

立法會
Legislative Council

LC Paper No. CB(2)2414/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/HS/1/11

Subcommittee on Proposed Senior Judicial Appointments

Minutes of meeting
held on Monday, 7 May 2012, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex

Members present : Dr Hon Margaret NG (Chairman)
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Dr Hon Priscilla LEUNG Mei-fun, JP

Members absent : Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man

Public Officers attending : Item II

The Administration

Miss Jennifer MAK, JP
Director of Administration

Miss Agnes WONG, JP
Deputy Director of Administration

Judiciary Administration

Miss Emma LAU, JP
Secretary
Judicial Officers Recommendation Commission

Mrs Angela LO
Assistant Judiciary Administrator (Corporate Services)

Clerk in attendance : Ms Alice LEUNG
Chief Council Secretary (2)1

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Miss Josephine SO
Senior Council Secretary (2)7

Ms Kiwi NG
Legislative Assistant (2)1

Action

I. Election of Chairman

Dr Margaret NG, the Member who had the highest precedence in the Council among those who were present at the meeting, presided over the election of the Chairman.

2. Dr Margaret NG invited nominations for the chairmanship of the Subcommittee. Dr Margaret NG was nominated by Ms Emily LAU and the nomination was seconded by Mr LAU Kong-wah. Dr NG accepted the nomination. As there was no other nomination, Dr Margaret NG was elected as the Chairman of the Subcommittee.

II. Meeting with the Administration

(LC Paper Nos. CB(2)1894/11-12(01) and CB(2)1544/11-12)

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

4. The Subcommittee requested the Judiciary Administration ("JA") to provide supplementary information on the following -

- (a) updated information on the overseas practices for recruitment to the highest appellate courts in other jurisdictions; and

Action

- (b) the policy for extension of the term of judicial office, including that of a Permanent Judge ("PJ") of the Court of Final Appeal ("CFA"), beyond the statutory normal retirement age of 65, as well as its application in the current appointment exercise regarding Mr Justice Syed Kemal Shah Bokhary; and the proposed appointment of Mr Justice Robert TANG Ching, who had attained the age of 65, as a PJ of CFA.

(Post-meeting note: The responses of JA to the above issues were circulated to members vide LC Paper Nos. CB(2)1982/11-12 and CB(2)2037/11-12 on 11 and 16 May 2012 respectively.)

Conclusion

5. Members supported the proposed senior judicial appointments and had no objection to the Administration giving notices of motions to seek the endorsement of the Legislative Council ("LegCo") on the recommended appointments. Members agreed that the Subcommittee would report its deliberations to the House Committee on 18 May 2012.
6. Director of Administration advised that the Administration intended to move the motions for obtaining the endorsement of LegCo on the appointments as soon as practicable after the Subcommittee had reported to the House Committee and in any event within the current legislative session.

III. Any other business

7. There being no other business, the meeting ended at 5:36 pm.

Council Business Division 2
Legislative Council Secretariat
21 June 2012

**Proceedings of meeting of the
Subcommittee on Proposed Senior Judicial Appointments
held on Monday, 7 May 2012, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000132	Dr Margaret NG Ms Emily LAU Mr LAU Kong-wah	Election of Chairman.	
000133 - 000215	Chairman	Opening remarks.	
000216 - 000440	Chairman Admin	Briefing by the Administration on the proposed senior judicial appointments (LC Paper No. CB(2)1544/11-12).	
000441 - 001259	Chairman Judiciary Administration ("JA")	<p>The Chairman sought explanation on the Judiciary's policy to consider only internal candidates for appointments to the Court of Final Appeal ("CFA"), including appointments as Permanent Judges ("PJs") and non-permanent Hong Kong judges ("HKNPJ"). She was concerned as to whether the Judiciary had difficulties in filling judicial vacancies in the appellate courts, especially when there were a number of judges approaching their retirement age.</p> <p>JA advised that in 2002, the Judiciary and the Judicial Officers Recommendation Commission ("JORC") conducted a review of the operation of JORC concerning the appointment of judges. Having considered the practices in other common law jurisdictions at that time and the circumstances in Hong Kong, the review concluded that it would be appropriate to extend open recruitment to judicial vacancies at the Court of First Instance ("CFI") level (as was already the case for the District Court and below). However, it would not be appropriate to extend open recruitment to appointments to the Court of Appeal and CFA as PJs and HKNPJs. The major considerations at that time were that for appointments to the appellate courts, the appointees should usually have previous judicial experience at the appropriate levels of court, and in a small jurisdiction such as Hong Kong, the arrangement for identifying candidates for appointment at such senior levels through internal elevation would work much</p>	

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		<p>better than open recruitment.</p> <p>JA's elaboration on JORC's recommendation and deliberations concerning the appointment of Mr Justice Robert TANG Ching ("Mr Justice TANG") as a PJ of CFA, as set out in paragraphs 24 to 29 of Annex D to LC Paper No. CB(2)1544/11-12.</p> <p>In response to the Chairman's enquiry about the practices in other common law jurisdictions for recruitment to the highest appellate courts, JA agreed that it would provide, when available, updated information on the practices for appointments to the highest appellate courts in other overseas jurisdictions.</p>	<p>JA to provide supplementary information (para 4(a) of the minutes refers)</p>
001300 - 002710	Chairman JA Mr LAU Kong-wah	<p>The Chairman and Mr LAU Kong-wah pointed out that there was public concern about the proposed appointment of Mr Justice TANG as a PJ of CFA, given the fact that he had attained the age of 65 and was nine months older than Mr Justice Syed Kemal Shah Bokhary ("Mr Justice Bokhary") whose term of office as PJ of CFA was not extended and had to vacate his office when he reached the normal retirement age in October 2012. They expressed similar concern about the policy for extension of the term of judicial office beyond the statutory normal retirement age and its application in the current appointment exercise.</p> <p>JA explained that the policy of JORC was that extension of the term of judicial office beyond the statutory normal retirement age should not be automatic. Extension should be regarded as exceptional and would not normally be approved unless -</p> <p>(a) the Judiciary had operational needs, including the need for continuity; and</p> <p>(b) the extension would not hinder the advancement of junior officers who were suitable for elevation or the appointment of members of the legal profession who were well suited and available for appointment.</p> <p>CJ had applied the JORC's policy in considering whether Mr Justice Bokhary's term of office as</p>	

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		<p>PJ of CFA should be extended or not. It was the view of CJ that there was no exceptional operational need for continuity in the case of Mr Justice Bokhary. CJ was also of the view that there would be judges in the High Court suitable for elevation as PJ.</p> <p>The Chairman enquired about the considerations that JORC had taken into account in recommending Mr Justice TANG to be appointed as a PJ. According to JA, JORC had given detailed consideration to the suitability of the three Judges of the High Court (including Mr Justice TANG) short-listed for further consideration having regard to the qualities required of a PJ, and all relevant factors including operational requirements. JORC considered Mr Justice TANG, a serving Vice-President and Justice of Appeal of the Court of Appeal, eminently suitable for elevation to CFA and appointment as a PJ.</p> <p>JA further elaborated on the background to the JORC's deliberations and resolution in respect of the proposed appointment of Mr Justice TANG.</p>	
002711 - 004047	Chairman Dr Priscilla LEUNG JA	<p>Dr Priscilla LEUNG raised concern about the transparency of the process of judicial appointment and enquired about the existing mechanism for handling complaints against judges.</p> <p>JA explained that JORC, as an independent commission, was entrusted with the function of making recommendations to the Chief Executive ("CE") regarding the appointment of judges at all levels. Open recruitment was conducted for judicial vacancies at and below CFI levels. All applicants were required to submit their applications, irrespective of whether they were from within or outside the Judiciary. The applications would be considered by a Selection Board appointed by CJ, and the Selection Board's recommendations would be considered by JORC. As for the appointments of judges to the Court of Appeal and CFA as PJs and HKNPJs, the Judiciary's current policy was to consider only internal candidates.</p>	

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		<p>As advised by JA, under the present mechanism for handling complaints against judges, any complaint against the judicial conduct of a judge might be made directly to the Judiciary. All complaints against judicial conduct were handled by CJ and/or the relevant Court Leader as appropriate. The Court Leaders would investigate into the complaints and take appropriate follow up actions if necessary. For cases where the complaints were against judicial decisions made by judges, complainants would be advised that they could only pursue their cases through appropriate appeal procedures under the existing legal system.</p>	
004048 - 005409	<p>Chairman Ms Emily LAU JA</p>	<p>In response to Ms Emily LAU's enquiry, JA reiterated the explanation that in the case of Mr Justice Bokhary, the question of extending his term of office as a PJ did not arise since CJ was of the view that there was no exceptional operational need for continuity and there would be judges in the High Court suitable for elevation as PJ. Accordingly, there was no requirement for CJ to make a recommendation under section 14(2)(a) of the CFA Ordinance to CE.</p> <p>At the request of Ms Emily LAU, JA agreed to provide supplementary information on the policy for extension of the term of judicial office beyond the statutory normal retirement age and its application in the current appointment exercise with regard to the case of Mr Justice Bokhary; and the proposed appointment of Mr Justice TANG, who had attained the age of 65, as a PJ of the CFA.</p>	<p>JA to provide supplementary information (para 4(b) of the minutes refers)</p>
005410 - 010309	<p>Chairman Dr Priscilla LEUNG JA</p>	<p>Dr Priscilla LEUNG's enquiry and JA's explanation on the procedures respectively for open recruitment of judges of the courts at and below CFI level and appointment of internal candidates to the Court of Appeal and CFA.</p>	
010310 - 010609	<p>Chairman Clerk JA Ms Emily LAU Admin</p>	<p>Date of reporting to the House Committee.</p> <p>Timing for moving motions for obtaining the endorsement of the Legislative Council of the recommended appointments.</p>	

Council Business Division 2
Legislative Council Secretariat
21 June 2012