

For discussion on

18 May 1999

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

“Leapfrog” appeals to the Court of Final Appeal

Purpose

This note sets out background information relating to the proposal to provide for “leapfrog” appeals from the Court of First Instance to the Court of Final Appeal.

Background

2. Leapfrogging is a procedure which allows appeals to go directly from the Court of First Instance to the CFA, without first being heard by the Court of Appeal. The Bar Association proposed in 1995 that a procedure, similar to that available in the UK, be provided for in the Hong Kong Court of Final Appeal Bill (the CFA Bill).

3. The Bar Association’s proposal was discussed in the Bills Committee to scrutinise the CFA Bill in July 1995. The Administration at the time did not agree to the proposal. It considered it to be unwise to provide for a leapfrog procedure in respect of the CFA from the time the court was established; and that it would prefer to allow the CFA to operate, at least initially, according to the system that prevailed in respect of the Privy Council. The Administration agreed however that after the CFA had been established for a number of years and its reputation established, the possibility of introducing a leapfrog procedure could be looked at again.

Arrangement proposed by the Bar Association

4. Specifically, the Bar Association's proposal in 1995 was as follows-
 - (a) the leapfrog procedure would only apply to civil cases;
 - (b) it could apply to cases of great general or public importance where it is obvious that an appeal would eventually reach the CFA;
 - (c) leave of the CFA would be required; and
 - (d) detailed procedures would be a matter for the draftsman.

The Arrangement in the UK

5. In the U.K., there has since 1969 existed a procedure, albeit infrequently used, for leapfrogging the Court of Appeal in England so as to enable an appeal to be taken from the High Court direct to the House of Lords. The conditions which must be satisfied before such a direct appeal can be taken are that-

- (a) the trial judge has granted a certificate of satisfaction; and
- (b) the House of Lords has given leave to appeal.

6. As to (a), a trial judge can only grant a certificate if all the parties consent and the case involves a point of law of general public importance which is either -

- (1) concerned wholly or mainly with the construction of a statute or of a statutory instrument, or

- (2) is one where the trial judge is bound by a previous decision of the Court of Appeal or the House of Lords.

The granting of a certificate by the trial judge is discretionary. No appeal is possible against the granting or refusal of a certificate.

7. As to condition (b), the application for leave to appeal is determined by the House of Lords without a hearing. If leave is granted, any appeal to the Court of Appeal from the decision of the trial judge is precluded. This leapfrog procedure did not apply to cases originated from Hong Kong to the Privy Council prior to the reunification.

Recent Development

8. Recently, we understand some Members expressed a wish to revisit the issue. In view of Members' interest, the Administration is prepared to consider either the original proposal, as put forward by the Bar Association in 1995, or any revised proposal which may be put forward by Members of this Panel or the Bar Association, on the introduction of a leapfrog procedure to the CFA.

Administration Wing

Chief Secretary for Administration's Office

11 May 1999