

立法會 *Legislative Council*

立法會CB(2)2059/02-03號文件

檔號：CB2/PL/AJLS

2003年5月16日內務委員會會議文件

司法及法律事務委員會就 立法會根據《基本法》第七十三(七)條同意法官任命 的程序所提交的報告

目的

本文件旨在匯報司法及法律事務委員會(“事務委員會”)就立法會根據《基本法》第七十三(七)條同意法官任命程序提出的建議。

背景

2. 《基本法》第七十三(七)條賦予立法會同意終審法院法官及高等法院首席法官任免的權力。
3. 自1997年7月1日以來，立法會曾先後兩次根據《基本法》第七十三(七)條，行使同意法官任命的權力。在2000年6月，立法會同意7項終審法院法官的任命。在2000年12月，立法會同意高等法院首席法官的任命。該兩次法官任命的詳情載於**附錄I**。

事務委員會對任命法官程序的意見及建議

事務委員會轄下的工作小組及諮詢文件

4. 經過上述兩次任命後，事務委員會決定成立工作小組，研究下列事項：
 - (a) 立法會如何能適當履行《基本法》第七十三(七)條所訂其在憲法上的責任；及
 - (b) 可如何改善任命法官的制度，以提高該制度的透明度和問責性，同時確保司法獨立。
5. 工作小組就立法會根據《基本法》第七十三(七)條同意法官任命的程序提出了3個方案，亦定出須予檢討的多項事項。有關事項包

括：政府當局須就獲提名出任司法職位的人選向立法會提供的資料；司法人員推薦委員會(“推薦委員會”)的成員組合、問責性和運作；以及設立機制處理針對法官的投訴是否可取及可行。工作小組建議諮詢公眾，特別是法律界的意見。

6. 事務委員會在2001年12月發表有關任命法官程序的諮詢文件，諮詢期於2002年3月15日屆滿。諮詢文件已於2001年12月12日隨立法會CB(2)662/01-02號文件送交所有議員。

事務委員會的建議

7. 事務委員會曾於2002年7月22日的會議上，考慮在諮詢期間接獲的意見，並就有關事項進行商議。事務委員會的商議結果及建議已詳載於任命法官的程序報告內。該報告已於2002年9月20日隨立法會CB(2)2798/01-02號文件發出，供所有議員參閱。

8. 經考慮法律專業團體、司法機構及政府當局對立法會根據《基本法》第七十三(七)條同意法官任命程序的意見後，事務委員會建議採取下列步驟——

- (a) 政府當局告知內務委員會，行政長官接納推薦委員會就任命法官提出的建議(此步驟應在行政長官公布其接納有關建議之前進行)；
- (b) 內務委員會把此事轉交司法及法律事務委員會或其他事務委員會或委員會討論；
- (c) 有關的事務委員會／委員會盡快在會議上討論此事，並邀請立法會全體議員出席有關會議；
- (d) 有關的事務委員會／委員會向內務委員會匯報討論結果；
- (e) 政府當局作出動議議案的預告，請求立法會同意所推薦的任命；
- (f) 有關議案在立法會會議席上動議、辯論並付諸表決；及
- (g) 如有關議案獲立法會通過，行政長官會作出任命。

9. 事務委員會決定請議事規則委員會研究現行規則是否足以落實上文第8段所述的程序，尤其是在現行規則下，立法會是否有足夠時間考慮同意任命的議案。

10. 事務委員會亦建議，政府當局徵求立法會根據《基本法》第七十三(七)條同意法官的任命時供立法會參考的資料，應盡可能涵蓋美國參議院司法委員會所編訂的問卷及英國高等法院法官職位申請表中所載的事項(附錄II及III)。司法機構已同意，在日後任命法官時，會要

求推薦委員會考慮應向行政長官提交的適當資料，讓行政長官能向立法會提供足夠的所需資料。

議事規則委員會的意見

11. 議事規則委員會曾於2003年3月6日的會議上討論上述事項。就立法會的現行規則是否足以落實事務委員會所建議立法會根據《基本法》第七十三(七)條同意法官任命的程序一事，議事規則委員會的意見如下——

- (a) 《議事規則》中規管“議案”的G部條文，適用於同意任命有關法官的決議案；
- (b) 根據《議事規則》第75條，內務委員會可將任命建議轉交小組委員會討論，因此無須修訂《議事規則》；及
- (c) 由於法官任命建議並非屬可轉交事務委員會討論的政策事宜，若內務委員會要將任命建議轉交司法及法律事務委員會或任何其他事務委員會討論，則須修訂《議事規則》，以容許事務委員會研究有關建議。

12. 關於上文第11(c)段，謹請委員察悉，在附錄I詳述的前兩次法官任命中，事務委員會只曾討論與法官任命有關的事宜，而未有討論建議的法官任命本身。

13. 議事規則委員會部分委員認為，內務委員會宜將任命建議交由小組委員會討論，而非轉交事務委員會研究。

14. 議事規則委員會又建議，事務委員會或可考慮，若立法會同意法官任命的程序獲得採納，該等程序應否亦適用於同意法官的免職。

立法會根據《基本法》第七十三(七)條同意法官任命的修訂程序

15. 事務委員會經考慮上文第11及13段所載議事規則委員會的意見後，並不反對內務委員會將任命建議轉交小組委員會而非事務委員會討論的建議。

16. 因此，事務委員會所建議的法官任命程序現修訂如下——

- (a) 政府當局告知內務委員會，行政長官接納推薦委員會的建議，並按上文第10段所述就獲推薦的法官任命人選提供足夠的所需資料(此步驟應在行政長官公布其接納有關建議之前進行)；
- (b) 內務委員會將此事轉交一個小組委員會討論；

- (c) 小組委員會盡快討論此事；
- (d) 小組委員會向內務委員會匯報商議結果；
- (e) 政府當局作出動議議案的預告，請求立法會同意所推薦的任命；
- (f) 議案在立法會會議席上動議、辯論並付諸表決；及
- (g) 如議案獲立法會通過，行政長官會作出任命。

立法會根據《基本法》第七十三(七)條同意法官免職的程序

17. 議事規則委員會建議，事務委員會或可考慮立法會同意法官任命的程序，應否亦適用於同意法官的免職(請參閱上文第14段)。秘書處曾發出文件，諮詢事務委員會對此建議的意見。雖然事務委員會的委員對建議並無異議，但事務委員會主席認為，此事應先在事務委員會日後會議上討論，然後才可作出此方面的建議。

徵詢意見

18. 謹請議員通過事務委員會在上文第16段所建議立法會根據《基本法》第七十三(七)條同意法官任命的程序。

立法會秘書處
議會事務部2
2003年5月14日

兩次法官任命

第一次 —— 任命7位終審法院法官

在2000年5月10日下午5時，政府當局與司法機構發出新聞公報，宣布委任陳兆愷法官和李義法官為終審法院常任法官、烈顯倫法官和沈澄法官為終審法院非常任香港法官，以及布仁立爵士、艾俊彬爵士和苗禮治勳爵為終審法院其他普通法適用地區非常任法官。政府當局將有關新聞公報及7位獲委任法官的簡歷發給議員。

2. 政府當局於2000年5月10日作出預告，表明會在2000年5月31日的立法會會議上動議議案，以便根據《香港終審法院條例》第7A條，就該7項任命徵求立法會同意。

3. 司法及法律事務委員會在2000年5月16日的會議上，決定邀請政府當局向事務委員會簡介與終審法院法官的任命有關的法律及行政事宜。應該事務委員會的要求，內務委員會請政府當局撤回其在2000年5月31日立法會會議上動議議案的預告，以待事務委員會討論有關事宜。政府當局於2000年5月22日撤回有關的議案預告。

4. 司法及法律事務委員會在2000年6月3日、6月13日及6月17日舉行3次特別會議，討論與終審法院法官的任命有關的事宜。在會議席上提出的事項之一，是政府當局就定於2000年5月31日動議的議案徵求立法會同意而採取的做法。委員關注到，政府當局在其就擬動議的議案作出預告之前，並無如現時提出重大的立法及財務建議般，事先徵詢事務委員會的意見。此外，政府當局亦無提供關於該議案的立法會參考資料摘要或議案動議人的發言擬稿，供議員參閱。委員認為政府當局未有提供足夠資料，以便立法會研究有關議案。政府當局理解委員關注的事項，並答允在日後任命法官時作出改善。

5. 司法及法律事務委員會主席分別在2000年6月9日及6月16日，向內務委員會口頭匯報該事務委員會討論有關事項的進展。

6. 經司法及法律事務委員會同意，政府當局於2000年6月5日作出預告，表明會在2000年6月21日的立法會會議上動議議案，就有關的7項任命徵求立法會同意。政府當局亦提交了關於該議案的立法會參考資料摘要，供議員參閱。該議案其後獲立法會通過。

第二次 —— 任命高等法院首席法官

7. 行政署長在2000年11月10日致內務委員會主席的函件中表示，行政長官已接納司法人員推薦委員會任命梁紹中法官為高等法院首席法官的推薦。行政長官將於當天下午公布其接納司法人員推薦委員會的建議。政府當局樂意就此提供更多資料及／或與議員會面，解

答議員的任何疑問。上述函件夾附該項任命的新聞公報及有關文件。政府當局要求議員在行政長官公布此項任命之前，不要向外透露此事。內務委員會主席安排將有關函件的副本送交全體議員。

8. 應司法及法律事務委員會主席的要求，政府當局在該事務委員會2000年11月28日的會議上，向事務委員會簡介該次任命的程序和考慮因素，並提交就該次任命徵求立法會同意的議案措辭，供委員參閱。

9. 政務司司長於2000年11月29日作出預告，表明擬動議同意任命的議案。該議案在2000年12月20日的立法會會議上動議並獲得通過。

Questionnaire set by the Senate Judiciary Committee in the United States

**(Extract from "Report of the Commission on the Selection of Federal Judges
1996, Miller Center Commission No. 7, May 1996")**

A. GENERAL PERSONAL QUESTIONS

- I.1. Full name and any former names used.
IV.1
- I.2. Address (current residence and office).
IV.2
- I.3. Date and place of birth.
- I.4. Marital status and spouse's name/maiden name (if applicable), occupation and employer's name/address.
- I.5. Education (list each college, law school and date of degree).
- I.6. Employment record (list by year each business or other enterprise since college).
- I.7. Military service (list dates, service, rank, serial number and type of discharge).
- I.8. Honors and Awards of interest to the Committee.
- I.13 What is present state of your health and when was your last physical exam?

B. LEGAL EXPERIENCE AND BACKGROUND

- I.9. Bar Associations (list all legal or judicial committees or conferences with titles and dates).
- I.10 Other memberships in organizations which lobby public bodies.
- I.11 All courts in which admitted to practice with dates and list any lapses. Same information for administrative bodies requiring special admission.

- I.12 List of all publications with copies of material not readily available and speeches on constitutional law or legal policy with readily available press reports about such speeches.
- I.14 State chronologically any judicial offices held with description.
- I.15 Provide citations for your ten most important opinions (if applicable), same for all appellate opinions reversing or criticizing your rulings, and your significant opinions on state or federal constitutional issues with related appellate rulings (if not readily available, provide copies of these).
- I.16 State any other public offices held with terms of service and descriptions, and list chronologically other candidacies.
- II.6. Ever play a role in a political campaign? If so, identify particulars, including candidate, dates, and your title/responsibilities.
- I.17 Describe chronologically your legal career including :
- a.1 - Clerkships.
 - a.2 - Solo practice.
 - a.3 - Law firms, companies, and government agencies.
 - b.1 - Describe general character of your practice.
 - b.2 - Describe former clients and specialities.
 - c.1 - Frequency of appearances in court? If this varied, give by date.
 - c.2 - Percentage of appearances in (a) federal, (b) state, and (c) other courts.
 - c.3 - Percentage of (a) civil and (b) criminal.
 - c.4 - Number of cases tried to conclusion and state your role.
 - c.5 - Percentage of cases (a) jury and (b) non-jury.

C. FINANCIAL DATA AND CONFLICT OF INTEREST

- II.1. Sources, amounts and dates of all anticipated receipts from business relationships. Describe arrangements for any future compensation.
- II.2. Explain how you will resolve potential conflicts of interest and identify likely areas which may initially pose conflicts.

I.18 Describe ten most significant litigated matters you personally handled. Give citation, summary, identify client, detail nature of your participation. Also : (a) date of representation. (b) name of court and judge. (c) names, addresses and phone numbers of co-counsel and principal counsel for other parties.

I.19 Describe the most significant legal activities you pursued (non-trial or non-litigation). Describe the nature of your participation (unless privileged).

II.3. Do you have plans to pursue outside employment with or without pay if confirmed? If so, explain.

II.4. List all sources of income received in the calendar year prior to nomination.

II.5. FINANCIAL STATEMENT REQUIRED

D. INVOLVEMENT IN LEGAL PROCEEDINGS/TAX AUDITS/OTHER
CONFIDENTIAL

IV.3. Ever been discharged or resigned due to impending discharge?

IV.4. Have you and your spouse paid all back taxes? Any tax payments made prior to your nomination? If so, detail.

IV.5. Tax lien or collection procedure ever instituted against you? If so, detail.

IV.6. You or spouse ever subject of any tax audit or inquiry? If so, detail.

IV.7. You or spouse ever declared bankruptcy? If so, give particulars.

IV.8. Have you or any organization you belonged to ever been under investigation for violating any law or regulation? If so, detail.

IV.9. Have you ever been the subject of a complaint to any group, agency or court for breach of ethics or rule of conduct? If so, give particulars.

IV.10 Ever been a party to any litigation?

IV.11 Please advise the Committee of any other adverse information that may affect your nomination.

E. GENERAL/OTHER

III.1. Describe your work to provide those disadvantaged with legal services.

- III.2. Any membership in a discriminatory organization? If so, what efforts did you make to try to change such policies?
- III.3. Selection committee in your jurisdiction to recommend nominations? If so, did they recommend you? Describe the entire process you underwent.
- III.4. Did anyone involved in your selection discuss any legal case or issue seeking to learn how you might rule? If so, explain fully.
- III.5. Discuss your views on a criticism of judicial activism.

LORD CHANCELLOR

Application for appointment as
Justice of the High Court

Restricted - Appointments

Please complete this form in type or write clearly in **black** ink. If there is insufficient space on the form please feel free to continue on a separate sheet. **You should complete all parts of this form, even if you have previously supplied some of the details requested.** This will help to ensure that our records are up to date.

Please read the guidance notes before completing this form.

Section A - Personal details

Title (tick as applicable) Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other (please state)

Professional surname

Private surname (if different from professional surname)

Forenames in full
(please underline the name by which you prefer to be known)

Date of birth

Decorations/honours

Professional address

Postcode
Telephone
Email

Private address

Postcode
Telephone
Email

Please indicate which address is to be used for correspondence relating to this application

☐ Professional ☐ Private

Please tick one or more as appropriate to indicate whether you are a :

☐ Barrister ☐ Solicitor ☐ Queen's Counsel
☐ Holder of full-time judicial office

Please indicate with a tick the Division(s) of the High Court to which you would prefer to be assigned, if appointed :

☐ Queen's Bench ☐ Chancery ☐ Family

Nationality

Section B - Educational and professional history

1 Further and/or Higher Education

| Dates | Colleges and/or Universities attended | Degrees/diplomas/certificates Awarded (please state class of Any degrees) |
|-------|---------------------------------------|---|
| | | |

2 Legal training**Barristers**

Month and year of call to the Bar

Inn of Court

Circuit membership (if any)

Specialist Bar Association (if any)

Year Silk taken (if applicable)

Solicitors

Month and year of admission as a solicitor

Specialist Solicitors' Association (if any)

Higher courts (Civil)

Date granted

Higher courts (Criminal)

Date granted

Higher courts (All Proceedings)

Date granted

Year Silk taken (if applicable)

All applicants

Please give dates of pupillage and name(s) and address(es) of pupil-master(s) and/or dates of articles and name(s) and address(es) of principal(s) and firm(s) or other organisation(s) (eg local authorities) with whom articles were undertaken, **starting with the earliest.**

| Dates | Name of pupil-master or principal and firm or other organisation | Address |
|-------|--|---------|
| | | |

All applicants

Please give details of your professional experience since completing pupillage or articles, **starting with the earliest.** Please include dates, addresses (including where appropriate, the name of the Head of Chambers). Please include under 'Particulars' the type of work done.

| Dates | Chambers, firm or other organisation and address | Particulars |
|-------|--|-------------|
| | | |

Barristers and Solicitors

Please give a general indication of the type of your present practice by entering, against each appropriate category below, the approximate percentage of your working time that you spend on that type of work.

%

| |
|---|
| Administrative and Public Law (including Judicial Review) |
| Arbitration |
| Banking and Financial Services |
| Chancery |
| Commercial and Admiralty |
| Common Law - Contract, Sale of Goods |
| Common Law - Personal Injury |
| Common Law - Product Liability |
| Common Law - Professional Negligence |
| Common Law - Other |
| Company Law |
| Conveyancing |
| Criminal |
| Defamation |
| Disciplinary |
| Employment and industrial relations |
| European and International |
| Family |
| Housing |
| Human Rights |
| Immigration |
| Insolvency |
| Intellectual Property |
| Landlord and Tenant |
| Parliamentary, Planning and Local Government (including Rating) |
| Practice Management |
| Restrictive practice and monopolies |
| Revenue |
| Technology and Construction |
| Other (please specify): |

If you are no longer in active practice as a barrister or a solicitor, on what date and in what circumstances did you cease to practise?

3 Fees

Please state your personal gross income from practice (exclusive of VAT) in each of the last three completed accounting years, beginning with the most recent (to the nearest £1,000)

Income

Accounting year ending

£

to

£

to

£

to

If you consider that the level of your fees or earnings have been affected by the nature of your or your firm's practice or extraneous factors, please give details in this section

Section C - Judicial experience

Do you now hold, or have you held in the past,
any judicial appointment?
(including part-time appointment)

☐ No

☐ Yes (please state which and give the
date(s) of appointment in the
space below)

If you currently hold a judicial appointment,
please state where you now sit, naming the
court(s) or hearing centre(s).

Please state any locations at which you have
sat in the last 3 years and the court(s) or
hearing centre(s) at which you have sat in that
time.

If you hold or have held any judicial appointment, please describe the work you have done as a holder of
judicial office, including the number of sitting days completed and the jurisdictions exercised.

Section D - General

Character

Have you ever been convicted of, or cautioned for, any criminal offence, other than a minor road traffic offence such as parking, or are any such proceedings pending? No ☐ Yes ☐ (please give details, including dates, below)

Please note that applicants for judicial appointment are not protected by sections 4(2) and 4(3) of the Rehabilitation of Offenders Act 1974, and convictions which would normally be regarded as 'spent' within the meaning of the Act should therefore be declared. [Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975]

Have you ever been adjudged bankrupt, made a composition with your creditors, or been sued to judgement for any debt, or are any such proceedings pending? No ☐ Yes ☐ (please give details, including dates, below)

Have you ever had proceedings brought against you, or paid a penalty, or made a composition in respect of failure to pay, or any other default relating to, VAT or any other form of tax or rates, or are any such proceedings pending? No ☐ Yes ☐ (please give details, including dates, below)

Have you ever had an action brought against you for professional negligence without the matter being dismissed, or are any such proceedings pending? If you are a solicitor and such an action has been brought or is pending against your firm in respect of a matter under your supervision, answer 'yes'. No ☐ Yes ☐ (please give details, including dates, below)

Are you, or have you ever been, subject to the disciplinary proceedings of the Bar or The Law Society (including the Bar's and The Law Society's procedures in respect of complaints about inadequate professional services or "shoddy work") in respect of a matter involving you personally or under your supervision, without the matter having been dismissed, or are any such proceedings pending? No ☐ Yes ☐ (please give details, including dates, below)

Are you aware of anything in your private or professional life which would be a source of embarrassment to yourself or the Lord Chancellor if it became known in the event of your appointment as a High Court Judge? No ☐ Yes ☐ (please give details below or, if you prefer, contact a member of Judicial Group staff as mentioned in the 'Guide for Applicants')

Consultation

You may include here the name(s) and address(es) of up to three members of the judiciary and/or profession who you consider will be able to comment on your qualities and experience. (The arrangements for consultation are outlined in the 'Guide for Applicants': this is an opportunity to name those who would not otherwise be consulted.)

Further information

Please provide any other information which you consider may be relevant to your application, including any matters you wish the Lord Chancellor to be aware of in considering your application. Please assess your own suitability for appointment to the High Court Bench, against the criteria (legal knowledge and experience, skills and abilities, and personal qualities; these are described in more detail in the Guide). You should provide examples of significant achievements to support your assessments. Continue on a separate sheet if necessary.

I declare that the information which I have given on this form is true to the best of my knowledge and belief.

Signature

Date
