

Advisory Committee on Complaints against Judicial Conduct makes good start at its first meeting

The following is issued on behalf of the Judiciary:

The first meeting of the Advisory Committee on Complaints against Judicial Conduct (the Advisory Committee), chaired by the Chief Justice of the Court of Final Appeal, was held on September 29.

The investigation reports on two cases, each involving a massive number of similar complaints and attracting wide public attention (case numbers: FLCC 3419/2019 and ESCC 2461/2019), were discussed at the meeting. After considering the investigation reports of the Panel of Judges and the advice of the Advisory Committee, the Chief Justice concluded that the complaints were not substantiated. The investigation outcomes on the two cases have been posted on the Judiciary webpage (www.judiciary.hk/en/about_us/similar_complaints.html) today (October 29).

In advising the Chief Justice that the two complaints were not substantiated, the Advisory Committee noted that they both alleged bias against the judicial officers concerned. After a detailed examination of the relevant facts and circumstances, the complaints were considered to be unfounded.

The Advisory Committee also endorsed the conclusions on four non-pursuable complaints as they were either complaints against judicial decisions or repeated complaints without new grounds.

In the course of discussion, the Advisory Committee noted that complaints against judicial or statutory decisions (as opposed to complaints against judicial conduct) should be dealt with by way of appeal, review or other relevant legal procedures, rather than the complaints mechanism. As for complaints of bias, a mere judicial error which was reversed on appeal does not by itself amount to bias. As to judicial remarks, it is important to take into account the relevant context in which they were made to see if bias is established. Another relevant factor is whether the party supposedly affected by the bias alleged saw the matter that way and appealed the relevant decision on the ground of bias.

The Advisory Committee stressed that when carrying out their judicial functions, judges and judicial officers (JJOs) should refrain from expressing views on controversial issues in the community so as to avoid unnecessary misunderstanding and allegations of actual or perceived bias, which might compromise public confidence in the impartiality of the Judiciary.

The Chief Justice considered the discussion and advice of the Advisory Committee pertinent and useful. He explained that appropriate training would

continually be provided to JJOs on judicial conduct, particularly on aspects relating to impartiality and bias. He looked forward to working closely with the Advisory Committee on handling complaints against judicial conduct and improving the mechanism where appropriate.

The Advisory Committee was established on August 16 upon the introduction of a two-tier system for handling complaints against judicial conduct. Its terms of reference are as follows:

- (a) to monitor and advise on the handling of complaints against judicial conduct;
- (b) to identify problems in court practices/procedures which lead or might lead to complaints and recommend improvements where appropriate; and
- (c) to make recommendations on improvements to the complaint handling mechanism.

The membership of the Advisory Committee is as follows:

Chairman

The Honourable Chief Justice Andrew Cheung Kui-ning
(Chief Justice of the Court of Final Appeal)

Members

The Honourable Mr Justice Johnson Lam Man-hon
(Permanent Judge of the Court of Final Appeal)

The Honourable Mr Justice Patrick Chan Siu-oi
(Non-Permanent Judge of the Court of Final Appeal)

The Honourable Mr Justice Jeremy Poon Shiu-chor
(Chief Judge of the High Court)

The Honourable Madam Justice Susan Kwan Shuk-hing
(Vice-President of the Court of Appeal of the High Court)

Dr Christopher Cheng Wai-chee

Mr Patrick Fung Pak-tung, SC

Ms Connie Lau Yin-hing

Professor Lee Chack-fan