

# 8 new judges must be found for High Court

By LINDY COURSE

THE Chief Justice, Sir Ti Liang Yang, will have to appoint up to eight new High Court judges in the next few months – an unprecedented challenge to find almost half the number of existing judges.

The vacancies will arise due to retirement and extra posts being created in a bid to keep waiting time for trials at acceptable levels.

Sir Ti Liang is expected to have great trouble filling the posts with suitable people, as there is a reluctance to move from the profitable private sector to the bench.

It would seem an ideal opportunity to localise the upper echelons of the judiciary, which, apart from the Chief Justice himself, has just two Chinese High Court judges and none in the Court of Appeal.

There is anxiety too about who will succeed Sir Ti Liang. He is due to step down in 1994 and, at present, there is no likely successor.

Appointing local lawyers to the High Court now could give them enough experience to become leading members of the judiciary by 1997.

However, it is unlikely that many local candidates from the private sector will be interested at this stage.

Traditionally, only Queen's Counsel – known as silks – have been taken straight on to the High Court bench. Many silks in Hongkong are comparatively young and would not consider moving to the judiciary yet.

Rather than stressing a candidate's background, Sir Ti Liang will be seeking the right calibre of person to maintain the respect and confidence of the community in Hongkong's legal system.

At present there are 19 High Court judges, one vacancy and nine Justices of Appeal.

Because of the number of cases awaiting trial, up to eight deputy judges also sit temporarily in the High Court each day.

The Registrar of the Supreme Court, Mr Julian Betts, said they had asked for three extra posts from the Government, two to be permanent and one temporary.

Sources said they were likely to get at least the two permanent posts.

Mr Betts also confirmed that another three Supreme Court judges would be retir-

ing before next April. They are believed to be Mr Justice Clough, Mr Justice Barnes and Mr Justice Hooper.

In addition, another Court of Appeal judge, Mr Justice Hunter, has been seriously ill for some months and is not expected to return to the bench.

There is already one vacancy left by the retirement of Mr Justice O'Connor more than six months ago. The fact that it has been vacant so long reflects the problem of finding suitable candidates.

While there is no shortage of District Court judges hoping for promotion – particularly those who have been acting in the High Court, sometimes for years – those who have been passed over before are unlikely to be successful this time.

Sources said some younger judges, including locals, would be tried out in the High Court soon, on a temporary basis, to see how they perform.

Several Legal Department lawyers have also shown an interest in the High Court, but they are all expatriates and Sir Ti Liang will not want to take too many as this has been a point of criticism in the past.

Formerly, Hongkong looked to England as a recruiting ground for the High Court, with mixed results. In a bid to ensure that the right lawyers are appointed, the policy now is to fly likely candidates to Hongkong at Government expense.

(Cont'd on Page 2, Col 4)

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(Cont'd from Page 1)

Mr Brian Keith, 47, who took silk two years ago, has been in Hongkong recently with his wife. He is believed to be only the second Queen's Counsel to be flown out. The first came about two years ago, but did not become a judge.

The trips have a dual purpose – to see if candidates like the territory and so that members of the Judicial Service Commission, who make recommendations to the Governor, can meet them.

A major disincentive to both overseas and local candidates is the fluid political situation in which there is uncertainty over how independent the judiciary will remain after 1997.

Concern over the constitution of the Court of Final

Appeal and the delay in setting it up has not helped confidence.

Another difficulty in attracting people of the right calibre for the bench is the recent decision that they can no longer live in government accommodation for 7½ per cent of their salary. New appointments will get a fixed housing allowance of about \$36,000, which would rent a much inferior home.

The chairman of the Bar, Mr Anthony Rogers, QC, has written to the Government urging it to reconsider the housing allowance.

"It is very important we don't put people off joining the bench over a comparatively minor matter like discrimination in housing. It is an unnecessary disincentive at a time when we must try to attract the right people to the bench," he said.