

Chapter XIX : Administration of Justice and Legal Services

19.1 At the invitation of the Chairman, the Judiciary Administrator (JA), Mr Wilfred TSUI, and the Secretary for Justice (SJ), Ms Elsie LEUNG, each highlighted the key programme areas within their respective purviews for the year 2004-05 (Appendices V-17a and V-17b).

Judicial resources on unrepresented litigants in civil cases

19.2 Miss Margaret NG noted the increasing number of civil proceedings involving unrepresented litigants in the High Court and the District Court, and sought information on the additional time and resources taken on average to hear such cases. She also enquired about the measures to be taken by the Judiciary to fulfil the Chief Judge's pledge that the quality of justice would be maintained despite budgetary constraints.

19.3 JA responded that in order to achieve the saving targets, the Judiciary had been taking measures to maximize the productivity of courts. While such efficiency drive would likely have impact on the court waiting time, the Judiciary would closely monitor the situation to ensure the quality of justice. To better meet the challenge ahead, the Judiciary had set up the Resource Centre for Unrepresented Litigants as a new service to provide assistance on court procedures to unrepresented litigants in civil proceedings in the High Court and the District Court. The purpose was to save the courts' time in explaining rules and procedures to the unrepresented litigants, thereby expediting the court process and lowering legal costs. As regards Miss Margaret NG's enquiry about the additional court time taken to hear these cases, he said that no quantified information was available. Nonetheless, he would consult the judges and see if further information could be provided to members after the meeting.

19.4 Ms Emily LAU nonetheless considered that in view of the rising trend of civil proceedings involving unrepresented litigants, the Judiciary should collect and collate the relevant data so that an objective assessment could be made on whether the resources put into the Resource Centre were meaningfully utilized. Noting Ms LAU's suggestion, JA pointed out that the Resource Centre had only begun operation for a few months. The Judiciary would conduct a review of the operation of the Resource Centre and revert to members in due course.

Labour Tribunal

19.5 Mr LAU Chin-shek asked whether there was any sign of an increase in the caseload being handled by the Labour Tribunal in 2004-05, resulting in a revival of the prolonged waiting time for such cases. JA replied that the number of claims filed at the Tribunal in 2003 had reduced by 9% from the record high in 2002. This together with the enhancement measures taken had reduced the waiting time considerably and kept it within the target time. He undertook to provide members with the actual number as well as waiting time of claims filed at the Tribunal in the first three months of 2004 after the meeting.

Small Claims Tribunal

19.6 Ms Audrey EU noted the increasing number of cases expected to be filed with the Small Claims Tribunal in 2004-05, and expressed concern that the need to reduce operating expenditure might have prevented the Judiciary from coping with the caseload by deploying additional judges for such cases. She noted that the proposed measures to tackle this increase, such as the construction of additional meeting rooms, enhancement of computer system and training for Tribunal Officers and frontline staff, were only peripheral improvements.

19.7 JA explained that as the Tribunal had no control over the number of claims to be filed each year, the Judiciary could only strive to ensure the efficient deployment of existing resources to prepare itself for any upsurge in caseload. Based on feedback from the staff concerned, the Judiciary would seek to implement a series of measures to improve the work processes of various pre-hearing tasks so that court time and facilities could be more efficiently used for hearing the claims. He assured members that the Judiciary would closely monitor the situation and consider deploying additional judges to the Small Claims Tribunal if and when necessary.

Court costs of civil proceedings brought against the Government

19.8 Ms Audrey EU referred to the relatively small amounts of \$423,550 and \$774,275 that were respectively paid and recovered by the Government as court costs of the 2 041 civil cases that were brought against the Government in 2003-04, and sought clarification on what the court costs entailed.

19.9 SJ explained that while it was not appropriate to generalize, the said civil proceedings were mostly relatively simple cases such as rating/Government appeal and tax cases. Some cases involved unrepresented litigants or were withdrawn subsequently. Hence, the court costs were on the low side. In this respect, the Director of Administration and Development (D of AD), the Department of Justice (D of J), clarified that civil cases brought by and against the Government did not necessarily reach the trial stage in the same year, not to say having the court costs settled in the same year. The amount of \$423,550 represented the court costs paid by the Government in respect of those cases which were brought against the Government in 2003-04 and with court costs settled in the same year. The briefing out expenses paid by the Department were separately accounted for under “other charges”.

Deployment of resources

19.10 In reply to Mr TAM Yiu-chung, JA advised that the 141 posts to be deleted in the Judiciary were mostly clerical and other supporting posts of the designated grades under the Second Voluntary Retirement (VR) Scheme. The release of VR takers was not expected to have much impact on the operation of the Judiciary.

19.11 In view of the Standing Committee of the National People’s Congress (NPCSC)’s recent decision to contemplate interpretation of the relevant provisions of the Basic Law (BL), Mr Martin LEE asked whether the Judiciary and D of J would cut down on their financial provision sought for 2004-05 as the number of cases to be handled in relation to BL should be reduced substantially. He further remarked that the Administration should not support the NPCSC’s move as it would upset the planned deployment of resources for the administration of justice and legal administration in 2004-05.

19.12 SJ considered the question premature as NPCSC had yet to make its interpretation. Nonetheless, she said that it was not expected that NPCSC would often exercise its power to interpret BL. Given that only a small number of cases handled by D of J were in relation to BL, it should not have any implication on the resource requirement of D of J. JA also said that most of the cases heard by the courts were not related to BL. In determining the financial provision to be sought each year, careful consideration would be given to the anticipated caseload.

Basic Law

19.13 Mr Albert HO asked whether additional resources would be required to review the focus and content of the Government's work in relation to the promotion of BL so as to increase public awareness of the "legislative intention" and "principles" of various BL provisions which came into light during recent discussions on the constitutional development in Hong Kong.

19.14 In response, the Solicitor General said that over the years, the Government had been promoting BL through civic education, school education, training for civil servants and general publicity in the form of Announcements of Public Interest. SJ supplemented that various policy bureaux were also involved in the promotion of BL. D of J would mainly be responsible for providing the basic materials of the publicity programmes as well as organizing seminars on BL. In this respect, the Basic Law Promotion Steering Committee comprising both official and non-official members would provide the necessary steer on the overall programme and strategy for promoting BL, and provide an organizational focus for co-ordinating the efforts of various parties concerned.

Court Prosecutor Grade

19.15 Miss Margaret NG reiterated her query about the cost-effectiveness of recruiting and maintaining Court Prosecutors (CP) in the permanent establishment as compared with briefing out magistracy cases to fiat counsel when the number of prosecution cases in the Magistrates' Court was declining in recent years. Noting the sharp decrease in the number of court days undertaken by fiat counsel in the Magistrates' Court in place of CP from 691 in 2002 to 78 in 2003, Miss NG was concerned that this had deviated from the established policy of D of J to brief out a certain proportion of magistracy cases to junior barristers and solicitors to provide them with some exposure to criminal prosecution work at summary level. She was worried about the far-reaching consequences this near monopoly of prosecution work in the Magistrates' Court by CP would have on the standard of prosecutions in Hong Kong.

19.16 In response, the Deputy Director of Public Prosecutions said that D of J was committed to providing efficient and effective legal services to the Government. The Administration's view was that the CP system was indeed achieving the necessary high standard of service and was considerably more cost-effective than briefing out to barristers or solicitors in the private sector. He

further explained that the significant reduction in the number of court days undertaken by fiat counsel in 2003 was mainly because the seven CP recruited in 2002 had completed their training and they began taking up prosecution cases in the Magistrates' Court in January 2003 (one of them had subsequently resigned in September 2003). In 2004-05, it was envisaged that more prosecution cases in the Magistrates' Court would be assigned to fiat counsel.

19.17 In this respect, SJ said that D of J had recently received a proposal from the Hong Kong Bar Association in relation to the training of young counsel in private practice. While D of J's function was not to train new counsel as such, she said that the department would actively consider the proposal and explore ways to provide more opportunities to new counsel. She also said that at this stage, D of J had no further plans to recruit CP in the foreseeable future.

Law drafting

19.18 Ms Emily LAU noted that notwithstanding the anticipated reduction in workload notably in the number of bills to be gazetted, the resource provision for the Law Drafting Division (LDD) of D of J in 2004-05 was more or less the same as the preceding year. Relaying her concern about the need to maintain a high standard of law drafting, including the timely preparation of Committee Stage amendments (CSAs) to bills, Ms LAU enquired how the surplus resources could be better utilized to seek further improvements.

19.19 SJ responded that fewer bills were expected to be gazetted in 2004-05 as it was the final session of the second term of the Legislative Council. As far as resource allocation was concerned, D of AD said that during such short-term fluctuation of workload, the department would ensure the efficient use of staffing resources through temporary re-deployment between the legal divisions. There was a Mentor-mentee Scheme implemented in LDD to enable junior officers to learn from more-experienced law drafters.

19.20 Addressing Ms Emily LAU's concern about the standard of law drafting, SJ said that both policy and technical aspects were involved in the development and preparation of legislative instruments. As regards the preparation of CSAs, she explained that in some cases, policy issues would arise during the detailed scrutiny of a bill by the Legislative Council. LDD could only proceed with the drafting of the relevant CSAs after such policy issues were resolved by the responsible policy bureau. While welcoming any suggestions

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from members on areas where further improvements could be sought, she would also monitor the situation to ensure that CSAs were promptly prepared for members' consideration.