

**Legislative Council
Panel on Administration of Justice and Legal Services**

**Judicial Manpower Situation at Various Levels of Court
and
Court Waiting Times**

PURPOSE

This paper seeks to provide the latest information and the Judiciary's view about the judicial manpower situation at various levels of court and court waiting times.

BACKGROUND

2. The issues of judicial manpower situation and court waiting times were last discussed by Members of the Legislative Council ("LegCo") Panel on Administration of Justice and Legal Services ("Panel") in May 2012 (LC Paper No. CB(2)2107/11-12(01)).

3. Subsequently, the two issues above were raised by some Members of the Panel in October 2012 in the context of considering the 2012-13 judicial service pay adjustment. The Panel requested supplementary information relating to unrepresented litigants and court waiting times, which was provided in the Administration's submission on the 2012-13 judicial service pay adjustment to the LegCo Finance Committee ("FC") (Enclosure 2 to FCR(2012-13)56).

4. At the relevant FC meeting held in December 2012, Members noted that the Judiciary would further provide an information note on the judicial manpower situation to Members of the Panel.

5. Further, at the Panel meeting on 26 November 2013 at which the 2013-14 judicial service pay adjustment was discussed, Members requested the Judiciary to provide relevant information on waiting times in the past three years, the Scheme of Judicial Assistants and the number of external deputy judges and judicial officers in the past three years.

JUDICIAL MANPOWER SITUATION

Establishment and Strength of Judges and Judicial Officers

6. As at 1 December 2013, 159 of the 193 judicial posts are filled substantively and there are 34 vacancies. The breakdown of these figures by levels of court is at Enclosure I.

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7. It is noteworthy that out of these 34 vacancies, 13 vacancies at the magisterial level would not or could not be filled for the time being for the following reasons –

- (a) There is operational requirement for seven Principal Magistrates only (one each for the seven Magistrates' Courts) and the remaining two Principal Magistrate vacancies would not be filled for the time being; and
- (b) The number of vacancies at the Magistrate level that could be filled is constrained by the number of available courtrooms in the Magistrates' Courts¹. Due to this constraint, 11 Permanent Magistrate vacancies could not be filled for the time being pending the completion of the West Kowloon Law Courts Building.

Accordingly, as at 1 December 2013, the total number of fillable vacancies for all levels of court is 21 and the number of fillable vacancies at the magisterial level is 13.

¹ With a view to providing adequate courtroom facilities to meet the Judiciary's operational needs, the Judiciary is actively pursuing the West Kowloon Law Courts Building ("WKLCB") project. In February 2012, approval was obtained from the LegCo Finance Committee for this project. Construction works has already started and is targeted to be completed by the end of 2015. The new WKLCB will co-locate the existing Tsuen Wan Magistrates' Courts, Small Claims Tribunal, Coroner's Court and Obscene Articles Tribunal, which are all under the Chief Magistrate's purview. The new WKLCB will increase the number of courtrooms by 12 (from 20 to 32). In addition, additional courtrooms (tentatively three) could be provided at the Eastern Magistrates' Courts after the Coroner's Court and Obscene Articles Tribunal, currently located there, are re-provisioned to the new WKLCB.

Filling of Judicial Vacancies by Substantive Appointments

(A) Last Round of Recruitment Exercises

8. The last round of recruitment exercises, which started during the period from June 2011 to July 2012, has been completed.

9. So far, 49² judicial appointments have been made through selection by open recruitment, comprising 10 Judges of the Court of First Instance of the High Court (“CFI Judges”), 19 District Judges (“DJs”), one Member, Lands Tribunal (“M/LT”), 14 Permanent Magistrates and five Special Magistrates. The few remaining appointees are expected to assume judicial office by the first quarter of 2014 after the relevant anticipated vacancies have arisen.

(B) Latest Recruitment Exercise for CFI Judges

10. In July 2013, the Judiciary launched another recruitment exercise for CFI Judges, which has also been completed. CFI Judge appointments from this recruitment exercise will be announced when they are made (one appointment has been made and announced so far).

(C) Next Round of Recruitment Exercises

Frequency of Conducting CFI Judge Recruitment Exercises

11. Open recruitment exercises for CFI Judges used to be conducted approximately every three years in the past (in 2002, 2006, 2009 and 2012). Recently, we have reviewed the frequency of conducting recruitment exercises for CFI Judges. Noting that some senior legal professionals in private practice may be interested in joining the Bench but the timing of joining, which is an important consideration, may not match the recruitment trawl at times, the Chief Justice is of the view that CFI Judge recruitment exercises should henceforth be launched on a more frequent basis and has decided that they should be conducted regularly on a yearly basis henceforth.

² This number excludes those 15 appointments without a recruitment exercise but were made and announced since June 2011, i.e., elevation to Permanent Judge (2), Chief Judge of the High Court (1), Justice of Appeal (5), Chief District Judge (1) and Principal Magistrate (6).

12. Accordingly, following the latest CFI Judge recruitment exercise launched in July 2013 (16 months after the one before in March 2012), the next CFI Judge recruitment exercise is planned to be launched in the latter half of 2014.

Recruitment of District Judges

13. There was only one fillable vacancy at the DJ rank as at 1 December 2013³. It is planned that this vacancy will be filled in due course. There is therefore no imminent need to conduct any open recruitment for DJs in the near future.

Recruitment of Permanent Magistrates and Special Magistrates

14. There were 11 and two fillable vacancies at the Permanent Magistrate and Special Magistrate ranks respectively as at 1 December 2013. The Judiciary is planning to launch another round of open recruitment for Permanent Magistrates and Special Magistrates in the first quarter of 2014.

Deployment of Temporary Judicial Manpower

15. Pending the filling of vacancies through open recruitment, in line with the established practice, the Judiciary has been engaging and will continue to engage temporary judicial resources as far as practicable to help maintain the level of judicial manpower required, and thereby help maintain court waiting times at reasonable levels and help reduce the court waiting times in some cases. The number of deputy Judges and Judicial Officers (“JJOs”) appointed fluctuates according to operational needs. The duration of their sittings also varies.

16. As at 1 December 2013, a total of 60 deputy JJOs, comprising 30 deputies who were appointed from within the Judiciary to act in higher positions and 30 deputies appointed from outside the Judiciary, were engaged to cope with the court’s workload.

³ This vacancy arose as a result of the elevation of a DJ to the Court of First Instance.

17. In the past 35 months (i.e. 1 January 2011 to 30 November 2013), a total of 126 persons were appointed to sit as external deputy/temporary JJOs at various levels of court. Some of them only sat for a few weeks at a time. Some of them may return to their practice and may take up deputy/temporary JJO appointments again in the future, having regard to their professional commitments and other considerations.

18. Out of these 126 persons who had sat as deputy/temporary JJOs in the past 35 months:

- (a) 21 were appointed as substantive JJOs at various levels of court during the same period;
- (b) 22 were retired JJOs who would not be substantively re-appointed to the judicial service; and
- (c) Of the remaining 83 persons:
 - (i) 26 (excluding 4 retired JJOs covered in (b) above) are sitting as deputy/temporary JJOs; and
 - (ii) 57 are no longer serving as deputy/temporary JJOs,as at 1 December 2013.

Establishment Reviews

19. The Judiciary is keenly aware of the importance of having adequate resources for the continued delivery of its mission to maintain an independent and effective judicial system which upholds the rule of law, safeguards the right and freedoms of the individual and commands confidence within and outside Hong Kong. To this end, the Judiciary has kept under constant review its judicial establishment and manpower situation having regard to operational needs, including the need to keep court waiting times within targets.

Establishment Reviews in the Past Five Years

20. In the past five years since July 2008, the Judiciary has conducted a number of comprehensive establishment reviews and substantially enhanced the judicial establishment. The number of judicial posts has increased from 182⁴ in June 2008 to 193⁴ at present (Enclosure I). The net additional 11 posts comprised one Justice of Appeal (“JA”) post, six CFI Judge posts, one Principal Family Court Judge post upgraded from a DJ post, two DJ posts, one Deputy Registrar, High Court post, one M/LT post and one Deputy Registrar, District Court post; offset by the deletion of one Principal Magistrate post.

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Latest Establishment Review in 2013

21. As indicated in LC Paper No. CB(2)2107/11-12(01) (please refer to paragraph 2 above), the Chief Justice took the view that upon the completion of the last round of recruitment exercises in 2012-2013, it would be opportune time to conduct another comprehensive review of the judicial establishment. If that review found that the judicial establishment should be further enhanced, the Judiciary would put forward judicial manpower proposals to the Administration and the LegCo in accordance with the established mechanism and procedures.

22. The last round of recruitment exercises was completed in the latter half of 2012; and ground work for an establishment review started in early 2013.

23. In assessing whether the judicial establishment is adequate, factors that would be taken into account include the trends of and the prevalent workload, the increasing complexity of the cases and the effects of the Civil Justice Reform. Consideration would also be given to any constraints posed by the number of courtrooms available to hear cases at various levels of courts.

24. With regard to prevalent workload, it is noted that in 2012, the High Court remains a pressure area and its waiting times still exceeded their targets (please see paragraph 35 below). In addition, while all the existing JA vacancies have been filled, the work pressure of the Court of Appeal has remained acute and it has to continue to rely heavily on

⁴ Excluding the Permanent Judge post created for a Non-Permanent Judge of the Court of Final Appeal.

drawing resources from the Court of First Instance (i.e. redeploying CFI Judges to sit as additional judges of the Court of Appeal⁵) to help cope with its workload. Therefore, the Chief Justice has instructed that the judicial manpower position of the Court of Appeal should be reviewed as a matter of priority; and that in the establishment review, a closer look should be taken not only into the manpower position of the Court of Appeal, but also the implications of such position on the Court of First Instance.

25. The establishment review of all levels of court, with particular emphasis on the establishment of the Court of Appeal and the Court of First Instance of the High Court, has been completed.

26. The review finds that additional resources are needed for the creation of additional judicial (and support staff) posts for the Court of Appeal to enable it to cope with the increased workload. With the establishment for the Court of Appeal enhanced as proposed, the judicial manpower redeployed from the Court of First Instance could be released back to that level of court to hear cases.

27. The review also finds that additional resources are needed for the creation of additional judicial posts at various levels of court for covering the absence of JJOs for attending training and dealing with judicial education matters.

28. The Judiciary has conveyed its resource requirements above to the Administration in August 2013, in accordance with the budgetary arrangements agreed between the Judiciary and the Administration in 2005. Under the said budgetary arrangements, the Judiciary is consulted every year on its overall resource requirements prior to the Administration's drawing up of the Operating Expenditure envelope for the Judiciary. In addition, the Judiciary would also put forward its forecast manpower requirements each year prior to the Administration's drawing up of the establishment ceiling for the Judiciary for the coming financial year.

29. The Judiciary expects to be in a position to inform LegCo Members of the details about the relevant additional resources in the context of the draft Estimates of Expenditure for 2014-15.

⁵ Section 5 of the High Court Ordinance (Cap. 4) provides that a judge of the Court of First Instance may, on the request of the Chief Justice, sit as an additional judge of the Court of Appeal, in which case he shall have all the jurisdiction, powers and privileges and of a Justice of Appeal.

THE SCHEME ON JUDICIAL ASSISTANTS

30. It is relevant to mention the Scheme on Judicial Assistants (“the Scheme”) as it seeks to provide enhanced support to appellate judges in the discharge of their duties. The Judiciary started the Scheme in 2010, the objectives of which are:

- (a) To provide assistance to appellate judges in the Court of Final Appeal and the Court of Appeal of the High Court in conducting research on law points and assisting in other work of the court; and
- (b) To enable fresh and bright law graduates who are about to embark upon careers in the legal profession to acquire an insight into the appellate process and to benefit from working with appellate judges, which will be conducive to the development of the legal profession.

31. Under the Scheme, Judicial Assistants are assigned to provide assistance to appellate judges in researching on law points, analyzing and writing memoranda on appeals and applications, drafting memoranda on legal points and assisting with other work of the court. Arrangements may also be made for individual Judicial Assistants to provide direct support to the appellate judges.

32. Having regard to the objectives of the Scheme, Judicial Assistants are normally recruited for a single one-year term and they will move on to other stages of their legal careers afterwards. Therefore, Judicial Assistants are engaged on non-civil service contract terms for a period of 12 months, and there is no civil service post on the Judiciary’s establishment for Judicial Assistants.

33. Having regard to the operational needs of the appellate judges, it is planned that up to six Judicial Assistants may be recruited each year. However, the Judiciary also takes the view that for the Scheme to operate effectively, only fresh and bright law graduates who are found suitable for the job would be recruited. Since 2010, the number of Judicial Assistants appointed was –

2010	5
2011	3
2012	3
2013	5

34. The Chief Justice attaches great importance to the Scheme and has personally examined, in consultation with the appellate judges, the effectiveness of the Scheme earlier this year. The conclusion is that the Scheme has met its objectives and should continue to operate on its existing terms in the foreseeable future. The Judiciary will keep the Scheme under review.

COURT WAITING TIMES

35. The court waiting times for the various levels of court in the past three years are set out at Enclosure II. It should be noted that in the past three years:

- (a) The court waiting time targets for the Court of the Final Appeal, the District Court (including those for the Family Court) and the Magistrates' Courts (except for summonses which marginally exceeded the target) and specialized court and tribunals have been met; but
- (b) The waiting times for cases in the High Court, both for the Court of Appeal and the Court of First Instance, have exceeded their targets in most of the cases and the waiting times have been lengthening. This was due to more complex, lengthy and re-fixed cases. It was also due to the temporary constraints in the deployment of judicial manpower in the High Court as a result of the retirement of Judges and elevation of Judges to higher positions;
- (c) In tackling the lengthening waiting times in the High Court:
 - (i) Great efforts and priority were given to timely disposal of criminal appeals in the Court of Appeal. The average waiting times for civil appeals were lengthening;

- (ii) Great efforts and higher priority were given to timely disposal of magisterial appeals in the Court of First Instance. The average waiting times for Criminal Fixture List and Civil Fixture List were lengthening.

36. As a result of the latest established review conducted in 2013 (paragraphs 21-29 above), the Judiciary has put forward proposals to the Administration for the creation of additional judicial and support staff posts to enable it to cope with the increased workload and to help reduce waiting times, particularly in the High Court. In the interim, the Judiciary will continue to monitor the situation closely and deploy temporary judicial resources to help reduce waiting times.

ADVICE SOUGHT

37. Members are invited to note the contents of this paper.

38. The Judiciary looks forward to having Members' support for additional resources for the Judiciary, when the draft 2014-15 Estimates of Expenditure for Head 80 – Judiciary is examined by Members, to strengthen its judicial establishment for coping with the increased workload in the Court of Appeal and for implementing continuing judicial education for JJOs.

Judiciary Administration
December 2013

**Establishment, Strength and Vacancy of JJOs
(Position as at 1 December 2013)**

Level of Court	Establishment	Strength	Vacancy
Court of Final Appeal	4*	4	0
Court of Appeal	11	11	0
Court of First Instance	33	26	7
High Court Masters' Office	11	2	9#
District Court (including Family Court & Member, Lands Tribunal)	38	46	-8
District Court Masters' Office	4	0	4^
Magistrates' Courts/ Specialized Court/ Other Tribunals	92	70	22
<i>Permanent Magistrate and Above</i>	<i>81</i>	<i>61</i>	<i>20</i>
<i>Special Magistrate</i>	<i>11</i>	<i>9</i>	<i>2</i>
Total	193*	159	34^Δ

Note : * Excluding one Permanent Judge post created for a Non-Permanent Judge of the Court of Final Appeal.

For the vacancies in the High Court Masters' Office, the duties are mostly taken up by District Judges deployed under the cross-posting policy.

^ Duties of the District Court Masters' Office are all taken up by Magistrates deployed under the cross-posting policy.

Δ 13 vacancies at the Magisterial level cannot be filled for the time being mainly due to constraints arising from insufficient courtrooms.

**Court Waiting Times for Various Levels of Court in the Past Three Years
(2010 – 2012)**

	Target	2010 (Actual)	2011 (Actual)	2012 (Actual)
<i>Average Waiting Time (days)</i>				
Court of Final Appeal				
application for leave to appeal				
criminal—from notice of				
hearing to hearing	45	42	38	40
civil—from notice of hearing				
to hearing.....	35	33	30	29
substantive appeal				
criminal—from notice of				
hearing to hearing	100	101	95	93
civil—from notice of hearing				
to hearing.....	120	97	102	105
Court of Appeal of the High Court				
criminal—from setting down of a				
case to hearing	50	50	53	52
civil—from application to fix date to				
hearing	90	89	117	131
Court of First Instance of the High Court				
Criminal Fixture List—from filing				
of indictment to hearing.....	120	166	169	180
Criminal Running List—from				
setting down of a case to hearing....	90	81	79	72
Civil Fixture List—from application				
to fix date to hearing.....	180	215	231	244
Civil Running List—from setting				
down of a case to hearing	90	60	83	50
appeals from Magistrates' Courts—				
from lodging of Notice of Appeal				
to hearing.....	90	95	86	92
District Court				
criminal—from first appearance of				
defendants in District Court to				
hearing	100	128	86	62
civil—from date of listing to				
hearing	120	80	72	96

	Target	2010 (Actual)	2011 (Actual)	2012 (Actual)
Family Court				
dissolution of marriage—from setting down of a case to hearing				
Special Procedure List	35	32	33	33
Defended List (one day hearing).....	110	128	107	98
financial applications—from filing of summons to hearing.....	110-140	88	90	83
Lands Tribunal—from setting down of a case to hearing				
appeal cases.....	100	37	32	20
compensation cases	100	42	46	41
building management cases.....	100	30	35	25
tenancy cases.....	60	27	26	21
Magistrates' Courts—from plea to date of trial				
summons	50	50	54	54
charge cases—				
for defendants in custody	30-45	37	38	41
for defendants on bail.....	45-60	51	51	51
Coroner's Court—from date of listing to hearing	42	39	40	42
Labour Tribunal—				
from appointment to filing of a case...	30	22	21	25
from filing of a case to first hearing	30	24	25	25
Small Claims Tribunal—from filing of a case to first hearing.....	60	35	38	39
Obscene Articles Tribunal—				
from receipt of application to classification	5	3	3	2
from referral by a magistrate to determination	21	20	21	21