

立法會

Legislative Council

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Subcommittee on Proposed Senior Judicial Appointments

**Minutes of meeting held on
Friday, 27 April 2018, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP(Chairman)
Hon James TO Kun-sun
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, SBS, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon YUNG Hoi-yan
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Hon Jeremy TAM Man-ho
Hon AU Nok-hin
Hon Vincent CHENG Wing-shun, MH
Hon Tony TSE Wai-chuen, BBS

Members absent : Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon HUI Chi-fung

Public Officers attending : **Agenda item II**

Administration Wing, Chief Secretary for Administration's Office

Ms Kitty CHOI, JP
Director of Administration

Ms Christine WAI
Assistant Director of Administration 3

Judiciary Administration

Miss Emma LAU, JP
Secretary
Judicial Officers Recommendation
Commission

Mrs Connie NGAN
Assistant Judiciary Administrator
(Corporate Services)

Clerk in attendance : Ms Wendy JAN
Senior Council Secretary (4)7

Staff in attendance : Mr YICK Wing-kin
Senior Assistant Legal Adviser 2

Ms Angela CHU
Senior Council Secretary (4)1

Mr Griffin FUNG
Legislative Assistant (4)8

Mr Terry HON
Clerical Assistant (4)1

I. Election of Chairman

Mr James TO, the member who had the highest precedence among members present at the meeting, presided over the election of the Chairman. He invited nominations for the chairmanship of the Subcommittee.

2. Mr SHIU Ka-fai nominated Dr Priscilla LEUNG and the nomination was seconded by Mr Jeffrey LAM. Dr Priscilla LEUNG accepted the nomination. There being no other nominations, Dr Priscilla LEUNG was elected Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

[LC Paper Nos. CB(4)982/17-18(01) and AW-275-010-005-004-P001]

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

(At 11:00 am, the Chairman ordered that the meeting be extended for 15 minutes to 11:15 am.)

Submissions from deputations/members of the public and the suggestion of holding a public hearing

5. Members noted that the Subcommittee had received 23 submissions from deputations/members of the public expressing views on the proposed appointments of two non-permanent judges from other common law jurisdictions ("CLNPIs"). The 23 submissions received were tabled at the meeting. The deputations/members of the public were generally concerned about the two judges' strong stand in supporting the rights of lesbian, gay, bisexual, and transgender ("LGBT") as well as same-sex marriage. Some of the deputations/members of the public had requested the Subcommittee to hold a public hearing to gauge public views on the proposed appointments of the two CLNPIs.

(Post-meeting note: The Subcommittee received a total of 60 submissions on the proposed appointments of the two CLNPIs. The submissions were issued to members vide LC

Paper Nos. CB(4)997/17-18 and CB(4)1028/17-18 on 30 April and 4 May 2018 respectively.)

6. Members expressed diverse views and had a lively debate on the suggestion of holding a public hearing to collect public views on the proposed appointments of the two CLNPs. The Subcommittee also noted that the Administration and the Judiciary had raised objection to the holding of a public hearing, which, in their views, would run a high risk of politicizing the judicial appointment process and undermining judicial independence or the perception of it.

7. The Chairman put the proposal of holding a public hearing to vote, and the proposal was not supported by the majority of the members present. Accordingly, the Subcommittee decided not to hold a public hearing on the matter. The Chairman requested the Judiciary and the Administration to provide a written response to the concerns raised in the submissions.

(Post-meeting note: The Administration's written response to the concerns raised in the submissions was circulated to members vide LC Paper No. CB(4)1028/17-18 on 4 May 2018.)

Proposed senior judicial appointments

8. Noting from the submissions that there was wide public concern that the strong stand of the two judges in supporting LGBT's rights and same-sex marriages might affect their judgment on such cases and create apparent bias, members sought information on the existing mechanism in handling bias in judicial proceedings. Mr SHIU Ka-fai, Mr Holden CHOW and Ms Starry LEE particularly enquired whether the two judges would sit in the Court of Final Appeal ("CFA") if the appeal matters involved LGBT's rights or same-sex marriages.

9. Secretary, Judicial Officers Recommendation Commission ("SJORC") advised that, as stipulated in paragraphs 38 to 70 of the Guide to Judicial Conduct, there were established common law principles and practices in dealing with actual, presumed or apparent bias in judicial proceedings. CLNPs were usually invited to sit as the fifth judge in CFA for hearing appeals. In selecting and inviting a CLNP to sit, the Chief Justice and CFA would take all relevant circumstances into account, including the availability of the judges, their particular expertise in certain areas of law and the nature of the cases to be heard, etc. CLNPs, when sitting in CFA, were functioning as Hong Kong judges and were dealing with cases according to Hong Kong law.

10. Mr Paul TSE and Mr CHEUNG Kwok-kwan asked if the Judicial Officers Recommendation Commission ("JORC") would take into consideration the candidates' social values and background when formulating recommendations to the Chief Executive on appointment of CLNPs. Mr CHAN Chi-chuen, Mr Jeremy TAM, Mr James TO, Mr AU Nok-hin, Dr Fernando CHEUNG and Mr Alvin YEUNG shared similar views that they did not consider it appropriate to take those factors into account when considering judicial appointments as it might politicize the process of judicial appointments.

11. SJORC stressed that JORC made recommendations on appointment of judges of CFA in strict accordance with Article 92 of the Basic Law and the professional qualifications stipulated in the Hong Kong Court of Final Appeal Ordinance (Cap. 484). In recommending the proposed appointments of the two CLNPs, JORC considered that they fulfilled the requirements in terms of judicial and professional qualities. Other considerations, including backgrounds or personal views on political, social or economic issues, should not be taken into account because it might run a high risk of politicizing the process of judicial appointments.

12. The Subcommittee voted without a division and agreed to support the proposed senior judicial appointments. The Subcommittee completed its deliberations.

Endorsement of the Legislative Council

13. Members noted the Administration's intention to move a resolution to seek the Council's endorsement of the proposed appointments at the Council meeting of 30 May 2018.

(Post-meeting note: Members were informed that the Chairman would report the deliberations of the Subcommittee to the House Committee on 11 May 2018 vide LC Paper No. CB(4)1028/17-18 on 4 May 2018.)

III. Any other business

14. There being no other business, the meeting ended at 11:08 am.

Annex

Subcommittee on Proposed Senior Judicial Appointments

**Proceedings of meeting
held on Friday, 27 April 2018, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Agenda Item I - Election of Chairman			
000438-000638	Mr James TO Mr SHIU Ka-fai Mr Jeffrey LAM Dr Priscilla LEUNG	Election of Chairman	
Agenda Item II - Meeting with the Administration			
000639-000813	Chairman	Members noted that the Subcommittee had received submissions from deputations/members of the public expressing concerns on the proposed appointments of two non-permanent judges from other common law jurisdictions ("CLNPJs") because of the two judges' ("the two judges") strong stand in supporting the rights of lesbian, gay, bisexual, and transgender ("LGBT") as well as same-sex marriage ("the deputations' concerns"), and that the deputations/members of the public had requested the Subcommittee to hold a public hearing to gauge public views on the proposed appointments.	
000814-001210	Chairman Administration	The Administration briefed members on the proposed senior judicial appointments.	
001211-002404	Chairman Mr SHIU Ka-fai Judiciary Administration ("JA")	Mr SHIU expressed support for appointing overseas judges as CLNPJs. In view of the deputations' concerns, he also expressed support for holding a public hearing on the proposed appointments of the two judges. Mr SHIU's enquiry and JA's response on the mechanism in handling bias in judicial proceedings.	
002405-002916	Chairman Mr Holden CHOW JA	Mr CHOW expressed support for appointing overseas judges as CLNPJs and shared the deputations' concerns. Mr CHOW's enquiry and JA's response on the mechanism in handling apparent bias in judicial proceedings.	

Time Marker	Speaker(s)	Subject(s)	Action required
002917-003549	Chairman Mr Paul TSE JA	Mr TSE's views on the impact of "single judgment" of the court in shaping the values of the whole society and the need to take into account the social values of the candidates for appointing CLNPs. JA's explanation on the collegiate court of the Court of Final Appeal and the criteria to be adopted in considering judicial appointments.	
003550-004306	Chairman Dr Junius HO Administration JA	Dr HO shared the deputations' concerns and stressed the importance of holding a public hearing by the Subcommittee to gauge public views on the proposed appointments of the two overseas judges. The explanation of the Administration and JA on the established practice of senior judicial appointments and their objection to the holding of a public hearing by the Subcommittee on the proposed appointments of the two overseas judges.	
004307-004755	Chairman Mr CHAN Chi-chuen JA	Mr CHAN's views on the established practice of judicial appointments and the importance of not taking into consideration the background or personal views on social or economic issues of candidates for appointing CLNPs, and his reservation on the holding of a public hearing by the Subcommittee on the appointments of the two overseas judges. Mr CHAN's enquiry and JA's response on the criteria to be adopted in considering judicial appointments.	
004756-005230	Chairman Mr Jeremy TAM	Mr TAM's views on the judicial and professional qualities of the two overseas judges and the deputations' concerns, and his objection to the holding of a public hearing by the Subcommittee on the appointments of the two judges. Mr TAM's enquiry on whether the subcommittees formed in the past to study proposed senior judicial appointments had held any public hearings to receive public views.	
005231-005821	Chairman Mr James TO Clerk	Mr TO's view on the importance of not politicizing the judicial appointment process in order to uphold judicial independence and not taking into consideration the background or	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>personal beliefs on social or economic issues of candidates for appointing CLNPs, and his objection to the holding of a public hearing on the appointments of the two overseas judges.</p> <p>The Clerk's response to the enquiry raised by Mr Jeremy TAM that no public hearings had been held to receive public views by the six subcommittees formed under the House Committee to study proposed senior judicial appointments since 2003.</p>	
005822-010444	Chairman Mr AU Nok-hin JA	<p>Mr AU's views on the established practice of senior judicial appointments and the importance of not politicizing the judicial appointment process in order to uphold judicial independence, and his reservation on holding a public hearing on the appointments of the two overseas judges.</p> <p>JA's explanation on its objection to the holding of a public hearing by the Subcommittee on the proposed appointments of the two overseas judges as well as the dealing of cases by CLNPs according to Hong Kong law.</p>	
010445-011140	Chairman Ms Starry LEE JA	Ms LEE's views on the deputations' concerns as well as her enquiry and JA's response on the mechanism in handling apparent bias in judicial proceedings.	
011141-011541	Chairman	Break	
011542-011800	Chairman JA	JA's further response to Ms Starry LEE's enquiry on the mechanism in handling apparent bias in judicial proceedings.	
011801-012553	Chairman Mr CHEUNG Kwok-kwan JA	Mr CHEUNG's views on the influence of social values on the judgment of judges as well as his enquiry and JA's response on the criteria to be adopted in considering judicial appointments.	
012554-013031	Chairman Dr Fernando CHEUNG	Dr CHEUNG's views on the judicial and professional qualities of the two overseas judges and the established practice of senior judicial appointments, and his objection to the holding of a public hearing on the appointments of the two overseas judges.	
013032-	Chairman	Mr YEUNG's views on the established practice of	

Time Marker	Speaker(s)	Subject(s)	Action required
013553	Mr Alvin YEUNG	senior judicial appointment and his support on the four proposed senior judicial appointments.	
013554-013736	Chairman Mr Kenneth LAU	Mr LAU's support on the proposed senior judicial appointments and his objection to the holding of a public hearing on the appointments of the two overseas judges.	
013737-014137	Chairman Dr Junius HO	Dr HO's reiteration on the need to gauge public views by the Subcommittee on the proposed appointments of the two overseas judges having regard to the deputations' concerns, and his views on the established practice of senior judicial appointments and the role of the Legislative Council as a gatekeeper in scrutinizing the proposed senior judicial appointments which caused grave concern.	
014138-014649	Chairman Mr Holden CHOW	Mr CHOW's concerns on the strong stand of the two CLNPJ candidates in supporting LGBT's rights and same-sex marriage, and public perception of presumed bias of hearing cases involving LGBT's rights or same-sex marriage by the two overseas judges, as well as his views on the handling of such presumed bias in judicial proceedings.	
014650-015127	Chairman Ms Starry LEE Administration	Ms LEE's views on the importance of holding of a public hearing on the proposed appointments of the two overseas judges having regard to the deputations' concerns and the established practice of senior judicial appointments, as well as her proposal to discuss the practice of senior judicial appointments in other countries by the Panel on Administration of Justice and Legal Services in the future. The Administration's explanation on the criteria to be adopted in considering judicial appointments and its objection to the holding of a public hearing by the Subcommittee on the proposed appointments of the two overseas judges.	
015128-020005	Chairman JA	The Chairman stated that the Basic Law allowed Hong Kong to recruit CLNPJs to leverage on their expertise in dealing with cases. The focal point of the current dispute was that the two judges' values on LGBTs' rights and same-sex marriage might not be consistent with the core social values	

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		<p>in Hong Kong, and members of the public were worried that the two judges' future judgments on such cases might create an impact on the whole society because in some cases in foreign countries judges had handed down judgments ruling that certain pieces of legislation were unconstitutional. The Chairman hoped that the Administration and JA would take heed of the deputations' concerns and ensure that CLNPs would deal with cases according to the law of Hong Kong. The Chairman emphasized that it was incumbent upon members to reflect the views of members of the public, and this would not amount to an interference of judicial independence.</p> <p>JA's reiteration on the dealing of cases by CLNPs according to Hong Kong law.</p>	
020006-020354	Chairman Dr Junius HO JA	<p>Dr HO's proposal to hold a public hearing on the proposed appointments of the two overseas judges and JA's reiteration of the Judiciary's objection to the proposal.</p> <p>The Chairman extended the meeting for 15 minutes beyond the appointed ending time to allow sufficient time for discussion.</p> <p>The Subcommittee's decision on the proposal to hold a public hearing on the proposed judicial appointments.</p>	
020355-020649	Chairman	The Subcommittee's decisions on the proposed senior judicial appointments.	
Agenda Item III - Any other business			
020650-020846	Chairman Administration	<p>The Chairman's request for written replies from the Administration and JA on the deputations' concerns raised in the submissions.</p> <p>The Administration's timetable to move a resolution to seek Legislative Council's endorsement of the proposed senior judicial appointments.</p>	Admin and JA (paragraph 7 of the minutes)