

## Report of the Committee on Criminal Law & Procedure 2023

This report outlines the work undertaken by the Committee on Criminal Law & Procedure (“**the CCrimLP**”) in 2023.

### Legislative Proposals

1. In January 2023, the Department of Justice (“**DoJ**”) launched a consultation for a proposal to amend the Criminal Procedure Ordinance (“**CPO**”). In short, it related to the proposed addition of procedures for the Prosecution to lodge an appeal against a ruling of ‘no case to answer’ by Judges of the Court of First Instance in criminal trials. On the instruction of the Bar Council, the CCrimLP considered the proposal and collated views from its members. Based on those views, the Bar Council later gave a written response to the DoJ on the proposal. The Vice-chairman of the Bar Council, Mr. Derek Chan, SC, also attended a meeting of the Legco’s Panel on Administration of Justice and Legal Services (“**AJLS Panel**”) on 27 February 2023 to speak on the Bar’s stance on the proposed amendment. In particular, the Vice-chairman raised concerns about the potential financial burden which could be placed on a defendant required to continue with the trial after a reversal of the trial judge’s “no case” decision by the Court of Appeal. Members of the AJLS urged the Government to pay heed to this concern when drafting the relevant bill.
2. In May 2023, the Government gazetted the Criminal Procedure (Amendment) Bill 2023 for: (a) implementation of the aforementioned amendment; and (b) introducing procedures for the Prosecution to appeal by way of case stated against a verdict or order of acquittal made by the Court of First Instance in cases tried by a panel of Judges without a jury under the HK National Security Law (“**the CP(A) Bill**”). As regards the issue of costs, the CP(A) Bill proposed to amend the Costs in Criminal Cases Ordinance so that it is made clear when the Court of Appeal can order costs be awarded to either the Prosecution or the Defence. The CP(A) Bill was subsequently passed on 12 July 2023 by the Legislative Council.
3. In September 2023, the DoJ invited the Bar Council to comment on a proposal to amend section 84 of the District Court Ordinance (“**the DCO**”). The proposal sought to synchronise the applicable modes of service of documents for appeals by way of case stated against acquittals in the District Court and the Magistrates’ Courts. The CCrimLP was again tasked to consider the proposal and collate views from its members. A written response was later issued by the Bar Council in November 2023.
4. Towards the end of the year, the Bar Association was informed by the Law Society that it had been working with the DoJ to consider amending s.55 of the Legal Practitioners Ordinance (“**the LPO**”), a provision setting the time limit of prosecuting certain offences therein. The CCrimLP is currently considering whether similar amendments should also be made to cover section 44 of the LPO, which is the offence prohibiting unlawful practice as a barrister.

Other matters

5. Outside of legislative proposals, the CCrimLP has been working on a proposed meeting with the Chief Magistrate in early 2024. It is hoped that the meeting will provide an opportunity to enhance understanding between the Bench and the Bar, and for the two to discuss plans which will further improve the administration of criminal justice.
6. The CCrimLP has also continued discussions with the Secretariat of the Law Reform Commission in response to their consultation on Cyber-dependent Crimes and Jurisdictional Issues. A written response was issued to the LRC in December 2023, and the CCrimLP continues to provide further comments.
7. The CCrimLP also continues to gather views from its members and criminal practitioners on issues arising from the practice and procedures of criminal law. Issues discussed this year revolved around case management, facilities in court buildings, as well as the use of languages in criminal trials, particularly in light of the judgment of *HKSAR v Luk Fu-leung* [2023] HKCFI 2965.

Membership:

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Martin Hui, SC  
Chairman  
Committee on Criminal Law and Procedure

8 January 2024