

立法會
Legislative Council

LC Paper No. CB(4)1162/18-19
(These minutes have been seen
by the Administration)

Ref: CB4/HS/1/18

Subcommittee on Proposed Senior Judicial Appointments

**Minutes of meeting held on
Tuesday, 11 June 2019, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP(Chairman)
Hon Starry LEE Wai-king, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Hon Alvin YEUNG
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHAN Chun-ying, JP

Members absent : Hon Paul TSE Wai-chun, JP
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung

Public Officers attending : **Agenda item II**

Administration Wing, Chief Secretary for
Administration's Office

Ms Esther LEUNG, JP
Director of Administration

Ms Jennifer CHAN, JP
Deputy Director of Administration 2

Judiciary Administration

Miss Emma LAU, JP
Secretary
Judicial Officers Recommendation Commission
/ Judiciary Administrator

Mr Jock TAM
Assistant Judiciary Administrator (Corporate
Services)

Clerk in attendance : Ms Shirley CHAN
Chief Council Secretary (4)5

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 4

Ms Shirley TAM
Senior Council Secretary (4)5

Ms Lauren LI
Council Secretary (4)5

Ms Zoe TONG
Legislative Assistant (4)5

Miss Mandy LUI
Clerical Assistant (4)5

Action

I. Election of Chairman

Dr Priscilla LEUNG, the member who had the highest precedence among members present at the meeting, presided over the election of the Chairman. She invited nominations for the chairmanship of the Subcommittee.

2. Ms YUNG Hoi-yan nominated Dr Priscilla LEUNG and the nomination was seconded by Mr Jimmy NG. 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 No. CB(4)974/18-19(01) and File Reference AW-275-010-005-004]

Declaration of interest

4. The Chairman declared that she was currently an Associate Professor at the School of Law of the City University of Hong Kong. According to her understanding, the Dean-designate of the School was from Singapore.

Discussion

5. The Subcommittee deliberated on the following two proposed senior judicial appointments (index of proceedings attached at **Annex**):

- (a) the Right Honourable Lord Jonathan SUMPTION as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal; and
- (b) the Honourable Mr Justice Jeremy POON Shiu-chor as the Chief Judge of the High Court.

Motions on the proposed senior judicial appointments

6. At the request of Mr Alvin YEUNG, the Chairman put the two motions on endorsing the two proposed senior judicial appointments as mentioned in 5(a) and (b) above to vote in turn and ordered a division. The voting bell was rung for five minutes.

7. The Chairman put the first motion on endorsing the proposed senior judicial appointment as mentioned in 5(a) above to vote.

The following members voted in favour of the motion:

Ms Starry LEE, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG and Mr Holden CHOW.

(5 members)

The following member voted against the motion:

Dr Junius HO.

(1 member)

No member abstained from voting.

The Chairman declared that the motion was carried.

8. The Chairman then put the second motion on endorsing the proposed senior judicial appointment as mentioned in 5(b) above to vote.

The following members voted in favour of the motion:

Ms Starry LEE, Mr Dennis Kwok, Dr Fernando CHEUNG, Mr Alvin YEUNG, Dr Junius HO and Mr Holden CHOW.

(6 members)

No member voted against the motion or abstained from voting.

The Chairman declared that the motion was carried.

9. The Chairman concluded that the Subcommittee supported the proposed senior judicial appointments as mentioned in 5(a) and (b) above. Members also noted that the Chairman would report the deliberations of the Subcommittee to the House Committee at its meeting on 21 June 2019, and that the Administration intended to move two resolutions to seek the Council's endorsement of the proposed appointments in accordance with Article 73(7) of the Basic Law at the Council meeting of 10 July 2019.

(Post-meeting note: Subsequent to the cancellation of the House Committee meeting on 21 June 2019, Members were consulted vide LC Paper No. CB(2)1711/18-19 issued on 21 June 2019 on the Administration's proposal of moving two resolutions to seek the Council's endorsement of the two proposed appointments in accordance with Article 73(7) of the Basic Law at the Council

meeting of 10 July 2019. Members raised no objection. The Council meeting of 10 July 2019 was not held subsequently.)

III. Any other business

10. There being no other business, the meeting ended at 12:26 pm.

Council Business Division 4
Legislative Council Secretariat
8 August 2019

Subcommittee on Proposed Senior Judicial Appointments

**Proceedings of meeting
held on Tuesday, 11 June 2019, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Agenda Item I - Election of Chairman			
000440-000724	Dr Priscilla LEUNG Ms YUNG Hoi-yan Mr Jimmy NG Mr Steven HO	Election of Chairman	
Agenda Item II - Meeting with the Administration			
000725-001054	Chairman Administration	The Administration briefed members on the two proposed senior judicial appointments.	
001055-001733	Chairman Mr Steven HO Administration Judiciary Administrator ("JA")	<p>Mr Steven HO expressed concern about the political neutrality of some incumbent judges who were alleged to have expressed views against the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 ("the Bill"), and urged the Judiciary to look into this matter and devise a mechanism to handle such incidents.</p> <p>JA advised that the Chief Justice of the Court of Final Appeal ("CJ") made a statement on 29 May 2019 that having regard to the independence and impartiality of the Judiciary, judges should refrain from expressing comments on political and other controversial issues, and particularly on legal issues which might come before the courts. CJ had since reminded all the judges of the importance of this. As stipulated in the Guide to Judicial Conduct, there were established common law principles and practices for dealing with actual, presumed or apparent bias in judicial proceedings.</p>	
001734-002708	Chairman Dr Junius HO JA	Dr Junius HO was dissatisfied that the recommendations of non-permanent judge from other common law jurisdictions of the Court of Final Appeal ("CLNPJ") made by the Judicial Officers Recommendation Commission ("JORC") in the past only included judges from the United	

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		<p>Kingdom ("the UK"), Australia, New Zealand and Canada ("the four jurisdictions"). He considered that suitable candidates from Singapore or other common law jurisdictions could also be considered for appointment as CLNPs.</p> <p>JA stressed that JORC had made recommendations on judicial appointments strictly based on candidates' judicial and professional qualities in accordance with Article 92 of the Basic Law ("BL"). Candidates who were considered suitable for appointment as CLNPJ by CJ would be put forward to JORC for consideration. JORC's deliberations were confidential. Since 1997, CLNPJs had been appointed from the UK, Australia and New Zealand where the legal systems had the closest affinity to that in Hong Kong. In 2018, a retired judge was appointed from Canada where the legal system was similar to Hong Kong in many aspects. The Judiciary would continue to look for suitable judges and retired judges from other common law jurisdictions for CLNPJ appointment as appropriate.</p>	
002709-003716	Chairman Mr Dennis KWOK Mr Alvin YEUNG JA	Mr Dennis KWOK and Mr Alvin YEUNG supported the two proposed senior judicial appointments. They considered it appropriate for JORC to recommend the appointment of candidates from the four jurisdictions as CLNPs in the past.	
003717-004840	Chairman JA	<p>Declaration of interests</p> <p>The Chairman shared Dr Junius HO's view that suitable candidates from Singapore could be considered for appointment as CLNPs in Hong Kong. She also shared a similar concern with Mr Steven HO about the political neutrality of some incumbent judges and urged the Judiciary to consider disqualifying such judges from sitting in courts to rule on cases related to the Bill in future to avoid bias or the appearance thereof.</p> <p>JA reiterated the CJ's statement made on 29 May 2019. She explained that as the Secretary to JORC, she attended the meeting primarily to answer questions relating to the two specific recommended appointments.</p>	

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004841-010507	Chairman Dr Junius HO Administration JA	To ensure an adequate pool of CLNPJs, Dr Junius HO reiterated that suitable candidates from other common law jurisdictions, in addition to the four jurisdictions, should be considered for appointment as CLNPJs. He remarked that since JORC had not considered candidates from other common law jurisdictions in recommending the proposed CLNPJ appointment, as a matter of principle, he could not agree with the appointment although he had no question on the proposed appointee's suitability for the appointment.	
010508-010839	Chairman Mr Alvin YEUNG JA	Mr Alvin YEUNG suggested that issues relating to appointment of CLNPJs from other common law jurisdictions could be followed up by the Panel on Administration of Justice and Legal Services.	
010840-011559	Chairman	<p>The Chairman suggested that Legislative Council ("LegCo") Members or former ones representing different political groups could be appointed as members of JORC so that JORC could have more diverse views in considering senior judicial appointments. She also suggested that the Judiciary should conduct a due diligence process on the recommended appointees and provide more information, including major publications and judgments written by them, in future judicial appointments to facilitate LegCo's consideration.</p> <p>JA explained that JORC was an independent commission consisting of CJ as the Chairman, SJ and seven other members appointed by CE of whom three should be persons who are not connected with the practice of law.</p> <p>The Administration said that according to section 4(1)(a) of the Judicial Officers Recommendation Commission Ordinance (Cap. 92), a person should not be appointed to be a member of JORC if he was a LegCo Member. Any such appointment would conflict with his role in the endorsement of senior judicial appointments under BL 73(7). A former LegCo Member might be regarded as appointable in his/her personal capacity under the provision. But the Administration stressed that in considering whether any individual was suitable for appointment to JORC, it was important not to politicize any matters relating to judicial appointments.</p>	

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011600-013610	Chairman Dr Junius HO JA Mr Alvin YEUNG	In response to Dr Junius HO's enquiry, JA advised that while vacancies of judges at the lower level of courts were normally appointed through an open recruitment process, such procedure was not considered suitable for the senior judicial appointments of the appellate courts given that the reputations of experienced judges were widely known in the legal profession.	
013611-014434	Chairman Dr Junius HO Mr Alvin YEUNG	Motions	
Agenda Item III - Any other business			
014435-014459	Chairman	Closing remarks	