



司法機構政務處

Judiciary Administration

電話 Tel: 2867 5201
 傳真 Fax: 2501 4636
 本函檔號 Our Ref.: JUD/DEV 1-55/5 PT5
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26 November 2020

Mr Lemuel Woo
 Clerk to Panel on Administration of Justice and Legal Services
 Legislative Council Complex
 1 Legislative Council Road
 Central, Hong Kong

Dear Mr Woo,

**Panel on Administration of Justice and Legal Services
 (“AJLS Panel”)
 Issued raised by members concerning the Judiciary**

I refer to your letter of 12 November 2020 to the Judiciary Administrator enclosing four letters from AJLS Panel Members and listing a number of issues as raised at the Panel meeting on 2 November 2020. The Judiciary is asked to provide preliminary views on the issues for Members’ consideration of whether to include the issues in the Panel’s List of outstanding items for discussion. The information is set out in the ensuing paragraphs.

Handling of complaints against judicial conduct¹ and the setting up of an independent judiciary monitoring committee²

The existing mechanism for dealing with complaints against judicial conduct is integral to upholding the principle of judicial independence. Judicial independence in handling complaints against judicial conduct must be safeguarded and respected. In accordance with the framework of Article 89 of the Basic Law, a tribunal for investigation into the alleged misbehaviour of a

¹ Item (a) of your letter refers.

² Item (g) of your letter refers.

judge should comprise judges and judges only. The investigating mechanism for handling complaints against judicial conduct should be consistent with the provisions and spirit of the Basic Law. The investigation should hence be conducted by judges and judges only. The Judiciary must continue to do this on its own without outside influence or interference.

Each complaint against judicial conduct will be investigated and reviewed with reference to the relevant provisions in the Guide to Judicial Conduct. To enhance impartiality and transparency in handling complaints against judicial conduct, the Judiciary has implemented a number of measures.

- (a) Each complaint will be investigated by the relevant court leader, who is invariably more senior in rank than the judge or judicial officer under complaint. Where appropriate, the complaint will be reviewed by one or more judges of a higher level of court.
- (b) The Judiciary has been releasing regularly in its Annual Report the relevant complaint statistics. Information on the number of justified or partially justified complaints and their details (the Judiciary updated the Panel on the implementation of the improvement measures on the mechanism in May this year);
- (c) Starting from July 2020, where there have been a large number of identical or similar complaints on judicial conduct in relation to any case, the Judiciary would post on its website the gist of the complaints, the outcome of investigation and the grounds.
- (d) In accordance with the principle of open justice, all court hearings, save for some very limited exceptions (e.g. involving children), are open to the public. Judgments, reasons for verdict and reasons for sentence for District Court and above are available on the Judiciary website. Starting from October 2020, summaries of selected decisions in the District Court and Magistrates' Courts which may attract great public attention will be prepared and uploaded to the Judiciary website as far as practicable to enhance public understanding about the reasoning of court decisions.

Senior judicial appointments³

As stipulated under Article 92 of the Basic Law, judges of the Hong Kong Special Administrative Region (“HKSAR”) shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions. In making recommendations on judicial appointments, it is important to maintain the highest standards in the Judiciary.

At present, there are 13 serving Non-Permanent Judges from other common law jurisdictions of the Court of Final Appeal (“CLNPs”), nine are from the United Kingdom, three are from Australia and one is from Canada. All CLNPs are judges or retired judges of the most eminent standing with profound judicial experience who enjoy the highest professional status and reputation, with good track records of judicial services in their respective jurisdictions, all of which are common law jurisdictions with whose legal systems Hong Kong has the closest connection, including the serving President of the Supreme Court of the United Kingdom.

Of all the other common law jurisdictions, Hong Kong’s legal system has the closest affinity to that of the United Kingdom, Australia and New Zealand. Canada is also a common law jurisdiction with which Hong Kong shares many common legal approaches, particularly in the areas of equity, commercial law and criminal law. The legal systems in other common law jurisdictions such as Singapore and Malaysia have relatively greater differences from that of Hong Kong. Nevertheless, judges from all the above common law jurisdictions will be considered if candidates with suitable judicial and professional qualities are identified in such jurisdictions.

Under section 16(1) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), when hearing and determining appeals, the Court of Final Appeal (“CFA”) is constituted by five judges, viz. the Chief Justice, three Permanent Judges (“PJs”) and one Hong Kong non-permanent judge or one CLNP selected by the Chief Justice and invited by the Court. This is in line with Article 82 of the Basic Law which prescribes that the CFA may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal. There is hence no question of replacing CLNP with permanent judges.

Since its establishment, the CFA has always operated with a single panel of judges to hear appeals. As the workload of the CFA has been quite

³ Items (c) and (d) of your letter refer.

stable throughout the years, and given that there are a sufficient number of non-permanent judges and flexibility in their deployment, the Chief Justice takes the view that there is no undue difficulty in coping with the CFA caseload with one panel of judges. There is hence no foreseeable need for increasing the number of permanent judges.

Regarding the appointment of a PJ to fill the anticipated vacancy which will arise when Mr Justice Andrew Cheung Kui-nung vacates the judicial office of PJ upon his assumption of office as the Chief Justice, section 7(2) of the Hong Kong CFA Ordinance (Cap. 484) stipulates that if the office of any PJ becomes vacant, by death or otherwise and the number of PJs is thereby reduced to less than three, the Chief Executive acting in accordance with the recommendation of the Judicial Officers Recommendation Commission (“JORC”) shall as soon as reasonably possible after the office becomes vacant appoint another permanent judge to fill the vacancy. Appointment of all Judges, including PJ, will be made in accordance with the established mechanism. Announcement of judicial appointments will be made through publication in Government Gazette and press release at an appropriate time.

Promotion and Posting of Judges in the Judiciary⁴

Article 88 of the Basic Law provides that judges of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission. The JORC is the statutory body constituted by the JORC Ordinance (Cap. 92) to perform the functions of the independent commission. For appointments to appellate courts, Court Leaders positions, and other judicial posts with administrative and managerial responsibilities, all these judicial offices require relevant judicial experience and therefore it has been the Judiciary’s established policy that only serving JJOs will be considered. The Chief Justice, having consulted the respective Court Leaders, will recommend suitable candidates from within the Judiciary for filling vacancies of these judicial offices. In deliberating proposed judicial appointments, the JORC will consider the background of candidates, including their professional qualifications and experience, judicial experience, the Court Leaders’ assessment on their performance and suitability for the specific appointments.

On the posting of Judges and Judicial Officers (“JJOs”), in line with the established mechanism, the respective Court Leaders will, from time to time,

⁴ Item (h) of your letter refers.

having regard to the operational needs at different levels of court, make recommendations to the Chief Justice on the deployment of JJOs.

Talk organised by Hong Kong Judicial Institute on 3 July 2020⁵

The Judiciary has all along attached great importance to the pursuit of continuing judicial education by JJOs. The Hong Kong Judicial Institute has from time to time been providing appropriate judicial training to meet the training needs of JJOs at all levels of court. A talk titled “Judicial Impartiality and Public Confidence” was organised by the Hong Kong Judicial Institute on 3 July 2020. It was one of the judicial training activities organised for magistrates.

Setting up of a sentencing commission or council⁶

A substantial part of the courts’ work consists of the administration of criminal justice. Sentencing is an essential part of this process. It is an exercise of the courts’ independent judicial power. Where a defendant pleads guilty or is found guilty after trial in a particular case, it is the court’s duty to impose a just and appropriate sentence, applying the relevant principles to the circumstances of the crime and those of the offender. Reasons for the sentence are given. All court decisions, including sentencing decisions, are open to public discussion. Where such sentence is regarded by a convicted person as excessive, that person may appeal. Where the Secretary for Justice considers the sentence to be manifestly inadequate or excessive, he/she may apply to the Court of Appeal for the sentence to be reviewed.

The main objectives of sentencing are retribution, deterrence, prevention and rehabilitation. All of them serve the public interest. Sometimes, seeking to attain one objective may lead to a more severe sentence whilst seeking to achieve another may tend towards a more lenient sentence. The judge has to consider all the circumstances of each case and decide on the appropriate degree of significance that should be given to each objective in that case. When setting sentencing levels, the courts take into account all relevant factors. These include the prevalence of certain types of offences and public concern over such prevalence.

From time to time, views have been expressed in the public arena that a “sentencing committee or council” be established to set sentencing

⁵ Item (b) of your letter refers.

⁶ Item (f) of your letter refers.

standards for all criminal cases. As a matter of principle, the Judiciary has reservations with this suggestion. The Judiciary emphasizes that sentencing is a judicial function and it is a question of law. This function should be exercised by the courts independently and exclusively. In fact, the courts make sentencing decisions day in and day out in a very large number of different cases. The circumstances which arise in the cases are of an infinite variety. Deciding on a just and appropriate sentence in each case is a challenging and difficult task for the courts and is a matter for balanced judicial judgment. In this regard, decisions by the Court of Appeal in sentencing appeals or reviews provide helpful guidance to sentencing courts. Where appropriate, the Court of Appeal also sets sentencing guidelines, which are binding on all sentencing courts.

Given that sentencing is part and parcel of the court's exercise of its independent judicial power, the Chief Justice is of the view that it is not appropriate for the Judiciary to send any representative(s) to attend any AJLS Panel meeting or provide any paper for discussion of this subject.

Assignment of cases⁷

Assignment of cases, which involve the internal operation of the Judiciary, is an important and integral part of the administrative duties of the respective Court Leaders. Court Leaders, taking into account all relevant factors (which include workload, expertise, and other factors which may be appropriate to be considered), will assign cases to judges and judicial officers in their respective courts.

In line with the principle of judicial independence, the Judiciary must perform this function without outside influences or interference. For this reason, the Chief Justice is of the view that it is not appropriate for the Judiciary to send any representative(s) to attend any AJLS Panel meeting or provide any paper for the discussion of matters.

Courts' sign language interpretation service⁸

We note that issues relating to the quality of the court's sign language service and improvement measures were recently discussed in the context of an oral Legislative Council question raised on 11 November 2020.

⁷ Item (h) of your letter refers.

⁸ Item (e) of your letter refers.

The Judiciary Administration does not see an imminent need to discuss the issues at the Panel again.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Winnie Wong', written in a cursive style.

(Miss Winnie Wong)
for Judiciary Administrator

c.c. Mr Daniel Cheng, JP
Director of Administration