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本函檔號 Our Ref.: JUD DEV 1-55/5 PT5

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18 January 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")
Letters from Hon Elizabeth Quat concerning the Judiciary**

I refer to your letter of 31 December 2020 to the Judiciary Administrator enclosing two letters from Hon Elizabeth Quat. The information in response to the request is set out in the ensuing paragraphs.

Suggestion to set up a sentencing council/committee and an independent judiciary monitoring committee¹

2. Further to the letter to the AJLS Panel on 26 November 2020 which set out the Judiciary's position on the handling of complaints against judicial conduct and the setting up of an independent monitoring committee, we would like to supplement the following information for Members' reference.

¹ Item (a) of your letter refers.

3. Over the years, the Judiciary has put in place many measures to enhance the efficiency, accountability and transparency of our court operations and services. Notable examples include the Civil Justice Reform, the comprehensive review of the Family Procedures Rules, the ongoing project to digitize our court procedures, and the implementation of remote hearings. The Judiciary is receptive to constructive suggestions on ways to further improve and enhance our operations and services.

4. As mentioned by the Chief Justice at the Ceremonial Opening of the Legal Year 2021 on 11 January 2021, we attach great importance to the mechanism of handling complaints against judicial conduct. Under our existing system, complaints against judges are handled by court leaders responsible to the Chief Justice. Where appropriate, input from senior judges is also sought. Annual reports of complaints received and handled are published by the Judiciary. In some cases, the results of investigation into complaints are posted on the Judiciary website and subject to public scrutiny. In the most serious of cases, Article 89 of the Basic Law provides for the removal of judges (including the Chief Justice) by the Chief Executive upon the recommendation of a tribunal consisting of judges only, on the ground that they are unable to discharge their duties, or for misbehaviour. The fact that even in the case of possible removal, the tribunal making the recommendation to the Chief Executive on the course to take comprises only judges speaks volumes of the importance the Basic Law attaches to judicial independence and non-interference with the Judiciary by any outside interests. Since last year, we have adopted the practice of uploading the results of investigation into complaints on our website in relation to cases that attract wide attention. In response to the public's attention on our complaints handling mechanism which was last reviewed in 2016, we will conduct a review of the mechanism with a view to further enhancing its transparency and accountability, subject always to the overriding consideration that there must be no undermining of judicial independence. Public views will be taken into account in the process.

5. On the suggestion to set up a sentencing council for laying down sentencing guidelines, we would like to point out that sentencing is an essential part of the judicial function which is exercised independently by judges. Under our 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. In view of the fact that suggestions for the setting up of a sentencing council all stem from some recent sentencing decisions in the lower courts in social event cases, a much more effective and conventional way of obtaining authoritative and binding sentencing guidance and ironing out discrepancies in sentences is by means of appeal and sentence review. Thus far, the Court of Appeal has dealt with no less than 10 sentence reviews arising from social event cases and given important sentencing guidance on this type of case, which is binding on all lower courts. More cases will be heard in the coming few months. We will also speed up the hearing of similar appeals and reviews in future. We consider this is the most effective and efficient means of addressing concerns over the need for timely sentencing guidance on the type of case in question.

6. 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.

Display of political slogans and illustration within the vicinity of the Duty Lawyer Service in the Shatin Law Courts²

7. In general, the display of materials in public areas which are directly managed by the Judiciary requires the prior agreement of the Judiciary. While the Duty Lawyer Service ("DLS") has been operating in various law courts buildings, it is not run by the Judiciary. The DLS is responsible for managing its accommodation (including display of materials) and business. The Judiciary notes that the DLS has taken prompt actions in response to the incident.

8. Arising from the incident, the Judiciary has taken the opportunity to remind all institutional users operating on court premises of their management responsibility and the general principles for displaying materials in their accommodation (particularly within the area accessible to the public). These include the requirements that any display materials should comply with the law, should not give rise to unnecessary public

² Item (b) of your letter refers.

concerns about the political neutrality of their services, and should not compromise the solemn and independent image of the Judiciary.

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