

**THE NEW FAMILY COURT**  
**VIEWS OF THE COMMITTEE ON FAMILY LAW**  
**OF THE HONG KONG BAR ASSOCIATION**  
**ON THE PROPOSED FACILITIES**

**INTRODUCTION**

1. The Hong Kong Bar Association (HKBA) has been approached by the Judiciary Administration for views on the Judiciary’s proposals in respect of the new District Court Building (DCB). The JA Paper<sup>1</sup> dated June 2021 refers.
2. Members agree with paragraph 2 of the Paper, namely that the existing accommodation of the DCB has already reached its capacity limits such that there has been persistent shortage of courtrooms and chambers, with grossly inadequate supporting facilities.
3. The proposal is to move to new premises on Caroline Hill Road, which are estimated to be about 80% larger than the accommodation currently occupied by the 3 courts and tribunal. The Paper states that this will provide “*not only sufficient space for accommodating the necessary and up-to-standard court facilities, but also room for expansion to address the long-term needs of the Judiciary.*”
4. We refer to the proposed space and facilities for the New Family Court and are of the view that these are insufficient to address the needs, whether long-term or otherwise. We record our concerns as follows.

**JUDGES, COURT ROOMS, CHAMBERS**

5. The proposal for the Family Court is for 18 court rooms, ranging from 60sq.m. to 130sq.m., 3 of which will offer separate waiting rooms and access for the parties. There will be 20 chambers for JJOs.

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<sup>1</sup> Construction of a New District Court Building to Re-provision the District Court, the Family Court and the Lands Tribunal

6. We consider that the proposed number of court rooms and chambers are inadequate, whether for the workload currently shouldered by the Family Judges or in the “long-term”. There will be insufficient space to provide for “*the necessary and up-to-standard court facilities*” or for “*expansion*”.
7. There are currently in excess of 21,600<sup>2</sup> new divorce cases each year, heard by the 6 Judges and 4 Deputy Judges in the FC. They are grossly overworked. They have enormous bundles of papers to read, long lists of “9:30 hearings”, followed by substantive hearings. Their lists usually entail having to prepare for and cope with many Litigants in Person (LIPs) such that the lists for the bilingual Judges are estimated to have 70% LIPs, if not more. Even before the hearings start at 9:30am, at least twice a week, the Judge would have had to deal with the Special Procedure List.
8. As a random example: on the day this paper was completed,<sup>3</sup> the court diary for Tuesday 29<sup>th</sup> June 2021 records that there were 112 matters heard by the 10 Judges, of which 69 were LIPs.
  - a. HH Judge Ivan Wong’s list (of which 14 were LIPs):
    - i. 12 matters listed for 9:30am (of which 7 had been postponed from 28<sup>th</sup> June);
    - ii. the Special Procedures List;
    - iii. followed an hour later at 10:30am by a Preliminary Issues hearing;
    - iv. followed by a PTR in the afternoon.
  - b. Deputy Judge S Wong’s list (of which 9 were LIPs):
    - i. 13 matters listed for 9:30am (of which 7 had been postponed from 28<sup>th</sup> June);
    - ii. followed by a trial starting an hour later at 10:30am.
  - c. HH Judge Own’s list (of which 10 were LIPs):

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<sup>2</sup> In 2019

<sup>3</sup> Tuesday 29<sup>th</sup> June 2021 happened to be the day following the Black Rainstorm Warning issued on Monday 28<sup>th</sup> June 2021, resulting in cases being postponed to the following day, thereby adding to the lists for Tuesday 29<sup>th</sup> June 2021

- i. 14 matters listed for 9:30am (of which 7 had been postponed from 28<sup>th</sup> June);
  - ii. the Special Procedure List;
  - iii. followed by a Financial Dispute Resolution (FDR) starting an hour later at 10:30am; and
  - iv. followed in the afternoon by a Children’s Appointment and First Appointment.
9. In our view, the above illustrates that, even taking into account the additional postponed cases, the Family Judges are put under tremendous pressure to finish their lists. Members of the Family Bar are familiar with (and grateful to the Judges for) sitting well beyond 4:30pm – sometimes 6:00pm or occasionally even later - to get through the day’s work because a part heard case is a disaster for all concerned due to the state of the court diary.
10. Anecdotal evidence shows that there are long waits, even for child cases. Recently, a 6-day child case was fixed for March 2022 ie 10 months hence. An access hearing, (also a child case), was fixed for January 2022 ie 8 months hence. A 5-day relocation case (yet another child case) was fixed in March for November 2021 ie 8 months hence. Much happens in the life of a child in the space of 8 to 10 months but the court diary is often too full to offer an earlier date.
11. When do the Family Judges find time to read into the voluminous files or write their Judgments? We believe that the many conscientious Family Judges work long after office hours and much of the weekends, catching up on what they are unable to do within the day. It is not surprising that Judgments sometimes take a long while. There is no capacity left, without incurring Occupational Stress<sup>4</sup>.
12. By way of comparison, Singapore, comprising 5 million people as compared to our 7.5 million, has 7,600 new divorce cases a year, as compared to our 21,600. It

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<sup>4</sup> Occupational Stress was recognised by the House of Lords in **Barber v Somerset** [2004] UKHL 13

currently has 44 Judges in its Family Courts of Justice, ie excluding the High Court Family Cases. We have 3 times their case load but only the equivalent of ¼ of their Judges.

See: <https://www.sgdi.gov.sg/organs-of-state/fjcourts>

13. Singapore currently has 10 court rooms and 12 chambers, all of which (pre-Covid) were being used for hearings ie 22 hearing venues. We have 3 times their case load and only 10 court rooms, ie less than half their venues.

See: <https://www.familyjusticecourts.gov.sg/contact/floor-by-floor-directory>,

14. Members do not accept that the proposals meet the needed capacity: the current work warrants more than the current 10 Judges. The proposed 18 court rooms, potentially for 18 Judges, whilst proportionately reflecting the estimated available increase in size of premises, does not take into account the current need let alone reflect “*long-term needs*” or “*expansion*”.

15. **We recommend** a study of relevant statistics that will bear out our above observations We suggest that statistics be sought as indicated in the attached table (**Appendix A**):

- a. Number of Substantive Family Judges
- b. Number of Deputy District Judges (Family Court)
- c. Number of Cases commenced in the Family Court
- d. Number of Active Cases in the Family Court
- e. Length of Time from issuing proceedings to date of First Appointment or First Hearing
- f. Length of Time from commencement of proceedings to the FDR
- g. Length of Time from commencement of proceedings to final settlement or Judgment
- h. Length of Time from completion of Submissions to Handing Down Judgment

- i. Number of successful FDR's / CDR's
  - j. Number of failed FDR's / CDR's
  - k. Number of Cases Transferred to the High Court.
  
- 16. **We recommend** providing at least the same number of Judges as does Singapore and allocating sufficient space to accommodate them, with a commensurate numbers of court rooms.
  
- 17. **We recommend** consideration be given to appointing specialist Family Law practitioners to sit as Deputy District Court Judges in the Family Court to assist in the FDRs, thus freeing up the “Docket Judge” so that he/she can continue to case-manage and eventually hear the case, if it does not settle.
  
- 18. **We recommend** consideration be given to appointing Judicial Assistants as a resource for Family Judges.
  
- 19. **We recommend** that every court room and chambers be fitted with all necessary technical equipment including
  - a. provision of fibre optic cables throughout to enable speeds of 1 Gb; and
  - b. widely available and at very high capacity WiFito enable remote hearings to take place in the court room or chambers as the case may be. Hong Kong has lagged far behind other common law jurisdictions because e-filing has yet to be widespread, technology is lacking and VCF equipment has to be wheeled from room to room, or Judges have to swap court rooms for a remote hearing.
  
- 20. **We recommend** that consideration be directed to the size and design of court rooms – the Family Court does not require a public gallery or a press box as most of the hearings are in Chambers, not open to the public. On the other hand, Court 41 (M/1 Floor) in which HH Judge Pang presides, is far too small, and potentially dangerous: the parties are in very close proximity to each other; emotions can run

high; and they are within 3 metres of the Judge. There has been at least one incident when an attempt was made to injure the Judge.

## **CONFERENCE ROOMS**

21. Members are concerned to note the proposal to provide only 10 conference rooms. Currently there are 3 conference rooms for every 2 court rooms 15:10. The lucky few have a conference room, often because someone has gone early to hold the room. It is unthinkable that the proposal will reduce the availability so as to share one conference room between 2 courts 10:18.
22. It may be that the Judiciary Administration and/or Judges are unfamiliar with what occurs outside court rooms, particularly between 9:30am and 10:30am when each Judge has say 10 hearings each morning. Given each case has at least 2 parties and some may have more if there are 3<sup>rd</sup> parties, there can be 40 or more litigants outside the cluster of 2 courts, some with one or more legal representatives. Emotions often run high and it is prudent to keep parties apart. Conversely, every step in the proceedings presents an opportunity to narrow issues, if not settle. However, it is not conducive to settlement if explanations and instructions are whispered in corridors, next to milling crowds of fellow litigants or their lawyers. This is particularly the case if the parties are engaged in a full day FDR (Financial Dispute Resolution) or CDR (Children's Dispute Resolution) and have nowhere to negotiate or regroup.
23. **We recommend** that there should be at least 10 conference rooms for every 4 courts ie a ratio of 2½ to each court room, which is the position in London. In any event, the new Family Court should not have less than the current ratio of 1½ conference room to each court room.
24. **We recommend** that the conference rooms are not designed as currently is the case, with glass walls and door, where all passing by can see and hear what is happening. There is no privacy.

25. **We recommend** that the conference rooms are fitted with all necessary technology to enable instructions to be taken from parties or witnesses remotely. We understand that this is standard in Singapore.

### **MULTI-DICIPLINARY INPUT**

26. Members are pleased to see that there are proposals for a meeting room for Judges to see children, and 4 dedicated dispute resolution rooms, with 12 breakout rooms.
27. **We recommend** that such rooms be available for the use of parties who are holding private FDRs or Private Financial Adjudication as this would be an incentive for dispute resolution taking the pressure off court lists.
28. Members are disappointed to see that there are no plans to introduce in-house multi-disciplinary resources for the Judges and the parties/their children. There is currently a long wait for a government clinical psychological report – around 4 to 6 months. Thus, only the wealthy have ready access to play therapists, counsellors, parenting co-ordinators and clinical psychologists in the private sector.
29. Compare Singapore and Australia. In Singapore there are in-house counsellors who sit with the Judge at the Child Focused Resolution Centre and then speak to the parties, with a view to seeing if an in-principle settlement can be reached. They form a bridge with the 40 plus counselling centres available outside the court system. In Australia there are in-house Family Consultants who assist the Judge.
30. **We recommend** that consideration be given to providing in-house access to multi-disciplinary input.

### **CONCLUSION**

31. Members are encouraged that the Judiciary Administration are addressing the need to provide greater and better facilities in the Family Court. However, we are of the view that the proposed facilities do not extend far enough to cope with current, let alone needs in the long term.

32. **We recommend** that a dialogue be set up with other jurisdictions, particularly those that have moved forward during Covid-19, because of the ability to hold remote hearings.
  
33. **We recommend** that an active dialogue be set up with the Judiciary and statistics be released to the 2-branches of the profession so that efforts can be made alongside the Judiciary, to strive for a modern Family Court that will provide good service for stakeholders for the next 2 to 3 decades.

**Dated: 9 July 2021**

**Committee on Family Law**



2021-CFaml-StatTable

(Appendix A)

Year	JUDGES		CASELOAD																	
	a. Number of Family Judges (Substantive)	b. Number of Deputy District Judges (Family Court)	c. Number of cases commenced in Family Court	d. Number of Active Cases in Family Court	e. Length of Time from issuing proceedings to date of First Appointment or First Hearing			f. Length of Time from commencement of proceedings to FDR			g. Length of Time from commencement of proceedings to final settlement or Judgment			h. Length of Time from completion of Submissions to Handing Down Judgment			i. Number of successful FDR's / CDR's	j. Number of failed FDR's / CDR's	k. Number of Cases Transferred to the High Court	
					Min	Max	Avg	Min	Max	Avg	Min	Max	Avg	Min	Max	Avg				
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