

Agenda Item VI. Statutory and non-statutory appointments of judges for extra-judiciary functions

Extract of CJ's speech at Ceremonial Opening of the Legal Year 2009

The appointment of Judges to offices outside the Judiciary

Judges are appointed by the Administration to various offices outside the Judiciary as part of their work. They include offices where the work involved is similar in nature to judicial work such as chairing various tribunals or is concerned with persons serving sentences, or with law reform, legal education and the like or is administrative in nature. Some offices are statutory. In a few instances, the statute prescribes that only serving judges are eligible to be appointed. In many instances, the statute provides that both serving and retired judges and, in some cases, senior legal practitioners are eligible to serve. Appointments are usually made by the Chief Executive, with the statute in some cases requiring recommendation by or after consultation with the Chief Justice.

Concern has been expressed about the appointment of judges to outside offices. The concern has focused on those which are administrative in nature. Further, it has been questioned whether the Judiciary has sufficient resources to cope with the additional work and whether judicial work has suffered as a result.

I must first dispel certain possible misconceptions. First, the Judiciary is usually provided with extra resources to deal with the additional work in the form of extra judicial posts or resources for employing deputy judges. Secondly, where a judge is asked to undertake work outside the Judiciary, his judicial work is appropriately reduced to enable him to cope adequately with both kinds of work.

In the light of the concern which has been expressed, it is appropriate to state the Judiciary's position on the appointment of judges to outside offices.

First, the Judiciary has not sought such work for itself. But where the Administration, reflecting community consensus, proposes legislation prescribing the appointment of a serving judge to a particular office,

provided the Judiciary is satisfied that there is no objection in principle, it would be prepared to make a judge available upon enactment of the legislation by the Legislature. If a community consensus emerges that it is no longer necessary to call on a serving judge for such an appointment, the Judiciary would equally have no objection.

Secondly, for all offices outside the Judiciary, whether or not judicial in nature, where the relevant statute provides for serving judges and other categories of persons to be eligible for appointment, such as retired judges and senior legal practitioners, the Judiciary's approach in recent years has been to request the Administration to look for a suitable person who is not a serving judge and to agree to make a serving judge available only where no other suitable person is available. In Hong Kong, there is a growing pool of retired judges and a pool of senior legal practitioners. Pursuant to this approach, serving judges are, for example, no longer appointed to chair the Administrative Appeals Board or the Air Transport Licensing Authority. This approach also applies to any non-statutory body, where the eligible persons are not legally prescribed.
