

Report of the Committee on Criminal Law & Procedure 2018

The Committee on Criminal Law & Procedure ("CCrimLP") do hereby report to the Chairman of the Hong Kong Bar Association matters that were achieved in the year 2018.

1. CCrimLP participated in the discussion papers for The Law Reform Commission of Hong Kong's consultation paper on Miscellaneous Sexual Offences. Representatives of the CCrimLP took part at the AJLS Panel Meeting in June and July 2018, and prepared its views for the Chairman of the Bar Association for submission to the AJLS Panel for their discussion.
2. CCrimLP has also had discussions in respect of the difficulties faced by members as a result of the implementation of the new Practice Directions 9.3 and 9.6. As a result of the relevant discussions, representatives of the CCrimLP had dialogues with representatives from the Judiciary and the Department of Justice and such dialogues had been positive in addressing members' concerns.
3. The Legal Aid Department has also been approached to continue the ongoing conversations and work with stakeholders concerning issues members faced as a result of PD9.3.
4. Members of the Bar will be further consulted in the coming months as to the running of PD9.3 after 1 year of its implementation.
5. Mock Trial Pilot Program has been put in action. Program materials is being prepared and it is believed that the Program should commence in the near future. Volunteer Trainers have been recruited. CCrimLP is aware that trainers recruitment is a continuous process, with a view to recruit more volunteers so as to cope with any possible hindrances.
6. CCrimLP met the representatives from the DoJ in respect of the fiat system. Members' concerns were presented to those representatives. Clarifications were sought from the DoJ and such matters include (a) the training scheme for members who wish to prosecute on fiat; (b) the operation of the briefing-out mechanism, for instance the A and B lists of the Magistrates' Court prosecution; District Court and High Court list; (c) any room for incremental adjustment of fees; (d) time required to be promoted from the District Court list to the High Court list; and (e) the logistics in letting fiat counsel to take case papers away in advance.
7. In short, CCrimLP was given to understand from the DoJ that (a) members who have participated in the training scheme and completed with satisfaction would be informed of such, he or she would also be placed into the B list on Magistrates' Court level. For a participant who could not pass the assessment, he or she can attend again, but the \$40,000 remuneration would not be given for a re-take, for it is only given on one-off basis; (b) those in the B list are expected to deal with less complicated and more routine cases, whilst those in the A list are expected to handle more complicated cases in the Magistrates' Court. Those

in the B list could be moved (or promoted) to the A list upon application or indication of interest, merits of application will be considered based on DoJ's records and information. Experience is a factor that DoJ may consider. Views from the Departmental Prosecution units may also be considered. However, A list counsel would not then be eligible for B list cases, in other words, they are mutually exclusive in nature. Therefore it is a matter of choice. A member either on the A or B list can also apply to be moved to District Court and High Court lists, DoJ will consider individual application by reference to their records and information as to the performance of the applicant. DoJ also reviews cases of individual members (on list) in considering promotion or demotion; (c) DoJ is alive as to the concerns of fees, DoJ's consideration includes the level of fees offered by the Legal Aid Department and the Duty Lawyers Scheme; (d) as to time required, it is not a factor of consideration; and (e) DoJ will review the logistics for allowing fiat counsel to take case papers in advance of hearing.

8. CCrimLP has collected views from members concerning issues they faced in their practice in the Magistrates' Court level. A meeting will be held in early December with the Chief Magistrate, with a view to voice out those issues and see if the same could be resolved.
9. The Bar Association and the Law Society will co-organise a Criminal Law Conference (CLC) in 2019. It is planned to be held on one of the Saturdays in May 2019. Four topics are to be discussed: (a) money laundering, restraint and confiscation; (b) computer crimes; (c) sexual offences reform; and (d) trafficking in persons. One or two speakers from overseas jurisdictions will be invited to participate in the CLC. The Prosecution Division of the DoJ is considering the possibility of inviting prosecutors from the ASEAN countries to attend the CLC, to be followed by a two-day lecture.

Last but not least, CcrimLP will continue to strive to achieve more for the benefit of our members in the time to come.

Eric Kwok SC
Chairman
Committee on Criminal Law and Procedure

29 November 2018

Annex: Membership List (2018)

Committee on Criminal Law & Procedure

Eric Kwok SC (Chairman)

Tony Li (Vice Chairman)

Andrew Bruce SC

Graham Harris SC

Andrew Raffell

James Tze

David Boyton

Charles J. Chan

Kay Chan

Randy Shek