立法會
Legislative Council

立法會CB(2)2122/03-04(01)號文件

檔　號：CB2/PL/AJLS

司法及法律事務委員會

立法會根據《基本法》第七十三(七)條同意法官免職的程序

目的

本文件旨在根據政府當局、司法機構及兩個法律專業團體所提出的意見，徵詢委員對立法會根據《基本法》第七十三(七)條同意法官免職程序的意見。

背景

2. 秘書處曾於2004年1月27日隨立法會CB(2)1073/03-04號文件向事務委員會發出有關"立法會根據《基本法》第七十三(七)條同意法官免職的程序"的文件擬稿，供委員考慮。該文件擬稿載於**附錄I**。

3. 按事務委員會所作決定，該文件擬稿已於2004年2月送交政府當局、司法機構及兩個法律專業團體，以諮詢其意見。

接獲的意見

4. 政府當局、司法機構、香港大律師公會及香港律師會所提出的意見綜述如下。

政府當局

5. 行政署長就文件擬稿提出的意見如下 ——

(a) 文件擬稿第8(a)段應作適當修改，清楚訂明有關程序亦可套用於行政長官根據《基本法》第八十九(二)條免除終審法院首席法官職務的安排；及

(b) 為求清楚明確起見，應在文件擬稿第7段"《基本法》第九十(二)條"之後加上"有關法官免職"等字眼。

6. 行政署長2004年2月24日的書面回應載於**附錄II**。

司法機構

7. 司法機構政務長告知事務委員會，司法機構同意行政署長的意見。司法機構政務長2004年2月26日的書面答覆載於**附錄III**。

香港大律師公會

8. 大律師公會同意文件擬稿所載的建議免職程序。大律師公會2004年3月16日的來函載於**附錄IV**。

香港律師會

9. 香港律師會在致事務委員會的書面回應(載於**附錄V**)中提出其意見。其意見涉及兩項獨立而又相關的事項，即建議同意法官免職的程序及處理針對法官的投訴的機制。

同意法官免職的建議程序

10. 對於在行政長官接納審議庭有關免除一名法官職務的建議後，是否還有需要由內務委員會轄下的小組委員會討論該建議，律師會表示懷疑。律師會認為，這過程甚為費時，而且倘若在小組委員會商議過程中，有關法官未能出席從本身觀點提出反駁，這對該法官並不公平。

11. 律師會建議取消小組委員會的商議過程(即附錄I第8段所載建議程序步驟(b)至(d))，倘行政長官接納審議庭有關免除一名法官職務的建議，政府當局便應作出動議議案的預告，請求立法會同意免職建議。議案隨後在立法會會議席上動議、辯論並付諸表決。

處理針對法官的投訴的機制

12. 律師會又表示，該會認為，針對法官的投訴可如何啟動免職程序並不清晰。律師會在其書面回應中夾附其之前於2002年11月向事務委員會提交有關"處理針對法官及司法機構人員的投訴的機制"的意見書。律師會的其中一項建議，是設立司法申訴專員一職。該意見書已轉交司法機構政務長考慮。

13. 委員諒會記得，在上一屆立法會會期，事務委員會曾研究由立法會秘書處資料研究及圖書館服務部擬備的研究報告。該報告探討了加拿大、英國、美國及美國紐約州等地處理針對法官的投訴的機制。事務委員會於2002年10月28日的會議席上，曾與司法機構討論如何就處理針對法官操守的投訴的現行機制，提高其透明度。

14. 對於部分委員建議設立一個正式機制以處理針對法官操守的投訴，司法機構回應時表示，在現行制度下，是由終審法院首席法官及司法機構中各法院的首長負責處理針對法官的投訴。現時處理投訴的機制是一個正式而有效的制度，能在適當處理針對法官的投訴及尊重司法獨立兩者間妥善地求取平衡。至於律師會委任司法申訴專員的

建議，司法機構政務長告知事務委員會，司法機構認為該建議可能損害司法獨立，因此並不贊成。

15. 事務委員會要求作出改善措施以提高處理投訴程序的透明度，司法機構在回應時同意 ——

(a) 發出資料單張，說明處理針對法官的投訴的程序，以加強司法人員的問責，並提高處理投訴機制的透明度；

(b) 頒布司法人員行為指引；及

(c) 公布有關針對法官及司法機構人員的投訴的統計數字。

16. 就上文第15段，請委員注意 ——

(a) 司法機構於2003年5月發出“就法官的行為而提出的投訴”的單張，供公眾參閱；

(b) 司法機構最近告知事務委員會，由終審法院首席法官委任的法官行為工作小組，正擬備一份《法官行為指引》擬稿，供終審法院首席法官考慮。預料該指引將於2004年內完成，供公眾參閱；及

(c) 有關針對法官及司法人員的投訴的統計數字，自2002年起，已在司法機構年報內登載。

徵詢意見

同意法官免職的經修訂建議程序

17. 經修訂的建議程序載列如下，供委員考慮 ——

(a) 政府當局告知內務委員會，行政長官已接納由終審法院首席法官就免除法官職務所任命的審議庭的建議，或行政長官就免除終審法院首席法官職務所任命的審議庭的建議(視乎情況而定)。~~，並已~~政府當局應在行政長官公布接納有關建議之前就建議向立法會提供足夠資料~~(此步驟應在行政長官公布其接納有關建議之前進行)~~；

(b) 內務委員會可將此事轉交一個小組委員會討論；

(c) 小組委員會盡快討論此事；

(d) 小組委員會向內務委員會匯報商議結果；

(e) 政府當局作出動議議案的預告，請求立法會同意有關的免職建議；

(f) 議案在立法會會議席上動議、辯論並付諸表決；及

(g) 如議案獲立法會通過，行政長官免除有關法官的職務。

18. 經修訂的建議程序已顧及下列各點 ——

(a) 政府當局、司法機構及法律專業團體提出的意見；及

(b) 宜給予內務委員會空間，讓其可在考慮事件的情況後，自行決定應否成立小組委員會以研究免職建議。按照原來建議程序的步驟(d)(該步驟顯示立法會同意法官任命的程序)，內務委員會必須將此事轉交小組委員會討論。

同意法官任命的經修訂程序

19. 若委員同意上文第17段所載同意法官免職的經修訂建議程序，請委員考慮，是否亦應給予內務委員會同樣的彈性，自行決定是否成立小組委員會以研究法官任命的建議。

處理針對法官的投訴的機制

20. 至於處理針對法官的投訴的機制，若事務委員會考慮過之前的討論及以後的發展後，認為有需要作進一步討論，則這事項應視作另一獨立議項(請參閱上文第12至16段)。

日後路向

21. 事務委員會會在考慮委員對上文第17至19段的意見後，向內務委員會提交報告。

立法會秘書處
議會事務部2
2004年4月23日

附錄I

立法會
Legislative Council

立法會CB(2)/03-04號文件

檔號：CB2/PL/AJLS

司法及法律事務委員會

立法會根據《基本法》第七十三(七)條同意法官免職的程序

目的

本文件旨在徵詢委員對立法會根據《基本法》第七十三(七)條同意法官免職程序的意見。

背景

2. 《基本法》第七十三(七)條賦予立法會同意終審法院法官及高等法院首席法官任免的權力。

3. 內務委員會於2003年5月16日同意由司法及法律事務委員會("事務委員會")所建議有關立法會同意法官任命的下列程序 ——

(a) 政府當局告知內務委員會，行政長官已接納司法人員推薦委員會的建議，並已就獲推薦的法官人選向立法會提供足夠資料(此步驟應在行政長官公布其接納有關建議之前進行)；

(b) 內務委員會將此事轉交一個小組委員會討論；

(c) 小組委員會盡快討論此事；

(d) 小組委員會向內務委員會匯報商議結果；

(e) 政府當局作出動議議案的預告，請求立法會同意有關任命的建議；

(f) 議案在立法會會議席上動議、辯論並付諸表決；及

(g) 如議案獲立法會通過，行政長官作出任命。

4.　　事務委員會在商議期間，曾邀請立法會議事規則委員會就上文第3段所述的程序，提供意見。議事規則委員會其中一項建議，是立法會同意法官任命的程序若獲得採納，立法會亦應依循相同程序同意法官的免職。

立法會根據《基本法》第七十三(七)條同意法官免職的程序

《基本法》的規定

5.　　在處理有關法官免職的事宜上，必須符合《基本法》第八十九及九十(二)條的規定。

6.　　《基本法》第八十九條規定 ——

> "香港特區法院的法官只有在無力履行職責或行為不檢的情況下，行政長官才可根據終審法院首席法官任命的不少於三名當地法官組成的審議庭的建議，予以免職。
>
> 香港特區終審法院的首席法官只有在無力履行職責或行為不檢的情況下，行政長官才可任命不少於五名當地法官組成的審議庭進行審議，並可根據其建議，依照《基本法》規定的程序，予以免職。"

7.　　《基本法》第九十(二)條規定 ——

> "除《基本法》第八十九條規定的程序外，香港特區終審法院的法官和高等法院首席法官的免職，還須由行政長官徵得立法會同意，並報全國人民代表大會常務委員會備案。"

建議的程序

8.　　事務委員會經考慮《基本法》的有關條文及現行立法會同意法官任命的程序後，建議立法會根據《基本法》第七十三(七)條同意法官免職的程序如下 ——

(a) 政府當局告知內務委員會，行政長官已接納由終審法院首席法官就免除法官職務所任命的審議庭的建議，並已就建議向立法會提供足夠資料(此步驟應在行政長官公布其接納有關建議之前進行)；

(b) 內務委員會將此事轉交一個小組委員會討論；

(c) 小組委員會盡快討論此事；

(d) 小組委員會向內務委員會匯報商議結果；

(e) 政府當局作出動議議案的預告，請求立法會同意有關的免職建議；

(f) 議案在立法會會議席上動議、辯論並付諸表決；及

(g) 如議案獲立法會通過，行政長官免除該法官的職務。

徵詢意見

9. 謹請委員就上文第8段所建議的程序提供意見。

立法會秘書處
議會事務部2
2004年1月27日

附錄 II

CSO/ADM/CR 8/4/3222/85
CB2/PL/AJLS

中區政府合署西座1211室
電話：2810 2576
傳真：2501 5779

傳真函件[2509 9055]

香港中環
昃臣道 8 號
立法會大樓
司法及法律事務委員會秘書
(經辦人：胡錫謙先生)

胡先生：

司法及法律事務委員會

立法會根據《基本法》第七十三(七)條
同意將法官免職的程序

多謝你二月五日的來信，邀請當局對事務委員會就立法會根據《基本法》第七十三(七)條同意將法官免職的建議程序的文件草擬本提出意見。

《基本法》第九十(二)條訂明行政長官就終審法院的法官和高等法院首席法官的任命或免職須徵得立法會同意。該條文中所指的“終審法院的法官”按其文意包括終審法院首席法官。正如文件草擬本的第六段引述，《基本法》第八十九(二)條訂明了行政長官可根據由他任命的審議庭的建議，把終審法院首席法官免職的特定程序。你可考慮修改文件草擬本的第八(a)段，以反映該特定程序。

文件草擬本的第七段只節錄《基本法》第九十(二)條有關法官免職而不包括任命的部份。為清晰的緣故，你亦可考慮在“《基本法》第九十(二)條訂明”後加上“就法官的免職”。

行政署長
(陳欽勉代行)

二零零四年二月二十四日

副本送：司法機構政務長 (經辦人：劉嫣華女士)
律政司 (經辦人：黃慶康先生)

附錄III

中文譯本

傳真函件 2509 9055

本署檔號：LM to SC/CR/25/2/1 Pt 9
來函檔號：CB2/PL/AJLS

香港中區
昃臣道8號
立法會大樓
立法會司法及法律事務委員會秘書
胡錫謙先生

胡先生：

司法及法律事務委員會
立法會根據《基本法》第七十三條第(七)款
同意將法官免職的程序

2004年2月5日的來信及行政署長2004年2月24日的答覆已經收悉。

我們同意行政署長的意見，並無任何補充。

司法機構政務長徐志強

副本分送：行政署長(經辦人：陳欽勉先生) – 2501 5779
律政司(經辦人：黃慶康先生) – 2523 5104

2004年2月26日

附錄 IV

HONG KONG BAR ASSOCIATION

Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong
DX-180053 Queensway 1 E-mail: info@hkba.org Website: www.hkba.org
Telephone: 2869 0210 Fax: 2869 0189

16th March 2004

Your Ref: CB2/PL/AJLS

Mr. Paul Woo
Clerk to Panel
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. Woo,

Subject: Procedure for Endorsement of Removal of Judges by the Legislative Council under Article 73(7) of the Basic Law

I refer to your letter dated 5th February 2004 and note the proposed procedure for endorsement of removal of judges, as outlined in paragraph 8 of the draft paper attached to your letter (LC Paper No. CB(2) /03-04).

The Bar Council is agreeable with the proposed procedure and no further comment is necessary in the circumstances.

Yours sincerely,

Andrew Mak
Hon. Secretary

/al

香港大律師公會
香港金鐘道三十八號高等法院低層二樓

Chairman 主席：
Mr. Edward Chan, S.C. 陳景生
Vice Chairmen 副主席：
Mr. Philip Dykes, S.C. 戴啟思
Mr. Ambrose Ho, S.C. 何沛謙
Hon. Secretary & Treasurer 名譽秘書及財政：
Mr. Andrew Mak 麥業成
Administrator 行政幹事：
Ms. Jennie Wang 王倩旎

Members 執行委員會委員：
Mr. Andrew Bruce, S.C. 布思義
Mr. Simon Westbrook, S.C. 韋仕博
Mr. Wong Yan Lung, S.C. 黃仁龍
Mr. Jat Sew Tong, S.C. 翟紹唐
Mr. Lui Kit Ling 呂傑齡
Mr. Joseph Tse 謝若瑟
Ms. Lisa Remedios 吳維敏
Mr. Keith Yeung 楊家雄
Ms. Lisa Wong 黃國瑛
Mr. Simon Leung 梁俊文
Mr. P.Y. Lo 羅沛然
Mr. Lawrence Ng 吳港發
Mr. Richard Khaw 許偉強
Mr. Paul Harris 夏博義
Mr. Hectar Pun 潘 熙
Ms. Yvonne Cheng 鄭蕙心
Mr. Jeremy Chan 陳肇基
Mr. Donald Leo 劉健能
Mr. Benjamin Ng 吳銘樞

THE RESPONSE

OF THE LAW SOCIETY

to the

Panel on Administration of Justice and Legal Services'

Paper on

"Procedure for Endorsement of Removal of Judges

by the Legislative Council

under Article 73(7) of the Basic Law"

– March, 2004 –

The Law Society thank the Panel on Administration of Justice and Legal Services ("**AJLS**") for their kind invitation to consider the "*Procedure for Endorsement of Removal of Judges by the Legislative Council on Article 73(7) of the Basic Law*", and seeking our comments on the recommended procedures contained in paragraph 8 of the L/C paper No. CB(2)/03/04 dated 27 January 2004, ("**the L/C Paper**").

The Law Society previously provided a report upon "*Mechanism(s) for Handling Complaints Against Judges and Judiciary Staff*", which was published in November 2002. A copy of that Report is attached (and referred to in this text as "**the November 2002 Report**"). The purpose of resubmitting the November 2002 Report derives from the issues which we raise herein.

The Law Society's November 2002 Report was intended to suggest a remedy for dealing with complaints against Judges and Judiciary staff, without recourse to the Draconian option of the removal of a Judge. The present proposals of the AJLS do not deal with addressing complaints against Judges (and makes no reference to Judiciary staff at all), but concentrates upon the ultimate sanction of the removal of Judges.

It may be construed that the procedure outlined in paragraph 8 of the L/C Paper is the "plateau" of a process which has been started much earlier, but in relation to which there is nothing mentioned in the L/C Paper. Thus, we address those exigencies first below. (In the following text we refer to "**the process**", being that which includes making a complaint through to the sanction of removal of a Judge. In bold, we refer to various "**Levels**" of this process).

1. A complaint in respect of a Judge, and we refer to Article 89 of the Basic Law, will, one assumes, relate to a Judge's "*inability to discharge his or her duties, or from misbehaviour...*".

   To whom is such a complaint to be made ? To members of the legal profession, be they solicitors or barristers, a potential starting point would be the Chief Justice of the Court of Final Appeal, (the "**CJ**"), but that is not clear.

However, to a layman (who may not have access to a solicitor or barrister, even assuming that any solicitor or barrister would wish to act in a matter relating to a complaint about a Judge, which is a moot point in any event), where do they start ?

2. It is important to identify to whom such a complaint is addressed or made, and how. Presumably the complaint will be investigated by the party which receives the complaint, be this the CJ or otherwise. If we assume that, for the sake of argument, the complaint is made to a member of LegCo, then this could constitute **Level 1** of the overall process. The member of LegCo or whomsoever received the complaint will (one might assume) refer the matter to the CJ, and presumably he will consider the matter : **Level 2**.

3. The CJ, by virtue of Article 73(7) of the Basic Law, is then vested with appointing a tribunal to consider the complaint in relation to a Judge. Unless we are mistaken, there are no terms of reference available for such a tribunal at present, save and except that for complaints against all Judges, save as against the CJ himself, the tribunal must consist of not fewer than three local Judges. In respect of a complaint concerning the CJ, the tribunal must consist of not fewer than five local Judges.

   Further, if complaint is being made about the CJ, it begs the question as to whom, in his stead, a complaint should be made. The Secretary for Administration ? The Chief Executive ?

4. The tribunal, when convened, constitutes **Level 3** in the process. However, various questions arise in relation to such a tribunal. Not only is it unclear as to the terms of reference the tribunal will enjoy, but should there be additional members on the tribunal such as laymen in addition to the "*not fewer than three* [or five] *local Judges*". We can see some merit at least two lay members, one being a member of LegCo, being additionally invited members of that tribunal for reasons we explain below, (when addressing the recommended procedures contained in paragraph 8 of the L/C Paper).

5. Is the tribunal to adopt procedures akin, for example, to those of the Law Society Disciplinary Proceedings ? Does a *prima facie* case to answer have to be found in relation to the complaint in question against a Judge before the tribunal is convened ? This might constitute **Level 3** in the process in which case the actual hearing before

the tribunal becomes **Level 4**. Is the Judge to be legally represented or represented at all ? Are witnesses to be called ? The whole concept of the tribunal is, again to the best of our knowledge, unexplored.

6. Assuming that the tribunal is properly convened and reaches a decision, etc., what are the possibilities of an appeal or a Judicial review of the decision of that tribunal ? Again, to the best of our knowledge, this matter has not been determined either. It lends itself to a possibility of **Level 5** in the complaints procedure.

7. If we assume that the foregoing issues are resolved and a tribunal, having considered the matter, makes a recommendation, (which is not appealed or judicially reviewed or if it is, the appeal or judicial review being unsuccessful), then, and only then, one arrives at the "plateau" process which is described in paragraph 8 of the L/C Paper. Each of the seven steps described in the L/C Paper as recommended procedures are considered hereafter.

(a) "*The Administration advises the House Committee of the Chief Executive's acceptance of the recommendation of the tribunal appointed by the Chief Justice of the Court of Final Appeal on the removal of a Judge and provide sufficient information on the recommendation to LegCo (this should take place before the Chief Executive makes any public announcement of his acceptance of the recommendation)*".

The tribunal does not, apparently, make a **decision**, but makes a **recommendation**. We presume that there will be Findings of Fact by the tribunal, constituting their 'decision' upon any complaint in relation to a Judge who displays an inability to discharge his or her duties, or from misbehaviour, and that the recommendation deriving therefrom must relate to the removal of the Judge.

The Chief Executive's "acceptance" of the recommendations of the tribunal constitutes **Level 6** of the process.

Presumably, the Chief Executive can refuse to accept the recommendations of the tribunal as to the removal of a Judge or otherwise, and presumably in such circumstances, the matter proceeds no further. It is not clear.

However, to reach a decision, the Chief Executive will have to consider the matter in any event and ergo **Level 6** in the process.

The Chief Executive then, one assumes, apprises the Administration that he has accepted the recommendation of the tribunal. Whilst we are not entirely sure what "*the Administration*" constitutes, as it is not defined, for the present purposes, we assume this to be the Office of the Chief Secretary for Administration or alternatively, the LegCo Civil Service. The decision of the Chief Executive will then be advised to the House Committee of LegCo.

It is unclear as to the extent to which the House Committee will review the recommendations of the tribunal themselves, at this stage, but this could constitute **Level 7** in the process.

Moreover, the reference to the House Committee of the acceptance by the Chief Executive of the recommendations of the tribunal has to take place before the Chief Executive makes any public announcement of his acceptance of the recommendation.

We are somewhat at a loss to understand how that public announcement can or should occur when the matter still has to be dealt with (upon the procedures recommended in the L/C paper), by the House Committee, a subcommittee of the House Committee and subject to the final endorsement of LegCo.

Without extending the ambit of this paper by investigating and considering the procedures of LegCo, surely it is inappropriate for the Chief Executive to make any announcement, "*of his acceptance of the recommendation of the tribunal*", save and except that if an announcement is required to satisfy some parliamentary-style convention, that it is blandly stated that the matter (described as a recommendation of the tribunal, but nothing more) has been referred to LegCo, preferably without naming the Judge in question.

It would be counter-productive for the Chief Executive to announce his acceptance of the recommendation of the tribunal if, in turn, LegCo, for whatever reason (through the subcommittee or otherwise), do not endorse the recommended removal. As importantly, it places the errant Judge in an extremely invidious position. It is manifest prejudice and appears lacking in natural justice.

(b) "*The House Committee refers to the matter to a subcommittee for discussion*".

We wonder whether there should be a standing subcommittee of the House Committee to determine such a matter if indeed, in practical terms, such a subcommittee needs to be convened in any event ? The consideration by a subcommittee constitutes **Level 8** in the process.

(c) "*The subcommittee discusses the matter as soon as possible*".

With respect, this is rather open-ended. Surely, the subcommittee should discuss the matter within a clearly delineated period of time, certainly as by the time the matter reaches this stage (as against the foregoing potential factual backdrop), many months, possibly years, could have elapsed.

The terms of reference of this subcommittee are not described, and we wonder how far, if at all, theirs will be an *ex parte* decision, without the unfortunate Judge being in a position to argue the matter from his or her perspective.

Alternatively, is the subcommittee only to deliberate upon "*the recommendation of the tribunal*" ? In the further alternative, is the subcommittee to deliberate upon the Chief Executive's acceptance of the tribunal's recommendation ? Is the subcommittee at liberty to call before it salient parties on issues which trouble them ? It is not clear.

(d) "*The subcommittee reports its deliberation to the House Committee*".

We are not entirely at ease with the use of the word "*deliberation*" in this context. Surely, deliberation would only constitute a précis of a debate, rather than a conclusion or finding or indeed endorsement of the recommendation of the tribunal, the Chief Executive's acceptance of the tribunal's

recommendation or otherwise. To understand "deliberation" in this context, the terms of reference of the subcommittee needs to be explained somewhat more fully. However, this referral to the House Committee will constitute **Level 9** of the process.

(e) "*The Administration gives notice of a motion to seek the endorsement of LegCo of the recommended removal*".

Again, we assume that "*the Administration*" means either the office of the Chief Secretary or the LegCo Civil Service.

The House Committee (or the subcommittee on behalf of the House Committee) will, presumably, have reported to the Administration, which promulgate the Notice of Motion.

[At this stage, we refer to the recommendation, which we make above, that a member of LegCo might usefully sit on the tribunal (per Article 89 of the Basic Law) "*consisting of not fewer than three local Judges*" as one of two lay persons, and presumably the same member of LegCo could move the motion, having some knowledge of the matter, before LegCo, although not being able to vote on the matter].

(f) "*The motion is moved, debated and voted on at a Council Meeting*".

This constitutes **Level 10** in the process.

(g) "*If the motion is passed by LegCo, the Chief Executive removes the Ju*dge".

This is **Level 11** in the process.

Conclusion

Earlier in this Report, we referred to the recommended procedures for the endorsement of removal of Judges by LegCo as described in the L/C Paper as constituting the "plateau" of a complaints process. It is not by any means clear as to how a complaint is elevated to this "plateau" and this we address above. However, concerning the "plateau" itself, there appear to us to be the following ten stages involved :

(i) The recommendation of the tribunal is considered by the Chief Executive.

(ii) If the Chief Executive accepts the recommendation of tribunal, he reports to the Administration.

(iii) The Administration advises the House Committee.

(iv) The House Committee refers the matter to a subcommittee.

(v) The subcommittee considers the matter.

(vi) The subcommittee reports to the House Committee.

(vii) The House Committee reports to the Administration.

(viii) The Administration gives notice of a motion to LegCo.

(ix) LegCo debates and votes on the issue and, if the motion is passed by LegCo.

(x) The Chief Executive removes the Judge.

There are ten steps in the "plateau" process and several (at least four, possibly more) steps prior to that. We can perceive little or no justification in terms of fairness to the errant Judge, nor in terms of the time to be attributed to consideration of the matter, etc. for such a tortuous process.

In practical terms, whilst it is more than likely that a Judge would have resigned long before this process is exhausted, surely it would be appropriate for the process to be made less onerous ?

If the Chief Executive accepts the recommendation of the tribunal, the House Committee need hardly form a subcommittee in relation to the matter and surely the Administration could move a Notice of Motion to seek the endorsement of LegCo without the House Committee considering the matter nor indeed a subcommittee. What benefit, in real terms, is there to anybody in adopting this administrative diversion ?

The Law Society would propose an alternative procedure for the endorsement of the removal of Judges by LegCo under Article 73(7) of Basic Law as follows :

(a) In the event that a tribunal appointed by the CJ makes recommendations as to the removal of a Judge, then the recommendations of the tribunal will be conveyed to the Chief Executive, who may either accept or deny those recommendations.

(b) In the event that the Chief Executive accepts the recommendations of the tribunal appointed by the CJ on the removal of a Judge, then he will report accordingly to the Administration.

(c) The Administration will give Notice of Motion to seek the endorsement of LegCo upon the recommended removal.

(d) The motion is moved, debated and voted upon at a Council Meeting.

(e) If the motion is passed by LegCo, the Chief Executive will thereafter remove the Judge.

We regret that the procedures for the endorsement of the removal of Judges as proposed in the L/C Paper is the subject of criticism on our part, but there remain many grey areas in the process generally, and the "plateau" forming the subject matter of the L/C Paper appears to be a somewhat convoluted methodology, prone to duplication of endeavour, procedural uncertainty, as well as the common concerns of expense and delay.

One issue which will be of some considerable importance to a Judge whom finds himself the subject of this process is expense. For these purposes, if we assume that the Judge remains employed by the Hong Kong Government, the Judge is being investigated in the performance of his / her duties. This raises the question as to who bears responsibility for the legal costs incurred by the Judge in question ? If it is borne in mind that legal representation of the Judge at the tribunal may be required, and at any appeal or judicial review of a tribunal's recommendation, and thereafter very possibly in relation to a potential appearance or representation before any subcommittee of the House Committee of LegCo, the legal costs incurred could be substantial. If the Judge is expected to meet such legal expenses himself, this could constitute a sufficient disincentive in its own right for the Judge, the subject of the

process contemplated, not to proceed to defend himself or herself, and occasioning his or her resignation.

We trust, however, that the issues we raise are of practical benefit to all parties concerned in considering the matter going forward. In particular, we would request that further consideration be given to the 'initial complaints process', without which we fear that the matter becomes one of illusory legislative benefit, incapable of achieving that which is intended.

The Law Society of Hong Kong
5 March 2004
75278

THE LAW SOCIETY'S WORKING PARTY

ON CIVIL JUSTICE FORM

Additional Report

in relation to

The Legislative Council's

Panel on Administration of Justice and Legal Services

on

"MECHANISM(S) FOR HANDLING COMPLAINTS

AGAINST JUDGES AND JUDICIARY STAFF"

The Law Society, as part of its continuing brief on "**Civil Justice Reform**", has been asked to consider the subject matter of "**Mechanism(s) for the Handling of Complaints against the Judiciary and Judiciary Staff**". This is contained in the following text, but subject to caveat as follows :-

(i) The Law Society considers that the word "*complaints*" has unfortunate connotations. The LSWP would prefer to address instances "*of poor or inappropriate Judicial Management*"; (Refer : Law Society "Report on Civil Justice Reform" Chapter 13 and Appendix 3 thereto).

(ii) The Law Society's Report has dealt with matters in relation to Civil Justice as opposed to Criminal Justice.

(iii) The Law Society in its deliberations deals only with the High Court and above, and not the lower Courts.

In preparing this Report, reference has been made to the following publications :

- "*Consultation Paper on Process of Appointment of Judges*", December 2001;

- "*Mechanism for Handling Complaints against Judges in Overseas Places*", July, 2002 by the Legislative Council Secretariat ("**LCS**")

- "*Legislative Council Paper No.CB(2)1388/01-02 (02)*", March 2002;

- "*Legislative Council Paper No. CB(2) 159/02-03 (01)*", October, 2002;

- "*Legislative Council Paper No. CB(2) 159/02-03 (02)*";

- "*Legislative Council Paper No. CB(2) 159/02-03 (03)*.

The Law Society in its Report on "Civil Justice Reform" ("**CJR**") Chapter 13, Paragraph 13 touched upon "complaints" in relation to the Judiciary and in Appendix 3 to that Report, Chapter 4 *et seq.*, made various comments under the Paragraphs entitled :

Judicial Ombudsman
Chief Justice
Fixed Term Contracts
Mechanism for Handling Complaints

With the benefit of the additional reference works cited above, and at the request of the Legislative Council, the Law Society has considered the matter further. One of the distinctions which the Law Society wishes to draw is between cases of poor or inappropriate Judicial Management in Civil matters as opposed to Criminal Proceedings. Civil Proceedings tend to have a less sensational aspect to them as opposed to Criminal matters, and civil litigants, for the most part, tend to be less "emotive" in relation to such matters.

In many instances in Civil matters heard before a Judge or Judicial Officer, the lay client will not be in attendance. It is thus frequently the case that it is only members of the Bar or solicitors which see at first hand those instances of poor or inappropriate Judicial Management. For members of the Bar and/or solicitors to protest about (or complain about) such matters could have significant professional ramifications for the barristers, firms of solicitors and individual solicitors when appearing before the same Judge or Judicial Officer at some time in the future. Consequently, the vast majority of instances of poor or inappropriate Judicial Management are not drawn to the attention of the authorities and/or reported for action, although well known in the professions. This is an important issue of which we would ask the Legislative Council not to lose sight. It was this "issue of professional prudence" which in part governed the recommendations made by the Law Society in its Report on CJR and prompted, in part, the suggestion of the appointment of a Judicial Ombudsman.

Upon giving the matter further consideration, the Law Society's view is that certain Hong Kong litigants, whether they be prominent Hong Kong based international corporate entities or otherwise, would also feel similarly constrained in lodging protests about poor or inappropriate Judicial Management. They would hazard, with some cause, that to make such a protest in relation to one matter might, conceivably cause them prejudice in another.

Those using the services of the Hong Kong Court System generally, and not just the High Court, wish to protect, at all costs, the sanctity of Judicial independence. The Law Society's representative at the Legislative Council meeting on 28th October, 2002 stressed this issue. We do so again.

The Law Society also need hardly opine to the Legislative Council in relation to the following, but do so to ensure that the matter is drawn to the attention of third parties which might read this Report. In the LCS Report, systems for "Handling Complaints against Judges" are dealt with in relation to Canada; the United Kingdom; the United States and the State of New York. All these jurisdictions enjoy mature constitutions and systems of Judicial process. Whilst Hong Kong enjoys the latter, the constitutional significance of the change of sovereignty of Hong Kong from a British Territory to that of a Special Administrative Region of The People's Republic of China, whose equivalent of a constitution is contained in the Basic Law, requires there to be some considerable distinction drawn between countries enjoying a mature and time-tested constitution, written or otherwise, as opposed to that are now enjoyed by Hong Kong.

Further, the Law Society, whilst making no observation at all in relation to the issue, bears in mind the recent controversy in the interpretation of the Basic Law by the People's Republic of China's National Congress. This has been construed in some quarters, wrongly or rightly, as a usurpation of Judicial independence in Hong Kong. The Law Society does not intend or wish that the sensitive issue of handling complaints against Judges becomes equally controversial. *The independence of the Judiciary must remain sacrosanct.* However, the competence of the Judiciary remains a component part of the bedrock of Hong Kong's Legal System and the Legal Services Industry. In this respect, the Law Society again refers to Chapter 13, Paragraphs 10 to 15 of its CJR Report, and the introduction to Appendix 3 thereof. The Law Society also notes that the Basic Law does, to same degree, constrain the Legislative Council in its consideration of the matter.

With reference to the LCS Report, (and ignoring the Basic Law), the Law Society comments as follows :-

Part 2 - Canada

The Law Society notes that the Judicial Council established in Canada under the Judges Act, 1971 is entirely composed of Judges, 39 in total. From this fact alone, the Law Society is not entirely convinced that the model could be appropriate for Hong Kong, where, in such matters as the Disciplinary Procedures in relation to solicitors, lay members have a very important role to play.

Moreover, in Canada, the largest source of complaints involved Family Law matters, invariably an emotive subject in all jurisdictions. That said, we note that complaints also extended to delays in :

Rendering Judgments, (an issue very salient to Hong Kong).

Undue impatience, (an unfortunate manifestation also to be found in Hong Kong).

Unprofessional conduct, (also to be encountered in Hong Kong).

Part 3 – The United Kingdom

The complaints handling procedures, similar to those in Hong Kong, are more informal in nature, with no statutory framework for the handling of complaints against Judges. A Judicial Correspondence Unit has been established as recently as 1998 by the Lord Chancellor. The Lord Chancellor has also considered complaints about the "personal conduct" of Judicial Officers, but not Judicial decisions.

"Personal conduct" in this context reflects a Judge's behaviour to litigants and their manner in dealing with a case. The Law Society agrees that certain matters may be "cured" or "remedied" on appeal, but this ignores the inordinate expense to which the litigants are exposed in having to appeal such matters. (In the U.K. Judicial delay is, curiously, not regarded as a matter of conduct, save for excessive delay in such matters as delivery of a Judgment).

Complaints can be channelled through Members of Parliament, and perhaps the Legislative Council should consider constituting a similar conduit for the public in Hong Kong.

Part 4 – the United States

With various levels of Judicial Officers, both national and federal, the procedures available in the United States would appear unnecessarily complicated or cumbersome for consideration by or adoption in Hong Kong. Having so stated, there is the possibility of anonymity of complaints which, bearing in mind the "small town" mentality of Hong Kong, might be an appropriate factor for consideration. The possibility of Judges under investigation being entitled to a hearing, and in fact "a trial about a trial" is broadly inappropriate.

The Law Society stresses in its CJR Report that "conciliation" be used to resolve problems. The complaints handling process in the United States is much more adversial *ab initio*. That said, for such matters as bribery / corruption, conciliation is entirely inappropriate; dismissal and presumably criminal sanction is the panacea to such issues.

We also note the Judicial Conduct and Disability Act has been criticised as not being transparent. The Law Society, however, considers that any process in relation to handling complaints about the Judiciary should be discreet. There is a sensitive dividing line between transparency and discretion, but one which the Legislative Council are implored to consider.

Part 5 – the State of New York

New York has a Commission on Judicial Conduct composed of four appointees by the Governor, three by the Chief Judge and one by each of the four leaders of the Legislature, of which four members are Judges, at least one is an Attorney and at least two are lay persons. The Law Society considered that the composition of the Commission is one of which the Legislative Council should take note.

Part 6 – Comparison of the various attributes of the Mechanism for Handling Complaints against Judges

There are 6 tables providing comparisons between the above four jurisdictions and that of Hong Kong.

We refer to the respective tables, as follows.

Table 8 : This sets out the constitutional positions.

Table 9 : Establishing the regulatory framework of Handling Complaints and Procedures, the Judicial Administration has responsibility for receiving complaints. Should there be an independent Judicial Ombudsman ?

Table 10 : Reference is made herein to a "Court Leader". We can find no statutory definition of this position or title. We are somewhat bemused that a complaint about a Judge may be made to the Judiciary – is that by way of letter or proceedings ?

Table 11 : Again, reference is made to a "Court Leader".

Table 12 : No comment.

Table 13 : We note that there is no appeal mechanism for either a complainant or a Judge.

Part 7 – Reference for Hong Kong

The Law Society commends to the Legislative Council that a system be established whereby the public can apprise itself of the existence of procedures for handling complaints about Judicial "misconduct". Such procedures can be publicised either on a website, through the Annual Report of the Judiciary and/or through media advertising.

The Law Society considers that there is a pressing requirement for a Guide or Code of Conduct relating to Judicial Practices, Discipline and Ethics.

The Law Society does not consider that "peer pressure" is a sufficient deterrent to forestall Judicial misconduct or, as the Law Society would prefer to have it, "poor or inappropriate Judicial Management", and, in particular, such matters as are cited in Chapter 13, Paragraph 13, of the Law Society's CJR Report. However, part of the root cause of such matters is the fact that

there is a dearth of Judicial resources to cope with the increased use of the Courts. Many of the problems derive from this fact alone : there are not enough Judges; the Judges are overworked. If the latter problems were addressed, quite possibly the controversial debate in relation to Handling Complaints against Judges might, for the most part, fall away.

Should the Judiciary be subject to self-discipline ? For the most part, all Judges exercise self-discipline and restraint and it is only the failure to do so, in certain very limited instances, which constitutes the problem to be addressed.

Legislative Council Paper No. CB(2)1388/01-02(02)

The Law Society concurs that the principle of Judicial Independence remains absolutely pivotal. However, the Law Society considers that its proposal for the appointment of a Judicial Ombudsman has much to commend it. A Judicial Ombudsman could work with the JORC and/or any Tribunal appointed by the Chief Justice or Chief Executive investigating Judicial Complaints. The Judicial Ombudsman could receive and consider complaints, or have an involvement whether the complaint is raised through the Legislative Council, or through the Administration, and endeavour to mediate or conciliate the "complaint".

For practitioners, where there are adverse observations about a Judge, these tend to relate to Judge's decisions and the (mis)conduct of the Judge, which may have led to an inappropriate Judicial decision. Lay clients, for reasons explained above, may not have been privy to the conduct of the Judge in Civil matters.

Whilst, broadly, we concur with the conclusions of **Paragraph 8** deriving as they do from **Paragraphs 6 and** 7, this presupposes that Hong Kong does not enjoy a "small town mentality" when that is, within the legal community at least, patently the case. It is realistic to expect a potential complainant, if they are a professional person, *not* to be exposing themselves to prejudice by making any complaint when, inevitably, at a later stage they will appear before the same Judicial Officer. Anonymity of complaints might assist, but patently any Judicial Officer, the subject of a complaint, will quickly conclude from whence - (be this from the client, solicitor

or barrister) - the complaint has derived. The Law Society has no panacea to this potential problem, but it is a matter for consideration by the Legislative Council.

Legislative Council Paper No. CB(2)159/02-03(01)

We note the opposition by the Judiciary to the suggestion by the LCS that Commission of Inquiry be appointed by the Chief Executive in Council under the Commission of Inquiry Ordinance. For reasons explained below, albeit different, the Law Society agrees. The Judiciary considers that there is, already, in place a formal system for such complaints, although not well publicised. This criticism it promises to address, together with statistics on complaints of Judges, in its Annual Report. Perhaps the word "statistics" should be extended to include the results of any such complaints for the sake of certainty.

In that a Guide or Code of Judiciary Conduct is mooted, the Judiciary considers that this should be a voluntary document and not one imposed upon the Judiciary. Its introduction is pressing, and breach of any provision of such a Guide or Code should constitute a ground for complaint. Moreover, it is unfeasible to have some members of the Judiciary which subscribe to the Guide / Code and others whom do not.

Legislative Council No. CB(2)(159/02-03)(02)

We refer to the paragraph enumeration of this text as follows :

Paragraph 5

The Law Society does not entirely endorse The Hon. Ms. Eu's comments that the majority of complaints against the Judiciary would not be directed to the Judges, but to the Court Administration staff. Complaints against Court Administration Staff are made to the Judiciary Administrator. For the Law Society, the majority of complaints are likely to concern Judicial conduct, but not exclusively. Certain "maverick" Judges who do not impress are well known to

those in the legal professions (and we anticipate other Judges). They do not serve the interests of either the Legal Community or the public.

Paragraph 7

The Judiciary Administrator's comments require a response. Appeals, as a component part of litigation generally, are expensive. If a decision at First Instance is patently wrong, sometimes it may not be possible on health, emotional, economic or other grounds, for the party wronged, (as wronged they are), to appeal. This ignores the damage caused to Hong Kong's international reputation as a legal centre by unnecessary appeals and unnecessary utilisation of valuable Court time.

Equally, it is not appropriate to introduce a system whereby "appeals" can be made by way of complaint to Tribunals, etc. Perhaps an appropriate factor for consideration would be for a re-trial to be recommended / ordered. It begs the question as to who will be responsible for the wasted costs incurred in the first trial – should this be from the Judiciary's budget?

Paragraph 8

We consider that it is likely that there may be a considerable increase in complaints in relation to the conduct of Judges were it not for the fact that by making complaint, legal practitioners could prejudice themselves for a future occasion. We do not consider that the relatively few complaints received against Judicial Decisions and/or Judicial Conduct reflects the reality of the situation and the number of complaints that would otherwise be made.

Paragraph 9

The Law Society is aware of two complaints made against staff of the Court to the Judiciary Administrator's Office, which in both cases were not actioned as the circumstances might reasonably have demanded. There is, consequently, a view that to make such complaints is a waste of time and might prejudice, especially, legal practitioners at a later date.

Legislative Council Paper No. CB(2)159/02/03 (03)

No comment.

The Legislative Council's letter to the Law Society dated 4th November, 2002

The Legislative Council summarises the position of the Law Society that it is appropriate to establish a system to address instances of poor or inappropriate Judicial performance. However, with respect, the Law Society went further than that. One of the innovations which the Law Society mooted for consideration was the appointment of a Judicial Ombudsman. We refer to Appendix 3, (sub-heading) Chapter 4 of the Law Society's CJR Report in this context.

Article 85, Basic Law states *inter alia* that : "*Members of the judiciary shall be immune from legal action in the performance of their judicial functions*". This raises two questions :

(i) Would the making of a complaint about a member of the Judiciary or a Judicial Officer offend Article 85 ?

(ii) Would the creation of the position of Judicial Ombudsman offend Article 85 ?

The Law Society's answers to both questions are "no". The Judicial Ombudsman could investigate such matters, and, if he so determined, report the matter for further action to one of the Tribunals envisaged in Article 89, Basic Law.

Article 89 addresses the *removal* of members at the Judiciary. Making a complaint about a Judge, whether this falls within the Law Society's description of poor or inappropriate Judicial Management or otherwise, need not necessarily anticipate or involve "removal". As stated, the Law Society has in mind a conciliatory / mediatory role of the Judicial Ombudsman to ensure that such instances of poor or inappropriate Judicial Management as are reported are not repeated. If there were further reports of such matters concerning a particular Judge, presumably the Judicial Ombudsman would report his findings on such matters to either the Chief Executive (**"CE"**) or

the Chief Justice of the Court of Final Appeal ("**CJ**") as is envisaged in Article 89. Repeated "offences" would presumably justify the convening of a Tribunal as envisaged in Article 89 in any event.

If you refer to sub-paragraph (a) of the Legislative Council's letter to the Law Society of 4th November, 2002, it is stated that the Judiciary comment that *investigation* into the conduct of Judges can only be dealt with in accordance with Article 89, Basic Law. This is not actually the case. Concerning "Judges" generally, no reference to "investigations" is made at all in Article 89. "Investigations" only relate to the CJ. In that this invitation for comment must derive from the Judiciary Administration's letter of October, 2002 (Legislative Council Paper No. CB(2) 159/02-03 (01)), they are both incorrect.

The opening paragraph to Article 89 states as follows :

> *"A judge of a Court of the Hong Kong Special Administrative Region may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of the Final Appeal and consisting of not fewer than three local Judges .... "*

There is no mention of "investigations" in this paragraph at all. It is only in the second paragraph of Article 89 that "an investigation" is contemplated, and this is solely in relation to the CJ, as follows :

> *"The Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region may be* ***investigated*** [our emphasis] *only for inability to discharge his or her duties, or for misbehaviour by a tribunal appointed by the Chief Executive and consisting of not fewer than five local Judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law."*

This means that it is <u>only</u> the CJ who can be "investigated", and only then for an inability to discharge his / her duties or for misbehaviour, and the investigation is conducted by a Tribunal appointed by the CE consisting of at least five local Judges and, if the Tribunal makes (we presume) a recommendation for the removal of the CJ, he can be removed by the CE in accordance with the procedures laid down in the Basic Law.

Consequently, we regret that the Law Society considers the summations of the Judicial Administrator (for the Judiciary) and the Legislative Council to be incorrect as to investigating members of the Judiciary (save for the CJ) although apropos "removal" we agree with their construction of Article 89.

Moreover, to convene a Commission of Inquiry under Ordinance, Cap.86, may be appropriate in some exceptional cases, but surely the position of a Judicial Ombudsman has much to commend it as a workable and, we trust, more economic and expedient alternative ? Commissions of Inquiry tend to be and are inherently adversarial in nature, with the various protagonists represented by lawyers. This is more akin to the complaints handling process established in the United States, about which we make adverse observation above. A review of the Commissions of Inquiry Ordinance will show that these are, by another name, tantamount to trials. This is not within the contemplation of the Law Society at all.

Conclusion

As an interim step, it should be incumbent upon the Judiciary, through those responsible for the Administration of Judicial Services, to publicise exactly how "complaints" can be made in relation to the professional and/or personal conduct Judges and Judicial Officers, and under what terms of reference. The introduction of a Guide or Code of Judicial Conduct is a sensible innovation and one which the Law Society suggests might be best prepared by in consultation with regular Court users, that is representatives from the Bar and the Law Society. The proposal can be extended to processes of complaint in relation to the Court Administration Services, to include a Judge's Clerk. Further, the Guide or Code must be complied with, without exception. In the event that there is a breach of any provision of such Guide or Code, then complaint can be made to the relevant authority.

The Law Society, having considered the above reference works and having further considered the matter, again commend for consideration by the Legislative Council the creation of the post of a "Judicial Ombudsman". He / she could be the recipient of such "complaints" and, subject to the Ordinance creating the post, be in a position to investigate both Judges and Judicial Officers (save for the CJ who would be excluded by virtue of Article 89, Basic Law in any event), with his primary role being one of conciliation / mediation of any problem about which complaint is made.

In this capacity, the Judicial Ombudsman could, presumably, vet those complaints which might be expected to be received from a party aggrieved by Judicial process through to more substantive complaints about the personal conduct or behaviour of a Judge / Judicial Officer by the litigants, their legal advisers and/or Counsel. In this latter context, we anticipate substantive professional matters, such as the handing-down Judgments / Orders not supported by the facts or wrong in law. It is not intended by the Law Society that this becomes an "alternative appeals procedure"; the appeal process must continue. However, fundamentally flawed or wrong decisions when they occur or, decisions made by Judges which are contradicted by the law do need the sanction of a sophisticated complaints procedure, in which the Judicial Ombudsman could serve a useful role. The Judicial Ombudsman's findings in respect of matters could, ultimately, be referred to the Tribunal(s) envisaged in the first paragraph of Article 89.

The Law Society's suggested panacea of the appointment of a Judicial Ombudsman has not, it appears, been considered by the authorities, and we respectfully remind the Legislative Council of the existence of that proposal. As to where the Judicial Ombudsman would fit in the Civil Service hierarchy is moot, for the reasons explained in Appendix 3 to the Law Society's Report on CJR. However, the Law Society approached and again approaches the matter as one of "conciliation" rather than punishment, although for grievous offences, such as bribery / corruption, other considerations and institutions would no doubt come into play. For example, the Independent Commission Against Corruption.

This is an extremely sensitive issue. The Law Society's proposals bear in mind the attendant problems, including limited Government resources being available for the Judiciary. Again, the Law Society's Report on the CJR addresses the provision of legal services generally in relation to Civil Justice. That said, many of the issues raised for consideration in that Report would also apply to Criminal cases. We again urge that a Review of Civil Justice Reform be not focused merely upon the Rules and Procedures applied in Court, but as a component part of a general reappraisal of the Legal Services Industry. In this context, the overwhelming majority of members of the Judiciary in Hong Kong in the performance of their often thankless and solitary duties for the community at all times remain above criticism and are held in the greatest of awe and respect for their role as determiners of legal issues, and whose conduct in (and out of) Court

remains, at all times, exemplary. There are rather fewer Judicial Officers who do not command the same sentiments. To sustain the pre-eminence of Hong Kong as a legal services centre for East Asia, and beyond, a system to provide for investigation of instances of poor or inappropriate Judicial Management is necessary, and one which must be rigorously applied.

We trust that the foregoing paper is of assistance to the Legislative Council in its further deliberations on this most sensitive of issues. We repeat, however, that *the sanctity of the independence of the Judiciary must remain the paramount consideration for the Legislative Council on behalf of the community and the wider international constituency which elects to use the Courts of Hong Kong to determine legal disputes.*

Working Party on Reform of
the Civil Process in Hong Kong
The Law Society of Hong Kong
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