

# 立法會 *Legislative Council*

LC Paper No. CB(2)2122/03-04(01)

Ref : CB2/PL/AJLS

## **Panel on Administration of Justice and Legal Services**

### **Procedure for endorsement of removal of judges by the Legislative Council under Article 73(7) of the Basic Law**

#### **Purpose**

This paper seeks the views of members on the procedure for endorsement of removal of judges by the Legislative Council (LegCo) under Article 73(7) of the Basic Law (BL73(7)) in the light of the views received from the Administration, the Judiciary and the two legal professional bodies.

#### **Background**

2. A draft paper on "Procedure for endorsement of removal of judges by the Legislative Council under Article 73(7) of the Basic Law" was issued to the Panel under cover of LC Paper No. CB(2)1073/03-04 on 27 January 2004 for members' consideration. A copy of the draft paper is in **Appendix I**.

3. As agreed by the Panel, the draft paper was issued to the Administration, the Judiciary and the two legal professional bodies for comments in February 2004.

#### **Comments received**

4. The views from the Administration, the Judiciary, the Hong Kong Bar Association and the Law Society of Hong Kong are summarized below.

#### The Administration

5. The comments of the Director of Administration (D of A) on the draft paper are as follows -

- (a) paragraph 8(a) of the draft paper should be appropriately modified to make it clear that the procedure also covers the removal of the Chief Justice (CJ) by the Chief Executive (CE) under BL89(2); and

- (b) for purpose of clarity, the words "for the removal of judges" should be added after "BL90(2) provides" in paragraph 7 of the draft paper.

6. The written response from D of A dated 24 February 2004 is in **Appendix II**.

#### The Judiciary

7. The Judiciary Administrator (JA) has advised the Panel that the Judiciary agrees with the comments made by D of A. JA's written reply dated 26 February 2004 is in **Appendix III**.

#### The Hong Kong Bar Association

8. The Bar Association is agreeable to the recommended removal procedure set out in the draft paper. The Bar Association's letter dated 16 March 2004 to the Panel is in **Appendix IV**.

#### The Law Society of Hong Kong

9. The comments made by the Law Society, as set out in its written response to the Panel in **Appendix V**, concern two separate but related issues, i.e. the recommended procedure for endorsement of removal of judges and the mechanism for handling complaints against judges.

#### *Recommended procedure for endorsement of removal of judges*

10. The Law Society raises doubt as to the need for a subcommittee of the House Committee to discuss the recommendation of the tribunal on removal of a judge after CE has accepted the recommendation. In the opinion of the Law Society, this would be a time consuming process and it may not be fair to the judge concerned if the deliberation of the subcommittee takes place in the absence of the judge arguing the matter from his or her perspective.

11. The Law Society has proposed to dispense with the subcommittee process, i.e. steps (b) - (d) of the recommended procedure (paragraph 8 of Appendix I) so that in the event that CE has accepted the recommendation of the tribunal on the removal of a judge, the Administration should give notice of a motion to seek the endorsement of LegCo of the recommended removal. The motion will then be moved, debated and voted on at a Council meeting.

#### *Mechanism for handling complaints against judges*

12. The Law Society also expresses the view that it is not clear as to how a complaint against a judge may trigger the removal process. The Law Society has attached to its written response a copy of its previous submission on "Mechanism

for handling complaints against judges and judiciary staff" provided to the Panel in November 2002. One of the suggestions made by the Law Society is the creation of a post of Judicial Ombudsman. The submission has been referred to JA for consideration.

13. Members may recall that in the last legislative session, the Panel considered the research report prepared by the Research and Library Services Division of the LegCo Secretariat which studied the mechanism for handling complaints against judges in Canada, the United Kingdom, the United States and the State of New York. At its meeting on 28 October 2002, the Panel discussed with the Judiciary ways to improve the transparency of the existing mechanism for handling complaints against the conduct of judges.

14. In response to some members' suggestion that a formal mechanism should be established for handling complaints against judges' conduct, the Judiciary advised that under the present system, CJ and Court Leaders in the Judiciary were responsible for handling complaints against judges. The present mechanism for handling complaints was a formal and effective system which achieved a right balance between proper handling of complaints against judges and respect for judicial independence. On the Law Society's suggestion of the appointment of a Judicial Ombudsman, JA had advised the Panel that the Judiciary was not in favour of the suggestion as it might compromise judicial independence.

15. In response to the Panel's request for improvements to be introduced to enhance the transparency of the complaints handling procedure, the Judiciary had agreed to -

- (a) publish an information leaflet on the procedures for handling complaints against judges so as to enhance judicial accountability and transparency of the complaints handling mechanism;
- (b) promulgate a Guide to Judicial Conduct; and
- (c) publish statistics on complaints against judges and judiciary staff.

16. In connection with paragraph 15 above, members are invited to note that -

- (a) a leaflet on "Complaints against a Judge's conduct" was issued in May 2003 for public information;
- (b) the Judiciary has recently advised the Panel that a Working Party on Judicial Conduct appointed by CJ is in the process of preparing a draft Guide to Judicial Conduct for CJ's consideration. The Guide is expected to be completed in the course of 2004 and made available for public information; and

- (c) the number of complaints against judges and judicial officers has been published in the annual report of the Judiciary since 2002.

### **Advice sought**

#### Revised recommended procedure for endorsement of removal of judges

17. The following revised procedure is recommended for members' consideration -

- (a) the Administration advises the House Committee of the Chief Executive's acceptance of the recommendation of the tribunal appointed by the Chief Justice of the Court of Final Appeal on the removal of a judge, or the recommendation of the tribunal appointed by the Chief Executive on the removal of the Chief Justice of the Court of the Final Appeal, as appropriate. The Administration should provide—and provides sufficient information on the recommendation to LegCo ~~(this should take place~~ before the Chief Executive makes any public announcement of his acceptance of the recommendation);
- (b) the House Committee ~~refers~~ may refer the matter to a subcommittee for discussion;
- (c) the subcommittee discusses the matter as soon as possible;
- (d) the subcommittee reports its deliberation to the House Committee;
- (e) the Administration gives notice of a motion to seek the endorsement of LegCo of the recommended removal;
- (f) the motion is moved, debated and voted on at a Council meeting; and
- (g) if the motion is passed by LegCo, the Chief Executive removes the judge.

18. The revised recommended procedure has taken into account -

- (a) the comments received from the Administration, the Judiciary and the legal professional bodies; and
- (b) the desirability to allow flexibility for the House Committee to decide whether a subcommittee should be formed to consider the recommended removal having regard to the particular circumstances of the case. Under step (d) of the original recommended procedure,

which mirrors the procedure for endorsement of appointment of judges, the House Committee must refer the matter to a subcommittee for discussion.

Revised procedure for endorsement of appointment of judges

19. Subject to members' agreement to the revised recommended procedure in paragraph 17 above, members are invited to consider whether the same flexibility should also be given to the House Committee in respect of the establishment of a subcommittee to consider recommended appointment of judges.

Mechanism for handling complaints against judges

20. As regards mechanism for handling complaints against judges, this should be the subject of a separate agenda item if further discussion is considered necessary by the Panel having regard to its past discussions and subsequent developments (paragraphs 12-16 above).

**Way forward**

21. Subject to members' advice on paragraphs 17 - 19 above, the Panel will make a report to the House Committee.

Council Business Division 2  
Legislative Council Secretariat  
23 April 2004

立法會  
*Legislative Council*

LC Paper No. CB(2)/03-04

Ref : CB2/PL/AJLS

**Panel on Administration of Justice and Legal Services**

**Procedure for endorsement of removal of judges  
by the Legislative Council under Article 73(7) of the Basic Law**

**Purpose**

This paper seeks the views of members on the procedure for endorsement of removal of judges by the Legislative Council (LegCo) under Article 73(7) of the Basic Law (BL73(7)).

**Background**

2. BL73(7) confers on LegCo the power to endorse the appointment and removal of judges of the Court of Final Appeal and the Chief Judge of the High Court.
3. On 16 May 2003, the House Committee endorsed the following procedure for endorsement of appointment of judges by LegCo, as recommended by the Panel on Administration of Justice and Legal Services (AJLS Panel) -
  - (a) the Administration advises the House Committee of the Chief Executive's acceptance of the recommendation of Judicial Officers Recommendation Commission and provides sufficient information on the recommended judicial appointee(s) to LegCo (this should take place before the Chief Executive makes any public announcement of his acceptance of the recommendation);
  - (b) the House Committee refers the matter to a subcommittee for discussion;
  - (c) the subcommittee discusses the matter as soon as possible;
  - (d) the subcommittee reports its deliberation to the House Committee;

- (e) the Administration gives notice of a motion to seek the endorsement of LegCo of the recommended appointment;
- (f) the motion is moved, debated and voted on at a Council meeting; and
- (g) if the motion is passed by LegCo, the Chief Executive makes the appointment.

4. In the course of its deliberation, the AJLS Panel invited the views of the Committee on Rules of Procedure of LegCo on the procedure set out in paragraph 3 above. One of the suggestions made by the Committee was that the procedure for endorsement of judicial appointments by LegCo, if adopted, should also apply to endorsement of removal of judges.

#### **Procedure for endorsement of removal of judges by LegCo under BL73(7)**

##### Basic Law provisions

5. In dealing with the issue of removal of judges, it is necessary to comply with the requirements set out in BL89 and 90(2).

6. BL89 provides as follows -

"A judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges.

The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in [the Basic Law]."

7. BL90(2) provides as follows -

"In the case of removal of judges of the Court of Final Appeal and the Chief Judge of the High Court of the HKSAR, the Chief Executive shall, in addition

to following the procedures prescribed in Article 89 of the Basic Law, obtain the endorsement of the Legislative Council and report such removal to the Standing Committee of the National People's Congress for the record."

Recommended procedure

8. Having regard to the relevant provisions of the Basic Law and the existing procedure for endorsement of appointment of judges, the following procedure for endorsement of removal of judges by LegCo under BL73(7) is recommended -

- (a) the Administration advises the House Committee of the Chief Executive's acceptance of the recommendation of the tribunal appointed by the Chief Justice of the Court of Final Appeal on the removal of a judge and provides sufficient information on the recommendation to LegCo (this should take place before the Chief Executive makes any public announcement of his acceptance of the recommendation);
- (b) the House Committee refers the matter to a subcommittee for discussion;
- (c) the subcommittee discusses the matter as soon as possible;
- (d) the subcommittee reports its deliberation to the House Committee;
- (e) the Administration gives notice of a motion to seek the endorsement of LegCo of the recommended removal;
- (f) the motion is moved, debated and voted on at a Council meeting; and
- (g) if the motion is passed by LegCo, the Chief Executive removes the judge.

**Advice sought**

9. Members' views are sought on the recommended procedure in paragraph 8.



CSO/ADM CR 8/4/3222/85  
CB2/PL/AJLS

24 February 2004

***By Fax [2509 9055]***

Mr Paul Woo  
Clerk to the Panel on Administration  
of Justice and Legal Services  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Mr Woo,

**Panel on Administration of Justice and Legal Services**

**Procedure for endorsement of removal of judges by the  
Legislative Council under Article 73(7) of the Basic Law**

Thank you for your letter of 5 February, inviting our comments on the Panel's draft paper on the proposed procedure for endorsement of removal of judges by the Legislative Council under BL73(7).

BL90(2) provides that the Chief Executive shall obtain the endorsement of the Legislative Council for the appointment or removal of judges of the Court of Final Appeal and the Chief Judge of the High Court. "Judges of the Court of Final Appeal" as referred to in that Article includes, in that context, the Chief Justice. As paragraph 6 of your draft paper has quoted, there is a specific procedure under BL 89(2) for the removal of the Chief Justice by the Chief Executive on the recommendation of a tribunal appointed by the Chief Executive. To reflect such a specific procedure, you may therefore wish to modify paragraph 8(a) of your draft paper accordingly.

Paragraph 7 of your draft paper extracts only those parts of BL90(2) concerning the removal of judges, but not appointment. You may therefore also wish to add “for the removal of judges” after “BL90(2) provides” in the paragraph to make that clear.

Yours sincerely,

( Chan Yum-min, James )  
for Director of Administration

cc      Judiciary Administrator      (Attn: Miss Emma Lau)  
          Department of Justice      (Attn: Mr Peter H H Wong)

**Appendix III**

By Fax 2509 9055

Our Ref. : LM to SC/CR/25/2/1 Pt 9  
Your Ref.: CB2/PL/AJLS

26 February 2004

With Chinese Translation

Mr Paul Woo  
Clerk to the Panel on Administration  
of Justice and Legal Services  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Mr Woo,

**Panel on Administration of Justice and Legal Services**

**Procedure for endorsement of removal of judges by the  
Legislative Council under Article 73(7) of the Basic Law**

I refer to your letter of 5 February 2004 and the Director of Administration's reply of 24 February 2004.

We agree with the comments of the Director of Administration and have nothing further to add.

Yours sincerely,

(Wilfred Tsui)  
Judiciary Administrator

c.c. Director of Administration (Attn : Mr James Chan) – 2501 5779  
Department of Justice (Attn : Mr Peter H H Wong) – 2523 5104



## Appendix IV

### HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong  
DX-180053 Queensway 1 E-mail: info@hkba.org Website: www.hkba.org  
Telephone: 2869 0210 Fax: 2869 0189

16<sup>th</sup> March 2004

Your Ref: CB2/PL/AJLS

Mr. Paul Woo  
Clerk to Panel  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Mr. Woo,

**Subject: Procedure for Endorsement of Removal of Judges  
by the Legislative Council under Article 73(7) of the Basic Law**

I refer to your letter dated 5<sup>th</sup> February 2004 and note the proposed procedure for endorsement of removal of judges, as outlined in paragraph 8 of the draft paper attached to your letter (LC Paper No. CB(2)/03-04).

The Bar Council is agreeable with the proposed procedure and no further comment is necessary in the circumstances.

Yours sincerely,

Andrew Mak  
Hon. Secretary

/al

### 香港大律師公會

香港金鐘道三十八號高等法院低層二樓

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**THE RESPONSE  
OF THE LAW SOCIETY**

to the

**Panel on Administration of Justice and Legal Services'**

**Paper on**

**"Procedure for Endorsement of Removal of Judges**

**by the Legislative Council**

**under Article 73(7) of the Basic Law"**

**– March, 2004 –**

The Law Society thank the Panel on Administration of Justice and Legal Services (“AJLS”) for their kind invitation to consider the “*Procedure for Endorsement of Removal of Judges by the Legislative Council on Article 73(7) of the Basic Law*”, and seeking our comments on the recommended procedures contained in paragraph 8 of the L/C paper No. CB(2)/03/04 dated 27 January 2004, (“**the L/C Paper**”).

The Law Society previously provided a report upon “*Mechanism(s) for Handling Complaints Against Judges and Judiciary Staff*”, which was published in November 2002. A copy of that Report is attached (and referred to in this text as “**the November 2002 Report**”). The purpose of resubmitting the November 2002 Report derives from the issues which we raise herein.

The Law Society’s November 2002 Report was intended to suggest a remedy for dealing with complaints against Judges and Judiciary staff, without recourse to the Draconian option of the removal of a Judge. The present proposals of the AJLS do not deal with addressing complaints against Judges (and makes no reference to Judiciary staff at all), but concentrates upon the ultimate sanction of the removal of Judges.

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It may be construed that the procedure outlined in paragraph 8 of the L/C Paper is the “plateau” of a process which has been started much earlier, but in relation to which there is nothing mentioned in the L/C Paper. Thus, we address those exigencies first below. (In the following text we refer to “**the process**”, being that which includes making a complaint through to the sanction of removal of a Judge. In bold, we refer to various “**Levels**” of this process).

1. A complaint in respect of a Judge, and we refer to Article 89 of the Basic Law, will, one assumes, relate to a Judge’s “*inability to discharge his or her duties, or from misbehaviour...*”.

To whom is such a complaint to be made ? To members of the legal profession, be they solicitors or barristers, a potential starting point would be the Chief Justice of the Court of Final Appeal, (the “CJ”), but that is not clear.

However, to a layman (who may not have access to a solicitor or barrister, even assuming that any solicitor or barrister would wish to act in a matter relating to a complaint about a Judge, which is a moot point in any event), where do they start ?

2. It is important to identify to whom such a complaint is addressed or made, and how. Presumably the complaint will be investigated by the party which receives the complaint, be this the CJ or otherwise. If we assume that, for the sake of argument, the complaint is made to a member of LegCo, then this could constitute **Level 1** of the overall process. The member of LegCo or whomsoever received the complaint will (one might assume) refer the matter to the CJ, and presumably he will consider the matter : **Level 2**.
3. The CJ, by virtue of Article 73(7) of the Basic Law, is then vested with appointing a tribunal to consider the complaint in relation to a Judge. Unless we are mistaken, there are no terms of reference available for such a tribunal at present, save and except that for complaints against all Judges, save as against the CJ himself, the tribunal must consist of not fewer than three local Judges. In respect of a complaint concerning the CJ, the tribunal must consist of not fewer than five local Judges.

Further, if complaint is being made about the CJ, it begs the question as to whom, in his stead, a complaint should be made. The Secretary for Administration ? The Chief Executive ?

4. The tribunal, when convened, constitutes **Level 3** in the process. However, various questions arise in relation to such a tribunal. Not only is it unclear as to the terms of reference the tribunal will enjoy, but should there be additional members on the tribunal such as laymen in addition to the "*not fewer than three [or five] local Judges*". We can see some merit at least two lay members, one being a member of LegCo, being additionally invited members of that tribunal for reasons we explain below, (when addressing the recommended procedures contained in paragraph 8 of the L/C Paper).
5. Is the tribunal to adopt procedures akin, for example, to those of the Law Society Disciplinary Proceedings ? Does a *prima facie* case to answer have to be found in relation to the complaint in question against a Judge before the tribunal is convened ? This might constitute **Level 3** in the process in which case the actual hearing before

the tribunal becomes **Level 4**. Is the Judge to be legally represented or represented at all ? Are witnesses to be called ? The whole concept of the tribunal is, again to the best of our knowledge, unexplored.

6. Assuming that the tribunal is properly convened and reaches a decision, etc., what are the possibilities of an appeal or a Judicial review of the decision of that tribunal ? Again, to the best of our knowledge, this matter has not been determined either. It lends itself to a possibility of **Level 5** in the complaints procedure.
7. If we assume that the foregoing issues are resolved and a tribunal, having considered the matter, makes a recommendation, (which is not appealed or judicially reviewed or if it is, the appeal or judicial review being unsuccessful), then, and only then, one arrives at the “plateau” process which is described in paragraph 8 of the L/C Paper. Each of the seven steps described in the L/C Paper as recommended procedures are considered hereafter.

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(a) *“The Administration advises the House Committee of the Chief Executive’s acceptance of the recommendation of the tribunal appointed by the Chief Justice of the Court of Final Appeal on the removal of a Judge and provide sufficient information on the recommendation to LegCo (this should take place before the Chief Executive makes any public announcement of his acceptance of the recommendation)”*.

The tribunal does not, apparently, make a **decision**, but makes a **recommendation**. We presume that there will be Findings of Fact by the tribunal, constituting their ‘decision’ upon any complaint in relation to a Judge who displays an inability to discharge his or her duties, or from misbehaviour, and that the recommendation deriving therefrom must relate to the removal of the Judge.

The Chief Executive’s “acceptance” of the recommendations of the tribunal constitutes **Level 6** of the process.



Presumably, the Chief Executive can refuse to accept the recommendations of the tribunal as to the removal of a Judge or otherwise, and presumably in such circumstances, the matter proceeds no further. It is not clear.

However, to reach a decision, the Chief Executive will have to consider the matter in any event and ergo **Level 6** in the process.

The Chief Executive then, one assumes, apprises the Administration that he has accepted the recommendation of the tribunal. Whilst we are not entirely sure what "*the Administration*" constitutes, as it is not defined, for the present purposes, we assume this to be the Office of the Chief Secretary for Administration or alternatively, the LegCo Civil Service. The decision of the Chief Executive will then be advised to the House Committee of LegCo.

It is unclear as to the extent to which the House Committee will review the recommendations of the tribunal themselves, at this stage, but this could constitute **Level 7** in the process.

Moreover, the reference to the House Committee of the acceptance by the Chief Executive of the recommendations of the tribunal has to take place before the Chief Executive makes any public announcement of his acceptance of the recommendation.

We are somewhat at a loss to understand how that public announcement can or should occur when the matter still has to be dealt with (upon the procedures recommended in the L/C paper), by the House Committee, a subcommittee of the House Committee and subject to the final endorsement of LegCo.

Without extending the ambit of this paper by investigating and considering the procedures of LegCo, surely it is inappropriate for the Chief Executive to make any announcement, "*of his acceptance of the recommendation of the tribunal*", save and except that if an announcement is required to satisfy some parliamentary-style convention, that it is blandly stated that the matter (described as a recommendation of the tribunal, but nothing more) has been referred to LegCo, preferably without naming the Judge in question.

It would be counter-productive for the Chief Executive to announce his acceptance of the recommendation of the tribunal if, in turn, LegCo, for whatever reason (through the subcommittee or otherwise), do not endorse the recommended removal. As importantly, it places the errant Judge in an extremely invidious position. It is manifest prejudice and appears lacking in natural justice.

- (b) *“The House Committee refers to the matter to a subcommittee for discussion”.*

We wonder whether there should be a standing subcommittee of the House Committee to determine such a matter if indeed, in practical terms, such a subcommittee needs to be convened in any event ? The consideration by a subcommittee constitutes **Level 8** in the process.

- (c) *“The subcommittee discusses the matter as soon as possible”.*

With respect, this is rather open-ended. Surely, the subcommittee should discuss the matter within a clearly delineated period of time, certainly as by the time the matter reaches this stage (as against the foregoing potential factual backdrop), many months, possibly years, could have elapsed.

The terms of reference of this subcommittee are not described, and we wonder how far, if at all, theirs will be an *ex parte* decision, without the unfortunate Judge being in a position to argue the matter from his or her perspective.

Alternatively, is the subcommittee only to deliberate upon *“the recommendation of the tribunal”* ? In the further alternative, is the subcommittee to deliberate upon the Chief Executive’s acceptance of the tribunal’s recommendation ? Is the subcommittee at liberty to call before it salient parties on issues which trouble them ? It is not clear.

- (d) *“The subcommittee reports its deliberation to the House Committee”.*

We are not entirely at ease with the use of the word *“deliberation”* in this context. Surely, deliberation would only constitute a précis of a debate, rather than a conclusion or finding or indeed endorsement of the recommendation of the tribunal, the Chief Executive’s acceptance of the tribunal’s

recommendation or otherwise. To understand “deliberation” in this context, the terms of reference of the subcommittee needs to be explained somewhat more fully. However, this referral to the House Committee will constitute **Level 9** of the process.

- (e) *“The Administration gives notice of a motion to seek the endorsement of LegCo of the recommended removal”.*

Again, we assume that “*the Administration*” means either the office of the Chief Secretary or the LegCo Civil Service.

The House Committee (or the subcommittee on behalf of the House Committee) will, presumably, have reported to the Administration, which promulgate the Notice of Motion.

[At this stage, we refer to the recommendation, which we make above, that a member of LegCo might usefully sit on the tribunal (per Article 89 of the Basic Law) “*consisting of not fewer than three local Judges*” as one of two lay persons, and presumably the same member of LegCo could move the motion, having some knowledge of the matter, before LegCo, although not being able to vote on the matter].

- (f) *“The motion is moved, debated and voted on at a Council Meeting”.*

This constitutes **Level 10** in the process.

- (g) *“If the motion is passed by LegCo, the Chief Executive removes the Judge”.*

This is **Level 11** in the process.

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## **Conclusion**

Earlier in this Report, we referred to the recommended procedures for the endorsement of removal of Judges by LegCo as described in the L/C Paper as constituting the “plateau” of a complaints process. It is not by any means clear as to how a complaint is elevated to this “plateau” and this we address above. However, concerning the “plateau” itself, there appear to us to be the following ten stages involved :

- (i) The recommendation of the tribunal is considered by the Chief Executive.
- (ii) If the Chief Executive accepts the recommendation of tribunal, he reports to the Administration.
- (iii) The Administration advises the House Committee.
- (iv) The House Committee refers the matter to a subcommittee.
- (v) The subcommittee considers the matter.
- (vi) The subcommittee reports to the House Committee.
- (vii) The House Committee reports to the Administration.
- (viii) The Administration gives notice of a motion to LegCo.
- (ix) LegCo debates and votes on the issue and, if the motion is passed by LegCo.
- (x) The Chief Executive removes the Judge.

There are ten steps in the “plateau” process and several (at least four, possibly more) steps prior to that. We can perceive little or no justification in terms of fairness to the errant Judge, nor in terms of the time to be attributed to consideration of the matter, etc. for such a tortuous process.

In practical terms, whilst it is more than likely that a Judge would have resigned long before this process is exhausted, surely it would be appropriate for the process to be made less onerous ?

If the Chief Executive accepts the recommendation of the tribunal, the House Committee need hardly form a subcommittee in relation to the matter and surely the Administration could move a Notice of Motion to seek the endorsement of LegCo without the House Committee considering the matter nor indeed a subcommittee. What benefit, in real terms, is there to anybody in adopting this administrative diversion ?

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The Law Society would propose an alternative procedure for the endorsement of the removal of Judges by LegCo under Article 73(7) of Basic Law as follows :

- (a) In the event that a tribunal appointed by the CJ makes recommendations as to the removal of a Judge, then the recommendations of the tribunal will be conveyed to the Chief Executive, who may either accept or deny those recommendations.
- (b) In the event that the Chief Executive accepts the recommendations of the tribunal appointed by the CJ on the removal of a Judge, then he will report accordingly to the Administration.
- (c) The Administration will give Notice of Motion to seek the endorsement of LegCo upon the recommended removal.
- (d) The motion is moved, debated and voted upon at a Council Meeting.
- (e) If the motion is passed by LegCo, the Chief Executive will thereafter remove the Judge.

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We regret that the procedures for the endorsement of the removal of Judges as proposed in the L/C Paper is the subject of criticism on our part, but there remain many grey areas in the process generally, and the “plateau” forming the subject matter of the L/C Paper appears to be a somewhat convoluted methodology, prone to duplication of endeavour, procedural uncertainty, as well as the common concerns of expense and delay.

One issue which will be of some considerable importance to a Judge whom finds himself the subject of this process is expense. For these purposes, if we assume that the Judge remains employed by the Hong Kong Government, the Judge is being investigated in the performance of his / her duties. This raises the question as to who bears responsibility for the legal costs incurred by the Judge in question ? If it is borne in mind that legal representation of the Judge at the tribunal may be required, and at any appeal or judicial review of a tribunal’s recommendation, and thereafter very possibly in relation to a potential appearance or representation before any subcommittee of the House Committee of LegCo, the legal costs incurred could be substantial. If the Judge is expected to meet such legal expenses himself, this could constitute a sufficient disincentive in its own right for the Judge, the subject of the

process contemplated, not to proceed to defend himself or herself, and occasioning his or her resignation.

We trust, however, that the issues we raise are of practical benefit to all parties concerned in considering the matter going forward. In particular, we would request that further consideration be given to the 'initial complaints process', without which we fear that the matter becomes one of illusory legislative benefit, incapable of achieving that which is intended.

**The Law Society of Hong Kong**  
**5 March 2004**  
75278



THE  
**LAW SOCIETY**  
OF HONG KONG  
香港律師會

**THE LAW SOCIETY'S WORKING PARTY**

**ON CIVIL JUSTICE FORM**

**Additional Report**

**in relation to**

**The Legislative Council's**

**Panel on Administration of Justice and Legal Services**

**on**

**“MECHANISM(S) FOR HANDLING COMPLAINTS**

**AGAINST JUDGES AND JUDICIARY STAFF”**

The Law Society, as part of its continuing brief on “**Civil Justice Reform**”, has been asked to consider the subject matter of “**Mechanism(s) for the Handling of Complaints against the Judiciary and Judiciary Staff**”. This is contained in the following text, but subject to caveat as follows :-

- (i) The Law Society considers that the word “*complaints*” has unfortunate connotations. The LSWP would prefer to address instances “*of poor or inappropriate Judicial Management*”; (Refer : Law Society “Report on Civil Justice Reform” Chapter 13 and Appendix 3 thereto).
- (ii) The Law Society’s Report has dealt with matters in relation to Civil Justice as opposed to Criminal Justice.
- (iii) The Law Society in its deliberations deals only with the High Court and above, and not the lower Courts.

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In preparing this Report, reference has been made to the following publications :

- “*Consultation Paper on Process of Appointment of Judges*”, December 2001;
- “*Mechanism for Handling Complaints against Judges in Overseas Places*”, July, 2002 by the Legislative Council Secretariat (“LCS”)
- “*Legislative Council Paper No. CB(2)1388/01-02 (02)*”, March 2002;
- “*Legislative Council Paper No. CB(2) 159/02-03 (01)*”, October, 2002;
- “*Legislative Council Paper No. CB(2) 159/02-03 (02)*”;
- “*Legislative Council Paper No. CB(2) 159/02-03 (03)*”.



The Law Society in its Report on “Civil Justice Reform” (“CJR”) Chapter 13, Paragraph 13 touched upon “complaints” in relation to the Judiciary and in Appendix 3 to that Report, Chapter 4 *et seq.*, made various comments under the Paragraphs entitled :

Judicial Ombudsman

Chief Justice

Fixed Term Contracts

Mechanism for Handling Complaints

With the benefit of the additional reference works cited above, and at the request of the Legislative Council, the Law Society has considered the matter further. One of the distinctions which the Law Society wishes to draw is between cases of poor or inappropriate Judicial Management in Civil matters as opposed to Criminal Proceedings. Civil Proceedings tend to have a less sensational aspect to them as opposed to Criminal matters, and civil litigants, for the most part, tend to be less “emotive” in relation to such matters.

In many instances in Civil matters heard before a Judge or Judicial Officer, the lay client will not be in attendance. It is thus frequently the case that it is only members of the Bar or solicitors which see at first hand those instances of poor or inappropriate Judicial Management. For members of the Bar and/or solicitors to protest about (or complain about) such matters could have significant professional ramifications for the barristers, firms of solicitors and individual solicitors when appearing before the same Judge or Judicial Officer at some time in the future. Consequently, the vast majority of instances of poor or inappropriate Judicial Management are not drawn to the attention of the authorities and/or reported for action, although well known in the professions. This is an important issue of which we would ask the Legislative Council not to lose sight. It was this “issue of professional prudence” which in part governed the recommendations made by the Law Society in its Report on CJR and prompted, in part, the suggestion of the appointment of a Judicial Ombudsman.

Upon giving the matter further consideration, the Law Society’s view is that certain Hong Kong litigants, whether they be prominent Hong Kong based international corporate entities or otherwise, would also feel similarly constrained in lodging protests about poor or inappropriate Judicial Management. They would hazard, with some cause, that to make such a protest in relation to one matter might, conceivably cause them prejudice in another.

Those using the services of the Hong Kong Court System generally, and not just the High Court, wish to protect, at all costs, the sanctity of Judicial independence. The Law Society's representative at the Legislative Council meeting on 28th October, 2002 stressed this issue. We do so again.

The Law Society also need hardly opine to the Legislative Council in relation to the following, but do so to ensure that the matter is drawn to the attention of third parties which might read this Report. In the LCS Report, systems for "Handling Complaints against Judges" are dealt with in relation to Canada; the United Kingdom; the United States and the State of New York. All these jurisdictions enjoy mature constitutions and systems of Judicial process. Whilst Hong Kong enjoys the latter, the constitutional significance of the change of sovereignty of Hong Kong from a British Territory to that of a Special Administrative Region of The People's Republic of China, whose equivalent of a constitution is contained in the Basic Law, requires there to be some considerable distinction drawn between countries enjoying a mature and time-tested constitution, written or otherwise, as opposed to that are now enjoyed by Hong Kong.

Further, the Law Society, whilst making no observation at all in relation to the issue, bears in mind the recent controversy in the interpretation of the Basic Law by the People's Republic of China's National Congress. This has been construed in some quarters, wrongly or rightly, as a usurpation of Judicial independence in Hong Kong. The Law Society does not intend or wish that the sensitive issue of handling complaints against Judges becomes equally controversial. *The independence of the Judiciary must remain sacrosanct.* However, the competence of the Judiciary remains a component part of the bedrock of Hong Kong's Legal System and the Legal Services Industry. In this respect, the Law Society again refers to Chapter 13, Paragraphs 10 to 15 of its CJR Report, and the introduction to Appendix 3 thereof. The Law Society also notes that the Basic Law does, to same degree, constrain the Legislative Council in its consideration of the matter.

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With reference to the LCS Report, (and ignoring the Basic Law), the Law Society comments as follows :-

## **Part 2 - Canada**

The Law Society notes that the Judicial Council established in Canada under the Judges Act, 1971 is entirely composed of Judges, 39 in total. From this fact alone, the Law Society is not entirely convinced that the model could be appropriate for Hong Kong, where, in such matters as the Disciplinary Procedures in relation to solicitors, lay members have a very important role to play.

Moreover, in Canada, the largest source of complaints involved Family Law matters, invariably an emotive subject in all jurisdictions. That said, we note that complaints also extended to delays in :

Rendering Judgments, (an issue very salient to Hong Kong).

Undue impatience, (an unfortunate manifestation also to be found in Hong Kong).

Unprofessional conduct, (also to be encountered in Hong Kong).

## **Part 3 – The United Kingdom**

The complaints handling procedures, similar to those in Hong Kong, are more informal in nature, with no statutory framework for the handling of complaints against Judges. A Judicial Correspondence Unit has been established as recently as 1998 by the Lord Chancellor. The Lord Chancellor has also considered complaints about the “personal conduct” of Judicial Officers, but not Judicial decisions.

“Personal conduct” in this context reflects a Judge’s behaviour to litigants and their manner in dealing with a case. The Law Society agrees that certain matters may be “cured” or “remedied” on appeal, but this ignores the inordinate expense to which the litigants are exposed in having to appeal such matters. (In the U.K. Judicial delay is, curiously, not regarded as a matter of conduct, save for excessive delay in such matters as delivery of a Judgment).

Complaints can be channelled through Members of Parliament, and perhaps the Legislative Council should consider constituting a similar conduit for the public in Hong Kong.

#### **Part 4 – the United States**

With various levels of Judicial Officers, both national and federal, the procedures available in the United States would appear unnecessarily complicated or cumbersome for consideration by or adoption in Hong Kong. Having so stated, there is the possibility of anonymity of complaints which, bearing in mind the “small town” mentality of Hong Kong, might be an appropriate factor for consideration. The possibility of Judges under investigation being entitled to a hearing, and in fact “a trial about a trial” is broadly inappropriate.

The Law Society stresses in its CJR Report that “conciliation” be used to resolve problems. The complaints handling process in the United States is much more adversarial *ab initio*. That said, for such matters as bribery / corruption, conciliation is entirely inappropriate; dismissal and presumably criminal sanction is the panacea to such issues.

We also note the Judicial Conduct and Disability Act has been criticised as not being transparent. The Law Society, however, considers that any process in relation to handling complaints about the Judiciary should be discreet. There is a sensitive dividing line between transparency and discretion, but one which the Legislative Council are implored to consider.

#### **Part 5 – the State of New York**

New York has a Commission on Judicial Conduct composed of four appointees by the Governor, three by the Chief Judge and one by each of the four leaders of the Legislature, of which four members are Judges, at least one is an Attorney and at least two are lay persons. The Law Society considered that the composition of the Commission is one of which the Legislative Council should take note.

#### **Part 6 – Comparison of the various attributes of the Mechanism for Handling Complaints against Judges**

There are 6 tables providing comparisons between the above four jurisdictions and that of Hong Kong.

We refer to the respective tables, as follows.

*Table 8 :* This sets out the constitutional positions.

*Table 9 :* Establishing the regulatory framework of Handling Complaints and Procedures, the Judicial Administration has responsibility for receiving complaints. Should there be an independent Judicial Ombudsman ?

*Table 10 :* Reference is made herein to a “Court Leader”. We can find no statutory definition of this position or title. We are somewhat bemused that a complaint about a Judge may be made to the Judiciary – is that by way of letter or proceedings ?

*Table 11 :* Again, reference is made to a “Court Leader”.

*Table 12 :* No comment.

*Table 13 :* We note that there is no appeal mechanism for either a complainant or a Judge.

### **Part 7 – Reference for Hong Kong**

The Law Society commends to the Legislative Council that a system be established whereby the public can apprise itself of the existence of procedures for handling complaints about Judicial “misconduct”. Such procedures can be publicised either on a website, through the Annual Report of the Judiciary and/or through media advertising.

The Law Society considers that there is a pressing requirement for a Guide or Code of Conduct relating to Judicial Practices, Discipline and Ethics.

The Law Society does not consider that “peer pressure” is a sufficient deterrent to forestall Judicial misconduct or, as the Law Society would prefer to have it, “poor or inappropriate Judicial Management”, and, in particular, such matters as are cited in Chapter 13, Paragraph 13, of the Law Society’s CJR Report. However, part of the root cause of such matters is the fact that

there is a dearth of Judicial resources to cope with the increased use of the Courts. Many of the problems derive from this fact alone : there are not enough Judges; the Judges are overworked. If the latter problems were addressed, quite possibly the controversial debate in relation to Handling Complaints against Judges might, for the most part, fall away.

Should the Judiciary be subject to self-discipline ? For the most part, all Judges exercise self-discipline and restraint and it is only the failure to do so, in certain very limited instances, which constitutes the problem to be addressed.

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**Legislative Council Paper No. CB(2)1388/01-02(02)**

The Law Society concurs that the principle of Judicial Independence remains absolutely pivotal. However, the Law Society considers that its proposal for the appointment of a Judicial Ombudsman has much to commend it. A Judicial Ombudsman could work with the JORC and/or any Tribunal appointed by the Chief Justice or Chief Executive investigating Judicial Complaints. The Judicial Ombudsman could receive and consider complaints, or have an involvement whether the complaint is raised through the Legislative Council, or through the Administration, and endeavour to mediate or conciliate the “complaint”.

For practitioners, where there are adverse observations about a Judge, these tend to relate to Judge’s decisions and the (mis)conduct of the Judge, which may have led to an inappropriate Judicial decision. Lay clients, for reasons explained above, may not have been privy to the conduct of the Judge in Civil matters.

Whilst, broadly, we concur with the conclusions of **Paragraph 8** deriving as they do from **Paragraphs 6 and 7**, this presupposes that Hong Kong does not enjoy a “small town mentality” when that is, within the legal community at least, patently the case. It is realistic to expect a potential complainant, if they are a professional person, *not* to be exposing themselves to prejudice by making any complaint when, inevitably, at a later stage they will appear before the same Judicial Officer. Anonymity of complaints might assist, but patently any Judicial Officer, the subject of a complaint, will quickly conclude from whence - (be this from the client, solicitor

or barrister) - the complaint has derived. The Law Society has no panacea to this potential problem, but it is a matter for consideration by the Legislative Council.

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**Legislative Council Paper No. CB(2)159/02-03(01)**

We note the opposition by the Judiciary to the suggestion by the LCS that Commission of Inquiry be appointed by the Chief Executive in Council under the Commission of Inquiry Ordinance. For reasons explained below, albeit different, the Law Society agrees. The Judiciary considers that there is, already, in place a formal system for such complaints, although not well publicised. This criticism it promises to address, together with statistics on complaints of Judges, in its Annual Report. Perhaps the word “statistics” should be extended to include the results of any such complaints for the sake of certainty.

In that a Guide or Code of Judiciary Conduct is mooted, the Judiciary considers that this should be a voluntary document and not one imposed upon the Judiciary. Its introduction is pressing, and breach of any provision of such a Guide or Code should constitute a ground for complaint. Moreover, it is unfeasible to have some members of the Judiciary which subscribe to the Guide / Code and others whom do not.

**Legislative Council No. CB(2)(159/02-03)(02)**

We refer to the paragraph enumeration of this text as follows :

**Paragraph 5**

The Law Society does not entirely endorse The Hon. Ms. Eu’s comments that the majority of complaints against the Judiciary would not be directed to the Judges, but to the Court Administration staff. Complaints against Court Administration Staff are made to the Judiciary Administrator. For the Law Society, the majority of complaints are likely to concern Judicial conduct, but not exclusively. Certain “maverick” Judges who do not impress are well known to

those in the legal professions (and we anticipate other Judges). They do not serve the interests of either the Legal Community or the public.

#### **Paragraph 7**

The Judiciary Administrator's comments require a response. Appeals, as a component part of litigation generally, are expensive. If a decision at First Instance is patently wrong, sometimes it may not be possible on health, emotional, economic or other grounds, for the party wronged, (as wronged they are), to appeal. This ignores the damage caused to Hong Kong's international reputation as a legal centre by unnecessary appeals and unnecessary utilisation of valuable Court time.

Equally, it is not appropriate to introduce a system whereby "appeals" can be made by way of complaint to Tribunals, etc. Perhaps an appropriate factor for consideration would be for a retrial to be recommended / ordered. It begs the question as to who will be responsible for the wasted costs incurred in the first trial – should this be from the Judiciary's budget?

#### **Paragraph 8**

We consider that it is likely that there may be a considerable increase in complaints in relation to the conduct of Judges were it not for the fact that by making complaint, legal practitioners could prejudice themselves for a future occasion. We do not consider that the relatively few complaints received against Judicial Decisions and/or Judicial Conduct reflects the reality of the situation and the number of complaints that would otherwise be made.

#### **Paragraph 9**

The Law Society is aware of two complaints made against staff of the Court to the Judiciary Administrator's Office, which in both cases were not actioned as the circumstances might reasonably have demanded. There is, consequently, a view that to make such complaints is a waste of time and might prejudice, especially, legal practitioners at a later date.



**Legislative Council Paper No. CB(2)159/02/03 (03)**

No comment.

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**The Legislative Council's letter to the Law Society dated 4th November, 2002**

The Legislative Council summarises the position of the Law Society that it is appropriate to establish a system to address instances of poor or inappropriate Judicial performance. However, with respect, the Law Society went further than that. One of the innovations which the Law Society mooted for consideration was the appointment of a Judicial Ombudsman. We refer to Appendix 3, (sub-heading) Chapter 4 of the Law Society's CJR Report in this context.

Article 85, Basic Law states *inter alia* that : "*Members of the judiciary shall be immune from legal action in the performance of their judicial functions*". This raises two questions :

- (i) Would the making of a complaint about a member of the Judiciary or a Judicial Officer offend Article 85 ?
  
- (ii) Would the creation of the position of Judicial Ombudsman offend Article 85 ?

The Law Society's answers to both questions are "no". The Judicial Ombudsman could investigate such matters, and, if he so determined, report the matter for further action to one of the Tribunals envisaged in Article 89, Basic Law.

Article 89 addresses the *removal* of members at the Judiciary. Making a complaint about a Judge, whether this falls within the Law Society's description of poor or inappropriate Judicial Management or otherwise, need not necessarily anticipate or involve "removal". As stated, the Law Society has in mind a conciliatory / mediatory role of the Judicial Ombudsman to ensure that such instances of poor or inappropriate Judicial Management as are reported are not repeated. If there were further reports of such matters concerning a particular Judge, presumably the Judicial Ombudsman would report his findings on such matters to either the Chief Executive ("CE") or

the Chief Justice of the Court of Final Appeal (“CJ”) as is envisaged in Article 89. Repeated “offences” would presumably justify the convening of a Tribunal as envisaged in Article 89 in any event.

If you refer to sub-paragraph (a) of the Legislative Council’s letter to the Law Society of 4th November, 2002, it is stated that the Judiciary comment that *investigation* into the conduct of Judges can only be dealt with in accordance with Article 89, Basic Law. This is not actually the case. Concerning “Judges” generally, no reference to “investigations” is made at all in Article 89. “Investigations” only relate to the CJ. In that this invitation for comment must derive from the Judiciary Administration’s letter of October, 2002 (Legislative Council Paper No. CB(2) 159/02-03 (01)), they are both incorrect.

The opening paragraph to Article 89 states as follows :

*“A judge of a Court of the Hong Kong Special Administrative Region may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of the Final Appeal and consisting of not fewer than three local Judges .....”*

There is no mention of “investigations” in this paragraph at all. It is only in the second paragraph of Article 89 that “an investigation” is contemplated, and this is solely in relation to the CJ, as follows :

*“The Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region may be **investigated** [our emphasis] only for inability to discharge his or her duties, or for misbehaviour by a tribunal appointed by the Chief Executive and consisting of not fewer than five local Judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.”*

This means that it is only the CJ who can be “investigated”, and only then for an inability to discharge his / her duties or for misbehaviour, and the investigation is conducted by a Tribunal appointed by the CE consisting of at least five local Judges and, if the Tribunal makes (we presume) a recommendation for the removal of the CJ, he can be removed by the CE in accordance with the procedures laid down in the Basic Law.

Consequently, we regret that the Law Society considers the summations of the Judicial Administrator (for the Judiciary) and the Legislative Council to be incorrect as to investigating members of the Judiciary (save for the CJ) although apropos “removal” we agree with their construction of Article 89.

Moreover, to convene a Commission of Inquiry under Ordinance, Cap.86, may be appropriate in some exceptional cases, but surely the position of a Judicial Ombudsman has much to commend it as a workable and, we trust, more economic and expedient alternative ? Commissions of Inquiry tend to be and are inherently adversarial in nature, with the various protagonists represented by lawyers. This is more akin to the complaints handling process established in the United States, about which we make adverse observation above. A review of the Commissions of Inquiry Ordinance will show that these are, by another name, tantamount to trials. This is not within the contemplation of the Law Society at all.

### **Conclusion**

As an interim step, it should be incumbent upon the Judiciary, through those responsible for the Administration of Judicial Services, to publicise exactly how “complaints” can be made in relation to the professional and/or personal conduct Judges and Judicial Officers, and under what terms of reference. The introduction of a Guide or Code of Judicial Conduct is a sensible innovation and one which the Law Society suggests might be best prepared by in consultation with regular Court users, that is representatives from the Bar and the Law Society. The proposal can be extended to processes of complaint in relation to the Court Administration Services, to include a Judge’s Clerk. Further, the Guide or Code must be complied with, without exception. In the event that there is a breach of any provision of such Guide or Code, then complaint can be made to the relevant authority.

The Law Society, having considered the above reference works and having further considered the matter, again commend for consideration by the Legislative Council the creation of the post of a “Judicial Ombudsman”. He / she could be the recipient of such “complaints” and, subject to the Ordinance creating the post, be in a position to investigate both Judges and Judicial Officers (save for the CJ who would be excluded by virtue of Article 89, Basic Law in any event), with his primary role being one of conciliation / mediation of any problem about which complaint is made.

In this capacity, the Judicial Ombudsman could, presumably, vet those complaints which might be expected to be received from a party aggrieved by Judicial process through to more substantive complaints about the personal conduct or behaviour of a Judge / Judicial Officer by the litigants, their legal advisers and/or Counsel. In this latter context, we anticipate substantive professional matters, such as the handing-down Judgments / Orders not supported by the facts or wrong in law. It is not intended by the Law Society that this becomes an “alternative appeals procedure”; the appeal process must continue. However, fundamentally flawed or wrong decisions when they occur or, decisions made by Judges which are contradicted by the law do need the sanction of a sophisticated complaints procedure, in which the Judicial Ombudsman could serve a useful role. The Judicial Ombudsman’s findings in respect of matters could, ultimately, be referred to the Tribunal(s) envisaged in the first paragraph of Article 89.

The Law Society’s suggested panacea of the appointment of a Judicial Ombudsman has not, it appears, been considered by the authorities, and we respectfully remind the Legislative Council of the existence of that proposal. As to where the Judicial Ombudsman would fit in the Civil Service hierarchy is moot, for the reasons explained in Appendix 3 to the Law Society’s Report on CJR. However, the Law Society approached and again approaches the matter as one of “conciliation” rather than punishment, although for grievous offences, such as bribery / corruption, other considerations and institutions would no doubt come into play. For example, the Independent Commission Against Corruption.

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This is an extremely sensitive issue. The Law Society’s proposals bear in mind the attendant problems, including limited Government resources being available for the Judiciary. Again, the Law Society’s Report on the CJR addresses the provision of legal services generally in relation to Civil Justice. That said, many of the issues raised for consideration in that Report would also apply to Criminal cases. We again urge that a Review of Civil Justice Reform be not focused merely upon the Rules and Procedures applied in Court, but as a component part of a general reappraisal of the Legal Services Industry. In this context, the overwhelming majority of members of the Judiciary in Hong Kong in the performance of their often thankless and solitary duties for the community at all times remain above criticism and are held in the greatest of awe and respect for their role as determiners of legal issues, and whose conduct in (and out of) Court

remains, at all times, exemplary. There are rather fewer Judicial Officers who do not command the same sentiments. To sustain the pre-eminence of Hong Kong as a legal services centre for East Asia, and beyond, a system to provide for investigation of instances of poor or inappropriate Judicial Management is necessary, and one which must be rigorously applied.

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We trust that the foregoing paper is of assistance to the Legislative Council in its further deliberations on this most sensitive of issues. We repeat, however, that *the sanctity of the independence of the Judiciary must remain the paramount consideration for the Legislative Council on behalf of the community and the wider international constituency which elects to use the Courts of Hong Kong to determine legal disputes.*

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**Working Party on Reform of  
the Civil Process in Hong Kong  
The Law Society of Hong Kong  
28 November 2002**

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