



郭榮鏗立法會議員辦事處
Legislative Council Office of the Hon. Dennis Kwok

By Fax: 2840 0269

Dr Hon Priscilla LEUNG Mei-fun
Chairman of the Panel on Administration of Justice and Legal
Services
Legislative Council

20 March 2020

Dear Chairman,

Technology for the Judiciary

As the representative of the legal sector, I have received a substantial amount of comments from the profession on their disappointment with the way the Judiciary is closed down during Covid-19. Other than the lack of transparency and certainty with the arrangement during the General Adjourned Period ("GAP") and how the backlog of cases is to be handled, there is also disappointment on how the Judiciary is lagging behind in terms of employing technology that would improve the administration of justice and minimise disruption to court operation in epidemics or forced closure for other reason. I enclose herewith a newspaper article written by a solicitor on this issue for the Panel's consideration.

It is submitted that the Panel should invite submissions on the need and expectations on technological advancement in the judicial process, so as to inform the sufficiency or insufficiency of the Court Proceedings (Electronic Technology) Bill, especially in view of the recent experience of the GAP, and to urge for timely action should further policy or law making be necessary.

Yours sincerely,

Dennis Kwok
Deputy Chairman

Coronavirus closes Hong Kong courts, and reveals their neglect of technology

FP hongkongfp.com/2020/03/01/coronavirus-closes-hong-kong-courts-reveals-neglect-technology/

Guest Contributor

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By Janet Pang

As tens of thousands of corporate lawyers and civil servants work from home while the Covid-19 epidemic hits Hong Kong, the Hong Kong Judiciary is a rare branch of government which has not exploited technological advances, with a significant backlog of cases and applications piling up.

Barristers and solicitors have been sitting around wondering when they will have to go to court and which case they should prepare for, whilst anxiously waiting for announcements by the Judiciary. Without compromising the rule of law, access to justice or fairness, the legal sector – particularly the Judiciary – should think further about their arrangements for combating the coronavirus.

The need for the Judiciary's own epidemic plan and strategy

Many have called for the Judiciary to provide greater transparency in their policies, decisions and details regarding the recent closure of courts. What were the factors and criteria to be considered in imposing court closure? Was the Judiciary influenced by the Administration's decision to impose work from home measures, or the rapid rise of the number of confirmed coronavirus cases? We do not know.

The Bar Association and the Law Society have both expressed concern about the delay in announcement and openness of the court arrangements. With the newest lengthy announcement made by the Judiciary on possible court resumption starting from March 2, it is still not very clear what the arrangements will be.

Perhaps the underlying issue of insufficient transparency stems from the lack of guidelines and strategies for epidemic emergency planning by the Judiciary. In contrast, some US courts came up with contingency plans for court operation during epidemics a decade ago, after the SARS and avian flu outbreaks.

In balancing the likely restriction of public access during a pandemic with the need for open justice, the epidemic preparedness plan would consider employing technology such as televised court proceedings, public access to computerised information systems, and simultaneous court transcription to provide participants and the public with access to court proceedings.

Although not seen in the Hong Kong context yet, the court should also be prepared for cases related to *habeas corpus* and quarantine orders during a time of epidemic. The court must also have basic ideas as to the conditions warranting court closure instead of simply following the practice of the administration, especially as the administration's decision to resume daily office operation may be motivated by political considerations.

It is crucial for the Judiciary to come up with its own plans and guidelines to ensure perception of independence. A proper policy in place will also provide greater certainty to court operations during times of stress, as the practices in the past few weeks have undermined certainty of the legal system, an important pillar of the rule of law.

E-filing and limited services

One of the most troubling issues is that numerous court applications cannot be filed when the Registry is closed. Many lawyers have missed the opportunities to make important applications for their clients, such as applying for default judgment when the other side does not respond to a legal suit.

Some of them may also risk missing a deadline for filing applications, as the Court Registry has been closed for almost a month. Why did the Judiciary not opt to provide limited service of its Registry to ensure minimal and necessary operation of the justice system?

A makeshift measure could be that the Court Registry is to open with limited service. Lawyers and applicants can still file their applications or take out summons by depositing physical copies of documents at the Court Registry. They can email the court the same.

This ad hoc measure would not violate the existing rules which require physical filing with the Registry but judicial staffers and judges can make reference to the electronic copies so as to reduce the risk of spreading disease through physical contact. There is perhaps no perfect solution during a time of epidemic but the courts need to think further and come up with more flexible ways to deal with the situation.

Hong Kong's long-term competitor, Singapore, implemented an e-filing system as early as the early 2000s, whilst Hong Kong only began thinking of such in 2003. The use of technology by the Hong Kong Judiciary is lagging tremendously.

As the Court Proceedings (Electronic Technology) Bill is on its way, the judiciary and the legal profession must take every opportunity to ensure that they can take the advantage of technological advances in accordance with principles of the rule of law when the bill is dealt with at the legislature.

Dealing with backlogs

It is expected that the courts will be swarmed with the backlog of applications and cases accumulated during court closure. It is understood the courts will adopt a staggered approach when they reopen, so that cases first taken out will be first dealt with. Yet, we do not know how long closure will last.

We could also expect long queues outside the courts on the first few days after reopening, when legal clerks rush to lodge application documents. This would ironically defeat the purpose of court closure, to control the flow of people. The Judiciary must devise proper arrangements to deal with the expected influx of people making court applications, such as arranging time slots for filing etc.

So far, it has expressed its intention to arrange for court registries be opened in batches but the details aren't released yet. Our previous suggestion that the court should consider providing limited service during closure to prevent a future influx would solve this problem.

It may be unfortunate that the Hong Kong Judiciary has faced an unprecedented workload due to the anti-Extradition Bill protests, followed by the coronavirus outbreak.

Yet, some of the consequences were avoidable. The forced closure of the courts during Covid-19 has revealed how archaic the existing legal system is, creating numerous hurdles where court operations could benefit from technology. The Judiciary should take this opportunity to consider long-term changes that would improve the administration of justice and minimise disruption to court operation in epidemics.

Janet Pang is a solicitor in Hong Kong and a member of Civic Party.