

LCQ22: Non-permanent judges from other common law jurisdictions

Following is a question by the Hon Tony Tse and a written reply by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, in the Legislative Council today (December 18):

Question:

Under the Basic Law, the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and the Judicial Officers Recommendation Commission Ordinance (Cap. 92), the Chief Executive may, on the recommendation of the Judicial Officers Recommendation Commission (JORC) and upon the endorsement of the Legislative Council, appoint judges from the common law jurisdictions outside Hong Kong as non-permanent judges from other common law jurisdictions (other CLJ judges) of the Court of Final Appeal (CFA). The candidates for such judges are generally put forward by the Judiciary for JORC's consideration. Since the reunification of Hong Kong, only judges/retired judges from the United Kingdom (UK), Australia, New Zealand and Canada have been appointed as other CLJ judges, and 10 out of the 15 current other CLJ judges come from UK. In this connection, will the Government inform this Council:

- (1) whether it knows, since the reunification of Hong Kong, the jurisdiction from which each of the appointed other CLJ judges came and the number of CFA cases heard by each of them;
- (2) whether it knows the criteria and procedures based on which the Judiciary identifies the candidates for other CLJ judges;
- (3) whether it knows, since the reunification of Hong Kong, if the Judiciary has put forward candidates from jurisdictions other than UK, Australia, New Zealand and Canada for other CLJ judges; if the Judiciary has not, of the reasons for that;
- (4) whether it knows if JORC may consider candidates for other CLJ judges, apart from those put forward by the Judiciary, put forward by other persons or those who nominate themselves; if JORC may, whether JORC has considered any candidate of this type since the reunification of Hong Kong; if JORC may not, of the reasons for that; and
- (5) whether the Government and the Judiciary conducted any review in the past 10 years of the procedure for identifying and recommending candidates for other CLJ judges; if so, of the review outcome; if not, whether they will conduct such a review shortly?

Reply:

President,

Based on the information provided by the Judiciary, the Government

should like to reply to the Question as follows:

(1) The non-permanent Judges from other common law jurisdictions of the Court of Final Appeal (CLNPJs) have come from the United Kingdom, Australia, New Zealand and Canada. Details are at Annex.

The Court of Final Appeal (CFA) has invited a CLNPJ to sit on the Court to hear and determine almost all of the substantive appeals, save for a few exceptions, since July 1, 1997. The Judiciary does not have readily available statistics on the number of CFA cases heard by each CLNPJ.

(2) In accordance with Article 92 of the Basic Law (BL 92), judges of the HKSAR shall be chosen on the basis of their judicial and professional qualities. The Judicial Officers Recommendation Commission (JORC) makes recommendations to the Chief Executive (CE) on all judicial appointments in strict accordance with BL 92.

All CLNPJs 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. Many of them were/are retired Chief Justices of their respective jurisdictions.

(3) and (4) The discussions of JORC should be kept strictly confidential and should not be disclosed. According to section 11 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92), if any JORC member or other person, without the CE's permission, publishes or discloses to any unauthorised person the contents of any document, communication or information which has come to his knowledge in the course of his duties under or in connection with the Ordinance, he shall be guilty of an offence.

(5) According to Article 88 of the Basic Law, judges of the courts of the Hong Kong Special Administrative Region (including CLNPJs) shall be appointed by the CE on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors. The JORC is the independent commission. The mechanism has been working satisfactorily. The Chief Justice has advised the Government that there is no need to review the existing mechanism at the moment. The Government agrees with the position of the Chief Justice.