

立法會
Legislative Council

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LC Paper No. CB(4) 552/13-14
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by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 25 February 2014, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Dennis KWOK (Deputy Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Alice MAK Mei-kuen, JP
Hon Martin LIAO Cheung-kong, JP
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen

Members Absent : Dr Hon Elizabeth QUAT, JP
Hon CHUNG Kwok-pan

Public Officers : Item III
attending

Judiciary Administration

Mr Esmond LEE, JP
Deputy Judiciary Administrator (Development)

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)

Item IV

Judiciary Administration

Mr Esmond LEE, JP
Deputy Judiciary Administrator (Development)

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)

Attendance by : Item III
invitation

司法事務關注運動

Mr Derry WONG Hak-ming
Founder

Faculty of Law, The Chinese University of Hong Kong

Professor Christopher GANE
Dean, Faculty of Law

Mr Christopher KNIGHT
Professional Consultant, Faculty of Law

Hong Kong Bar Association

Mr Paul SHIEH, SC

Mr P Y LO

CAHK Legal Exchange Foundation

Mr Barry CHIN
Member, Executive Council

Item IV

Hong Kong Bar Association

Mr Paul SHIEH, SC

Mr P Y LO

Mr LAW Man-chung

Clerk in attendance : Miss Mary SO
Chief Council Secretary (4)2

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Cindy CHAN
Senior Council Secretary (4)5

Ms Rebecca LEE
Council Secretary (4)2

Ms Mandy WAN
Administrative Assistant (4)1

I. Information paper(s) issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

II. Items for discussion at the next meeting

LC Paper No. CB(4)415/13-14(01) -- List of outstanding items for discussion

LC Paper No. CB(4)415/13-14(02) -- List of follow-up actions

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2. Members agreed to discuss the following issues at the next regular meeting scheduled for 25 March 2014 at 4:30 pm -

- (a) Establishment of an electronic database of Hong Kong legislation with legal status;
- (b) Abolition of the common law offence of champerty; and
- (c) Compensation for wrongful conviction.

III. Mechanism for handling complaints against judicial conduct

LC Paper No. CB(4)415/13-14(03) -- Judiciary Administration's paper on "Mechanism for Handling Complaints against Judicial Conduct"

LC Paper No. CB(4)415/13-14(04) -- Background brief on "Mechanism for handling complaints against judicial conduct" prepared by the Legislative Council Secretariat

Views of deputations

司法事務關注運動

3. Mr Derry WONG Hak-ming presented the views of *司法事務關注運動* as detailed in its submission (LC Paper No. CB(4)419/13-14(01)). Specifically, to safeguard the rule of law, judicial conduct should be regulated through legislation and an independent mechanism should be established to handle complaints against judicial conduct.

Faculty of Law of the Chinese University of Hong Kong

4. Professor Christopher GANE said that:

- (a) in his view, there was nothing wrong in principle to involve lay members in the process of reviewing judicial conduct, having regard to the facts that such an arrangement was practised in some overseas jurisdictions and that judges and judicial officers ("JJOs") of Hong Kong were appointed by the Chief Executive ("CE") on

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the recommendations of the Judicial Officers Recommendation Commission which comprised members who were not connected in any way with the practice of law. If persons from non-legal sectors were to be engaged in the investigations into complaints against judicial conduct, it was important to ensure that these lay members were able to exercise their duties in an independent manner; and

- (b) it should be noted that, unlike Hong Kong, investigations into complaints against judicial conduct could be conducted in the absence of a formal complaint in some overseas jurisdictions.

Hong Kong Bar Association ("Bar Association")

5. Mr Paul SHIEH said that the Bar Association did not consider it appropriate to have lay participation in the handling of complaints against judicial conduct, having regard to the principles set out in paragraph 8 of the Judiciary Administration ("JA")'s paper. Mr SHIEH further said that if judges were entrusted by the community with the exercise of independent judicial power, there was no good reason to believe that the same judges would not dispense justice in handling complaints against the judicial conduct of other JJOs. Mr P Y LO supplemented that to provide practical assistance to judges in dealing with matters relating to judicial conduct, a Guide to Judicial Conduct was published by the JA in 2004.

The CAHK Legal Exchange Foundation

6. Mr Barry CHIN presented the views of the CAHK Legal Exchange Foundation as detailed in its submission tabled at the meeting. In gist, the Judiciary should be trusted for handling complaints against judicial conduct, albeit greater transparency of the existing mechanism for handling judges' conduct could be explored without compromising judicial independence.

(Post-meeting note: Submission from the CAHK Legal Exchange Foundation was issued to members vide LC Paper No. CB(4)437/13-14(01) on 26 February 2014.)

Discussion

Review of the existing mechanism for handling complaints against judicial conduct

7. Mr Ronny TONG said that judicial independence involved each judge at all levels of court to adjudicate according to law without fear or favour.

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Complaints against a judge's decision should not be entertained, as anyone who felt aggrieved by a judge's decision could appeal through the existing legal procedures. Mr TONG however agreed that it was important to have a mechanism for handling complaints against a judge's conduct which would enable a complaint against a judge's conduct to be fairly and properly dealt with whilst respecting judicial independence. To this end, Mr TONG said that the Judiciary should enhance the transparency and openness of the existing mechanism for handling complaints against judicial conduct, such as stepping up efforts to publicize the operation of the mechanism and promulgating the date on which the mechanism was invoked to handle a complaint received. To uphold the independence of the Judiciary in handling complaints against judicial conduct, the Judiciary should not be required to disclose each and every detail covered in the investigation of the complaints.

8. Mr WONG Yuk-man said that safeguarding judicial independence should not prevent the public from monitoring judges' conduct. Whilst agreeing that complaints against judicial decisions should be handled in accordance with the legal procedures, Mr WONG pointed out that complaints against judicial conduct and complaints against judicial decisions were not always mutually exclusive as inappropriate judicial conduct could lead to wrong judicial decisions. In this regard, Mr WONG said that he could not agree with the views of the JA given at the meeting of the Panel on 23 July 2013 that the number of complaints received by the Judiciary was small (i.e. of a total of 126 complaints received by the Judiciary in 2012, 74 were related to judiciary decisions, 31 were related to judicial conduct, and 21 concerned both) when compared to the 524 905 court cases disposed of by JJOs in the same year. Furthermore, as pointed out by Mr Paul TSE at the same meeting, not many people had found themselves to be in a position to lodge a complaint against a judge, in particular when they were not legally represented.

9. Mr Dennis KWOK said that two of the major concerns raised by members at the meeting of the Panel held on 23 July 2013 to discuss the mechanism for handling complaints against judicial conduct were whether there should be a more detailed set of procedures for handling complaints against judicial conduct and whether the existing mechanism for handling complaints against judicial conduct was effective. Noting that all complaints against judges were handled by the Chief Justice ("CJ") and/or the Court Leader of the relevant level of court, Mr KWOK asked whether consideration would be given to the setting up of an office similar to the Judicial Conduct and Investigations Office in the United Kingdom, whose work was governed by a set of prescribed regulations, to alleviate the workload of the Court Leaders.

10. DJA (Development) responded that as mentioned in paragraph 10(c) of the JA's paper, one of the areas being addressed in the review of the mechanism

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for handling complaints against judicial conduct was whether the administrative support to the Court Leaders in handling complaints against judicial conduct should be enhanced with a view to improving the efficiency and effectiveness of the mechanism. DJA (Development) further said that the Court Leaders were at present assisted in the handling of the complaints.

11. Dr CHIANG Lai-wan said that it was timely for the Judiciary to review the mechanism for handling complaints against judicial conduct which was established back in 2003 to ensure that all complaints against judges were fairly and properly dealt with, and urged for an early completion of the review. Dr CHIANG then asked whether a judge would be penalized for not observing the Guide to Judicial Conduct.

12. DJA (Development) explained that as the purpose of the Guide to Judicial Conduct was to provide practical assistance to judges in dealing with matters relating to judicial conduct, the Guide did not try to define judicial misconduct and did not carry sanctions for non-compliance. DJA (Development) further said that the Guide had been made available on the website of the Judiciary.

13. The Chairman said that there might be occasions whereby a judge was previously involved or had an interest in the case heard before him/her. Responding to the Chairman's enquiry as to whether the Judiciary had implemented any measure to ensure the impartiality of such proceedings, DJA (Development) said that matters concerning disqualification of a judge from sitting were set out in Part D of the Guide to Judicial Conduct.

14. Responding to Ms Starry LEE's enquiry about the measures which would be taken by the Judiciary to enhance the transparency of the mechanism for handling complaints against judicial conduct, DJA (Development) said that the review had begun in December 2013 and it would take some time for specific measures to be worked out. Upon the completion of the review which was expected to be completed by the end of 2014, a report would be published by CJ. The report would be made available to the legal profession and the Panel.

15. Mr Paul TSE noted that if a complaint against judicial conduct was found to be substantiated, the matter would be referred to CJ for consideration whether a tribunal should be appointed under Article 89 of the Basic Law ("BL89") or the Judicial Officers (Tenure of Office) Ordinance (Cap. 433), the latter did not cover Judges of the Court of Final Appeal, Justices of Appeal, Judges of the Court of First Instance or District Judges. Mr TSE further noted that according to section 6(1) of Cap. 433, the tribunal appointed by CJ to investigate a complaint against a judicial officer should consist of two judges of the High Court, one of whom CJ should appoint as Chairman of the tribunal, and a public officer. Mr TSE asked which public officers had been appointed

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by CJ to sit on the tribunal under Cap. 433. To increase the accountability and openness of the tribunal under Cap. 433, Mr TSE suggested appointing a Member of the Legislative Council ("LegCo") or a person not connected in any way to the practice of law to sit on the tribunal. DJA (Development) undertook to provide the information requested by Mr TSE after the meeting.

16. Responding to Mr Paul TSE's enquiry as to what assistance could be rendered by the Judiciary to unrepresented litigants who had difficulties in determining whether to lodge a complaint against the judges' conduct or to appeal against the judges' decisions if these litigants felt aggrieved by judicial decisions, DJA (Development) said that the Judiciary's Resource Centre for Unrepresented Litigants had been set up to provide assistance to unrepresented litigants and such assistance was confined to procedural matters only. DJA (Development) further said that information leaflets on how to lodge a complaint against a judge's conduct were available at the Resource Centre.

17. Mr Martin LIAO said that not all misbehaviour of judges warranted removal from office under BL89. Although Cap. 433 provided different levels of sanctions against a judicial officer who had misbehaved from dismissal to reprimand by CJ, Cap. 433 did not cover a judge of the Court of Final Appeal, Justice of Appeal, a Judge of the Court of First Instance or a District Judge. In the light of this, Mr LIAO considered it necessary to introduce different levels of sanctions, short of removal from office, against judges for failing to discharge their duties or for misbehaviour.

Article 89 of the Basic Law

18. Mr WONG Yuk-man disagreed with the views taken by CJ, referred to in paragraph 8(c) of the JA's paper, that any investigating mechanism for handling complaints judicial conduct should comprise judges and judges only, so as to be consistent with the framework as enshrined in BL89 under which a tribunal for investigation into the alleged misbehaviour of a judge comprised judges and judges only for the following reasons. First, BL89 only provided for the invocation of a tribunal which could make recommendation on the removal of a judge for misbehaviour after investigation, and was silent on the establishment of any investigating mechanism against judicial conduct. Second, BL89 only specified that the tribunal should consist of not fewer than three local judges, and did not preclude the involvement of other persons, such as retired judges from Hong Kong and other common law jurisdictions and persons from non-legal sectors.

19. Mr LEUNG Kwok-hung questioned how a complaint could be properly dealt with if a judge under complaint had been elevated to the office of CJ. In

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such case, he considered it essential to allow for the involvement of persons not connected in any way with the practice of law in the investigation into CJ.

20. Ms Starry LEE expressed reservation about the views taken by CJ that any investigating mechanism for handling complaints against judicial conduct should comprise judges and judges only, so as to be consistent with the framework as enshrined in BL89 under which a tribunal for investigation into the alleged misbehaviour of a judge comprised judges and judges only, having regard to the fact that it was the common practice of professional and/or statutory bodies to involve persons not connected in any way with their professions in the complaint handling proceedings against their members.

21. Mr Paul SHIEH of the Bar Association agreed with the interpretation by CJ of BL89 that the tribunal for investigating a judge's conduct should comprise judges and judges only. Mr SHIEH however pointed out that BL89 did not specify that the tribunal for investigating a judge's conduct should comprise judges only.

JA 22. DJA (Development) responded that the principles set out in paragraph 8(a), (b) and (c) of the JA's paper should be read in totality. The paragraph mentioned that there should be due regard to the safeguard of judicial independence in handling complaints against judicial conduct and there should be due regard to the separation of roles and responsibilities among the executive, legislative and judicial arms of government in dealing with their respective internal affairs. The working group set up by CJ would identify areas for improvements in the context of the Hong Kong Judiciary and make recommendations for improvements by the end of 2014. The JA would revert to the Panel on this.

Other issue

JA 23. Mr Dennis KWOK said that the executive branch of the Government should respect the independence of the Judiciary. Mr KWOK sought confirmation as to whether CE had raised with CJ that in future the wearing of wigs and robes by newly-appointed judges when taking oaths to assume their offices should be dispensed with. DJA(Development) undertook to check and revert to the Panel.

Information requested by members at the meeting of the Panel on 23 July 2013

24. Mr WONG Yuk-man, Dr CHIANG Lai-wan, Mr Paul TSE, Mr LEUNG Kwok-hung, Ms Starry LEE and Mr Dennis KWOK expressed strong dissatisfaction that after more than six months, the JA still failed to provide the

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requested information raised at the meeting of the Panel held on 23 July 2013, given that such information was mainly factual in nature.

25. DJA (Development) responded that the Judiciary's original intention was to deal with the request for information in the overall context of the ongoing internal review. It was noted that not all available information on the mechanisms in the other jurisdictions might be relevant in the Hong Kong context.

Way forward

JA

26. The Chairman requested the JA to consider providing before the regular meeting of the Panel on 22 April 2014, responses in writing to the information requested by members at the meeting held on 23 July 2013 as well as the following questions raised by members at this meeting:

- (a) what was the basis for concluding that the tribunal under BL89 should consist of judges and judges only;
- (b) whether the number of judges appointed to the tribunal under BL89 for investigation into a judge and CJ could exceed three and five respectively; if not; why not;
- (c) whether consideration would be given to providing different levels of sanctions, short of removal from office, against judges who were found to have misbehaved after investigating complaints against them; and
- (d) which public officers had been appointed by CJ to sit on the tribunal under Cap. 433.

The Chairman suggested that subject to the JA's responses to issues raised by members, the Panel would decide in the April 2014 meeting whether a further meeting should be held before the completion of the review on the mechanism for handling complaints against judicial conduct, and if so, when. Members agreed.

(Post-meeting note: The letter from the JA informing that, based on a realistic assessment of the time required to prepare the requested information, such information be made available to the Panel in May or June 2014 at the earliest, was issued to members vide LC Paper No. CB(4)505/13-14(01) on 25 March 2014.)

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IV. Proposed legislative amendments relating to the adjudication of Equal Opportunities claims in the District Court

LC Paper No. CB(4)415/13-14(05) -- Judiciary Administration's paper on "Proposed Legislative Amendments relating to the Adjudication of Equal Opportunities Claims in the District Court"

LC Paper No. CB(4)415/13-14(06) -- Submission from The Law Society of Hong Kong

LC Paper No. CB(4)415/13-14(07) -- Submission from the Hong Kong Bar Association

Briefing by the Judiciary Administration

27. DJA (Development) briefed members on the proposed legislative amendments to the District Court Equal Opportunities Rules (Cap. 336G) which sought to streamline the adjudication of Equal Opportunities ("EO") claims in the District Court, details of which were set out in the JA's paper (LC Paper No. CB(4)415/13-14(05)). Subject to members' views on the legislative proposals, the Judiciary aimed to table them in LegCo for negative vetting before the summer of 2014.

Views of the Bar Association

28. Mr LAW Man-chung said that the Bar Association was supportive of the proposed legislative amendments to Cap. 336G.

Discussion

29. Mr Ronny TONG agreed to the objectives of the proposed legislative amendments to Cap. 336G. The proposed legislative amendments, which were mainly technical in nature, could be examined in detail through possibly the setting up of a subcommittee under the House Committee after the legislative proposals were tabled in LegCo.

30. The Chairman pointed out that under the simplified procedures, the court would be granted discretionary powers to order the use of formal pleadings instead of the prescribed claim and response forms, and to extend deadlines for various time limits in appropriate cases. She considered that there was a need to set down criteria for the exercise of such powers.

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31. Assistant Judiciary Administration (Development) responded that unless the court directed otherwise, parties to EO claims should conduct the proceedings in accordance with the simplified procedures. If, in the opinion of the judge concerned, the use of prescribed claim and response forms might not be the best arrangement for taking forward a particular claim after taking into account all the relevant circumstances of the case (such as its complexity), the court might direct that the formal pleadings process be used instead. DJA (Development) supplemented that a new practice direction dedicated for EO claims was being prepared to provide for, amongst others, details of the newly proposed process and arrangements. The two legal professional bodies would be consulted when the new practice direction was ready.

Conclusion

32. The Chairman concluded that members generally supported the tabling of the proposed legislative amendments in LegCo for negative vetting.

V. Any other business

33. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 4
Legislative Council Secretariat
14 April 2014