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

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 21 March 2016**

**Mechanism for handling complaints against judicial conduct**

**Purpose**

This paper gives a brief account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the mechanism for handling complaints against judicial conduct.

**Background**

2. According to the Judiciary, all complaints against judges are handled by the Chief Justice ("CJ") and/or the Court Leader of the relevant level of court. In brief, complaints against (i) judges in the Court of Final Appeal and the Court Leaders are handled by the CJ; (ii) those against High Court judges by the Chief Judge of the High Court; (iii) those against judges of the District Court, the Family Court and the Lands Tribunal by the Chief District Judge; and (iv) those against magistrates and judicial officers of the Labour Tribunal, Small Claims Tribunal, Coroner's Court and Obscene Articles Tribunal by the Chief Magistrate.
3. The relevant Court Leader will investigate the complaints received. The Court Leader may refer to the relevant court files and audio recordings and may seek further information from the complainant as appropriate. After investigation, the Court Leader will send a reply to the complainant.
4. If a complaint against judicial conduct is found to be substantiated, the matter will be referred to the CJ for consideration whether a tribunal should be appointed under Article 89 of the Basic Law ("BL") or the Judicial Officers (Tenure of Office) Ordinance (Cap. 433). Under Article 89 of the BL, a Judge at

District Court level and above might only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive ("CE") on the recommendation of a tribunal of at least three local judges appointed by CJ. Cap. 433 provides for a procedure for a tribunal to be appointed by CJ to investigate the matter and report findings.

5. The Judicial Officers Recommendation Commission ("JORC") may also be informed of the matter at an appropriate time.

6. If a complaint is against judicial decision made by a judge, the complainant will be advised to pursue his/her case by appeal through the existing legal procedures.

## **Past discussions**

### Mechanism for handling complaints against judicial conduct

7. The Panel discussed the mechanism for handling complaints against judicial conduct at its meeting held on 23 July 2013. Major concerns and views expressed by members are summarized in paragraph 8-16 below.

8. The Judiciary Administration ("JA") advised that a total of 126 complaints were received by the Judiciary in 2012. Of these complaints, 74 were related to judiciary decisions, 31 were related to judicial conduct, and 21 concerned both. The number of complaints was small when compared to the 524 905 court cases disposed of by Judges and Judicial Officers in 2012. Amongst the 31 complaints against judicial conduct received by the Judiciary in 2012, one complaint was found substantiated and one complaint was found partially substantiated. Apologies might be made by the Court Leader to the complainants if the complaints were found substantiated.

9. Mr Paul TSE expressed concern that that actual number of complaints received by the Judiciary in 2012 (i.e. 126 cases) was only a small proportion of all potential complaints that might be harboured by litigants or other parties, as some litigants were not legally represented.

10. Mr Ronny TONG considered that the transparency of the existing mechanism for handling complaints against judicial conduct should be enhanced. Measures should also be taken to make members of the public aware of how and where to lodge a complaint against judicial conduct and the channels, if any, to raise views or objection to the outcome of the investigation of the complaint.

11. The JA advised that information on the existing mechanism for handling complaints against judicial conduct was posted on the website of the Judiciary. Noting members' concern about the need to enhance transparency, the Judiciary would consider making available additional information, such as related statistics, in the Judiciary's website and annual reports.

12. Mr Dennis KWOK opined that the conduct and performance of some judges, especially those in the lower courts, such as Magistrate's Courts and Lands Tribunal, might not up to standard. Mr KWOK requested the Judiciary to provide the Panel with a breakdown of complaints cases against judicial conduct in the past three years by the level of courts involved and the rank of judges being complained against, as well as how the aforesaid complaints had been dealt with.

13. Dr CHIANG Lai-wan was concerned about the potential conflict of interest that might arise if all complaints against judicial conduct were handled in-house by CJ and/or the Court Leader. To enhance transparency and the accountability of the Judiciary, Dr CHIANG suggested that an independent body be set up to receive and investigate into complaints against judicial conduct, or to monitor and review the Judiciary's handling of complaints against judicial conduct. Mr Paul TSE also suggested establishing an independent body to handle complaints against judicial conduct, similar to the Travel Industry Authority expected to be established in 2014 to regulate the tourism sector.

14. In response to Dr CHIANG's and Mr TSE's suggestions, the JA informed members that CJ objected to any proposals that a body outside the Judiciary be set up to investigate complaints against judicial conduct as any such proposals would run the high risk of undermining the principle of judicial independence.

15. Ms Emily LAU cautioned that when members considered issues related to the handling of complaints against judicial conduct, it was necessary to strike a balance between upholding the integrity of the court and enhancing the transparency of the complaint-handling mechanism.

16. At the request of the Panel, the JA agreed to provide the following information after the meeting:

- (a) the number of magistrates who had not practiced law prior to their judicial appointments as magistrates;
- (b) the current mechanism for handling complaints against judicial conduct in other jurisdictions;
- (c) the number of complaint cases that had been brought to the attention of the JORC in the past three years and the subsequent actions taken on these cases;

- (d) what constituted "misbehaviour" of a judge as stated in Article 89 of the BL for which the judge might be removed by the CE in accordance with the relevant proceedings prescribed in the BL; and
- (e) the right, if any, of complainants to access the audio recording of the court proceeding in connection with their complaints against judges.

### Review of the existing mechanism for handling complaints against judicial conduct

17. On 3 December 2013, Members paid a visit to the Judiciary. During the meeting with CJ, Members raised concern about the transparency of the mechanism for handling complaints against judicial conduct. CJ advised that an internal working group had been set up to review the mechanism to see what improvements could be made.

18. On 25 February 2014, the JA briefed members on the review of the existing mechanism for handling complaints against judicial conduct and the Panel further received views from deputations on the mechanism. In taking forward the review, CJ considered it important to stress that the review must be conducted on the premise having regard to the following principles -

- (a) While maintaining sufficient openness and transparency of the mechanism, there should be due regard to the safeguard of judicial independence in handling complaints against judicial conduct;
- (b) There should be due regard to the separation of the roles and responsibilities among executive, legislative and judicial arms of government in dealing with their respective internal affairs. Handling of complaints against judicial conduct should be free from intervention from the other arms of government as any suggestion of such involvement would run high risk of politicizing the process; and
- (c) The direction of the review should be consistent with the framework as enshrined in the Basic Law (ref. Article 89) under which a tribunal for investigation into alleged misbehaviour of a judge comprised judges and judges only. CJ therefore took the view that any investigation mechanism for handling complaints against judicial conduct should comprise judges and judges only.

19. CJ had also instructed the working group to take stock of past experience, identify areas for improvements in the context of the Hong Kong Judiciary and make recommendations for improvements. In the process, reference would be made to overseas experience as appropriate though not all practices in other overseas jurisdictions would be applicable.

20. The JA reported that the working group had met and identified some broad areas to be addressed in the review –

- (a) Whether complaints against judicial conduct should continue to be dealt with by Court Leaders only or whether there could be improvement in dealing with the investigation of the complaints;
- (b) Whether there is room to enhance the transparency of the mechanism while without adversely affecting the proper administration of justice, including JJOs' work. This would also include giving consideration to publishing statistical information on complaints received and handled; and;
- (c) 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.

21. Views and concerns from deputations and discussion of members at the meeting held on 25 February 2014 are summarized in paragraph 22-36 below.

22. 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.

23. Professor Christopher GANE of the Faculty of Law of the Chinese University considered there was nothing wrong in principle to involve lay members in the process of reviewing judicial conduct but it was important to ensure that they were able to exercise their duties in an independent manner. Nevertheless, Mr Paul SHIEH of the Hong Kong Bar Association (Bar Association), did not consider it appropriate to have lay participation having regard to the principles mentioned by CJ, as set out in para 18 above. Mr Barry CHIN presented the views of the CAHK Legal Exchange Foundation as detailed in its submission (LC Paper No. CB(4)437/13-14(01)). 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.

24. Mr Ronny TONG considered that the complaint against a judge's decision should not be entertained as this kind of complaint could be appealed through existing legal procedures and that the mechanism for handling complaints against a judge's conduct should be fairly and properly dealt with whilst respecting judicial independence. Mr TONG said that the Judiciary should enhance

transparency and openness of the existing mechanism but disclosing each and every detail covered in the investigation should not be required.

25. Mr Wong Yuk-man said that safeguarding judicial independence should not prevent the public from monitoring judges' conduct. Whilst agreeing that complaints against judicial decision should be handled in accordance with the legal procedures, Mr WONG pointed out that inappropriate judicial conduct could lead to wrong judicial decision and thus the complaints against judicial decision and judicial conduct were not always mutually exclusive.

26. Mr WONG Yuk-man also said that he could not agree with JA's view (as detailed at para 8 above) that the number of complaints was small and he mentioned the view pointed out by Mr Paul TSE at the meeting held on 23 July 2013 that many people had found themselves not in a position to lodge a complaint against a judge, in particular when they were not legally represented.

27. 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, JA stated that the Judiciary's Resource Centre for Unrepresented Litigants had been set up to provide assistance to unrepresented litigants for procedural matters. Information leaflets on how to lodge a complaint against a judge's conduct were also available at the Resource Centre.

28. Noting that all complaints against judges were handled by the CJ and/or the Court Leader of the relevant level of court, Mr Dennis 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. In response, JA mentioned this was one of the areas being addressed in the current review (as set out at para 20(c) above) and that Court Leaders were at present assisted in handling of complaints.

29. Dr CHIANG Lai-wan asked whether a judge would be penalized for not observing the Guide to Judicial Conduct. JA explained that as the purpose of the Guide to Judicial Conduct, which had been made available on the Judiciary's website, 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.

30. In responding to the Chairman's enquiry as to whether the Judiciary had implemented any measure to ensure the impartiality of proceedings involving occasions whereby a judge was previously involved or had an interest, JA stated

that matters concerning disqualification of a judge from sitting were set out in Part D of the Guide to Judicial Conduct.

31. To increase the accountability and openness of the tribunal under Cap. 433, Mr Paul TSE suggested appointing a Member of the Legislative Council or a person not connected in any way to the practice of law to sit on the tribunal. As 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, Mr Martin 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.

32. Mr WONG Yuk-man disagreed with CJ's view (as set out in para 18(c) above) 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 Article 89 of the BL since Article 89 was silent on the establishment of any investigating mechanism against judicial conduct and that it 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. 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, Ms Starry LEE also expressed reservation as to CJ's view mentioned above.

33. Mr Paul SHIEH of the Bar Association agreed with the interpretation by CJ of Article 89 of the BL that the tribunal for investigating a judge's conduct should comprise judges and judges only though Article 89 of the BL did not specify that the tribunal for investigating a judge's conduct should comprise judges only.

34. 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 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.

35. JA responded that the principles set out in JA's paper (as detailed at para 18 above) should be read in totality. It was mentioned that there should be due regard to the safeguard of judicial independence in handling complaints against judicial conduct as well as 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. Upon completion of the review, a report would be published by CJ and made available to the legal profession and the Panel.

36. The Chairman requested the JA to consider providing 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 the meeting held on 25 February 2014:

- (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.

37. JA had provided the information requested by members at the meetings held on 23 July 2013 and 25 February 2014, vide LC Paper No. CB(4)840/13-14(01), based on the information obtained or collated as at 17 June 2014.

### **Latest position**

38. JA will inform the Panel of the outcome of the review at the Panel Meeting on 21 March 2016.

### **Relevant papers**

39. A list of relevant papers is in **Appendix I**.

Council Business Division 4  
Legislative Council Secretariat  
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## Appendix I

### Mechanism for Handling Complaints against Judicial Conduct

#### List of relevant papers

Date of Meeting of Administration of Justice and Legal Services Panel	Minutes / Paper	LC Paper No.
-	Letter from Hon LEUNG Kwok-hung and Hon WONG Yuk-man dated 22 May 2013 requesting to discuss the issue of "Handling of cases by Court Masters" (Chinese version only)	<a href="#"><u>CB(4)670/12-13(01)</u></a>
23.07.2013	Judiciary Administration's paper on "Mechanism for Handling Complaints against Judicial Conduct"  Minutes of meeting	<a href="#"><u>CB(4)871/12-13(02)</u></a>  <a href="#"><u>CB(4)206/13-14</u></a>
25.02.2014	Judiciary Administration's paper on "Mechanism for Handling Complaints against Judicial Conduct"  Background brief on "Mechanism for handling complaints against judicial conduct" prepared by the Secretariat  Speaking note of Mr Derry WONG Hak-ming, Founder of a deputation (司法事務關注運動) (Chinese version only)  Submission on "Mechanism for handling complaints against judicial conduct" from CAHK Legal Exchange Foundation (English version only)  Minutes of meeting	<a href="#"><u>CB(4)415/13-14(03)</u></a>  <a href="#"><u>CB(4)415/13-14(04)</u></a>  <a href="#"><u>CB(4)419/13-14(01)</u></a>  <a href="#"><u>CB(4)437/13-14(01)</u></a>  <a href="#"><u>CB(4)552/13-14</u></a>
23.07.2013 & 25.02.2014	Judiciary Administration's paper on "Mechanism for handling complaints against judicial conduct: Information requested by Members"	<a href="#"><u>CB(4)840/13-14(01)</u></a>