

LCQ12: Brief out cases

Following is a question by the Hon Dennis Kwok and a written reply by the Secretary for Justice, Mr Rimsky Yuen, SC, in the Legislative Council today (June 3):

Question:

It is an established practice for the Department of Justice (DoJ) to brief out some of the criminal and civil cases, when there is a need for expert assistance where the requisite skill is not available in DoJ, or when there is no suitable in-house counsel to appear in court for the Government. In this connection, will the Government inform this Council:

(1) of the respective number of cases, among the civil cases briefed out by DoJ in 2014, handled by the top 50 counsels;

(2) of the total number of civil cases briefed out by DoJ in the past three years, with a breakdown by sets of chambers;

(3) of the total number of counsels engaged by DoJ in civil cases briefed out in the past three years and, among them, the respective percentages of the counsels who had and had not been previously engaged; and

(4) given that one of the stated objectives of DoJ's policy to brief out cases is to promote a strong and independent local Bar, particularly to the junior Bar, whether DoJ will consider briefing out civil cases to a greater diversity of junior counsels in different sets of chambers; if it will, of the details; if not, the reasons for that?

Reply:

President,

The DoJ has been briefing out certain criminal and civil

cases, according to fee schedules approved by the Finance Committee, or at negotiated fees in specified circumstances. Briefing out is mainly to meet operational needs. Generally speaking, the DoJ may resort to briefing out when:

(i) there is a need for expert assistance where the requisite skill is not available in the DoJ;

(ii) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region;

(iii) there is a need for advice or proceedings involving members of the DoJ;

(iv) there is a need for continuity or economy when handling a case;

(v) as a matter of prudence, it is deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interest; and

(vi) the size, complexity, quantum and length of a case so dictate.

Further, where appropriate, some criminal cases are briefed out with the objective, among others, of promoting a strong and independent local Bar by providing work, particularly to the junior Bar, and of securing a pool of experienced prosecutors to supplement those within the DoJ. This practice is also intended to help change the commonly-held perception that all prosecutors must be government lawyers whereas the private Bar can represent only the defence in criminal cases.

As regards the handling of civil cases, the selection of briefed out counsel will be made in accordance with established internal guidelines on briefing out so as to

ensure propriety of the process and avoid any possible favouritism. The selection criteria include the briefed out counsel's years of experience and suitability in terms of areas of expertise and availability for the case concerned. The level of fees charged by the briefed out counsel is also one of the factors to be taken into account, since public money is involved.

The DoJ's reply to the four-part question raised by the Hon Dennis Kwok is as follows:

(1) In 2014, there were a total of 203 civil cases briefed out to outside counsel. The respective ranges of number of cases handled by individual briefed out counsel are as follows:

Number of cases handled by briefed out counsel	Number of counsel
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16-20	3
11-15	3
6-10	9
5 or below	54

(2) In the past three years (i.e. 2012 to 2014), a total of 763 civil cases were briefed out to outside counsel. Unless under special circumstances (e.g. the engagement of a junior counsel for a selected senior counsel in the same chambers for better work efficiency where the circumstances so required), the chambers to which a counsel belongs is not one of the considerations of selecting a briefed out counsel. Instead, as stated above, the selection criteria include the relevant counsel's years of experience, suitability in terms of areas of expertise, availability and level of fees. As such, we do not keep separate records on the sets of chambers involved.

(3) A total of 140 counsel were engaged by the DoJ in the 763 civil cases briefed out in the past three years as mentioned

above. About 80 per cent of the counsel concerned had previously been engaged whilst the remaining 20 per cent had not been previously engaged.

(4) We repeat the selection criteria stated above when briefing out civil cases. Where appropriate, we will allow junior counsel to participate in our handling of civil cases. As stated above, the chambers to which a counsel belongs is generally not one of the considerations of selecting a briefed out counsel. Besides, whilst we support the promotion of a strong and independent local Bar, such a factor is not and cannot be the sole factor when briefing out civil cases.

Ends/Wednesday, June 3, 2015