	1.1%	41	1.3%
Training outside Hong Kong (other than China)	49	1.7%	44	1.3%
Total	2,875	100%	3,289	100%

2008



2009



Civil Division

Advisory units

Number of pieces of legal advice given	2008	2009
(a) Planning, Environment, Lands & Housing Unit	1,968	1,990
(b) Civil Advisory Unit	9,396	10,201
(c) Commercial Unit	3,226	2,888

	2008	2009
Number of commercial tenders, consultancy briefs, contracts, licences and franchises drafted / vetted by the Commercial Unit	491	512
Number of tenders, contracts and permits drafted / vetted by the Civil Advisory Unit	45	83
Number of contract documents drafted / vetted by the Planning, Environment, Lands & Housing Unit	20	22

Civil Division (Continued)

Civil Litigation Unit

	2008	2009
Number (and percentage) of civil litigation cases in respect of which one or more outside professionals were briefed	1,053 (5.1%)	975 (4.3%)
Total number of current civil litigation cases	20,602	22,842

Selected categories of current civil litigation cases	2008	2009
Tax, stamp duty, estate duty, rating & government rent appeals	4,999	4,817
Judicial review / habeas corpus proceedings	566	547
Building, planning, environmental appeals	339	520
Personal injuries proceedings	316	280
Medical Council, Dental Council, Supplementary Medical Professions Council, Veterinary Surgeons Board and Chinese Medicine Practitioners Board	291	315
Land related cases (other than land resumption)	59	59
Land resumption	251	248

	2008	2009
Number of civil proceedings instituted by government	1,467	1,526
Amount claimed / involved	\$178 million	\$161 million
Number of civil proceedings instituted against government	889	1,071
Amount claimed / involved	\$239 million	\$180 million

	2008	2009
Number of Court of Appeal cases with substantive hearings	46	38
Number of Court of Final Appeal cases with substantive hearings	10	5

International Law Division

	2008	2009
Number of international agreements initialled	3	1
Number of pieces of legal advice provided	7,031	9,263
Number of new requests dealt with in various categories of mutual legal assistance	167	202

Law Drafting Division

Legislative drafting work	2008	2009
Drafts of legislation released ¹	2,689	2,350
Number of pieces of legal/professional advice given (including written and oral advice)	6,100	6,171
Papers prepared ²	131	219
Papers commented on ³	1,454	1,311
Drafting conferences attended	343	520
ExCo and LegCo attendances	448	332

Volume of legislation gazetted	2008	2009
Number of Bills gazetted	17	28
Number of pages of bilingual text (as gazetted)	594	1,078
Number of pieces of subsidiary legislation	284	265
Number of pages of bilingual text (as gazetted)	3,940	2,862

¹ This includes all drafts of legislation (whether gazetted or not), including draft Committee Stage Amendments.

² This includes all drafts (other than legislation) prepared by Law Drafting Division counsel (whether issued in the name of individual counsel or otherwise) for consideration by parties outside the administration. Examples are papers explaining legal points submitted to Bills Committees, legal reports to the Standing Committee of the National People's Congress and Law Draftman's certificates for private Bills, etc.

³ This includes all documents sent to the division by parties outside the department for consideration and comments. Examples are drafts of ExCo Memos, LegCo Briefs, speeches by bureau secretaries, private Bills, replies, press releases, papers submitted to Bills Committees or LegCo's panels or ExCo's subcommittees, etc.

Law Drafting Division (Continued)

Volume of legislation enacted	2008	2009
Number of Bills enacted	33	18
Number of pages of bilingual text of Committee Stage Amendments incorporated in legislation	584	83

Legal Policy Division

Visits (and visitors) to and from the Mainland handled by the division	2008	2009
Number of visits (and visitors) from the Mainland	27(455)	23(517)
Number of visits (and visitors) to the Mainland	2(5)	6(10)
Total	29(460)	29(527)

Number of pieces of legal advice given	2008	2009
General legal policy	692	623
Basic Law and constitutional matters	998	995
Human rights	1,258	1,355
Mainland law	320	332
Total	3,268	3,305

Prosecutions Division

	2008	2009
Number of pieces of legal advice given	15,356	16,520

Criminal cases / appeals at all levels of court	2008	2009
<i>Court of Final Appeal and related applications</i>		
Number of appeals concluded	121	145
(including number of prosecution appeals)	(8)	(4)
<i>Court of Appeal</i>		
Number of appeals heard	481	449
(including number of prosecution appeals - case stated)	(1)	(0)
(Including number of prosecution appeals - review of sentence)	(15)	(9)
<i>Court of First Instance (Magistracy appeals)</i>		
Number of appeals heard	985	905
(including number of prosecution appeals - case stated)	(5)	(6)
<i>Court of First Instance</i>		
Number of indictments	182	274
<i>District Court</i>		
Number of charge sheets	1,254	1,443
<i>Magistrates' Court</i>		
Number of applications for review under section 104 of the Magistrates Ordinance (Cap 227)	45	67
Caseload of Court Prosecutors	195,510	200,415
<i>High Court</i>		
Number of bail applications	838	798
<i>Death inquests</i>		
Number of inquests	27	39

Prosecutions Division (Continued)

Percentage of criminal cases conducted in Chinese	2008	2009
Court of Final Appeal and related applications	38.9%	39%
Court of Appeal (criminal appeals)	31.6%	32.5%
Court of First Instance (Magistracy appeals)	75.9%	73.7%
Court of First Instance (criminal trials)	23.8%	26.1%
District Court (criminal trials)	47.8%	55.5%
Magistrates' Courts (criminal trials)	83.1%	84.5%

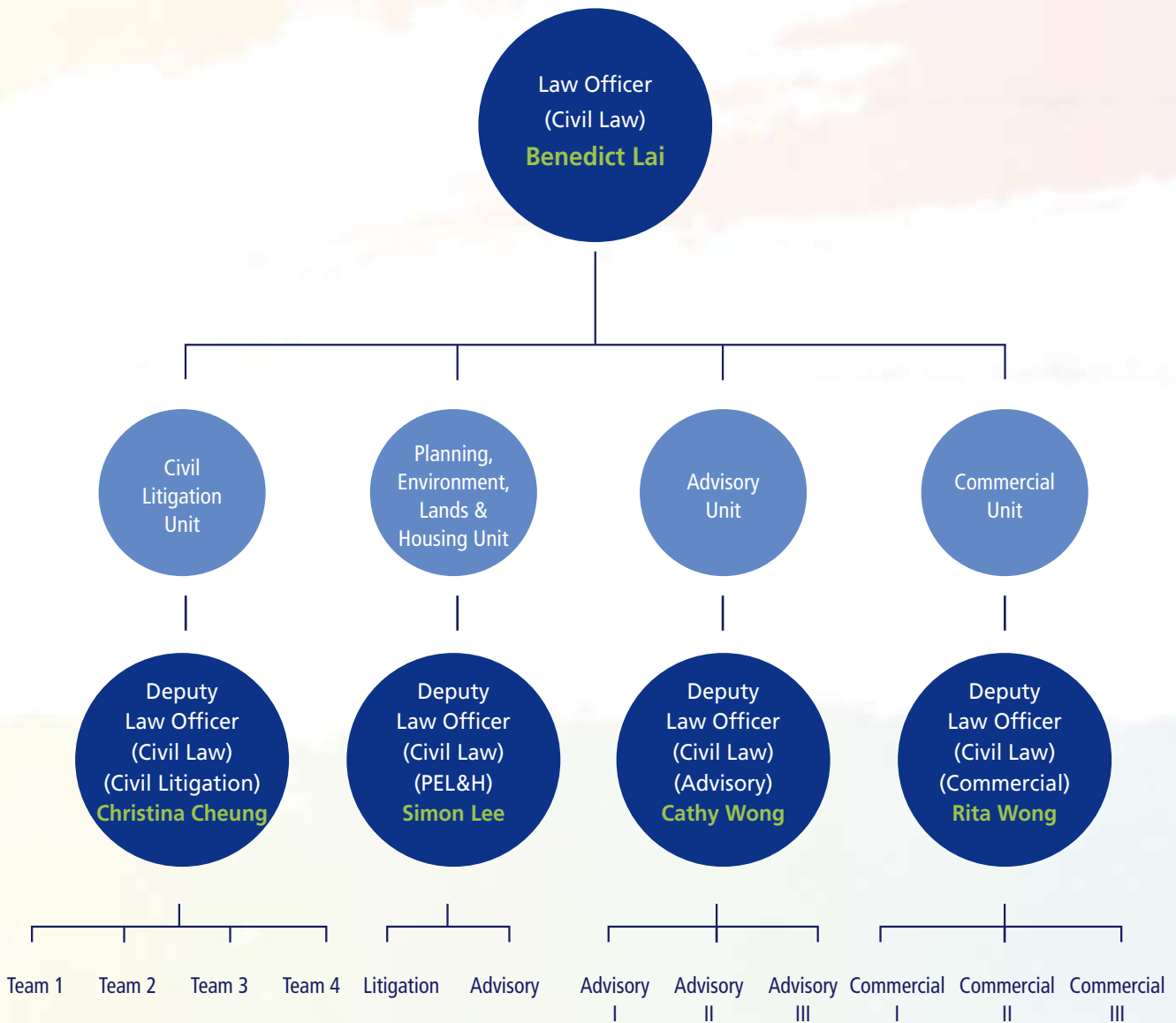
Briefing out	2008		2009	
	No of cases	No of court days	No of cases	No of court days
<i>Appeals</i>				
Court of Final Appeal and related appeals	0	0	12	7
Other appeals	17	28	15	50
<i>Court of First Instance (criminal trials)</i>	53	486	62	440
<i>District Court (criminal trials)</i>	487	3,316	548	3,472
<i>Magistrates' Court (criminal trials)</i>				
In place of Government Counsel	430	995	571	1,293
In place of Court Prosecutor *	-	2,184	-	3,255

* Lawyers instructed in place of Court Prosecutors are briefed to attend to all cases on the basis of the daily cause list before a particular magistrate.

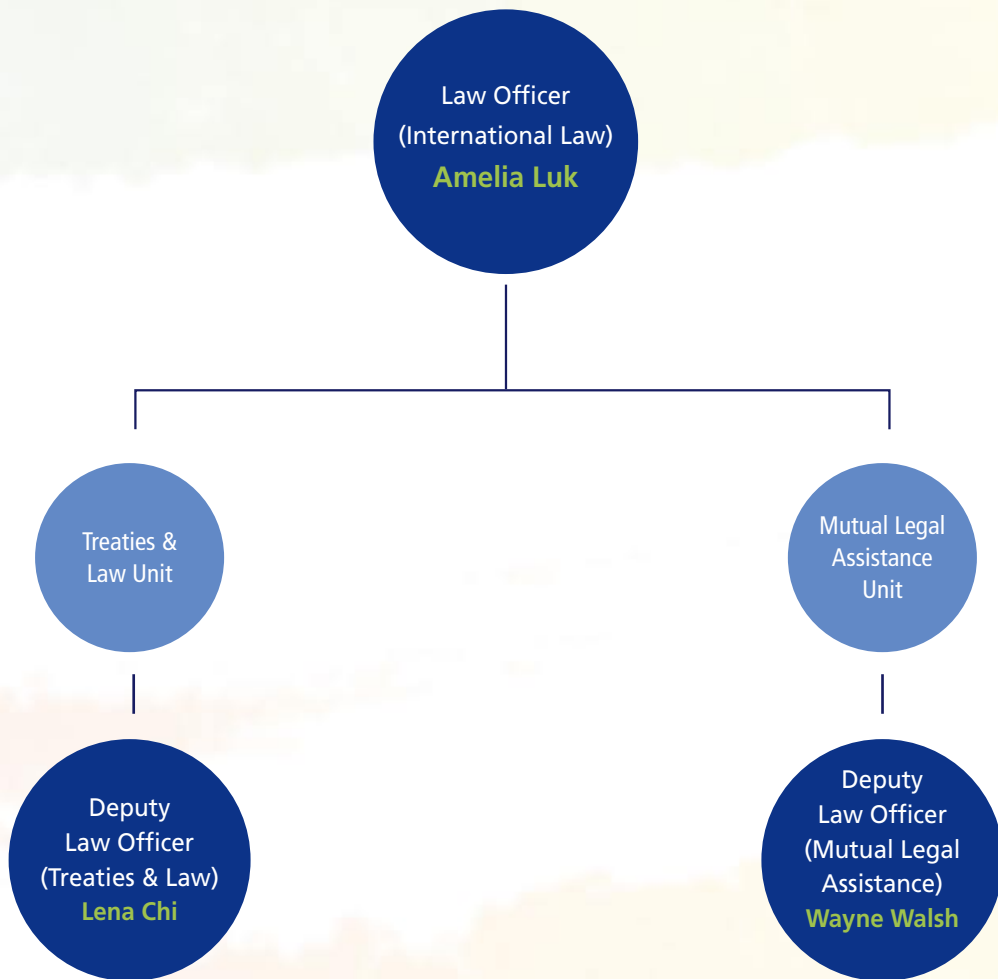
Organisation chart of the Department of Justice (as at 31 December 2009)



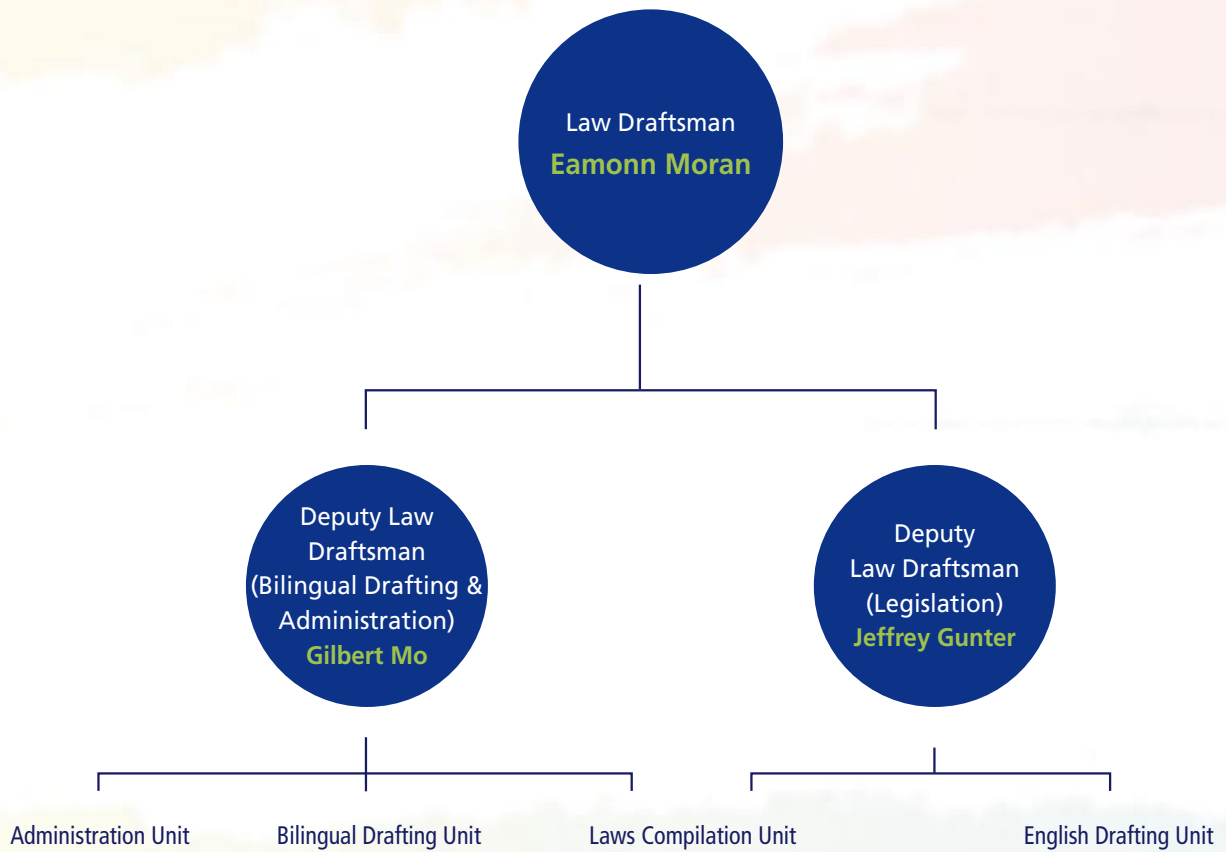
Organisation chart of the Civil Division (as at 31 December 2009)



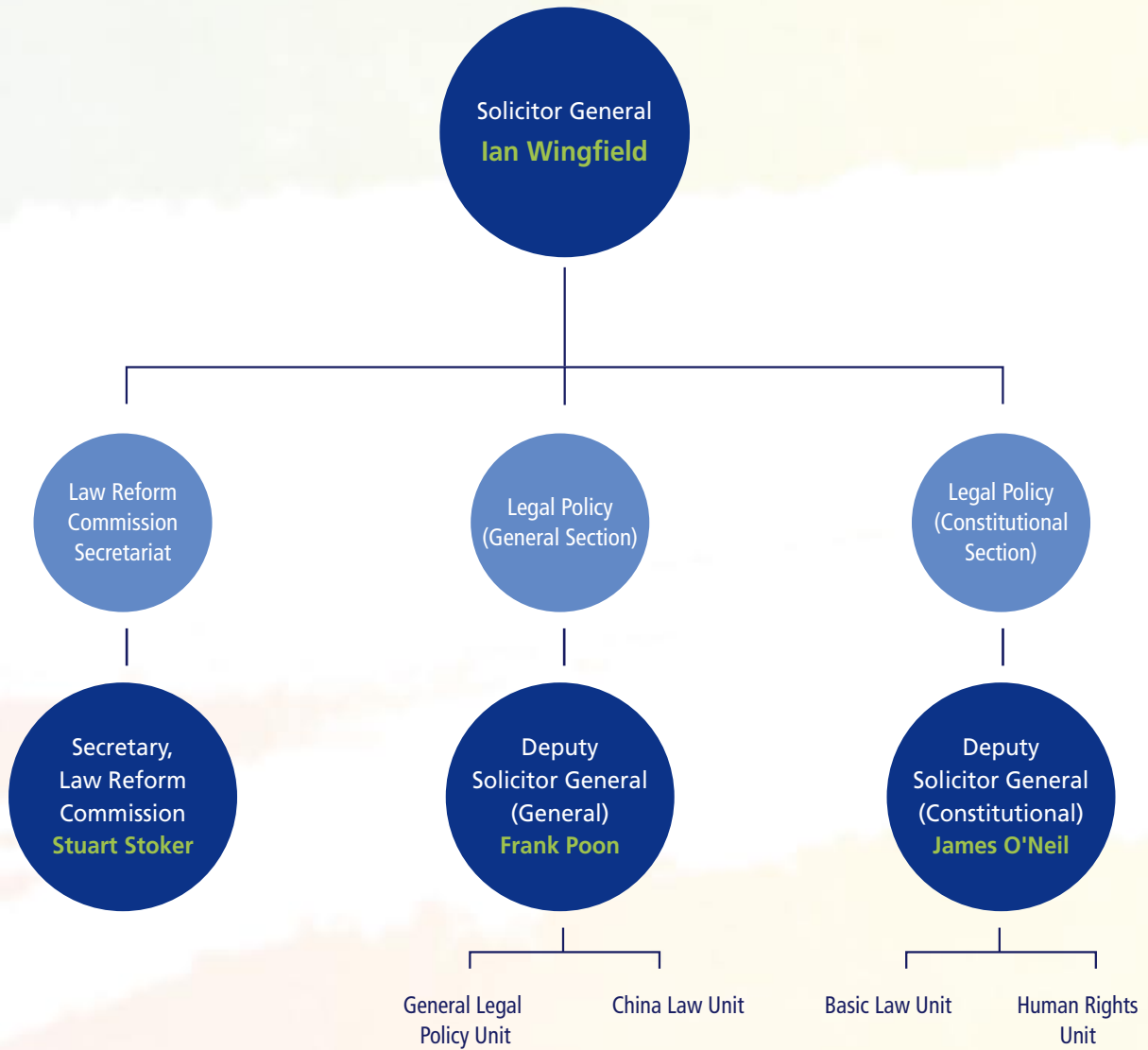
Organisation chart of the International Law Division (as at 31 December 2009)



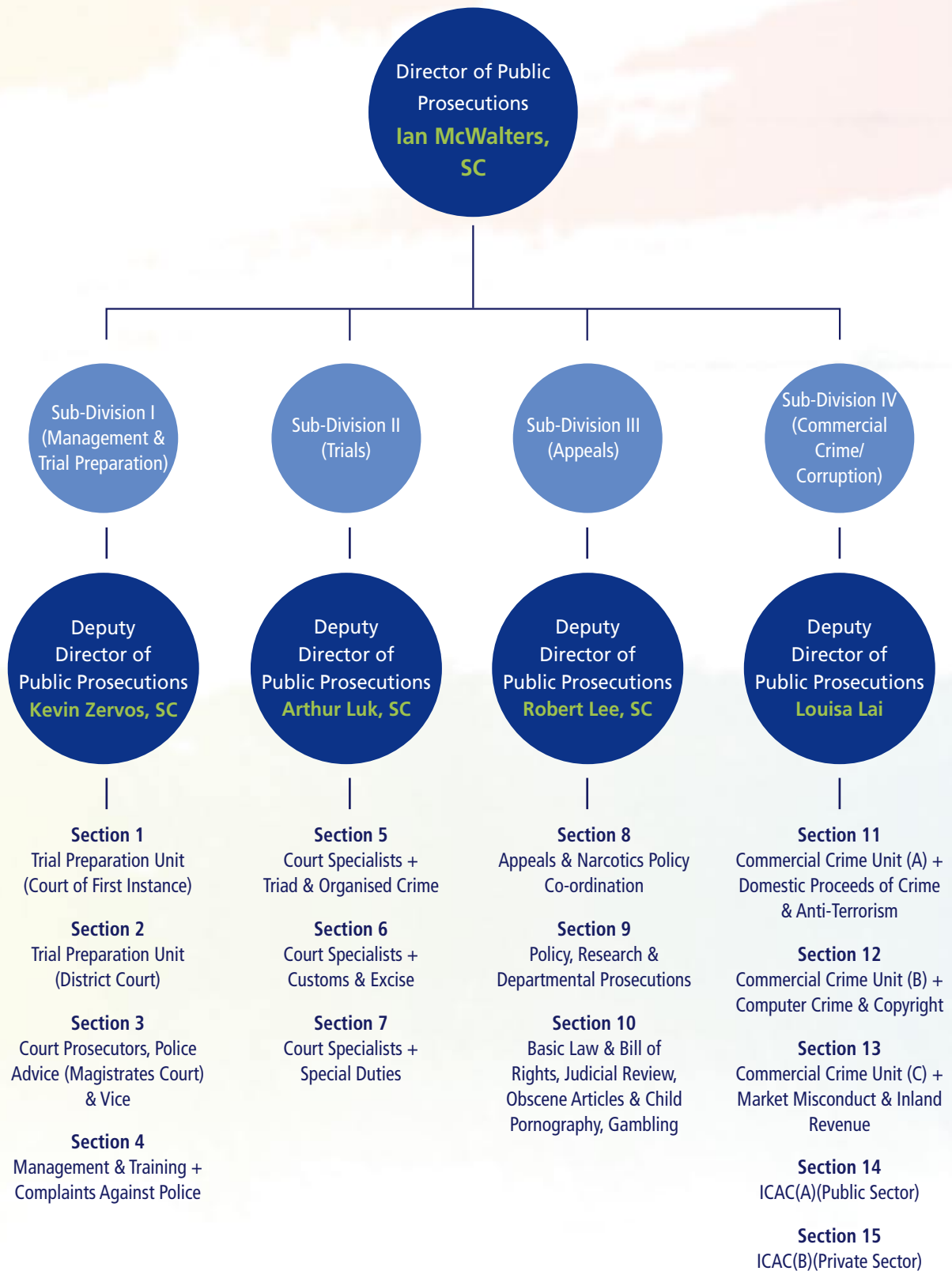
Organisation chart of the Law Drafting Division (as at 31 December 2009)



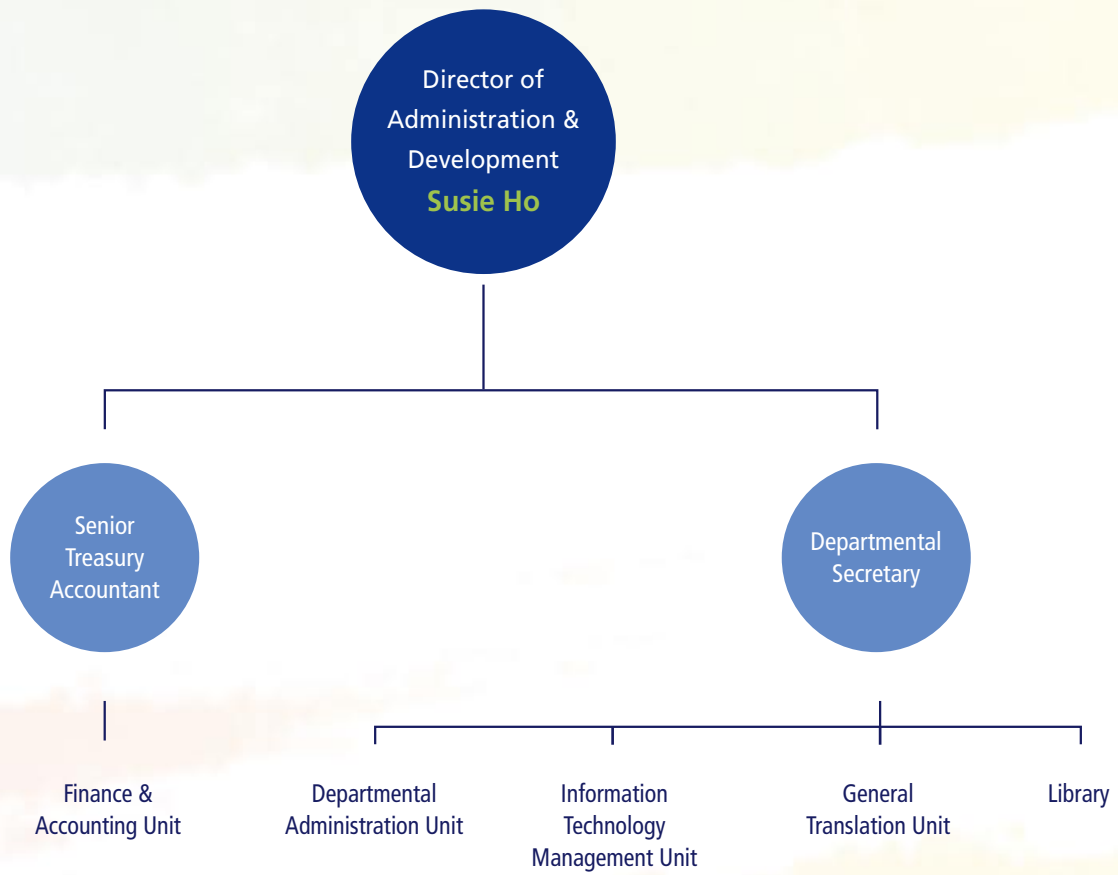
Organisation chart of the Legal Policy Division (as at 31 December 2009)



Organisation chart of the Prosecutions Division (as at 31 December 2009)



Organisation chart of the Administration & Development Division (as at 31 December 2009)



Department of
JUSTICE

