

立法會 *Legislative Council*

立法會CB(2)1133/05-06(02)號文件

檔 號：CB2/HS/2/05

資深司法任命建議小組委員會

立法會秘書處為2006年2月16日會議擬備的背景資料簡介

目的

本文件旨在提供資料，說明立法會同意資深司法任命的程序，以及過去根據《基本法》第七十三(七)條所作的任命。

背景

《基本法》的有關係文

2. 《基本法》第四十八(六)條授予行政長官依照法定程序任命各級法院法官的職權。根據《基本法》第八十八條，各級法院的法官根據獨立委員會(即司法人員推薦委員會(“推薦委員會”)^註)推薦，由行政長官任命。關於終審法院法官及高等法院首席法官的任命，《基本法》第九十條規定，行政長官除依從《基本法》第八十八條規定的程序外，還須徵得立法會同意。《基本法》第七十三(七)條相應地授予立法會同意任命終審法院法官和高等法院首席法官的職權。

過去的任命

3. 自1997年7月1日以來，立法會曾3次根據《基本法》第七十三(七)條行使同意法官任命的權力——

- (a) 於2000年6月，立法會同意7名終審法院法官的任命，包括兩名常任法官、兩名非常任香港法官，以及3名其他普通法適用地區的非常任法官(“非常任普通法法官”);
- (b) 於2000年12月，立法會同意高等法院首席法官的任命；及
- (c) 於2003年7月，立法會同意3名終審法院非常任普通法法官及高等法院首席法官的任命。

^註 根據《司法人員推薦委員會條例》第3(1)條，推薦委員會由以下人士組成：終審法院首席法官(主席)、律政司司長、行政長官委任的7名委員(包括大律師及律師各1名、法官兩名，以及行政長官認為與法律執業完全無關的人士3名)。

檢討任命法官的程序

4. 司法及法律事務委員會(“事務委員會”)研究過2000年兩次法官任命後，決定檢討任命法官的程序，並於2001年12月發出諮詢文件，就多項事項諮詢公眾，尤其希望徵詢法律界的意見。該等事項包括立法會根據《基本法》第七十三(七)條同意司法任命的程序；政府當局須就司法職位提名人選向立法會提供的資料；推薦委員會的成員組合、問責性及運作情況；以及設立機制處理針對法官的投訴是否可取可行。

5. 事務委員會於2002年9月發出任命法官的程序報告(“該報告”)，當中提出有關根據《基本法》第七十三(七)條同意司法任命程序的建議。內務委員會已於2003年5月16日的會議上通過該項建議。

立法會根據《基本法》第七十三(七)條同意司法任命的程序

6. 內務委員會所通過立法會根據《基本法》第七十三(七)條同意法官任命的程序，現綜述如下——

- (a) 政府當局告知內務委員會，行政長官接納推薦委員會的推薦，並就獲推薦任命人士向立法會提供充分資料(此步驟應在行政長官公布其接納有關推薦之前進行)；
- (b) 內務委員會將此事轉交一小組委員會討論；
- (c) 小組委員會盡快就此事作出討論；
- (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，徵求立法會同意獲推薦的任命；
- (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，行政長官作出任命。

為徵求立法會同意司法任命而向其提供的資料

7. 在檢討期間，事務委員會主要關注到，政府當局在2000年兩次司法任命中提供予立法會的資料既不詳盡，亦不足夠。為令立法會能有效行使同意資深司法任命的權力，事務委員會在報告中建議，政府當局徵求立法會根據《基本法》第七十三(七)條同意一項司法任命時向立法會提供的資料，應盡可能涵蓋美國參議院司法委員會所編訂的問卷(附錄I)及英國高等法院法官職位申請表(附錄II)中所載的事項。司法機構已同意，在日後的司法任命中，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充分資料。

上一次的司法任命

8. 上文第6段所述立法會同意司法任命的程序，在2003年7月的司法任命中首次實行。立法會成立了一個小組委員會考慮3名終審法院非常任普通法法官及高級法院首席法官的擬議司法任命。

9. 在該次任命中，政府當局所提供獲推薦任命人士的履歷，涵蓋的範圍包括其個人背景、學歷、法律經驗、司法經驗、服務及活動、所獲頒受的榮譽學位及名銜，以及著作等。小組委員會同意，與2000年的兩次司法任命相比，是次就獲推薦任命人士所提供的資料較為全面，已大有改進。然而，有關終審法院非常任普通法法官的擬議任命，小組委員會要求政府當局提供更多資料，包括獲推薦任命人士的重要著作及曾審理的主要案件。應小組委員會的要求，政府當局提供了下列補充資料，供委員參閱：

- (a) 獲推薦任命人士的重要著作；及
- (b) 獲推薦任命人士曾作出的判詞選集。

10. 小組委員會考慮所取得的所有資料後，同意獲推薦任命人士具有豐富的法律及司法經驗、崇高地位，贊同擬議的任命。立法會其後於2003年7月3日同意有關任命。

是次任命

11. 行政署長在2006年1月6日致內務委員會主席的函件中表示，行政長官已接納推薦委員會的推薦，任命馬曉義先生及高禮哲法官為終審法院非常任普通法法官。隨函夾附的文件還有——

- (a) 有關是次任命的新聞稿預覽；及
- (b) 題為“終審法院非常任法官的任命”的文件。

內務委員會主席已安排秘書處向所有議員發出此函件。

12. 內務委員會已於2006年1月13日的會議上成立小組委員會，研究是項擬議司法任命。

13. 據政府當局所述，其擬在本立法會期內動議議案，盡快徵求立法會同意是項任命。如立法會同意有關任命，行政長官將根據《基本法》第八十八條任命獲推薦的人士。上述兩位獲推薦任命人士可於2006年4月履新。

立法會秘書處
議會事務部2
2006年2月15日

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

	Income	Accounting year ending
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)	£	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
