



司法機構政務處

Judiciary Administration

電話 Tel: 2867 2101
傳真 Fax: 2121 1895
本函檔號 Our Ref.:
來函檔號 Your Ref.: JUD SS 5-30/2/8

5 March 2021

Miss Judy YEE
Clerk to the Establishment Sub-committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss YEE,

**Legislative Council Establishment Sub-committee
Follow-up to the Meeting held on 17 February 2021**

At the meeting of the Establishment Sub-committee on 17 February 2021, Members requested for supplementary information in relation to the proposed creation of one permanent judicial post, the proposed retention of one supernumerary directorate civil service post and the proposed creation of one supernumerary directorate civil service post in the Judiciary viz. EC(2020-21)8. The relevant information is enclosed for Members' reference please.

Yours sincerely,

(Jock Tam)
for Judiciary Administrator

Encls.

c.c.: Financial Services and the Treasury Bureau

**Legislative Council Establishment Subcommittee
Follow-up to meeting on 17 February 2021**

EC(2020-21)8

Question 1

Please supplement the measures being or planned to be implemented to help ease the workload of the Court of Appeal of the High Court, such as streamlining court procedures, preventing the abuse of the appeal system, etc.

Reply to Question (1)

Measures to help ease the workload of the Court of Appeal

To cope with the heavy and increasing workload of the Judges of the Court of Appeal of the High Court (CA), in addition to seeking the Legislative Council's approval to create one additional Justice of Appeal of the CA post, the Judiciary has been taking the following measures –

- (a) Following the implementation of legislative amendments to the High Court Ordinance (Cap. 4) to streamline court procedures and facilitate processing of cases in the CA, including judicial review (JR) cases relating to non-refoulement claims, the Judiciary would extend the use of a 2-Judge bench of the CA to determine more types of cases. The amendments have also clarified the powers of a judge of the Court of First Instance of the High Court (CFI) acting as an additional judge of the CA to dispose of cases on paper without having physically to “sit” in court where appropriate. The Judiciary will make use of such flexibility in deploying judicial resources of the High Court, thereby increasing the effective capacity of the CA in handling cases;
- (b) Paper disposal will continue to be adopted to deal with suitable cases (interlocutory matters in particular);

- (c) The Judiciary is considering how best to make use of remote hearings to expedite the court processes as appropriate, particularly when the court has to reduce its capacity due to public health or other reasons;
- (d) From November 2020, the Judiciary has been conducting a new round of recruitment exercise for Judges and Judicial Officers at different levels of courts, including the High Court, from November 2020 with a view to increasing the substantive judicial manpower to cope with the operational needs of the courts. As CFI Judges may assist in CA work, additional CFI Judges would be able to help the CA in handling its cases, including non-refoulement claims;
- (e) The Judiciary has been engaging additional temporary judicial manpower at the CFI level to expedite the processing of applications for JR. This would facilitate the release of more CFI judges to help out with handling appeal cases at the CA level on a temporary basis; and
- (f) The Judiciary has been engaging Judicial Associates to assist Judges of the CA in research and other related work of court cases. The Judiciary will gradually expand the Judicial Associate scheme to support CFI Judges as well. This will enhance the efficiency of handling of High Court cases, including non-refoulement claims.

Minimising abuses of the JR and related Appeal System

2. We note that there are concerns arising from the existing JR system, including the related appeal system. We set out below the existing situation and the proposed measures to address the concerns.

3. For JRs, section 21K of the High Court Ordinance (Cap. 4) provides that no application for JR shall be made unless the leave of the court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

4. Where leave to apply for JR is refused by the CFI or the application for JR is refused after leave to apply for JR is granted, the applicant may appeal to the CA. If the appeal is refused by the CA, an application for leave to appeal may be filed with the CA or the Court of Final Appeal (CFA), and if granted, the applicant may lodge the appeal with the CFA.

5. From 2016 to 2020, the total number of applications to CFI for leave to apply for JR increased from 228 to 2,500. The vast majority (over 90%) of the increase in the number of JR cases were from cases related to non-refoulement claims, which increased from 60 to 2,367. **As for other judicial review cases, the number has remained stable at an annual average of around 160 cases with no apparent trend of increase.**

6. The existing procedure of obtaining leave from the court as mentioned above has generally been effective in screening out applications for JR which are not reasonably arguable with a realistic prospect of success. Between 2016 and 2019, among the 3,610 cases concluded as at 10 November 2020, leave was granted in only 208 cases, i.e. about 6%. Among the 3,071 cases relating to non-refoulement claims, leave was granted in only 112 cases (about 4% of the concluded cases).

7. The courts have consistently been taking a stringent and vigilant approach in assessing the “standing” of the JR applicants where appropriate in considering whether he/she has sufficient interest in the matter before leave is granted. According to case law, Judges have to take into account a basket of factors (including but not limited to the personal interest of the applicant, absence or presence of other interested parties, merits of the case and public interest in the rule of law) before deciding whether an applicant has sufficient interest to pursue the JR. A decision made at the leave stage is often based on incomplete information (based on *ex parte* materials) and may be subject to review at the substantive hearing. Such a decision at first instance is subject to the right to appeal which is part and parcel of the right of access to court and the right of final adjudication of the CFA.

8. To further enhance the expeditious and efficient disposal of applications for JR and appeals therefrom, the Judiciary is currently consulting stakeholders on a new Practice Direction about the handling of classes of cases assigned to the Constitutional and Administrative Law List in the CFI and the CA, including applications for JR. These include the following measures –

- (a) Two Judges will be designated to take charge of the List, to cope with the increase in caseload;
- (b) The court will continue to issue specific case management directions for individual applications having regard to all relevant circumstances including but not limited to whether the JR application raises constitutional issues or points of law which are of great general or public importance; generates significant general public interest; impacts seriously on public expenditure; or requires prompt disposal;
- (c) The court may exercise tighter or closer case management control of leave applications and/or substantive applications by (i) setting procedural timetables; (ii) setting time limits for any interlocutory applications; (iii) fixing hearing dates; and (iv) giving further directions relating to the hearings;
- (d) At the conclusion of a hearing, the court will ordinarily fix a handing down date of the judgment; and
- (e) The court may, as and when appropriate, give further directions to expedite an appeal or an application for leave to appeal.

Subject to the consultation outcome, the Judiciary intends to implement the above measures as soon as possible within April 2021.

9. The Judiciary always takes a proactive approach to address pressures experienced by the judicial system. We will continue to keep in view the situation with a view to considering the need for any further refinements to the leave application procedures and criteria.

Question 2

What is the organisation and the size of establishment of the Accommodation Section of the Judiciary Administration? Please make a comparison between the Accommodation Section and sections of other government policy bureaux/departments with similar functions in the terms of organisation, size of establishment and security matters for which it is responsible.

Reply to Question (2)

The Accommodation Section of the Judiciary Administration (Jud Adm) is responsible for the formulation and implementation of accommodation strategy for the Judiciary in response to its operational challenges. These include –

- (a) planning and development of short, medium and long-term accommodation projects for addressing the shortfall of court and supporting facilities in the administration of justice;
- (b) overseeing the Judiciary's property management functions including management of Judiciary-wide contracts in cleaning, security, horticultural, electrical and mechanical services;
- (c) management of 14 Judiciary premises¹ of which four (the High Court Building (HCB), the West Kowloon Law Courts Building, the Tsuen Wan Law Courts Building (TWLCB), and supporting offices in the Queensway Government Offices are directly managed by the Accommodation Section. As the venue manager of these premises, the Accommodation Section is directly responsible for the day-to-day management, maintenance, safety and security of the premises. As for the other ten premises, the Accommodation Section is tasked with providing guidelines and support to the venue managers; and

¹ The 14 Judiciary premises comprise the Court of Final Appeal Building, the HCB, the Wanchai Law Courts Building, the Lands Tribunal, the Labour Tribunal, the Eastern Law Courts Building, the Kowloon City Law Courts Building, the Kwun Tong Law Courts Building, the West Kowloon Law Courts Building, the Fanling Law Courts Building, the Shatin Law Courts Building, the Tuen Mun Law Courts Building, the TWLCB and supporting offices on various floors in the Queensway Government Offices.

- (d) overseeing policy issues and drawing up operational arrangements on court security, crowd management of high-profile cases and anti-epidemic measures in collaboration with relevant parties.

2. The Accommodation Section is headed by a Principal Executive Officer (PEO) and is supported by 32 non-directorate posts. These non-directorate posts can be broadly organised into three functional areas –

- (a) project planning and accommodation: 13 posts of nine Executive Officer (EO), one Architect and three clerical and secretarial grades;
- (b) court security: four posts of three EO and one clerical grades; and
- (c) property management of four Judiciary premises: 15 posts of seven EO and eight clerical grades.

Comparison with Government bureaux/departments

3. Owing to the varying nature, scope, volume and complexity of operational requirements of each organisation for responsibilities relating to property management, it is not considered appropriate to make direct comparisons on the manpower required. It would be difficult to identify in Government bureaux/departments (B/Ds) a section that is entrusted with the same functions as the Accommodation Section of the Jud Adm. In particular, the work on court security and crowd management of high-profile court cases which attract intensive media and public attendance is a unique operational requirement of the Judiciary and hence not directly relevant to any Government B/Ds.

4. For illustration purpose, the Planning and Development Branch (PDB) of the Social Welfare Department is responsible for the planning, co-ordination and implementation of works projects of welfare premises, as well as the management and maintenance of welfare premises, but it does not undertake premises security and crowd management functions in the same way as the Accommodation Section of the Jud Adm does. The PDB is headed by a Senior Principal Executive Officer (D2) and has an establishment of around 60 non-directorate posts.

Need to retain the existing supernumerary PEO post in the Accommodation Section

Planning and co-ordination of court accommodation projects

5. It should be noted that the Judiciary is not proposing to create a totally new supernumerary PEO post but to re-create or retain the supernumerary post previously approved by the Finance Committee in December 2017 which lapsed in April 2020. As there is a continued operational need for this post, a supernumerary PEO post was subsequently created and held temporarily against a vacant Principal Magistrate post in April 2020. The previously approved post was created mainly for providing dedicated support on steering the site search and the planning and design strategy for two mega court relocation projects, namely the reprovisioning of the High Court (HC) and the District Court (DC) building projects. Taking into account the latest progress of these two mega projects and other short-to-medium court accommodation projects, we see an imminent need for retaining the supernumerary post to ensure the timely completion of the following time-critical tasks during the coming five years –

- (a) ***DC reprovisioning project:*** This project involves the construction of a new law courts building (LCB) at Caroline Hill Road to reprovision the DC, the Family Court and the Lands Tribunal. The project has entered the active and critical stage of consolidating essential functional requirements, conducting extensive consultation with stakeholders including the legal professional bodies and the Court Users' Committees, as well as tender preparation. Subject to funding approval of the Finance Committee, construction works are expected to start in 2022 for completion in 2027.
- (b) ***HC relocation project:*** This project involves the construction of a new HCB at Site 5 and the site south of Site 5 in the new Central Harbourfront. While the project is at the initial planning stage, the Judiciary has been working with the relevant Government B/Ds in sorting out the complex interfacing issues with infrastructural projects in the vicinity, formulating the user requirements for the new HCB and liaising with the Architectural Services Department (ArchSD) on the technical feasibility issues. The above work

requires strategic planning, detailed analyses and close liaison with stakeholders, which is essential for ensuring smooth delivery of the project.

- (c) ***TWLCB project:*** This project involves the reinstatement of four courtrooms and associated facilities at the TWLCB to meet operational needs of the court at the DC level. The additional facilities will help free up courtrooms in the DC for dealing with cases related to social events. The Judiciary is closely monitoring the progress of works. The TWLCB is expected to be commissioned in the second half of 2021.
- (d) ***HC Lower Ground Fourth Floor (LG4/F) project:*** This project involves the construction of six courtrooms and associated facilities at the HCB as part of the short-to-medium measures to address shortfall of court facilities in the HC. The Judiciary is working on interfacing issues such as temporary relocation of the LG4/F entrance so as to vacate the area for the works concerned. Construction works are expected to commence in the third quarter of 2021 for completion in phases by mid of 2024.
- (e) ***Eastern Law Courts Building (ELCB) project:*** This project involves the renovation of two courtrooms and associated facilities at the ELCB. Pre-construction studies and tender preparation are in progress. Construction works are expected to commence in the fourth quarter of 2021 for completion in early 2023.

Strategic planning and implementation of court security measures

6. From late 2019 onwards, the rapid and substantial upsurge in court cases relating to social events has brought unprecedented challenges to the Judiciary. As at end 2020, more than 1 600 cases have been brought before various levels of courts. While around 1 000 cases have been disposed, more cases are expected to come. Operational arrangements for such cases tend to be more complex, mainly because quite a number of them involve a large number of defendants, legal representatives, media and public viewers. These have inevitably been posing challenges to the Judiciary, particularly in terms of court security and crowd management.

7. To cope with the upsurge in social events cases through the optimal use of all available judicial manpower resources and facilities where appropriate, around 100 high profile cases are being heard across different levels of courts in different court premises every week ever since mid-2020, even in the face of the fluctuating public health situation where social distancing measures have been put in place. It is common to see multiple high-profile cases listed on the same day in the same court building. Taking into account the on-going and expected increase in caseload, the situation is expected to continue in the coming five years. Such hearings usually involve intensive media coverage, high public attendance (sometimes up to a few hundreds), large demand for courtroom seats, order and security issues. There have been occasions where vexatious court users are displaying unruly behavior, different groups are staging demonstrations etc. These have given rise to an increasing demand for strategic and contingency planning and oversight at the directorate level to put in place timely and appropriate crowd management and court security measures for ensuring the smooth, orderly and safe operation of the courts. Examples of such measures include introducing security screening on court premises², appropriate queuing and ticketing arrangements to ensure fair allocation of seats (for both general public and media representatives) and orderly admission of a large number of people attending court proceedings, liaising with the Police and law enforcement agencies on court security issues, and supervising over 300 security personnel in support of venue managers in maintaining order and security in 14 Judiciary premises.

8. We see a clear need for dedicated directorate support to ensure timely and appropriate adjustments to strategic planning on court security can be made as and when necessary from time to time, having regard to the following operational experience-

- (a) There were a series of security incidents in recent years. For instance, following the arson attacks on five court premises and the proliferation of public order events in the vicinity of LCBs in 2019 the Judiciary enhanced police liaison as well as physical security and fire safety measures in all court buildings;

² Security screening is now in place for the Family Court and the court floors of the HCB. We are planning to extend security screening to the West Kowloon Law Courts Building. Where necessary, case-based security screening is also performed at other law courts and other court premises on an ad hoc basis.

- (b) Arising from the prolonged COVID-19 epidemic in 2020 the Judiciary had been putting in place various preventive and social distancing measures in response to the adjustments to court operations in response to the changing public health situation. These include mandatory body temperature checks for all court users, chessboard seating arrangements in courtrooms, capacity limits and admission controls for registries and court lobbies, triage and special ticketing arrangements for registries, expanding broadcasting areas, installing protective screens and partitions in courtrooms etc.. These require prompt assessment, formulation and implementation of effective measures to meet rapid-changing circumstances.

9. Operational experience has revealed that it will not be feasible for the above responsibilities to be taken up by less senior officers owing to their heavy and complex nature, as well as the intensity of engagements required with both internal and external stakeholders at senior levels. Without the PEO, the Jud Adm will be deprived of the dedicated directorate support required for ensuring effective discharge of duties related to accommodation and court security matters. The Deputy Judiciary Administrator (Planning and Quality) will have to provide personal steer, advice and oversight on the work of non-directorate officers of the Accommodation Section, unnecessarily diverting his/her attention and focus from the policy and strategic matters of the Planning and Quality Division. Moreover, all existing directorate officers of the Jud Adm are already fully engaged in their existing schedules and initiatives. It will be practically impossible for any of them to take up the work required of the PEO post without adversely affecting the effective discharge of their respective duties.

Judiciary Administration
March 2021