

Operation of the Court of Final Appeal

Introduction

At its meeting held on 28 May 1997, the Establishment Sub-Committee endorsed the proposals contained in paper EC (97-98) 12 for the creation of 6 permanent posts for the establishment of the Court of Final Appeal. At the meeting, the Judiciary Administrator undertook to brief the LegCo Panel on Administration of Justice and Legal Services the operation of the Court of Final Appeal about 18 months after its operation, specifically on two matters: the operation of the Court and the number of cases requiring additional non-permanent judges.

Operation of the Court of Final Appeal

2. The Court of Final Appeal (CFA) was established in July 1997 to replace the Privy Council as Hong Kong's final appellate court. Accessibility to the Court is identical to that for the Privy Council with similar criteria for lodging appeals. For final judgments in civil cases involving more than HK\$1 million, there is an appeal as of right. Apart from this, an appeal can only go forward with leave. This ensures that only cases, which involve important points of law or principle or in criminal cases where grave and substantial injustice has been shown, end up in the Court of Final Appeal.

3. The Appeal Committee, which consists of the Chief Justice, CFA, and two permanent judges or three permanent judges nominated by the Chief Justice, hears the application for leave to appeal. The decision of the Appeal Committee is final and is not subject to appeal.

4. A full hearing of an appeal before the Court of Final Appeal is heard by five judges including the Chief Justice, CFA, and one non-permanent judge from Hong Kong or from another common law jurisdiction. There are at present 11 non-permanent judges from Hong Kong and 6 judges on the overseas panel. The law provides that the non-permanent judge is selected by the Chief Justice and invited by the Court. So far, non-permanent judges have been drawn from the overseas panel.

Caseload

5. By 30 June 1997, the Privy Council cleared all the appeal cases from Hong Kong and the CFA need not deal with unfinished business from the Privy Council. Since the establishment of the Court, the caseload has built up. The number of application for leave to appeal and substantive appeals lodged with the Court, together with the number of cases dealt with by the Court for the periods 1.7.1997 to 31.12.1997; 1.1.1998 to 31.12.1998 and 1.1.1999 to 31.3.1999 are annexed. Under the Rules of the CFA which call for written cases to be lodged, it takes about 4 months to take a case from date of filing of notice of appeal to a full hearing.

Non-permanent Judges

6. Section 18(2A) of the Court of Final Appeal Ordinance provides, inter alia, that no judge should sit on the CFA on the hearing of an appeal from a judgment or order made by him. Since the three permanent judges of the CFA are formerly Court of Appeal Judges, there might be circumstances in which a permanent judge cannot sit on the Appeal Committee or the full Court because he has previously dealt with the case in his capacity as Justice of Appeal. The CFA Ordinance was amended in October 1997 to empower the Chief Justice to nominate a non-permanent judge to sit in place of a permanent judge in such circumstances. By February 1999, there were 10 cases before the CFA involving the disqualification of permanent judges where one or two additional non-permanent judges (1 of the 10 cases involved two additional non-permanent judges) were required, comprising 5 applications for leave to appeal, and 5 full appeals. It is estimated that there would only be 1 case to be heard in the coming 6 months where additional non-permanent judges would be required.

Judiciary Administrator's Office

April 1999

Caseload of the Court of Final Appeal

(I) For the period 1.7.1997 to 31.12.1997

	No. of cases lodged	No. of cases dealt with	No. of cases withdrawn
Application for leave to appeal			
- Civil	3	1	1
- Criminal	13	7	1
(Total)	(16)	(8)	(2)
Substantive appeal			
- Civil	4	1	0
- Criminal	1	0	0
(Total)	(5)	(1)	(0)

(II) For the period 1.1.1998 to 31.12.1998

	No. of cases lodged	No. of cases dealt with	No. of cases withdrawn
Application for leave to appeal			
- Civil	23	21	1
- Criminal	32	28	1
(Total)	(55)	(49)	(2)
Substantive appeal			
- Civil	27	15	2
- Criminal	6	4	0
(Total)	(33)	(19)	(2)

(III) For the period 1.1.1999 to 31.3.1999

	No. of cases lodged	No. of cases dealt with	No. of cases withdrawn
Application for leave to appeal			
- Civil	4	4	0
- Criminal	6	9	0
(Total)	(10)	(13)	(0)
Substantive appeal			
- Civil	3	8	0
- Criminal	1	3	0
(Total)	(4)	(11)	(0)