

**Extract from minutes of meeting of Administration of Justice
and Legal Services Panel held on 22 July 2002**

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III. Research Report on "Mechanism for Handling Complaints Against Judges in Overseas Places"

(RP07/01-02 issued under LC Paper Nos. CB(2)2528 and 2547/01-02)

4. At the invitation of the Chairman, Head (Research & Library Services Division) (H(RL)) briefed members on the main findings of the research report which studied the mechanism for handling complaints against judges in Canada, the United Kingdom, the United States, and the State of New York. The relevant issues identified in Part 7 of the research report for consideration of the Panel were summarised below -

- (a) whether the Judiciary should increase the accessibility and visibility of the existing system of handling complaints against judges, and publicise relevant complaint statistics on a regular basis;
- (b) whether the Judiciary should develop relevant codes of conduct for judges; and
- (c) whether a formal complaint system against judges should be established, having regard to overseas practices and the small size of the Judiciary in Hong Kong.

5. Ms Audrey EU was in favour of establishing a mechanism for handling complaints against judicial conduct, not judicial decisions. Ms EU further said that to her understanding, the majority of complaints against the Judiciary were not directed at judges, but the behaviour of staff working in courts and tribunals etc. towards litigants and defendants. In this connection, Ms EU asked about the arrangements in handling complaints against judiciary staff overseas and in Hong Kong.

6. H(RL) said that complaints related to the merits of judicial decisions or procedural rulings were not handled by the complaints handling institutions of the overseas jurisdictions covered in the research report. He had no information on the procedure for handling complaints against judiciary staff in places which were outside the scope of the research.

7. Judiciary Administrator (JA) responded that to uphold judicial

independence, the existing mechanism for handling complaints against judges (including judicial officers) did not deal with complaints against judicial decisions. If a complainant was dissatisfied with a judicial decision, the Court Leader would explain to him that the matter in question was within the judge's judicial authority and inform him of the relevant appeal procedures. As regards complaints against the staff of the Judiciary Administration, JA said that they were handled by a Senior Executive Officer reporting to him. JA added that he would personally handle complaints referred from Members of the Legislative Council (LegCo) or the Ombudsman.

8. In reply to Mr TSANG Yok-shing's enquiry, JA said that a total of 120 complaints about judges were received by the Judiciary in 2001. Of these complaints, 91 were about judicial decisions and 29 about judges' conduct. However, the actual number of complaints against judges' conduct was less than 29, as some complainants who were dissatisfied with judicial decisions would also lodge complaints against the conduct of the judges making the decisions. JA further said that the number of complaints was very small compared to the 750 000 cases disposed of by judges and judicial officers in 2001.

9. At the request of the Chairman, JA undertook to provide information on the number of complaints against the staff of the Judiciary Administration after the meeting.

(Post-meeting note - The information provided by the Judiciary Administration was circulated to the Panel vide LC Paper No. CB(2) 2645/01-02 on 26 July 2002. The number of complaints against the staff of the Judiciary Administration in 2000 and 2001 was 57 and 50 respectively.)

10. Mr Albert HO enquired how the Judiciary would follow up complaints against judges' conduct which were found to be substantiated. JA responded that an apology would be sent to the complainant, and CJ or the Court Leader would discuss the matter with and counsel the judge concerned to seek to avoid recurrence of similar conduct. Further, the matter would be brought to the attention of the Judicial Officers Recommendation Commission at the appropriate time.

11. Mr Albert HO considered that the Judiciary should improve the existing complaint mechanism to enhance its fairness and openness, in the light of overseas practices. On the complaint mechanism, he said that members of the public should be informed of how and where a complaint could be lodged, the complaint handling process and the outcome of the investigation of the complaint. Mr HO further said that the Judiciary should consider developing relevant codes of conduct for judges and judicial officers, so as to enhance judicial accountability. Mr HO also suggested that the Panel may consider

paying a visit to CJ with a view to exchanging views with CJ and other judges on the matter.

12. Ms Emily LAU expressed support for a formal mechanism for handling complaints against judges which should be structured, open and accountable to the public. Ms LAU also expressed support for Mr Albert HO's suggestion about having a forum for informal exchange of views with CJ. She pointed out that the Judiciary had invited LegCo Members to meet with CJ to exchange views on matters of mutual concern on several occasions prior to 1997. Ms LAU suggested that the Chairman should write on behalf of the Panel to request for an informal meeting with CJ for the purpose of exchanging views on matters of common interest. The Chairman agreed.

(Post-meeting note - The Chairman wrote to the Chief Justice on 6 September 2002.)

13. Mr Martin LEE was of the view that many judges would not resist changes to improve the transparency of the mechanism for handling complaints against judges. However, the important principle was that judges should not be subject to any pressure for changes.

14. Members agreed that the Judiciary should be invited to consider the issues identified in Part 7 of the research report. In addition to the views expressed by members earlier at the meeting, the Chairman invited the Judiciary to consider ways to improve the transparency of the existing mechanism for handling complaints against judges and staff of the Judiciary Administration, for example, by posting on the Internet and publishing in annual reports of the Judiciary information relating to the judicial complaint handling procedures and related statistics. The Chairman requested the Judiciary to revert to the Panel on its views on the matter, before introducing any changes to the present complaint handling mechanism, so that the Panel could consult interested parties if considered necessary.

15. JA said that the Judiciary would consider the issues raised in the research report and the views of members expressed at the meeting. On the timing for reverting to the Panel, JA said that he would need to consult CJ and the Court Leaders. The Chairman said that the Panel would follow up the matter early in the next legislative session. JA noted the Chairman's view.

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