

LCQ15: Adjournment of court hearings

Following is a question by the Hon Dennis Kwok and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (April 22):

Question:

In response to the Coronavirus Disease 2019 (commonly known as "the Wuhan pneumonia") epidemic, the Judiciary has adjourned all hearings originally scheduled to be held in courts (including tribunals) from January 29 to March 22, 2020, and the various court registries and offices handled only urgent and essential hearings/matters during the said period. The Judiciary subsequently announced that it would, starting from March 2, pave the way for the orderly resumption of proceedings for all levels of courts and re-opening of court registries/offices within March. In other words, courts at all levels and their offices have not been in normal and full operation for as long as two months. In this connection, will the Government inform this Council if it knows:

(1) (i) the criteria adopted by the Judiciary for determining that the aforesaid court closure arrangements should be made, and (ii) whether the Judiciary took into consideration that the prolonged closure of courts would prejudice members of the public's right of access to justice by means of judicial proceedings; if the Judiciary did, whether the Judiciary has reviewed if such decisions struck a balance between fighting against the epidemic and upholding justice; if the Judiciary has not, of the reasons for that;

(2) the number of cases affected by the court closures, with a breakdown by the courts involved and type of cases (i.e. (i) civil cases, (ii) criminal cases, and (iii) others);

Court	(i)	(ii)	(iii)	Total
Court of Final Appeal				
Court of Appeal of the High Court				
Court of First Instance of the High Court				
District Court				
Magistrates' Courts				
Labour Tribunal	(not applicable)			
Lands Tribunal	(not applicable)			
Competition Tribunal	(not applicable)			
Coroner's Court	(not applicable)			

Obscene Articles Tribunal	(not applicable)	
Small Claims Tribunal	(not applicable)	

(3) whether the Judiciary will take measures to expeditiously reschedule the hearings which have been adjourned as a result of the court closures; if the Judiciary will, of the details; if not, the reasons for that;

(4) whether the Judiciary has, in response to the outbreak of the Severe Acute Respiratory Syndrome in 2003, formulated a contingency plan in respect of court operation and hearings during an infectious disease outbreak; if the Judiciary has, of the details, and whether the Judiciary has implemented such a plan in tackling the current epidemic; if the Judiciary has no such contingency plan, of the reasons for that; and

(5) whether the Judiciary has plans to expedite the implementation of information technology application projects, with a view to enabling the electronic transmission of documents among the parties to the proceedings and the conduct of hearings by telephone or video link, so as to reduce the impacts of court closures necessitated by infectious disease outbreaks in future; if the Judiciary does, of the timetable and details; if not, the reasons for that?

Reply:

President,

Based on the information provided by the Judiciary, the Government's consolidated reply to the five parts of the Question is appended as follows.

In view of public health considerations under the COVID-19 pandemic, the Judiciary has generally adjourned court proceedings from January 29, 2020 (General Adjourned Period or GAP). During GAP, urgent and essential hearings continue to be heard and the Judiciary has been doing its best to handle urgent and essential court business under such constraints. GAP has now been extended until May 3, 2020, and will be subject to review having regard to the prevailing public health situation. The Judiciary stresses that the health and safety of the public, including those of court users, Judges and Judicial Officers (JJOs) and the Judiciary's staff, remain the paramount considerations in the handling of court operations.

The Judiciary has stated that the general adjournment and its duration are unprecedented amid an unprecedented public health challenge for the whole community. The decision to impose and extend GAP, as well as the determination of the scope of urgent and essential business that is to be dealt with during GAP, was made by the Chief Justice, as the head of the Judiciary, after striking a careful balance between public health considerations and the public interest involved in the due administration of justice, while taking into account any logistical and legal considerations.

The Judiciary is constantly reviewing the latest situation and devising appropriate plans to mitigate the impact on court business owing to GAP. While access to justice is important, the Judiciary must also take into account the paramount considerations of protecting the health and safety of the public in tackling this unprecedented phenomenon of COVID-19 pandemic.

The Judiciary's Efforts in Mitigating the Impact of GAP

The Judiciary is keenly aware that GAP has affected court users and stakeholders to varying extent and has been taking proactive steps to mitigate its impact. More specifically, it has been taking a multi-pronged approach in addressing and alleviating the impact on court business owing to GAP. The Judiciary's efforts in this regard are summarised below:

(a) the Judiciary has made special arrangements for all urgent and essential court hearings and business to be handled promptly during the period. In addition, the Judiciary recognises that the longer the general adjournment has become, the more matters may become urgent and essential. As such, the Judiciary has been constantly reviewing the scope of urgent and essential business which should be handled during GAP and refining its scope on a regular basis. As a result, physical hearings on urgent and essential business, including fresh remand cases, urgent bail hearings and judicial review hearings and urgent appeals, are heard at all levels of courts during GAP. In addition, despite the general closure of court registries and offices, enhanced measures have constantly been introduced to handle the filing of additional types of documents and other matters in support of the expanded scope of urgent and essential business. In fact, the scope of urgent and essential court business and the list of enhanced measures have been adjusted 11 times since January 29, 2020;

(b) proactive case management is done by all JJOs of cases assigned to them, so that clear and prompt directions will be given to the parties as necessary. This will also enable those cases which will be ready for hearing upon the expiry of GAP to be re-fixed as early as practicable;

(c) where appropriate, JJOs will consider or invite the parties to consider disposing the cases on paper as far as possible, in particular for civil cases, e.g. interlocutory matters. Paper disposal is an existing and well-accepted means of processing cases without the need for oral hearing;

(d) the Judiciary has been proactively taking incremental steps to explore the use of alternative modes of hearing submissions by video-conferencing facilities (VCF) and telephone. Further details on the use of information technology (IT) to handle court business are set out in paragraphs under "Use of Information Technology" below;

(e) the Judiciary has re-assured all stakeholders and parties that there will be sufficient lead time for notification and preparation, regardless of whether the cases will proceed as scheduled after GAP or be re-fixed; and

(f) additional temporary JJOs will continue to be engaged as appropriate and more effective listing arrangements will be introduced where practicable to

enhance the judicial capacity in dealing with the increased volume of judicial work culminated during GAP.

The Judiciary will continue to closely monitor the public health situation and take proactive steps to prepare for the eventual resumption of court proceedings in an orderly, staggered and progressive manner as appropriate taking into account all relevant considerations. At the same time, the Judiciary will continue to take appropriate public health and crowd control measures to help ensure the safety of court users, JJOs and staff of the Judiciary.

Use of Information Technology

During GAP where physical attendance at the court premises and contacts in person should be minimised and gathering of crowds should be avoided, the Judiciary is actively pursuing the greater use of IT to support and facilitate the conduct of court business during GAP in the context of its long-term strategy. At the same time, the Judiciary has been in communication with relevant stakeholders as to how the greater use of IT could facilitate and support the conduct of court business. The major developments are summarised below.

First, the Judiciary takes a positive and proactive approach in the use of IT in support of the court operations but it is important to stress that any measure must be in accordance with the law. The Judiciary recognises the need and urgency of providing the legislative backing for initiatives such as the intended introduction of e filing and transaction, including e payment, for court proceedings. In this regard, under the Information Technology Strategy Plan, the Judiciary has been proactively developing by phases an integrated court case management system (iCMS) across all levels of courts to enable an electronic mode for handling court-related documents and payments. The Court Proceedings (Electronic Technology) Bill, which seeks to provide the necessary legal basis, was introduced into the Legislative Council on January 8, 2020. Subject to the enactment of the Bill and some further subsidiary legislation, the iCMS will first be implemented at the District Court (DC) and part of the Magistrates' Courts (MCs). The Judiciary looks forward to the passage of the Bill and bringing all these work to fruition as soon as practicable.

Pending the provision of the necessary legislative backing, the Judiciary has been taking steps to explore and introduce certain administrative measures within the confines of its IT security policy and practices to enable the handling of certain documents by electronic means. These include:

(a) special email accounts have been created to enable parties to lodge certain documents to the court electronically to facilitate paper disposal; and

(b) the scope of an existing electronic submission platform in the DC has been expanded for implementation in other courts. This platform was extended to the High Court (HC) and the Family Court from April 1, 2020 to enable the

electronic submission of documents including but not limited to those relating to hearings, e.g. list of authorities and hearing bundles. The platform was further extended to the Lands Tribunal from April 15, 2020.

As stated above, the Judiciary has also been proactively taking incremental steps to use alternative modes of hearing submissions in civil cases by VCF by phases. The Judiciary issued on April 2, 2020 a Guidance Note for Remote Hearings for Civil Business in the High Court (Phase 1: Video-Conferencing Facilities) which sets out the practice for remote hearings by VCF in civil cases in the Court of Appeal and the Court of First Instance of the HC during GAP. Two cases using VCF were tried out in the week of April 6 and the experience was satisfactory. The Judiciary notes that feedback from practitioners on the use of VCF for remote hearings is generally positive. A few more cases using VCF have also been listed at the HC in the coming few weeks. In the next phase, the Judiciary is actively considering the expansion of the use of VCF for remote hearings in some other civil courts. The Judiciary is also examining the possibility of using phone hearings for simple interlocutory hearings. The Judiciary will announce the details when ready.

Apart from the consideration of compliance with the law, it is important that any application of IT must be secure and the integrity of the specific aspects of the court operation involving the use of IT cannot be jeopardised or compromised. The Judiciary will continue to adopt a pragmatic approach. The Judiciary will also continue to maintain a close dialogue with the legal profession and other stakeholders on matters relating to the use of IT for court business during GAP and in the longer run.

Social Distancing

The Judiciary has been adopting a "space-out" approach to ensure smooth people flow and avoid over-crowdedness in court premises including courtrooms and registry areas. This is reflected in the refined scope of business to be handled, including registry business (as revised from time to time), the manner in which cases are listed for hearing, the number of courts that are opened for hearing, the manner in which court proceedings are spaced out, the number of and manner in which MCs are opened for business, and the preventive and crowd control measures implemented. Some examples of preventive and crowd control measures include the setting of capacity limits for each courtroom, court lobby and registry areas, as well as the implementation of a queuing and admission ticketing system as appropriate. These measures will continue to apply during and beyond GAP as necessary.

Impact on Caseload

The Judiciary has not kept precise statistics on cases and proceedings affected (including those adjourned), those took place and those disposed of through other means such as paper disposal or settlement, etc. since the general adjournment on January 29, 2020. However, within the reduced capacity of the courts because of the need for social distancing, the courts have been handling as much court business as efficiently and safely as possible during GAP by various means as described above. The Judiciary has also been

redeploying or engaging temporary registry staff to help clear the backlog of cases filed with the registries as expeditiously as possible.