



Judicial Manpower Situation

Submissions to the Panel on Administration of Justice and Legal Services

The Law Society notes with concern the increase of the workload for judges and judicial officers (JJOs) in recent years, and the lengthening of waiting times for criminal and civil cases, for both trials and interlocutory applications. Clearly, the present situation is unacceptable as there is an adverse impact on the administration of justice.

The demands on JJOs are significant. The current system imposes heavy duties on many office holders who have to spend their days in court, attend to administrative duties, sit on internal and external working parties, and somehow find sufficient time to write their judgments. There is also an obvious need to strengthen the establishment particularly in the District, Family and High Court to keep waiting times within target, and eventually reduce them, without relying on temporary judicial resources.

The Law Society has the following recommendations to address the present situation:

1. Recruit Solicitors

1.1 Under Sections 9(1A) and 9(2A) of the High Court Ordinance (Cap.4) solicitors with 10 years PQE are eligible to for appointment as High Court Judges (**see Annexure 1**). These provisions were added to the High Court Ordinance in 1995 and 1982 respectively, but no candidate from the solicitor's branch of the profession has been appointed to the High Court.

1.2 We note solicitors have received appointments as Deputy District Court Judges but no candidate has as yet been appointed as a Recorder or as Deputy Judges in the High Court.

The Judicial Officers Recommendation Commission (JORC) should widen its search and should actively consider making such appointments so that potential candidates can receive experience sitting as Recorders and as Deputy Judges in the High Court and be assessed on capability as well as suitability.

Many law firms support the Judiciary by permitting their solicitors to clear their diaries so they can accept temporary appointments as Deputy District Court Judges or as Masters in the High Court. Senior solicitors should be regarded as suitable candidates for appointment as Records or Deputy Judges in the High Court.

1.3 The Law Society is happy to encourage senior members of the solicitors' branch of the profession to seek judicial appointment. A programme could be introduced whereby the Law Society would assess potential candidates and make nominations to the JORC for consideration. We believe such a scheme might encourage senior members to consider applying for judicial appointment.

1.4 We suggest the Judicial Studies Board consider extending its training to potential candidates from both branches of the profession. The provision of appropriate courses might provide encouragement to potential candidates to see whether they have the qualities necessary to be a judge.

2. Current Pool of Candidates too small

The current pool of talent is too small.

The traditional approach of recruiting from the ranks of senior barristers is no longer viable as evidenced by the 45 vacancies or 24% of the complement of judicial officers. The Law Society considers an additional solution would be expansion of recruitment of overseas candidates. However, consideration must also be given to improving the pay and working environment of the judges.

3. Overhaul the Pay and Conditions of Service of Judicial Officers

The Law Society notes an independent Standing Committee on Judicial Salaries and Conditions of Service is responsible for advising the Chief Executive on the pay and conditions of service for JJOs.

The Judicial Service Pay Scale (JSPS) is different and separate from the Civil Service Pay Scale (CSPS), but in recent years we have seen the JSPS adjusted more or less in line with changes in the CSPS. We consider this is one of the factors which makes it difficult for the Judiciary to attract talent to the Bench.

Currently, the JSPS for the Chief Justice is \$241,750. This is 30% lower than the proposed monthly remuneration of a Director of Bureau after July 2012 of \$343,730. If the Administration sees the need to attract qualified professionals to become Principal Officials with attractive salaries, the JSPS should also be adjusted to be in line with market changes.

If overseas recruitment is to take place then given the high cost of housing in Hong Kong, the provision of accommodation must be provided otherwise it would be a self-defeating exercise.

4. Working Environment of Judges

We also note the Judiciary Administrator's budget should be reviewed in order to provide extra resources for JJOs.

We understand High Court Judges do not have personal secretaries but must rely on a common pool of typists to prepare their papers.

Listing of cases – the judges are not given adequate time to write their judgments or to read into the new cases. There may be a mistaken view that a judge who is not in court during court hours is not working – the reality is the judicial officer has too much work and the situation has been exacerbated by the current number of vacancies.

The provision of more support staff and more time to write judgments and prepare for hearings would assist to improve the working environment of Judges and help with the recruitment of the required and right talent.

5. Affect on Practitioners

The following comments highlight the affect vacancies have on one area of court-related work:

Probate practitioners have from time to time expressed to the Law Society their concern on the lengthy time taken by the Probate Registry in processing grant applications lodged on behalf of their clients.

Although the Joint Standing Committee on Probate Practice comprising representatives from the Judiciary and the Law Society has already put in much effort to streamline the grant application process in all respects, the application process could not be shortened unless there is sufficient manpower in the Probate Registry. The Law Society would like to see more resources being put into the Probate Registry for further improvements in this regard.

The Law Society of Hong Kong
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Chapter:	4	Title:	HIGH COURT ORDINANCE	Gazette Number:	10 of 2005
Section:	9	Heading:	Professional qualifications of judges	Version Date:	08/07/2005

(1) A person shall be eligible to be appointed to be a judge of the High Court if- (Amended 25 of 1998 s. 2)

- (a) he is qualified to practise as a barrister or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; or (Amended 14 of 1997 s. 2)
- (b) he is qualified as mentioned in paragraph (a) and prior thereto was qualified to practise as a solicitor in such a court,

and, in either case, he has for at least 10 years practised as a barrister, solicitor or advocate in such a court.

(1A) A person shall also be eligible to be appointed to be a judge of the High Court if he is qualified to practise as a solicitor of the High Court and has for at least 10 years practised as such. (Added 52 of 1995 s. 2. Amended 25 of 1998 s. 2)

(2) A person shall also be eligible to be appointed to be a judge of the High Court if- (Amended 25 of 1998 s. 2)

- (a) he is qualified to practise as a barrister or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; or (Amended 14 of 1997 s. 2)
- (b) he is qualified as mentioned in paragraph (a) and prior thereto was qualified to practise as a solicitor in such a court,

and, in either case, he has, subject to subsection (3), for at least 10 years-

- (i)-(iii) (Repealed 14 of 1997 s. 2)
- (iv) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap 336);
- (iva) been the Registrar of the Hong Kong Court of Final Appeal appointed in accordance with section 42 of the Hong Kong Court of Final Appeal Ordinance (Cap 484); (Added 10 of 2005 s. 132)
- (ivb) been the Registrar or a senior deputy registrar, deputy registrar or assistant registrar appointed in accordance with section 37; (Added 10 of 2005 s. 132)
- (ivc) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap 336); (Added 10 of 2005 s. 132)
- (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap 227);
- (va) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap 504); (Added 10 of 2005 s. 132)
- (vb) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap 338); (Added 10 of 2005 s. 132)
- (vc) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap 25); (Added 10 of 2005 s. 132)
- (vi) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap 87);
- (vii) (Repealed 8 of 1993 s. 6)
- (viii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap 91); (Added 50 of 1976 s. 2. Amended 24 of 1983 s. 7; 39 of 1992 s. 8; 60 of 1992 s. 3)
- (ix) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap 6); or (Added 39 of 1992 s. 8. Amended 60 of 1992 s. 3; 68 of 1995 s. 17)
- (x) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap 412). (Added 60 of 1992 s. 3)

(2A) A person shall also be eligible to be appointed to be a judge of the High Court if- (Amended 25 of 1998 s. 2)

- (a) he is a solicitor of a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; (Amended 14 of 1997 s. 2)
- (b) he is and has been for the previous 2 years at least, and in aggregate for at least 5 years, employed in the service of the Crown in Hong Kong on judicial or legal work; and
- (c) he has, subject to subsection (4), for at least 10 years either-
 - (i) practised as a barrister, solicitor or advocate in such a court; or
 - (ii) been employed in such service as is described in paragraph (b). (Added 44 of 1982 s. 2)

(3) For the purposes of calculating the period of 10 years referred to in subsection (2), periods of less than 10 years falling within any of paragraphs (iv) to (x) of that subsection may be combined, and there may be included in such period, any period of practice as a barrister, solicitor or advocate in any of the courts referred to in subsection (2)(a). (Amended 50 of 1976 s. 2; 39 of 1992 s. 8; 60 of 1992 s. 3; 14 of 1997 s. 2)

(4) For the purposes of calculating the period of 10 years referred to in subsection (2A)(c) there may be included any period of less than 10 years falling within any of paragraphs (iv) to (x) of subsection (2), and periods of less than 10 years falling within subparagraphs (i) and (ii) of subsection (2A)(c) may be combined. (Added 44 of 1982 s. 2. Amended 39 of 1992 s. 8; 60 of 1992 s. 3; 14 of 1997 s. 2)

(5) For the purposes of calculating the period of 10 years under subsection (2), periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap 100) may be taken into account notwithstanding the repeal of that Ordinance. (Added 8 of 1993 s. 6)

(Amended 10 of 2005 s. 132)

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