

## **Chapter XVII : Administration of Justice and Legal Services**

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17.1 At the Chairman's invitation, the Secretary for Justice (SJ), Ms Elsie LEUNG, and the Judiciary Administrator (JA), Mr Wilfred TSUI, each gave a presentation to highlight the work priorities within their respective purview for the year 2002-03 (Appendix V-16a & V-16b).

### **Court Prosecutor grade**

17.2 Noting that the estimated number of court days undertaken by Court Prosecutors (CPs) in Magistrates' Court for 2002 was more or less the same as the actual number for 2001, Miss Margaret NG queried the need for the recent appointment of 8 CPs. The Director of Administration & Development (D of AD), Department of Justice, advised that the 8 CPs were appointed to fill existing vacancies, not newly created posts. The vacancies had to be filled to cope with the existing workload, which would otherwise have to be briefed out to private counsel. He added that there was a shortfall in the functional strength of the CP grade attributable to no-pay leave taken by several members of the grade on long-term legal training courses.

17.3 In view of the small number of cases briefed out in 2001 and the fact that the Administration was able to cope with the prosecution work despite the vacancies in the CP grade, Miss Margaret NG urged the Administration to review the establishment of the grade. D of AD pointed out that the number of court days undertaken by CPs could not fully reflect their workload, as the time required for the preparatory work for complicated cases before appearing in court could be substantial.

17.4 Responding to Miss Margaret NG, the Director of Public Prosecutions (DPP) clarified that the amount of \$1,285 mentioned in the Administration's written reply referred to the average cost per court day of a CP grade officer responsible for administrative and supervisory duties. Responding to Miss NG's further enquiry, D of AD advised that the estimated staff costs for 2002-03 included the costs of CP grade officers attending in-house training, but excluding those attending long-term legal training courses on no-pay leave.

17.5 As some of the Senior Court Prosecutors (SCPs) were required to assess the decisions made by Magistrates, Miss Margaret NG expressed concern about their legal competence in performing this duty and whether they were required to appear in court. DPP advised that there were three SCPs II in each of

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the nine Prosecution Offices in Magistracies. While one of them appeared in the plea court, day in and day out, one conducted trials regularly and the remaining one handled administration matters. As regards SCPs I, they supervised the nine Prosecution Offices, assessed the decisions made by Magistrates to facilitate recommendations for review or appeal in appropriate cases, and examined case reports. Normally, they did not appear in court except on review cases. One of the two Chief Court Prosecutors (CCPs), CCP(Operations), appeared in Magistrates' Courts for some important and complicated cases.

17.6 In view of the growing complexity of the cases taken up by CPs and the need to maintain the quality of the prosecution service, Miss Margaret NG attached great importance to the legal qualifications of the more senior officers of the grade. She requested the Administration to provide in writing the legal qualifications of the officers at the rank of SCP II or above, and the number of prosecution cases actually handled by them in 2001.

17.7 Noting that the selection of officers for promotion to the higher ranks of the CP grade was decided on the criteria of character, ability and experience, Miss Margaret NG was concerned that legal qualification was not one of the selection criteria. Miss NG asked whether open recruitment would be conducted to select suitable persons to fill the vacancies at the higher ranks of the grade. DPP advised that internal promotion exercises would be conducted to fill such vacancies. Selection boards would be formed to consider the suitability of eligible serving officers for advancement to the higher rank on the basis of their performance, abilities and experience. By monitoring their performance, the management could assess the officers' suitability for discharging duties in the higher rank on the basis of their abilities in various aspects, including legal knowledge, ability to grasp legal issues and advocacy skills.

17.8 To assess the objectivity of the internal promotion exercise, Miss Margaret NG requested the Administration to set out in writing the criteria for promotion of CPs and whether legal qualification was one of the considerations.

### **Promotion of Hong Kong as an international arbitration centre**

17.9 Whilst appreciating the efforts made by SJ in promoting Hong Kong as an international arbitration centre, Mr Albert HO asked whether resources had

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been earmarked in 2002-03 for further promotion in this aspect. SJ advised that although resources had not been earmarked for the purpose, the Department of Justice had been keeping in touch with the legal profession, including The Law Society of Hong Kong and The Hong Kong Bar Association, professional arbitrators and the Hong Kong International Arbitration Centre, to monitor the progress. As some 300 arbitration cases were handled each year, SJ considered the outcome encouraging as compared with the experience in other countries.

### **Official language of the courts**

17.10 Noting that about 60% of the judges and judicial officers were fully bilingual and able to conduct hearings which were considered suitable to be heard in Cantonese, Mr Jasper TSANG expressed concern about the adequacy of bilingual judges and judicial officers, in particular for the high level courts where a great majority of the hearings was conducted in English. While interpretation service was available, Mr TSANG pointed out that it would slow down the hearing process.

17.11 In response, JA provided a breakdown of the percentages of bilingual judges and judicial officers and of cases heard in Cantonese at different levels of courts, as follows -

<u>Court</u>	<u>Percentage of bilingual judges and judicial officers</u>	<u>Percentage of cases heard in Cantonese in 2001</u>
Court of Appeal	33%	17%
Court of First Instance	53%	20%
District Court, Family Court And Lands Tribunal	56%	23%
Magistrates' Courts and other Tribunals	75%	81%

17.12 Given that the percentages of bilingual judges and judicial officers were proportional to the percentages of cases heard in Cantonese at different levels of courts, JA considered that sufficient bilingual judges and judicial officers were available to conduct hearings in Cantonese. Under the current policy, the Judiciary maintained a bilingual court system through enhancing the bilingual

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capability of the judges and judicial officers. For this purpose, resources had been earmarked for providing judges and judicial officers with appropriate language training.

17.13 Mr Jasper TSANG pointed out that the percentage of cases heard in Cantonese did not reflect the actual demand. He considered it more meaningful for the Administration to provide the number of requests submitted by the accused or litigants for their cases to be heard in Cantonese, and the number of such requests not acceded to because of the non-availability of bilingual judges and judicial officers. He also suggested that the Administration should assess the implications of conducting hearings in English on the expenditure on interpretation services, and on the length of the hearings.

17.14 In response, JA pointed out that the request of the accused or litigants was only one of the factors to be considered by the judge concerned in deciding which language would be used for hearing a case. Other factors included the language ability of the judges, legal representatives and witnesses concerned; the factual and legal issues in dispute; and the volume of documents which might be required to be translated into the other official language.

17.15 Mr Martin LEE considered it important for the judge concerned to have the ability to comprehend the evidence given by the litigant in his own language. The fact that not all the judges were able to do so demonstrated the failure of the bilingual court system. In response, JA pointed out that interpretation services were available to assist the judge in this aspect. Given that interpreted evidence might have lost its original flavour, Mr LEE urged the Administration to address the situation.

### **Lands Tribunal**

17.16 Ms Audrey EU noted that while the target average waiting time in respect of compensation cases for the Lands Tribunal was 100 days, the actual average waiting time in 2000 and 2001 were 29 days and 18 days respectively. Given the limited hearing time per day and the involvement of the Presiding Officer and Member of the Lands Tribunal in a number of cases, Ms EU queried the accuracy of the actual average waiting time achieved in 2000 and 2001, and requested the Administration to clarify the basis of calculation.

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17.17 In response, JA pointed out that the average waiting time in respect of compensation cases referred to the time involved from setting down of a case, rather than from filing of a case, to its first hearing. A case would be set down only when both parties involved in the case had made ready the relevant documents and evidence. To shorten the average waiting time, an additional Presiding Officer had been appointed for the Lands Tribunal in 2001. Moreover, an additional Member would be appointed in 2002 to assist in dealing with the increased number of compensation claims arising from the West Rail Project.

17.18 Ms Audrey EU pointed out that the equipment and facilities of the Lands Tribunal were unable to meet the requirements of modern courts. The inadequate lighting, poor air-conditioning and lack of supporting facilities such as a proper audio system, had affected the operations of the Tribunal. Ms EU therefore urged the Administration to earmark resources for improvement in those aspects. JA advised that the Lands Tribunal was accommodated in an old building, the design of which did not cater for the requirements of modern courts. The Judiciary was aware of the situation and had invited the Architectural Services Department to consider any possible short-term measures for improvement. In the long term, the Judiciary planned to relocate the Lands Tribunal to the existing Eastern Magistracy where spaces would be made available after the completion of a new court building in Hong Kong West in 2007-08. It was anticipated that substantial improvements could then be made.

### **Labour Tribunal**

17.19 Mr LEE Cheuk-yan expressed concern about the long waiting time in respect of cases for the Labour Tribunal. JA pointed that while both the target average waiting time “from appointment to filing of a case” and “from filing of a case to first hearing” were 30 days, the actual figures for 2001 were 14 days and 24 days respectively. The actual average waiting time was therefore 38 days. JA further pointed out that despite the heavy caseload of the Labour Tribunal (about 10 000 per year), the Judiciary had endeavoured to shorten the average waiting time by scheduling both day and night hearings. As a result, the number of cases on waiting for filing was reduced from 1 600 to 500.

17.20 Responding further to Mr LEE Cheuk-yan, JA advised that the time involved in the whole process from the first hearing to the completion of a case handled by the Labour Tribunal varied from case to case.

### **Court of Final Appeal and High Court**

17.21 In view of the substantial difference between the target and actual average waiting time, Ms Emily LAU saw the need for the Administration to adjust the target suitably, e.g. to adjust downward the target average waiting time in respect of cases for the Court of Final Appeal. She also urged the Judiciary to introduce measures to shorten the actual average waiting time in respect of both criminal and civil cases for the High Court.

17.22 JA advised that the target average waiting time was the Judiciary's performance pledge set in accordance with the recommendations of the Court Users' Committees or respective legislative provisions. The target was only the minimum level of service to be provided i.e. actual performance could be much better, as in the case of the Court of Final Appeal. For cases heard in the High Court, the relatively long average waiting time in 2001 was attributable to the upsurge in the number of Right of Abode appeals and bankruptcy cases. In fact, the number of bankruptcy cases heard in the High Court had been increased from 2 558 in 1997 to 13 191 in 2001. As cases before the High Court had grown in complexity and generally taken longer time to conclude in recent years, the Judiciary would closely monitor the situation and continue to explore ways to maximize the productivity of courts, such as by improving the listing system, the application of modern technology and pre-trial reviews, appointment of temporary judges, etc.

17.23 Ms Emily LAU requested the Administration to review the target average waiting time for the various levels of courts to ensure that they were realistic. She also requested the Administration to provide, in due course, the relevant Panel with the information on any improvement measures implemented for shortening the actual average waiting time.

### **Pilot Scheme on Family Mediation**

17.24 Responding to Ms Miriam LAU's enquiry on the effectiveness of the three-year Pilot Scheme on Family Mediation launched by the Judiciary since 2 May 2000, JA advised that the Hong Kong Polytechnic University (HKPU) was commissioned to assess the effectiveness of the pilot scheme. HKPU collected feedback from the mediators and other relevant parties, such as the users, and would submit its report to the Judiciary for consideration. Responding further to

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Ms LAU, JA advised that of the 572 cases which had been referred as at the end of 2001 to mediators for settlement under the pilot scheme, 387 reached full or partial settlement.

17.25 Ms Miriam LAU noted that in 2001-02, 338 cases had been referred to the mediators for settlement under the pilot scheme. She considered this figure comparatively small, having regard to the fact that more than 10 000 cases were handled by the Family Court per year. Ms LAU suggested that appropriate measures should be taken to encourage members of the public who were in need of the mediation service to use the pilot scheme. JA responded that the Administration had taken active measures to publicize the pilot scheme, highlighting its simplified and less confrontational approach.

### **Application of information technology**

17.26 Mr SIN Chung-kai appreciated the efforts made by the Judiciary in uploading the judgments delivered at the District Court and above onto the Internet. In order to enhance the user-friendliness of the system, Mr SIN asked whether the Administration would categorize the cases and develop a search engine to assist the public in searching particular cases.

17.27 JA advised that at present, a great majority of judgements was delivered at the District Court or above. Judgements delivered at other levels of courts would also be uploaded onto the Internet as far as practicable. JA also said that arrangement was being made for the Judiciary to facilitate the development of a powerful search engine on legal reference materials by the University of Hong Kong and an organization in Australia, which would also be available to members of the public.

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