

Written Submission

Judge's misbehavior

Relevant laws

- **Basic Law Article 89:** A judge of court of the Hong Kong Special Administrative Region may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.
- **Cap 433 Judicial Officers (Tenure of Office Ordinance)** (hard copy with markings printed out)

Mechanism (Cap 433 Judicial Officers (Tenure of Office) Ordinance)

Inability / misbehavior:

- CJ to notify the judge and call on him to state in writing (Section 2)
- If fail to write / justification not satisfactory → call on tribunal to investigate the matter. (Section 2)
- Tribunal (CJ + 2 High Court Judge) to investigate and submit a report to the Judicial Officers Recommendation Commission (Section 6, 7)
- If report negative, then recommend to CE that judge may be dismissed / compulsory retirement/ reduced in rank / future salary increments stopped / reprimanded (譴責).)(Section 8)
- CE to take action according to recommendation (Section 9)

Points:

- To start with, one should criticize the fundamental principle instead of giving piecemeal attack of the procedure.
- Judges are of high quality: chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions (Basic Law Article 92).

- As a experienced legal practitioner, I believe from my experience that there is no perfect system in the world. There are only better systems, and I opine that Hong Kong's legal system is one of those better systems.
- Legal system has a long history, which could be traced back to as early as in the Roman Empire. One should aim at making refinements to the system instead of revolutionary changes.
- Hong Kong adopts the English common law system that upholds judicial independence, which is secured by:
 - (1) By ensuring that the appointment of judges is made independently from the influence of the executive branch of the government;
 - (2) By conferring upon judges security of tenure so that they cannot readily be dismissed by the executive branch of the government;
 - (3) By conferring upon judges immunity from suit for actions taken in the exercise of their judiciary functions.
- **Source of judicial independence from government:** The question of state immunity was one which the Court could decide independently on its own without consulting the executive; otherwise the case might be decided by the executive based on what it considered as "politically expedient" (*The Philippine Admiral* [1977] AC 373, quoted in *Democratic Republic of the Congo v FG Hemisphere Associates LLC (No. 1)* (2011) 14 HKCFAR 266)
-
- **Current system that manages judge's misbehavior:** Basic Law Article 89; Cap 433 Judicial Officers (Tenure of Office) Ordinance: Suspension of officer and Tribunal (CJ + 2 High Court Judges)
-
- **Whether judge's behavior should be accountable to public?**
 - Rule of Law does not equal to democracy, though they are intertwined concepts
 - Judge's behavior should be independent from both the government and public is important for uphold of rule of law.
 - There are sufficient check & balance to ensure the professionalism of the judges.
 - There may be a risk of mob justice if judge's making of judgments needs to report to the public.
- **Issue of transparency:**
Ronny Tony SC urged for enhancement of transparency of the existing mechanism for handling complaints against judicial conduct.

I welcome this proposal from Mr. Tong, but would like to remind that if the mechanism allows for too much transparency may do more harm. The immunity of judges and therefore independence of judiciary may be harmed.

- **Experience sharing 1: Appeal system is sufficient:**
 - If an individual is aggrieved by the Court's decision, s/he can appeal to the upper court.
 - Judges are the elites chosen from local pool of barristers and/or recruited from other common law jurisdiction. Therefore, I trust their professionalism and dignity.
 - Even if you disagree with the judgment does not mean that the Judge must be wrong. Maybe we cannot see what the judge can see in the case.
 - ◆ Sometimes, even we legal practitioners can be taken by surprise regarding the sentencing of criminal cases. However, given the detailed explanation of the judgment and the opportunity to appeal, I trust the judges have made the best effort to achieve justice.

- **Experience sharing 2: Impartiality of Judges**
 - Sometimes, the Judges may be very critical of the performance of lawyers in Court.
 - The harsh comments / behavior of the judges against the lawyers will not affect their judgments. Judges rarely insert their personal /emotional elements into the judgments.
 - Judges do not give a harsher sentence to a defendant in a criminal case just because they are critical of their legal representatives.

Barry Chin

Executive Councillor of CAHK Legal Exchange Foundation

25-Feb.-2014.