

Chapter 1

Introduction

(This chapter gives an account of the events that have led to the current study on the appropriate institutional structure, mechanism and methodology for the determination of judicial remuneration in Hong Kong.)

Background

1.1 The Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee) was established in December 1987 in recognition of the independent status of the Judiciary and the need for the pay and conditions of service for judges and judicial officers to be dealt with separately from those of the civil service. In practice, the Judicial Committee shared the same membership as the Standing Committee on Directorate Salaries and Conditions of Service prior to January 2004. Conventionally, judicial salaries have been pegged to civil service salaries and no benchmark studies have ever been conducted. Annual adjustments to judicial pay have, until October 2002, followed those made to the upper salary band of the civil service.

1.2 The introduction of the new Accountability System in Government in July 2002, the reduction of civil service pay by legislation and the possible introduction of performance pay to the civil service pay system have cast doubt on the propriety of maintaining the close relationship traditionally existed between judicial and civil service remuneration and pay adjustment mechanism.

1.3 In view of the independent status of the Judiciary, the Administration has been in discussion with the Judiciary for some time on the establishment of a new institutional structure, mechanism, as well as the appropriate methodology for the determination and revision of judicial pay and conditions of service. Pending a decision on this new system, it was decided that the pay reductions for the civil service with effect from 1 October 2002, 1 January 2004 and 1 January 2005, should not be applied to judges and judicial officers in the relevant pay reduction legislation. The understanding is that once this new structure is in place, an assessment should be made within that structure as to whether the pay reductions

applicable to the civil service should also be applied to the judicial service, and if so, from what date.

1.4 On 23 April 2003, the Chief Justice submitted to the Chief Executive the Judiciary's proposal for the determination of judicial remuneration, based on a consultancy study (by Sir Anthony Mason) commissioned by the Judiciary. A list of the nine recommendations of the Mason Report is at **Annex A**.

1.5 In late 2003, the Chief Executive decided to reconstitute the Judicial Committee and extend its terms of reference to include the following –

“To advise and make recommendations to the Chief Executive on matter concerning the system, institutional structure, methodology and mechanism for dealing with judiciary salaries and conditions of service which the Chief Executive may refer to the Committee.”

1.6 We were subsequently appointed to the new Committee on 31 December 2003 for a term of two years with effect from 1 January 2004 under a revised set of terms of reference. A list of current membership is at **Annex B**. The original and the revised terms of reference are at **Annex C**. The Committee continues to be supported by the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service.

1.7 On 20 January 2004, the Chief Executive approached the Chairman inviting the Committee to undertake an independent study on the appropriate institutional structure, mechanism and methodology for the determination of judicial remuneration, and in particular to make recommendations on whether the Judiciary's proposal based on its consultancy study (i.e. the Mason Report) should be accepted. The letter from the Director, Chief Executive's Office is reproduced at **Annex D**.

The Study

1.8 We conducted our study in two phases. The first phase focussed on commenting on the Mason Report. The second phase sought to formulate a framework on the institutional structure, mechanism and methodology for the determination of judicial remuneration.

1.9 During the first phase, we considered it important to review the history and current practices of other jurisdictions, the characteristics of different systems, and their relative merits on the issues raised in the Mason Report so as to better advise the Chief Executive. To this effect, we considered it desirable to commission a consultancy study by an academic with legal background, but who has no direct involvement with the local Bench. The consultant should also be familiar with the local situation and the Basic Law.

1.10 Professor Albert H Y Chen of the Faculty of Law, the University of Hong Kong, a Member of the Law Reform Commission of Hong Kong and the Basic Law Committee, was commissioned on 3 June 2004 to conduct the consultancy study. His brief includes the following –

- (a) to review and comment on the Judiciary's proposal based on the Mason Report and its recommendations, including the empirical data, analysis and recommendations therein, and to conduct supplementary research where necessary, having regard to –
 - (i) the systems and practices for the determination and revision of judicial pay and conditions of service in other jurisdictions;
 - (ii) the pros and cons of the systems adopted by such other jurisdictions;
 - (iii) what would be an appropriate system for the determination and revision of judicial remuneration for Hong Kong, bearing in mind the Basic Law implications;
- (b) 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; and
- (c) to formulate different options for the consideration of the Judicial Committee, addressing the pros and cons of each option.

1.11 Professor Chen's study covered some 70 countries including both Common Law and Civil Law jurisdictions. He submitted his report (see Annex E) to us on 19 September 2004. We thank Professor Chen for his wide-ranging and learned research. Professor Chen's researches do indicate that solutions adopted by individual communities invariably derived from their individual constitutional and fiscal systems, and their particular economic, social and political circumstances. Therefore, we have cautioned ourselves that we do not have direct comparisons and must look to the particular circumstances of our own community for solutions.

1.12 We have examined the Judiciary's proposal in the light of the Mason Report and Professor Chen's report. Having considered both the overseas experience and local situation, we have summarised our observations and recommendations in Chapter 2.

1.13 Before proceeding to the second phase of our study, we made known to the Chief Executive our initial findings. In response, the Chief Executive's Office drew our attention to the appeals to the Court of Final Appeal in connection with the propriety of pay reductions for civil servants and other specified public officers, and asked the Committee to consider the implications, if any, of the decision of the Court of Final Appeal before making recommendations to the Administration.

1.14 Working in tandem, we pressed ahead with the second phase of our study and commissioned a human resource consultant, the Hay Group, to offer advice on the design of an appropriate institutional structure, mechanism and methodology for the determination and revision of judicial remuneration, having regard to overseas practices, the Hong Kong situation and other relevant factors. The study was completed in September 2005. In the light of the findings and recommendations in Professor Chen's study and the Hay Group's report, we propose a new institutional structure, mechanism and methodology for the determination of judicial remuneration as set out in Chapter 3.

1.15 In drawing up our recommendations, we have taken into consideration the implications of the judgment of the Court of Final Appeal, which was delivered on 13 July 2005. We have also noted the views of the Legislative Council Panel on Administration of Justice and Legal Services on the Mason Report and the budgetary arrangements for the Judiciary.