

## ***Preface and Acknowledgements***

This report is the product of a consultancy study commissioned by the Standing Committee on Judicial Salaries and Conditions of Service in the course of its work in examining the Judiciary's proposal (as embodied in the "Mason Report" mentioned below) on the determination and revision of judicial remuneration in Hong Kong and in considering the recommendations in the Mason Report.

The Mason Report, the full title of which is *Consultancy Report: System for the Determination of Judicial Remuneration*, is the result of a consultancy study commissioned by the Judiciary in 2002. It was published in April 2003 as the main body of the Judiciary's proposal to the Government of the Hong Kong Special Administrative Region (HKSAR). The author of the Report is the Honourable Sir Anthony Mason AC KBE, former Chief Justice of Australia and currently a non-permanent member of the Court of Final Appeal of the HKSAR.

The objective of the present study is to review and comment on the Judiciary's proposal based on the Mason Report and its recommendations, having regard to –

- (a) what constitutes an appropriate institutional structure, mechanism and methodology for the determination and revision of judicial pay and conditions of service for Hong Kong judges; and
- (b) how judges' salaries were set and/or protected in other jurisdictions, and how and to what extent they were affected by the socio-economic situation prevailing at the time.

More specifically, I have been asked to examine and comment on the Mason Report, including the empirical data, analysis and recommendations therein, and to conduct supplementary research where necessary, having regard to –

- (a) the systems and practices for the determination and revision of judicial pay and conditions of service in other jurisdictions, including –
  - (1) the history of and fundamental principles underpinning the pay policies, pay system and pay structure applicable to judges and judicial officers;
  - (2) the mechanism for determining pay levels and pay adjustments applicable to judges and judicial officers;

- (3) the relevant legislation, institutional structure or administrative measures for protecting judicial pay, if any; and
  - (4) how the setting and protection of judicial pay were affected by the socio-economic situation prevailing at the time.
- (b) the pros and cons of the systems adopted by such other jurisdictions, including any evidence of success or otherwise, and the best practices adopted in other jurisdictions that could be adopted in, or otherwise of particular relevance to, Hong Kong, having regard to the history and development of the judicial pay system in Hong Kong; and
- (c) what would be an appropriate system for the determination and revision of judicial remuneration for Hong Kong, bearing in mind the Basic Law implications.

I have also been asked to examine the relevant international norms relating to judicial remuneration, as well as the systems and practices in selected jurisdictions (including those belonging to the civil law family of legal systems and those that have newly established constitutions) not directly covered by the Mason Report.

In addition, I have been asked to formulate different options for the consideration of the Standing Committee, addressing the pros and cons of each option, so as to assist its deliberations on the matter.

This Report therefore takes at its point of departure the Mason Report and the recommendations therein. It appears from the press coverage of the discussion of the Mason Report when it was released in April 2003 and from the initial discussion in and submissions to the Legislative Council Panel on Administration of Justice and Legal Services on the subject that some recommendations in the Mason Report (particularly the recommendation on legislation “prohibiting absolutely any reduction in judicial remuneration”) may be more controversial than others. Relatively more attention will be devoted in this Report to potentially controversial recommendations or information relevant thereto, although it also attempts to supply relevant information and comments on the other recommendations.

While the objective of the present study is to provide a critical commentary on the Mason Report, it will nevertheless strive to be fair and objective. Additional information (not mentioned in the Mason Report) which I came across in the course of undertaking this study that tends to support the recommendations of the Mason Report will be fully set out in this Report, side by side with information that may be used by those arguing against the recommendations or part of them.

This Report consists of the following chapters –

Executive Summary

Chapter 1: general theoretical considerations relating to judicial independence and judicial remuneration;

Chapter 2: relevant international norms;

Chapter 3: the British experience;

Chapter 4: the American experience;

Chapter 5: the Australian experience;

Chapter 6: the Canadian experience;

Chapter 7: other countries and jurisdictions;

Chapter 8: the way forward for Hong Kong

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