

立法會
Legislative Council

LC Paper No. CB(4)80/17-18
(These minutes have been
seen by the Administration)

Ref : CB4/HS/3/16

Subcommittee on Proposed Senior Judicial Appointments

Minutes of meeting
held on Tuesday, 14 February 2017, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK Wing-hang
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding

Attendance by invitation : Agenda item II
Administration Wing, Chief Secretary for
Administration's Office

Ms Kitty CHOI, JP
Director of Administration

Ms Jennifer CHAN
Deputy Director of Administration

Judiciary Administration

Miss Emma LAU, JP
Secretary
Judicial Officers Recommendation Commission

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Mrs Connie NGAN
Assistant Judiciary Administrator
(Corporate Services)

Clerk in attendance : Mr Daniel SIN
Chief Council Secretary (4)3

Staff in attendance : Miss Rachel DAI
Assistant Legal Adviser 2

Miss Joyce CHING
Senior Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

I. Election of Chairman

Dr Priscilla LEUNG, the member who had the highest precedence in the Council among members present at the meeting, presided over the election of the Chairman.

2. Dr Priscilla LEUNG invited nominations for the chairmanship of the Subcommittee. Mr Holden CHOW nominated Dr Priscilla LEUNG and the nomination was seconded by Mr Dennis KWOK. Dr Priscilla LEUNG accepted the nomination. There being no other nomination, Dr Priscilla LEUNG was elected Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a deputy chairman of the Subcommittee.

II. Meeting with the Administration and the Judiciary Administration

LC Paper No. CB(4)546/16-17(01) - Background brief on "Subcommittee on Proposed Senior Judicial Appointments" prepared by the Legislative Council Secretariat

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File ref.: CSO/ADM CR
8/4/3222/85

- Director of Administration's letter dated 17 January 2017 issued to Chairman of the House Committee on 18 January 2017

4. The Subcommittee deliberated (index of proceedings attached at **Annex**). The key issues discussed are summarized in the ensuing paragraphs.

Manpower shortage and workload among judges in the Judiciary

Work distribution among judges in the Judiciary

5. Mr Dennis KWOK expressed concerns about the shortage of judges and uneven distribution of caseloads among judges in the High Court and suggested that judges specialized in handling criminal cases could be assigned civil cases to relieve the heavy workload of other judges.

6. Secretary, Judicial Officers Recommendation Commission ("SJORC") explained that judges with mixed specialties were already assigned both criminal and civil cases where appropriate. The Judiciary had set up a working group to look into measures to improve case management and to ensure better use of judiciary resources. SJORC mentioned that the working group had prepared a practice direction and on which the legal sector had been consulted and supported.

Filling senior judicial positions through internal promotion

7. The Chairman said that the Judiciary should implement a policy of filling senior positions through internal promotion. SJORC said that some of the judicial vacancies in District Court and the Court of First Instance were already being filled through internal promotions, but, as the Chief Justice of the Court of Final Appeal ("CJ") had repeatedly stressed, it was important to continue absorbing senior and experienced practitioners into the Judiciary to maintain the quality of service and to promote the long term positive development of the Hong Kong's judicial system.

Expanding the pool of non-permanent judges

8. Dr Junius HO suggested that the Judiciary should make an effort to appoint more persons to the pool of non-permanent judges ("NPs") of the Court of Final Appeal ("CFA"), especially non-permanent Hong Kong judges ("HKNPs"). SJORC said that whether more NPs could be appointed would

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depend on the availability of suitable persons with the relevant experience and qualifications, taking into consideration the prevailing operational requirements of CFA.

Widening the mix of non-permanent judges from other common law jurisdictions and introducing more new blood

9. Dr Junius HO suggested that more judges from a wider variety of jurisdictions such as Australia or New Zealand, etc., should be appointed to fill the pool of non-permanent judges from other common law jurisdictions ("CLNPIs") and more new blood should be introduced. SJORC said that since 1997, CLNPIs had been appointed from among judges and retired judges in the United Kingdom ("UK"), and retired judges from Australia and New Zealand where the legal systems had the closest affinity to that in Hong Kong.

Criteria of identifying candidates for appointment

10. The Chairman and Mr Paul TSE queried by what criteria candidates were identified for consideration by the Judicial Officers Recommendation Commission ("JORC"). SJORC responded that factors such as the candidates' professional standing, judicial achievement, areas of expertise and their availability in attending appeal hearings or reviews would be considered for appointment as CLNPIs.

Procedure of vetting candidates' background

11. The Chairman commented that for senior positions such as CLNPIs of CFA, there should be a more rigorous process of checking the background to ensure that the candidates were suitable for appointment and that they could be tasked to handle important legal cases in Hong Kong. She suggested that the Judiciary should implement a due diligence process and JORC should consider the report from the Judiciary before making a recommendation to the Chief Executive ("CE") for appointment of CLNPIs. The Chairman also suggested that in future proposed appointments, the Administration should provide details of the areas of expertise being held by incumbent CLNPIs for reference of the subcommittee formed to consider the proposed senior judicial appointments.

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Political neutrality of judges

12. The Chairman said that it was important to ensure political neutrality among judges. SJORC responded all judges of the Judiciary were abide by the principle of political neutrality, and judgments were to be made according to the Hong Kong law.

Transparency in the appointment of judges

13. The Chairman commented that the current recruitment process in the Judiciary and the selection process for senior judicial positions in JORC lacked transparency. Dr Junius HO shared a similar view. SJORC explained that local judges for lower courts were appointed through an open recruitment process, but such procedure was not suitable for the appointment of more senior judicial positions. The Judiciary, however, took the view that such procedure was not suitable for the filling of vacancies at the appellate courts, given the small size of the Hong Kong Judiciary and the consideration that it would be desirable for appellate judges to have judicial experiences. For senior judicial appointments to CFA, the Judiciary did not consider open recruitment an appropriate option. SJORC said that JORC comprised serving judges and legal practitioners who had knowledge of the candidates and were in a position to make considered recommendations to CE.

Professional and political background of candidates

14. Mr Holden CHOW asked if JORC would take into consideration a candidate's political views, political affiliation and past involvement in political activities when formulating recommendations to CE on the appointment of CLNPs. SJORC advised that JORC would base its recommendations on the candidates' judicial and professional qualities according to Article 92 of the Basic Law, as well as the professional qualification as prescribed in the Hong Kong Court of Final Appeal Ordinance (Cap. 484).

15. Dr Junius HO observed that Lord REED was currently an incumbent UK judge and queried whether he could spare the time to serve as CLNP in CFA. SJORC said that in the UK, incumbent judges were allowed to accept appointment to serve in Hong Kong courts for not more than four weeks a year.

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Way forward

16. The Chairman concluded that the Subcommittee had completed deliberation of the Administration's proposed senior judicial appointments, and would report to the House Committee on 24 February 2017. Members also noted the Administration's intention to move a resolution to seek the Council's endorsement of the proposed appointment of CLNPIs at the Council meeting on 29 March 2017.

(Post-meeting note: The Chief Secretary for Administration moved a motion at the Council meeting on 29 March 2017 on a proposed resolution under Article 73(7) of the Basic Law of Hong Kong Special Administrative Region of the People's Republic of China and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). The resolution was made.)

III. Any other business

17. There being no other business, the meeting ended at 3:39 pm.

Council Business Division 4
Legislative Council Secretariat
30 October 2017

Subcommittee on Proposed Senior Judicial Appointments

**Proceedings of meeting
held on Tuesday, 14 February 2017, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Election of Chairman			
000300-000542	Dr Priscilla LEUNG Mr Holden CHOW Mr Dennis KWOK	Election of Chairman	
Meeting with the Administration			
000542-000715	Administration	The Administration briefed members on the proposed senior judicial appointments.	
000715-001700	Mr Dennis KWOK Judiciary Administration ("JA")	Mr Dennis KWOK's concern over manpower shortage and uneven distribution of workload among judges in the Judiciary.	
001700-002219	Chairman JA	The Chairman's concern over the criteria of identifying candidates and the procedure for considering judicial appointment as well as her query as to whether due diligence had been conducted.	
002219-002657	Mr Holden CHOW JA	Mr Holden CHOW's query as to whether the candidates' political views, political affiliation and past involvement in political activities would be taken as factors for consideration on the appointment of other common law jurisdictions non-payment Judges("CLNPJs").	
002657-003204	Dr Junius HO JA	Dr Junius HO's concern that Lord REED was currently an incumbent UK judge and thus whether he could spare the time to serve as CLNPJ in the Court of Final Appeal. Dr HO's query as to the number of candidates for recommendation on appointment as CLNPJs by the Judicial Officers Recommendation Commission ("JORC") this time.	
003204-003830	Chairman JA	The Chairman's suggestion of implementing a due diligence process and considering the report from the Judiciary before making a recommendation to	

Time Marker	Speaker(s)	Subject(s)	Action required
		the Chief Executive ("CE") for appointment of CLNPs as well as enhancing the transparency in the senior judicial appointment process.	
003830-004135	Mr Holden CHOW JA	Mr Holden CHOW's query as to whether JORC would take the initiative to research into candidates' political views, political affiliation and past involvement in political activities before formulating recommendations to CE on the appointment of CLNPs.	
004135-004316	Mr Dennis KWOK Chairman	Mr Dennis KWOK's view that it was important to ensure political neutrality among judges and that, in any case, judicial decision should be respected.	
004316-004940	Chairman JA	The Chairman's view that it was important to ensure political neutrality among judges.	
004940-005711	Dr Junius HO JA	<p>Dr Junius HO's observations that:</p> <ul style="list-style-type: none"> (a) the pool of non-permanent judges of CFA should be expanded; (b) more non-permanent Hong Kong judges should be appointed; (c) more information about the selection process should be made available for the subcommittee formed to consider the proposed senior judicial appointments; (d) a mix of CLNPs from a wider variety of jurisdictions would be more desirable; and (e) more new blood should be introduced into the pool of CLNPs. 	
005711-010357	Mr Paul TSE JA	<p>Mr Paul TSE raised questions on the following:</p> <ul style="list-style-type: none"> (a) the statistics on the Court of Final Appeal (as set out in Appendix 4 to Enclosure B of the Director of Administration's letter dated 17 January 2017 (Ref: CSO/ADM CR 8/4/3222/85)); (b) on what criteria candidates were identified for consideration by JORC; and (c) how many CLNPs had actually come to 	

Time Marker	Speaker(s)	Subject(s)	Action required
		Hong Kong to hear appeal cases in the past twelve months.	
010357-010523	Mr Holden CHOW JA	In response to Mr Holden CHOW's enquiry, JA clarified and confirmed that overseas judges had come to Hong Kong to hear appeal cases in the capacity of CLNPJs after their appointment as CLNPJs.	
010523-010716	Chairman Dr Junius HO Administration	Upon Dr Junius HO's enquiry, the Administration explained the procedure and way forward on the endorsement of the proposed senior judicial appointments.	
010716-010930	Chairman	<p>The Chairman reiterated her concerns over implementing a due diligence process before making a recommendation to CE for appointment of CLNPJs and the transparency in the senior judicial appointment process.</p> <p>The Chairman suggested that in future proposed appointments, the Administration should provide details of the areas of expertise being held by incumbent CLNPJs for reference of the subcommittee formed to consider the proposed senior judicial appointments.</p>	
Any other business			
010930-011032	Chairman	<p>The Chairman informed members about the Administration's intention to move a resolution to seek the Council's endorsement of the proposed appointment of CLNPJs at the Council meeting on 29 March 2017.</p> <p>The Chairman concluded that the committee had completed deliberation of the Administration's proposed senior judicial appointments, and would report to the House Committee on 24 February 2017. Subject to the views of the House Committee, the Administration would move a resolution at the Council meeting scheduled for 29 March 2017 to seek the Council's endorsement of the proposed appointment.</p>	