

立法會
Legislative Council

LC Paper No. CB(4)300/20-21
(These minutes have been seen
by the Judiciary Administration
and the Administration)

Ref: CB4/HS/1/20

Subcommittee on Proposed Senior Judicial Appointment

Minutes of meeting held on
Wednesday, 28 October 2020, at 8:30 am
in Conference Room 1 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP(Chairman)
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Hon Elizabeth QUAT, BBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung

Members absent : Hon CHUNG Kwok-pan

[According to the announcement made by the Hong Kong Special Administrative Region Government on 11 November 2020 pursuant to the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region, Kenneth LEUNG, Dennis KWOK Wing-hang and Alvin YEUNG were disqualified from being a member of LegCo on 30 July 2020.]

Public Officers attending : **Agenda item II**

Administration Wing, Chief Secretary for Administration's Office

Mr Daniel CHENG, JP
Director of Administration

Ms Jennifer CHAN, JP
Deputy Director of Administration (2)

Judiciary Administration

Ms Esther LEUNG, JP
Secretary
Judicial Officers Recommendation
Commission

Mr Jock TAM
Assistant Judiciary Administrator (Corporate
Services)

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4)6

Staff in attendance : Ms Clara TAM
Senior Assistant Legal Adviser 2

Mr Ambrose LEUNG
Senior Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Election of Chairman

Mr James TO, the member who had the highest precedence among members present at the meeting, presided over the election of the Chairman. He invited nominations for the chairmanship of the Subcommittee.

2. Mr Abraham SHEK nominated Dr Priscilla LEUNG and the nomination was seconded by Ir Dr LO Wai-kwok. Dr LEUNG accepted the nomination. Mr Kenneth LEUNG nominated Mr Dennis KWOK and the nomination was seconded by Mr Alvin YEUNG. Mr KWOK accepted the nomination. There being no other nominations, Mr TO announced a vote by secret ballot. Of the 15 members present for voting, nine members voted for Dr LEUNG and six members voted for Mr KWOK. Mr TO declared Dr LEUNG elected as Chairman of the subcommittee. Dr LEUNG then took the chair.

3. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

[LC Paper No. CB(4)48/20-21(01) and File Reference AW-275-010-005-004]

4. The Subcommittee deliberated on the proposed appointment of the Right Honourable Lord Patrick Hodge ("Lord Hodge") as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal ("the proposed senior judicial appointment") (index of proceedings attached at **Annex**).

5. The Chairman sought members' views on whether they supported the proposed senior judicial appointment. She concluded that, except a member who reserved his decision until after the information he requested had become available and another member who abstained, members in general supported the proposed senior judicial appointment. The Subcommittee had completed its deliberations which would be reported to the House Committee.

(Post-meeting note: The Administration has moved a resolution under Article 73(7) of the Basic Law and Section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) regarding the appointment of Lord Hodge as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal at the Council meeting of 9 December 2020)

III. Any other business

6. There being no other business, the meeting ended at 10:27 am.

Council Business Division 4
Legislative Council Secretariat
16 December 2020

Subcommittee on Proposed Senior Judicial Appointment

Proceedings of meeting held on Wednesday, 28 October 2020, at 8:30 am in Conference Room 1 of the Legislative Council Complex

Time Marker	Speaker(s)	Subject(s)	Action required
Agenda Item I - Election of Chairman			
000344-001240	Mr James TO Mr Abraham SHEK Mr Mr Kenneth LEUNG Mr James TO	Election of Chairman	
Agenda Item II - Meeting with the Administration			
001240-001636	Chairman Director of Administration ("DoA")	DoA's briefing on the proposed appointment of the Right Honourable Lord Patrick Hodge ("Lord Hodge") as a non-permanent judge from another common law jurisdiction ("CLNPJ") of the Court of Final Appeal ("CFA") ("the proposed senior judicial appointment).	
001636-002219	Mr Holden CHOW Secretary, Judicial Officers Recommendation Commission ("SJORC")	Mr CHOW's concerns regarding the adequacy of CLNPJs' knowledge and understanding about the "One Country, Two Systems" principle and the Basic Law. SJORC's response that the appointment of CLNPJs had been a long-standing practice under the Basic Law and the Hong Kong CFA Ordinance; all CLNPJs would be taking judicial oaths on assumption of office; they would be dealing with cases according to Hong Kong laws as common law experts; and there was no question of CLNPJs not having adequate knowledge of the "One Country, Two Systems" principle and the Basic Law.	
002219-003250	Mr Kenneth LEUNG SJORC Chairman Ms Elizabeth QUAT SJORC	Mr LEUNG's support for the proposed senior judicial appointment and queries on whether CLNPJs from more varied common law jurisdictions other than the United Kingdom ("UK"), Australia, New Zealand and Canada ("the four jurisdictions"), such as India, would be appointed.	

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		<p>Ms QUAT's queries whether the Judiciary would in the future consider appointing CLNPs who specialize in certain legal areas in order to broaden the expertise in CFA.</p> <p>SJORC's explanation of the basis for choosing judges of HKSAR according to the Basic Law and the reasons for appointing CLNPs from the four jurisdictions.</p>	
003250-004505	<p>Dr Fernando CHEUNG DoA Ms Claudia MO Chairman</p>	<p>Dr CHEUNG's support for the proposed senior judicial appointment and concerns about press reports regarding a joint letter issued by some UK parliamentarians regarding the proposed senior judicial appointment.</p> <p>Ms MO's queries whether the proposed senior judicial appointment was related to the resignation of a former CLNP in September 2020, and her concerns about a public statement made by the President of the Supreme Court of UK who was also a CLNP expressing concern about the Law of the People's Republic of China on Safeguarding National Security in Hong Kong Special Administrative Region ("the National Security Law"). Ms MO's queries about their impacts on the international community's confidence in Hong Kong's judicial independence.</p> <p>DoA's response that the proposed senior judicial appointment was not related to the resignation of a former CLNP as it took much longer time to go through such an appointment and that judicial independence was guaranteed under the Basic Law.</p> <p>The Chairman's view that the Administration should take a proactive stance in responding to such concerns to clarify the misunderstanding of the public.</p>	
004505-005110	<p>Mr HUI Chi-fung SJORC</p>	<p>Mr HUI's request for an update on Lord Hodge's willingness to accept the appointment as a CLNP of CFA and his view that CLNPs were under a duty to monitor the rule of law situation in Hong Kong.</p> <p>Mr HUI's requests for information on a detailed breakdown on the types of cases that might be</p>	Admin

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		<p>heard by CLNPs and whether they would be designated to hear cases concerning offence endangering national security and, if so, whether a list of such designated CLNPs was available.</p> <p>SJORC's response that there were recent communications through which Lord Hodge had confirmed accepting the appointment.</p>	
005110-005613	Mr Dennis KWOK	Mr KWOK's support for the proposed senior judicial appointment, confidence in CLNPs' knowledge about the Basic Law and the constitutional order in Hong Kong, and concerns regarding the international community's confidence in Hong Kong's legal system.	
005613-010120	Dr Junius HO	<p>Dr HO's indication of his intention to abstain from voting on whether to support the proposed senior judicial appointment.</p> <p>Dr HO's suggestion that CLNPs from more varied common law jurisdictions should be appointed and his views on the role of CLNPs as part of CFA which exercised judicial power independently under the Basic Law.</p> <p>Dr HO's view that, rather than operating under a system of separation of powers, Hong Kong had an executive-led government as provided in the Basic Law.</p>	
010120-011023	Mr IP Kin-yuen Mrs Regina IP DoA	<p>Mr IP's emphasis on the importance of judicial independence including the appointment of judges being free from political interference.</p> <p>Mrs IP's views on the separation of powers, that it was not applicable in the pre-handover era nor after the establishment of HKSAR.</p>	
011023-011439	Mr IP Kin-yuen Chairman Mr James TO Dr Junius HO Chairman	Mr IP's point of order regarding Dr HO's comments, and Dr HO's point of order.	
011439-012522	Mr James TO SJORC Mr Alvin YEUNG SJORC	Mr TO's expression of confidence in CLNPs' knowledge and understanding about the constitutional order of Hong Kong including the "One Country, Two Systems" principle and the	

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	Mr Alvin YEUNG	<p>Basic Law.</p> <p>Mr YEUNG's views about whether there was separation of powers in Hong Kong and his queries whether the Administration would brief CLNPs on the constitutional order of Hong Kong, the Constitution of the People's Republic of China and the National Security Law.</p>	
012522-013115	Chairman	<p>The Chairman's support for the proposed senior judicial appointment and her request that a selection of judgments given by Lord Hodge be provided to the Subcommittee for consideration.</p> <p>The Chairman's views on the importance of a proper understanding of the constitutional order of Hong Kong through an accurate reading of the Basic Law. The Chairman explained that even though under one country two systems, Hong Kong was not practising separation of powers like the United States. and the UK, Hong Kong had strong checks and balances systems amongst the three powers under the Basic Law.</p> <p>The Chairman's suggestion for the Hong Kong Judicial Institute to conduct activities to facilitate exchanges between CLNPs and other judges on topics such as "One Country, Two Systems" principle.</p>	Admin
013115-013747	Dr Fernando CHEUNG Mr Kenneth LEUNG	<p>Dr CHEUNG's views on separation of powers, emphasizing the importance of the legislature and the judiciary as checks and balances of the executive. Mr LEUNG's view on the difference and similarities between common law and statute law systems.</p>	
013747-014446	Dr Junius HO Mr Dennis KWOK	<p>Dr HO's and Mr KWOK's views regarding the separation of powers and the role of the Chief Executive.</p> <p>Dr HO's request for information on statistics on CLNPs' caseloads in CFA.</p>	Admin
014446-014646	Mr HUI Chi-fung	<p>Mr HUI's reiteration of his request for an update on Lord Hodge's willingness to accept the appointment as a CLNP, information on whether CLNPs would be designated to hear cases concerning offence endangering national security and, if so, whether a list of such designated</p>	Admin

Time Marker	Speaker(s)	Subject(s)	Action required
		CLNPIs would be available. Mr HUI's indication of reservation about giving support to the proposed senior judicial appointment until the information he requested had been provided by the Administration.	
014646 – 014958	Mr Holden CHOW SJORC	Mr CHOW's emphasis on the importance for CLNPIs to fully grasp the constitutional order of Hong Kong including an adequate knowledge of the Basic Law and the "One Country, Two Systems" principle.	
014958-015300	Mrs Regina IP	Mrs IP's view that there was no separation of powers in Hong Kong and that it was a political, rather than legal, concept.	
015300-015701	The Chairman Mr Kenneth LEUNG	The Chairman's request that a selection of judgments given by Lord Hodge be provided for members' reference. The Chairman's and Mr LEUNG's views on the relationship between the Chief Executive, the legislature, the judiciary and the role of the Central Government under the Basic Law.	Admin
015701-015901	The Chairman	The Chairman's instruction that Dr Junius HO's letter given to her at the meeting be circulated to members after the meeting.	
Agenda Item III - Any other business			
015901-200010	The Chairman	Closing remarks	