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27 August 2021

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")  
Letter from Hon Elizabeth QUAT proposing two items for discussion  
by the Panel concerning the Judiciary**

I refer to your letter of 16 August 2021 to the Judiciary Administrator enclosing a letter from Hon Elizabeth QUAT on the captioned subject. Our response is set out in the ensuing paragraphs.

**Enhanced mechanism for handling complaints against judicial conduct**

2. The Judiciary briefed the AJLS Panel Members on 14 May 2021 on the two-tier mechanism for handling complaints against judicial conduct and the role of the Advisory Committee on Complaints against Judicial Conduct ("Advisory Committee"), and provided supplementary information as requested by the AJLS Panel Members on 16 June 2021.

3. In taking forward the two-tier mechanism, the Judiciary adheres to the overriding principle that there should be no undermining of judicial independence. The mechanism only deals with complaints against judicial conduct and not those against judicial decisions. Any dissatisfaction with judicial decisions should only be dealt with in accordance with applicable legal procedures such as appeal or review. Moreover, complaints relating to ongoing proceedings (including appeal) will only be handled upon completion of all relevant proceedings.

4. As Members are aware, measures to enhance the transparency and the accountability of the mechanism mainly include setting up a Panel of Judges (the first-tier) comprising more than one High Court judge to investigate complaints against judicial conduct (pursuable complaints) of a serious or complex nature, or which have drawn wide public attention, and having a second-tier Advisory Committee comprising senior judges and members of the community to review and provide advice on these cases before the Chief Justice makes a final decision on each complaint. The membership list of the Advisory Committee, as from 16 August 2021 being the commencement date of the term, is at **Annex A**.

5. Since the two-tier mechanism for handling complaints against judicial conduct has only come into operation on 16 August 2021, and that the Advisory Committee has yet to commence its work, we consider it practical and reasonable for the Judiciary to take account of the operational experience of the two-tier mechanism after it has come into effect for a considerable period of time before briefing the Panel on its work.

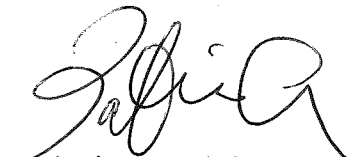
### **Suggestion to set up a sentencing committee**

6. As regards the suggestion to set up a sentencing committee for laying down sentencing guidelines, the Judiciary would like to emphasize that sentencing is an essential part of the judicial function which should be exercised independently by judges under the Basic Law. 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 made public in line with the principle of open justice. Where such sentence is regarded by a convicted person as excessive, that person may appeal in

accordance with established legal procedures. 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.

7. Under the existing common law system, our appellate courts, sitting on appeal or sentence review, play the important role of correcting mistakes, ironing out discrepancies in decisions and sentences among lower courts, and giving authoritative sentencing guidance and guidelines. The Judiciary notes that recent suggestions of setting up a sentencing committee for drawing up sentencing guidelines stem mainly from sentencing decisions on social event cases ("SE cases"). Up to 31 July 2021, the Court of Appeal had already dealt with no less than 18 sentence reviews arising from SE cases and given important sentencing guidance on all the major offences covered by SE cases as a matter of priority, which is binding on all lower courts. Recent experience indicates that on average, these sentence review cases would require 6 months or less to complete. More cases will be heard in the coming few months. As compared with the proposal to set up a sentencing committee which has to take more time and may only be drawing up general sentencing principles and guidelines, we consider the issue of authoritative and binding sentencing guidance by the Court of Appeal for SE cases under the existing sentence review system has proved to be the most effective and efficient means of dealing with sentencing issues arising from SE cases. The Judiciary does not see any imminent need for pursuing the proposal to set up a sentencing committee. We will, however, continue to monitor the effectiveness of the current sentencing review system, with a view to reviewing and improving it where necessary.

Yours sincerely,



(Miss Patricia SO)

for Judiciary Administrator

c.c. Chief Secretary for Administration's Office (Attn: Miss Ingrid WONG)

**Membership of  
the Advisory Committee on Complaints against Judicial Conduct  
(16 August 2021 to 15 August 2023)**

Chairman

The Hon Chief Justice Andrew CHEUNG, GBM  
*Chief Justice of the Court of Final Appeal*

Members

The Hon Mr Justice LAM  
*Permanent Judge of the Court of Final Appeal*

The Hon Mr Justice CHAN, GBM  
*Non-Permanent Judge of the Court of Final Appeal*

The Hon Mr Justice POON  
*Chief Judge of the High Court*

The Hon Madam Justice KWAN  
*Vice-President of the Court of Appeal of the High Court*

Dr Christopher CHENG Wai-chee, GBS, JP

Mr Patrick FUNG Pak-tung, BBS, SC

Ms Connie LAU Yin-hing, SBS, JP

Professor LEE Chack-fan, GBS, SBS, JP