

Chapter XX : Administration of Justice and Legal Services

20.1 At the Chairman's invitation, the Judiciary Administrator (JA), Mr Wilfred TSUI and Secretary for Justice (SJ) each highlighted the key programme areas within their respective purview for the year 2003-04 (Appendix V-18a and V-18b).

Judicial remuneration

20.2 Noting that a consultancy study on judicial remuneration had been completed, Mr Albert HO was concerned about changes to the pay structure of judicial officers and the financial implications of the study. He considered it important to uphold judicial independence and that any change to the pay structure of judicial officers should be effected by legislative and not administrative means. In reply, JA advised that the consultancy report was being considered by the Chief Justice. No resources had been set aside in 2003-04 in relation to the report. Mr Albert HO requested and JA agreed to relay his view to the Chief Justice that the results of the consultancy study be released to the public. JA would inform members of the outcome.

Resources for implementation of new services and reforms

20.3 Miss Margaret NG was concerned that new initiatives to bring about reforms in civil proceedings would be put on hold because of the need to save resources. She pointed out that judicial reforms had already been considered necessary after the setting up of the Court of Final Appeal and the change of sovereignty. She was worried that by expanding the administrative structure of the Judiciary, implementation of judicial reforms would be compromised especially when costs for new services had to be absorbed within the existing resources of the Judiciary.

20.4 JA pointed out that a report on the reform of civil proceedings was being drafted. There was no need for additional provision in this respect for 2003-04. In the case of the implementation of the Pilot Scheme for the Reform of Ancillary Relief Procedures in Matrimonial Proceedings, any additional costs incurred could be absorbed through better deployment of existing resources. JA emphasized that the provision of new services by existing staff was effected through re-engineering and reprioritisation, which should not be taken to mean that there were surplus staff. JA also clarified that there had not been any expansion in the administrative structure in the Judiciary. He would provide figures in this regard.

Chapter XX : Administration of Justice and Legal Services

20.5 Responding to Miss Margaret NG's question about the cost associated with the Technology Court, JA said that the construction and equipment cost was \$9 million. It was expected that no additional staff cost would be incurred because the existing staff could provide engineering and information technology support. Miss NG requested the Administration to provide the expenditure and cost savings in connection with the use of information technology.

20.6 In this connection, Ms Miriam LAU asked if the cost savings from the implementation of efficiency initiatives such as Mobile Summons Service System, introduction of Digital Audio Recording and Transcription System and outsourcing information technology support services, would be reflected in the level of fee and charges, such as those for transcripts of court proceedings. JA replied that most of the initiatives were targeted at enhancing efficiency and the cost savings could not be specifically quantified. Income from Government fees and charges went to the central revenue. The Administration was aware of the concern about the charge of transcripts which was fixed at \$85 per page. A review was underway and the Administration would report the outcome to the Panel on Administration of Judiciary and Legal Services in about two to three months. Miss Margaret NG requested that the Administration be represented by the Treasury when the subject was discussed by the Panel. JA undertook to provide in writing the cost savings from outsourcing information technology support services.

20.7 On public access to judgments, Mr Martin LEE asked the rationale for extending the availability of judgments of the District Court through the Internet from 1982 back to 1968 only. JA replied that this was a rolling programme. The plan was to upload all judgments onto the Internet for public access eventually.

Resource Centre for Unrepresented Litigants

20.8 Mr TAM Yiu-chung, Ms Emily LAU, Ms Miriam LAU and Mr SIN Chung-kai supported the setting up of the Resource Centre for Unrepresented Litigants. Mr TAM and Ms Emily LAU suggested that the operating hours of the Resource Centre should extend beyond normal working hours and sought information on its operation details, including its floor area, mode of operation and staff support.

Chapter XX : Administration of Justice and Legal Services

20.9 In response, JA said that the Resource Centre which would be located at the First Floor of the High Court Building would be around 1 600 square feet. Its operating hours had yet to be confirmed and the Administration would consider members' view. There would be five experienced staff including Judicial Clerks to man the Resource Centre. These staff were receiving relevant training on various civil court procedures in the High Court and the District Court. They would explain to unrepresented litigants the civil court procedures and assist them in filling forms. Given the independent role of the Judiciary, the Resource Centre would not provide legal advice to litigants. It would provide physical accommodation to the legal profession and others to facilitate litigants to access pro bono legal services provided by them.

20.10 Ms Miriam LAU enquired if the two legal professional bodies had agreed to provide pro bono legal services, which would be warmly welcomed by members of the public. JA said that the Judiciary was discussing with the two legal professional bodies and agreement had yet to be reached in this regard. In any event, the Resource Centre would help litigants to access whatever services provided by the legal profession. Miss Margaret NG remarked that the setting of the Resource Centre involved complicated issues and the matter would be discussed by the Panel on Administration of Judiciary and Legal Services in due course.

Labour Tribunal

20.11 Noting a 18% increase of cases for the Labour Tribunal in 2002 and the closure of all night courts since February 2003, Mr LEE Cheuk-yan asked if additional day courts would be set up to handle the increasing caseload to reduce the average waiting time. JA clarified that night courts were closed because they were found to be less cost-effective. Night courts operated for two hours per day and it was not uncommon that litigants had to attend more than one hearing, hence causing inconvenience to litigants. To cope with the additional workload in the Labour Tribunal, day courts had been increased from ten to 13 over the past years. The Administration would monitor the situation and set up more day courts if considered necessary.

20.12 Mr LEE Cheuk-yan observed that there had been a waste of resources of the Labour Tribunal in handling labour dispute cases in which the employers were known to be missing. He opined that instead of being handled by the Labour Tribunal, these cases should be referred directly to the Legal Aid Department in the form of application for liquidation. JA said that he shared

Chapter XX : Administration of Justice and Legal Services

Mr LEE's observation. The Judiciary however could not reject cases filed by the referred claimants. Nevertheless, he would discuss with Labour Department to minimize the number of claims filed in the Labour Tribunal involving closed-down companies.

Judgments

20.13 Miss Margaret NG was concerned about outsourcing of translation of judgments, having regard to the status and implications of judgments. She considered it inappropriate to outsource this work and sought information on the resources earmarked for translation of judgments. JA clarified that the resources earmarked were for acquisition of casebooks in Chinese on judgments frequently referred to in the courts of Hong Kong. He would provide the relevant resource figures in writing. As regards the legal status of translated judgments, the Administration had undertaken to revert to the Panel on Administration of Judiciary and Legal Services at its next regular meeting.

20.14 Following up Miss Margaret NG's question, Mr Albert HO asked the percentage of judgments which were available in both Chinese and English languages. JA said that only judgments which had significant constitutional implications and wide public interest would be available in English and Chinese. He would provide the percentage of bilingual judgments in writing.

20.15 Mr Martin LEE noted with concern that judges did not have time to write judgments. Some judgments were outstanding long after the trials had been completed. He requested that when fixing the trial dates of cases, allowance should be made for judges to complete judgments. In response, JA said that consideration had already been given to the need to write judgments in fixing the trial dates of cases. Should judges consider that they needed more time to write judgments, they could make a request to their Court Leader for consideration. As far as he knew, such requests were always acceded to.

Court Prosecutor Grade

20.16 Notwithstanding that the Department of Justice (D of J) had no plan to fill vacant posts of Court Prosecutors (CP) in 2003-04, Miss Margaret NG doubted whether this would be the case. She pointed out that the same was made by D of J in the previous year but the posts were filled eventually. In anticipation of a decrease in magistracy cases, she queried whether it was more cost-effective to recruit CP in the permanent establishment as compared with

Chapter XX : Administration of Justice and Legal Services

briefing out magistracy cases to fiat counsel. In response, SJ affirmed that court prosecutors provided a cost-effective service. SJ pointed out that the average cost of a CP grade officer conducting prosecutions at the Magistrates' court was \$3,044 per court day. This was made up of \$2,960 staff cost plus \$84 accommodation cost. However, the fees for prosecuting on general fiat was \$5,670 per court day. If all the estimated 14 300 court days to be conducted by court prosecutors in 2003 were briefed out to private council, it would cost \$81 million. This would be \$37.5 million more than the \$43.5 million cost for CP.

20.17 SJ further clarified that the estimated decrease in the number of court days undertaken by fiat counsel from 691 days to 340 days in 2003 was due to two reasons. First, the number of prosecutions in the Magistrates' Court was expected to decrease in 2003, as shown by a downward trend over the past years as follows:

<u>Year</u>	<u>Number of cases filed</u>	<u>Number of cases disposed of</u>
1999	427 060	427 087
2000	381 956	374 667
2001	341 644	339 696
2002	227 521	232 563

(up to September)

Second, 7 CPs recruited last year had completed their nine-month training and started to prosecute since January 2003. SJ stressed that a media report that outsourcing work in D of J would be cut by half was incorrect. In fact, D of J was seeking in the 2003-04 Estimates a total provision of \$228,279,000 for briefing out. This represented an increase of 3.6% over the revised estimate of \$220,325,000 for 2002-03. Miss NG requested SJ to provide the quoted figures in writing.

Deployment of resources

20.18 Noting the continued employment of Non-Civil Service Contract (NCSC) staff in the Civil Division of D of J in 2003-04, Miss Margaret NG queried the need for these posts. Director of Administration and Development, D of J (D of AD) said that it was more appropriate to employ NCSC staff to meet service needs of a time limited duration or service needs under review. There were 34 NCSC staff working in the Civil Division, including 16 Senior Government Counsel or Government Counsel and 18 supporting staff. An

Chapter XX : Administration of Justice and Legal Services

increase in the expenditure in 2003-04 was required to meet the full-year salary payment of these staff who were recruited in 2002-03 but continued to be employed during 2003-04 and also to provide for employment of additional NCSC staff in 2003-04. D of AD undertook to provide the cost involved in the employment of NCSC staff in the Civil Division in 2003-04.

20.19 Miss Margaret NG sought explanation on how resources could be saved or better deployed from transfer of posts from other departments to D of J. She quoted for example the Senior Government Counsel (SGC) post in Home Affairs Department (HAD) and 5 posts in relation to information technology in Information Technology Services Department (ITSD) transferred to D of J. D of AD advised that a SGC post was created in HAD to enhance the legal support for HAD's building management staff to implement the Building Management Ordinance (Cap.344) (BMO). For better deployment and management of counsel, it was considered appropriate to transfer the SGC post from HAD to D of J. Similarly, for more efficient management, 5 staff in ITSD currently providing services to D of J would be transferred to D of J. As this involved transfer of posts and commitment within the Government, it would be cost neutral to the Government as a whole.

20.20 Mr Albert HO expressed dissatisfaction over the transfer of the SGC post from HAD to D of J. He said that the SGC post was created in HAD after his repeated requests. The SGC had assisted liaison officers greatly in dealing with legal issues associated with the implementation of BMO. SJ advised that the SGC post was created to fulfil the pledge of the Government in the 2001 Policy Address. Since its creation, HAD staff had accumulated experience and become familiar with the procedures and regulations in respect of the BMO. SJ assured members that D of J would continue to provide legal support to HAD after the transfer of the SGC post to D of J. Mr HO reiterated his view on the need for retaining the SGC post in HAD. He requested SJ to provide information on the present workload of the SGC in HAD and advise whether any performance pledge had been made that the transfer of the SGC post would not adversely affect the implementation of the BMO.

20.21 Ms Emily LAU noted that no additional resources had been set aside to deal with cases arising from the National Security (Legislative Provisions) Ordinance. Since D of J expected that there would be few such cases, she did not see the need or the urgency for the enactment of the Ordinance. SJ replied that as the National Security (Legislative Provisions) Bill was yet to be enacted, there was no need to make provision in that regard in 2003-04. Moreover,

Chapter XX : Administration of Justice and Legal Services

Government expected that few cases would be prosecuted after the Ordinance had been enacted and the present resources in the Prosecutions Division could handle such cases, if any. Following up SJ's reply, Ms LAU enquired whether resources would be required for the implementation of the Ordinance in 2004-05. SJ said that it was inappropriate to forecast the expenditure for 2004-05 at the present stage.

20.22 Responding to the query raised by Ms Emily LAU and Mr Albert HO on the need to set up a specialized team to deal with terrorist activities, SJ clarified that the specialized team was not a new set-up but was re-organized from the existing resources committed to deal with triad and organized crimes.

Court costs awarded against Government

20.23 Mr Martin LEE noted that court costs amounting to over \$63 million had been awarded against Government in 2002-03 and enquired if D of J had conducted any post-mortem review on the reasons for failure of the 340 cases in question. SJ responded that evaluation of cases was conducted between her and the Director of Public Prosecutions and the Law Officer (Civil Law) in her regular meetings with the two Divisions. As a matter of fact, the 340 cases listed in the reply to question SJ030 represented only a small percentage of the total number of court cases pursued by D of J. Deputy Director of Public Prosecutions supplemented that there were many reasons for dismissal of appeals or acquittal of defendants. In some cases, the main witnesses did not turn up or did not testify according to the evidence given in the statements. The ultimate aim of prosecution or appeal was not to convict but to have the case prosecuted in a fair manner. Mr LEE said that the question was not whether the number of unsuccessful cases was small but that D of J must act fairly in taking every decision to prosecute. He requested D of J to review and advise in writing if any of the 340 unsuccessful cases should not have been prosecuted or appealed.

