

立法會
Legislative Council

LC Paper No. ESC 37/20-21

(These minutes have been
seen by the Administration)

Ref : CB1/F/3/1

Establishment Subcommittee of the Finance Committee

**Minutes of the 3rd meeting
held in Conference Room 1 of Legislative Council Complex
on Wednesday, 17 February 2021 at 9:00 am**

Members present:

Hon Mrs Regina IP LAU Suk-yee, GBS, JP (Chairman)
Hon YIU Si-wing, BBS (Deputy Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon Steven HO Chun-yin, BBS
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Jimmy NG Wing-ka, BBS, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon YUNG Hoi-yan, JP
Dr Hon Pierre CHAN
Hon CHAN Chun-ying, JP
Hon Tony TSE Wai-chuen, BBS, JP

Members absent:

Hon WONG Kwok-kin, SBS, JP
Hon CHUNG Kwok-pan
Dr Hon Junius HO Kwan-yiu, JP

Public Officers attending:

| | |
|--|---|
| Mr Raistlin LAU Chun, JP | Deputy Secretary for Financial Services and the Treasury (Treasury) 1 |
| Mrs Angelina CHEUNG FUNG Wing-ping, JP | Deputy Secretary for the Civil Service 1 |
| Ms Esther LEUNG Yuet-yin, JP | Judiciary Administrator |
| Ms Wendy CHEUNG Shuk-ting | Deputy Judiciary Administrator (Operations) |
| Miss Winnie WONG Ming-wai | Assistant Judiciary Administrator (Development)1 |
| Mr Jock TAM Wai-yuen | Assistant Judiciary Administrator (Corporate Services) |
| Mr Francis CHENG Ka-man | Principal Executive Officer (Project Planning and Accommodation) Judiciary |

Clerk in attendance:

| | |
|-----------------|------------------------------|
| Ms Connie SZETO | Chief Council Secretary (1)4 |
|-----------------|------------------------------|

Staff in attendance:

| | |
|-----------------|-----------------------------------|
| Miss Judy YEE | Council Secretary (1)4 |
| Ms Alice CHEUNG | Senior Legislative Assistant (1)1 |
| Ms Sharon CHAN | Legislative Assistant (1)4 |
| Ms Haley CHEUNG | Legislative Assistant (1)10 |

Action

The Chairman drew members' attention to the information paper ECI(2020-21)9, which set out the latest changes in the directorate establishment approved since 2002 and the changes to the directorate establishment in relation to the one item on the agenda. She then reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP"), they should disclose the nature of any direct or indirect pecuniary interest relating to the item under discussion at the meeting before they spoke on the item. She also drew members' attention to RoP 84 on voting in case of direct pecuniary interest.

Action

EC(2020-21)8

Proposed creation of one permanent judicial post of Justice of Appeal of the Court of Appeal of the High Court (JSPS 17) in the Judiciary with immediate effect upon approval by the Finance Committee to strengthen the judicial establishment at that level of court; retention of one supernumerary civil service post of Administrative Officer Staff Grade C (D2) for five years from 1 February 2022 to provide directorate support to the Planning and Quality Division of the Judiciary Administration; and creation of one supernumerary civil service post of Principal Executive Officer (D1) for five years with immediate effect upon approval by the Finance Committee to provide directorate support to the Accommodation Section of the Planning and Quality Division of the Judiciary Administration

2. The Chairman remarked that the staffing proposal was to create one permanent judicial post of Justice of Appeal of the Court of Appeal of the High Court ("JA") (JSPS 17) with immediate effect upon approval by the Finance Committee ("FC") to strengthen the judicial establishment at that level of court; retain one supernumerary civil service post of Administrative Officer Staff Grade C (D2), designated as Assistant Judiciary Administrator (Planning and Quality) ("AJA(PQ)"), for five years from 1 February 2022 to provide directorate support to the Planning and Quality Division ("PQ Division") of the Judiciary Administration ("Jud Adm"); and create one supernumerary post of Principal Executive Officer ("PEO") (D1), to be designated as Assistant Judiciary Administrator (Accommodation) ("AJA(Accom)"), for five years with immediate effect upon approval by the FC to provide directorate support to the Accommodation Section of the PQ Division of the Jud Adm.

3. The Chairman remarked that the Panel on Administration of Justice and Legal Services ("the Panel") had discussed the proposals for creation of one permanent judicial post of JA and one PEO post (i.e. AJA(Accom)) at its meeting on 25 May 2020. During the discussion of the proposed creation of the JA post, some members considered that the mere creation of the proposed JA post per se would not be able to cope with the increasing workload of the Court of Appeal ("CA"). Those members urged the Judiciary to prudently review its establishment and other resources with a view to formulating comprehensive measures to clear the backlog of outstanding cases expeditiously. Some other members requested the Judiciary to provide information on the total number of outstanding civil

Action

appeals (including appeals in relation to non-refoulement claims) as at the end of 2019. The relevant supplementary information had been circulated to members for reference vide LC Paper No. CB(4)448/20-21(01). Regarding the proposal of creating the AJA(Accom) post, some members were concerned about the main duties and responsibilities of the post, and they hoped that the post would help Jud Adm to enhance court security through various means, including application of advanced technology in a more proactive manner. The Panel supported submission of the proposals for creation of the two posts to the Establishment Subcommittee ("ESC") for consideration.

4. Regarding the proposal to retain the supernumerary AJA(PQ) post at the Jud Adm for five years, the Panel had discussed a proposal to make the post permanent at its meeting on 2 November 2020. At the meeting, members requested the Judiciary to provide supplementary information for the Panel's further consideration. The Judiciary subsequently submitted a paper providing the supplementary information requested by the Panel. Members considered the paper at the Panel meeting on 23 November 2020 and did not raise any views.

Deliberations

Proposed creation of the permanent judicial post of Justice of Appeal of the Court of Appeal of the High Court

5. Ms Starry LEE asked, if the proposed creation of the permanent judicial post of JA was approved, how, in the view of the Judiciary, CA could increase its work efficiency.

6. Ir Dr LO Wai-kwok expressed support for the proposed creation of a permanent judicial post of JA. He enquired about the reasons leading to the upsurge in the number of civil appeals filed in relation to non-refoulement claims in recent years (which rose sharply from one case in 2016 to 350 in 2019), and the current numbers of outstanding non-refoulement claims at the Court of First Instance ("CFI"), CA and the Court of Final Appeal ("CFA"). Mr Tony TSE expressed similar concerns and enquired about the measures in place to prevent abuse of the relevant procedures.

7. Mr YIU Si-wing noted that the Immigration (Amendment) Bill 2020, currently under scrutiny by the Legislative Council ("LegCo"), sought to, among other things, improve the screening procedures for non-refoulement claims. Subject to the passage of the Bill, he asked how, in the view of the Judiciary, the efficiency in handling non-refoulement claims could be enhanced, and how it would affect the overall workload of

Action

CA. Furthermore, he expressed concern about the Judiciary's measures to address the workload of CA arising from the sharp increase of unrepresented litigants in criminal and civil cases in recent years.

8. Ms Elizabeth QUAT asked, in addition to creating the permanent judicial post of JA, whether other measures, such as establishing a dedicated court for handling non-refoulement claims, would be considered, with a view to increasing the efficiency in handling relevant cases.

9. Mr SHIU Ka-fai asked about the waiting time for cases handled by CA. He opined that strengthening the establishment of JA could expedite the handling of non-refoulement claims, and asked whether consideration had been given to creating the proposed judicial post on a supernumerary basis to reduce public expenditure over the long run.

10. Mr WONG Ting-kwong said that he supported the creation of the judicial post of JA in principle with a view to easing CA's heavy workload. He considered it more important to ensure the quality of the trial by the judges, and suggested that the quality of the judgements should be given weighted consideration in the appointment of judges.

11. The Chairman was of the view that in recent years, CFI had been overly lax with regard to the grant of leave for judicial review ("JR"). In certain cases, leave was granted to applications filed by persons not affected by relevant ordinance, resulting in consistent heavy caseload of CA (especially those in relation to non-refoulement claims). She enquired whether the Judiciary had any plans to review the procedures of application for JR, including the eligibility of applicants and fees, with a view to preventing abuses of the JR system. The Chairman also enquired whether the Judiciary had considered engaging more Judicial Associates to relieve the workload of judges through provision of judicial researches, and provide training opportunities for persons with legal qualifications.

12. Ms YUNG Hoi-yan expressed support for creating the JA post. She had similar concerns regarding the manpower of Judicial Associates. She remarked that given the backlog of outstanding cases at CA, especially those relating to non-refoulement claims, the Judiciary should engage more Judicial Associates to help judges in conducting relevant judicial researches and collection of information.

13. In response, Judiciary Administrator remarked that at present, JR applicants should file leave applications for JR to the CFI of the High Court ("HC") under the High Court Ordinance (Cap. 4) for leave to be granted. If an application for leave for JR was refused, the applicant could appeal against the CFI's order to CA as provided for in the ordinance. If an

Action

appeal was refused by CA, an application for leave to appeal might be filed with CA or CFA, and if granted, the applicant might lodge an appeal with CFA.

14. Judiciary Administrator said that the Administration conducted a comprehensive review on the strategies for handling non-refoulement claims in 2016, and the Immigration Department had subsequently expedited the screening of such cases which led to an upsurge of outstanding non-refoulement claims at CFI and CA. As at end of September 2020, CFI had a backlog of about 6 500 outstanding non-refoulement claims in total, while CA and CFA each had a backlog of around 350 outstanding claims. Judiciary Administrator added that the upsurge in the number of application for leave for JR filed with CFI was mainly attributable to the number of non-refoulement claims, while no significant upward trend was observed in the number of other application for leave for JR, whose number maintained at around 160 cases annually. As at November 2020, leave was granted to only around 6% of cases filed during 2016 to 2019; and of cases involving non-refoulement claims, only less than 5%. Judiciary Administrator said that she would convey the Chairman's views on the system for application for JR to the Judiciary for careful consideration.

15. On easing the workload of CA, Judiciary Administrator advised that the Judiciary had drawn judicial manpower from CFI by deploying CFI Judges to sit as additional judges of CA, conducted open recruitment for judges and engaged more deputy judges with a view to providing relief to the judicial manpower constraint at CA. Following the implementation of legislative amendments to the High Court Ordinance (Cap. 4) to streamline court procedures and facilitate processing of cases in CA, including JR cases relating to non-refoulement claims, the Judiciary would flexibly deploy judicial resources of HC to raise CA's efficacy in handling cases. Furthermore, subject to improvement being made to the current judicial manpower shortage, judicial officers would be deployed, where appropriate, to handle non-refoulement claims, which would be tantamount to provision of dedicated manpower for handling such cases. Regarding appeals filed by unrepresented litigants, Judiciary had been providing assistance to such litigants where practicable; and with wider use of information technology by the court, appropriate assistance could be provided to such litigants. For criminal and civil appeals filed with CA, the current waiting times for such cases were around 50 odd days and 90 days respectively. Due to the Coronavirus Disease 2019 epidemic, court waiting times in 2020 differed slightly than previous years. The Judiciary was compiling the latest information on the time required for listing of court cases, the details of which would be set out in the Controlling Officer's Report in the 2021-2022 Budget to be published in due course.

Action

16. Judiciary Administrator pointed out that the workload of CA (including criminal and civil appeals) had been consistently heavy in recent years, and a number of those cases involved complex legal principles, for which deployment of additional time and resources was necessary. In addition to judicial duties, it was also the duties of JA to oversee other areas of work including the development of mediation, remote hearings, review of family and matrimonial procedure, and criminal procedure, and the operation of the Judicial Institute, etc. This being the case, it was imperative for creation of a permanent judicial post of JA to handle the increasingly heavy administrative duties.

17. On the appointment of judges and judicial officers, Judiciary Administrator remarked that all judges and judicial officers in Hong Kong were appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission in accordance with the Basic Law, relevant legislation and established procedures of the Judiciary. This appointment system had been working effectively and strictly in accordance with the law. The Basic Law stipulated that judges of Hong Kong should be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions. Only serving judges and judicial officers with adequate judicial experience would be considered for JA posts. After consulting the Chief Justice and the respective Court Leaders, the Judiciary would make internal recommendations on the candidate to fill a judicial post.

18. On the vacancies of judges and judicial officers and matters relating to recruitment of Judicial Associates, Judiciary Administrator responded that the Judiciary would conduct open recruitment to fill the judicial posts at various ranks. At the same time, the Judiciary would also expand the Judicial Associate scheme to offer both full-time and part-time Judicial Associate posts. The Judiciary expected that the scheme could attract more judicial talents to apply for relevant posts for providing legal and professional support for judges and judicial officers.

19. At the further request of Mr Tony TSE, Judiciary Administrator undertook to provide supplementary information after the meeting to explain the measures implemented or planned to be implemented to help ease the workload of CA of HC, such as streamlining court procedures, preventing the abuse of the appeal system, etc.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members on 9 March 2021 vide LC Paper No. ESC30/20-21(01).)

Action

Proposed retention of the supernumerary Assistant Judiciary Administrator (Planning and Quality) post

20. Mr YIU Si-wing pointed out that courts in Hong Kong were lagging behind courts in other jurisdictions in terms of application of information technology ("IT"). He asked how retention of the supernumerary AJA(PQ) post could promote more extensive use of IT in court operations and expedite the relevant legislative work.

21. Mr Holden CHOW asked whether the Judiciary had drawn up a timetable for implementation of remote hearings in courts.

22. Ms YUNG Hoi-yan expressed concerns about the sluggish implementation of the Information Technology Strategy Plan ("ITSP") in the Judiciary despite the fact that the supernumerary AJA(PQ) post proposed for retention had been extended for three years in 2019, as well as the ineffective application of other IT measures such as remote hearings and paperless judicial procedures. She enquired about what new measures would be in place to speed up the application of IT in court operations.

23. Ms Elizabeth QUAT expressed support for wider application of IT in judicial business. She enquired about the Judiciary's expectation on enhancing efficiency through IT application; and the main duties of the PQ Division to which AJA(PQ) belonged, and whether such duties included studies on judicial reform, establishing a sentencing committee and reviewing the existing mechanism for lodging complaints against judges.

24. Ms Starry LEE was of the view that the Judiciary should take forward the application of IT at various levels of courts as soon as possible. She asked about the efforts made by the supernumerary AJA(PQ) post holder in this regard in recent years, the effectiveness of such efforts, and details of liaison work with LegCo.

25. Mr CHAN Chun-ying opined that the duties of the supernumerary AJA(PQ) post holder for co-ordination on matters having an interface with the Government and LegCo might overlap with that of the Development Division of Jud Adm. He asked whether consideration would be given to entrusting the duty to a single division for enhanced operational efficiency.

26. Mr WONG Ting-kwong queried if there was an urgency to retain the supernumerary AJA(PQ) post. He opined that amid the current economic downturn in Hong Kong, the Administration should be prudent in using public monies and consideration should be given to internal manpower redeployment for sharing out relevant duties.

Action

27. In response, Judiciary Administrator remarked that the newly established PQ Division was mainly responsible for coordinating and integrating the services provided by the Judiciary and exploring ways to improve service quality and efficiency. In addition to IT development for the Judiciary, the main duties of the PQ Division also included implementation of two mega accommodation projects (i.e. reprovisioning of HC and the District Court ("DC")).

28. Judiciary Administrator advised that the supernumerary AJA(PQ) post was originally under the purview of the Development Division. Upon the establishment of the PQ Division, the supernumerary post holder would be deployed to the PQ Division to discharge main duties such as coordination and implementation work of matters relating to IT application at the Judiciary, as well as formulation of long-term planning on the administrative measures of the Judiciary, etc. Originally, the Judiciary proposed making the supernumerary AJA(PQ) post permanent, but after consulting the Panel, the proposal had been amended to the retention of the post on a supernumerary basis for five years. The AJA(PQ) post holder would focus on handling the legislative amendment exercises relating to IT application at the Judiciary, including the subsidiary legislation of the Court Proceedings (Electronic Technology) Ordinance (Cap. 638) and the legislative exercise on the use of remote hearings in criminal proceedings.

29. Judiciary Administrator advised that Phase 1 of ITSP was scheduled for completion by 2019 in the context of progressive implementation of electronic court documentation. The Director of Audit conducted a review on ITSP and published a relevant audit report in October 2019. The audit report pointed out that relevant work of ITSP encountered delays brought about by various difficulties, which mainly included issues relating to software upgrades, manpower shortage, purchase of IT infrastructure and stakeholder engagement. Among the recommendations made in the audit report, the Jud Adm was asked to enhance monitoring over various projects under Phase 1 of ITSP and to bring the remaining projects to completion expeditiously. The Judiciary had subsequently reviewed the supervisory structure of ITSP and made improvements in various aspects. Holder of the supernumerary AJA(PQ) post would be deployed to monitor the progress of various projects and provide effective support to relevant teams, with a view to bringing the remaining projects to completion expeditiously. Subject to enactment of the relevant subsidiary legislation, the Judiciary would implement the comprehensive e-filing of court documents in civil proceedings at the DC level in phases starting from the fourth quarter of 2021. In addition, since December 2020, the Judiciary had been piloting and promoting the use of e-bundles at court hearings to enhance the electronization of judicial business.

Action

30. Judiciary Administrator remarked that from April 2020 to January 2021, remote hearings for business in civil courts were implemented in the Judiciary in three phases, with a browsing option for videoconferencing ("VC") facilities in the third phase, providing court users a relatively inexpensive way to connect with court facilities for hearings through VC. The initiative allowed judicial proceedings to be completed without the parties having to be present in the court in person; it also enhanced the efficiency of court proceedings. Subject to completion of the relevant legislative amendments, the Judiciary looked forward to using remote hearings in criminal cases where appropriate.

31. Regarding liaison between the Judiciary and LegCo, Judiciary Administrator responded that that used to be the responsibilities of the Development Division. With the establishment of the PQ Division, the supernumerary AJA(PQ) post holder would be responsible for assisting the Deputy Judiciary Administrator (Planning and Quality) in coordination of the relevant work. In addition to communicating with LegCo Members, the supernumerary post holder would also be responsible for liaising with LegCo Secretariat on matters relating to the arrangements of Judiciary's attendance at different LegCo meetings and preparation of relevant papers. The Judiciary was also reviewing the mechanism for lodging complaints against judges and would listen to the views of LegCo Members and various sectors to enhance the transparency of the mechanism.

Proposed creation of a supernumerary Assistant Judiciary Administrator (Accommodation) post

32. Mr CHAN Chun-ying pointed out that a supernumerary post of PEO (Project Planning and Accommodation) ("PEO(P&A)") was created in February 2016 to spearhead the reprovisioning of HC and DC. The post had lapsed in April 2020. He asked why it was necessary to create a supernumerary AJA(Accom) post to undertake similar duties, whether the Judiciary had considered assigning the duties to officers in the lower ranks, and whether it would consider outsourcing the court security work for saving manpower.

33. Mr Holden CHOW pointed out that the two projects of relocating HC and DC were at the initial planning stage and the stage of tender preparation respectively. He was concerned whether it was imperative to create a supernumerary AJA(Accom) post now to handle the two projects. He was also concerned that recently, a large number of people would attend the courts when cases relating to social incidents were heard, which might bring pressure to the judges adjudicating such cases and affect the judicial procedures. He asked about the corresponding measures adopted by the

Action

Judiciary. Furthermore, he suggested that consideration should be given to reforming the judicial system, for example, establishing a sentencing committee and improving the mechanism for lodging complaints against judges.

34. Ms YUNG Hoi-yan noted that the main duties of the proposed supernumerary AJA(Accom) post included formulating and implementing a long-term accommodation strategy for the Judiciary. Given that there were only 12 premises under the Judiciary, she was concerned whether it was necessary to create a supernumerary directorate post to steer and handle such duties.

35. Ms Elizabeth QUAT opined that there was no pressing need to create the AJA(Accom) post at present and enquired about the strategies and measures in place to maintain court security and the impartiality of the courts.

36. Mr YIU Si-wing asked about the details of the current arrangements on court security, including the ratio of judicial officers and security officers. He asked whether consideration would be given to outsourcing court security work in a progressive manner to reduce the public expenditure in this area.

37. Mr WONG Ting-kwong reiterated that given the current economic downturn in Hong Kong, public monies should be used in a prudent manner and consideration should be given to sharing out relevant responsibilities through internal re-deployment, instead of creating the supernumerary AJA(Accom) post.

38. In response, Judiciary Administrator remarked that after the supernumerary PEO(P&A) post had lapsed in April 2020, the Judiciary addressed operational needs temporarily through internal deployment and secondment of directorate officers from the Civil Service Bureau. Given that the Judiciary would continue to implement expansion of all levels of courts in the short, medium and long run over the next five years, which entailed a large volume of preliminary planning work (especially the reprovisioning of HC and DC), the relevant planning work had to be completed in a timely manner in spite of the completion dates still being quite far away. This being the case, support from a dedicated directorate post was much needed, as the current arrangement of having other directorate officers seconded to the Judiciary was less than satisfactory. The Judiciary had proposed to make the supernumerary PEO post permanent, but after consulting the Panel, the proposal was changed to creating a supernumerary post for a period of five years.

Action

39. Regarding accommodation for the courts, Judiciary Administrator remarked that the reprovisioning of HC and DC was part of the Judiciary's long-term accommodation strategy to meet the operational needs in the coming decades. The Judiciary also conducted a review on the long-term need for new Magistrates' Courts in Hung Shui Kiu, Tseung Kwan O and Hong Kong Island. In addition, the former Tsuen Wan Law Courts Building would be re-commissioned by 2021 to relieve DC of the tremendous caseloads brought about by the proliferation of court cases relating to social events. To cope with the tremendous caseloads, six additional courtrooms would be constructed at HC. As such, it was imperative that the proposed supernumerary post be created in order to provide continual directorate support for the aforesaid responsibilities.

40. On issues relating to court security, Judiciary Administrator replied that security deployment had been made in light of an increase in high-profile cases at all levels of court involving a large number of people attending the courts. If disorder occurred within the precincts of a court (e.g. behaviours that caused nuisance to persons attending court for trial), security staff would intervene and take dispersal actions. These corresponding measures were in general effective and implemented smoothly. As the Judiciary had to put in place timely and appropriate crowd management and court security measures for ensuring smooth, orderly and safe operation of the courts, a supernumerary AJA(Accom) post was proposed to be created to provide dedicated directorate support for coordination and supervision of policies and matters relating to court security. At present, there were around 300 outsourced security officers, together with 40 to 50 security officers directly employed by the Judiciary. The number of security officers directly employed by the Judiciary and outsourced security officers would be adjusted in light of security needs with a view to maintaining the flexibility of its establishment. Judiciary Administrator advised that the Judiciary kept reminding court building users that publicity materials displayed in the office had to be lawful which did not convey a perception that the service provided carried any political position. Efforts should also be made to ensure that the perception of impartiality, independence and solemnity of the Judiciary would not be affected.

41. Mr Tony TSE requested the Judiciary to provide the following supplementary information after the meeting: (a) details of the organization and the size of establishment of the Accommodation Section of the Jud Adm; and (b) a comparison between the Accommodation Section and sections of other government policy bureaux/departments with similar functions in the terms of organization, size of establishment and security matters for which it was responsible.

Action

(*Post-meeting note:* The supplementary information provided by the Administration was circulated to members on 9 March 2021 vide LC Paper No. ESC30/20-21(01).)

Voting on the item

42. There being no further questions from members, the Chairman put the item to vote. All the members present voted in favour of this proposal. The Chairman declared that ESC agreed to recommend the item to FC for approval.

43. Mr Tony TSE requested that the item be voted on separately at the relevant FC meeting. Mr WONG Ting-kwong, Ms Starry LEE, Ms YUNG Hoi-yan and Ms Elizabeth QUAT requested that the three posts proposed to be created be voted on separately at the relevant FC meeting.

44. There being no other business, the meeting ended at 10:18 am.

Council Business Division 1
Legislative Council Secretariat
18 March 2021