

# 立法會

## *Legislative Council*

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### **Note for the Select Committee on Building Problems of Public Housing Units**

#### **Legal Adviser's Views on the Application of the *Sub Judice* Rule in Select Committee Proceedings**

#### The relevant rules of procedure

Section 3 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) provides Members with the freedom of speech and debate in the Council. Such freedom of speech and debate is not liable to be questioned in any court or place outside the Council. Under section 4 of the same ordinance, no civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to the Council or a committee, or by reason of any matter brought by him therein by petition, bill, resolution, motion or otherwise.

2. However, the Legislative Council has imposed upon itself certain restrictions in relation to contents of speeches as contained in Rule 41(2) of the Rules of Procedure of the Council, which provides -

"Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case."

This subrule is applied by Rule 43 of the Rules of Procedure to proceedings in a committee unless the chairman of the committee orders otherwise.

3. The subrule has its origin in and retains the wording of Standing Order No. 31(2) of the Standing Orders of the previous Legislative Council. It reflects what is commonly known as the *sub judice* rule or convention in legislative assemblies of some other

jurisdictions.

4. In Hong Kong, apart from Rule 41(2), Rule 25(1)(g) also applies the spirit of the *sub judice* rule to questions. It provides that "a question shall not reflect on the decision of a court of law or be so drafted as to be likely to prejudice a case pending in a court of law". The paragraph has its origin in and retains the wording of Standing Order No. 18(1)(g) of the Standing Orders of the previous Legislative Council.

Application of the *sub judice* rule

5. In Hong Kong, the Council has not formulated any further general guidelines beyond what has been expressly provided in its Rules of Procedure as quoted above. At the first meeting of the Select Committee on Building Problems of Public Housing Units on 22 February 2001, members have asked for some guidelines on the application of the rule.

6. Whilst it is understandable that the precise application of the rule is at the discretion of the Chairman of the Select Committee, being the person who is to rule on such matters whenever they arise, the following principles from the past application of the rule locally and from practices and procedures in other jurisdictions may be helpful -

- (a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;
- (b) matters awaiting adjudication should include matters in respect of which a charge has been made or proceedings have been initiated by the filing of the appropriate documents with the court;
- (c) references should include comment on, inquiry into and the making of findings on such matters; and
- (d) prejudice might arise from an element of explicit or implicit prejudgment in the proceedings of the legislature in two possible ways -
  - (i) the references might hinder the court in reaching the right conclusion or lead it to reach other than the right conclusion; and
  - (ii) whether the court is affected in its conclusion or not, the references might amount to an effective usurpation of the court's judicial functions.

Principle of self-restraint

7. As it is enshrined in the Rules of Procedure of the Council, the rule is binding as such on members in proceedings of a select committee. However, it should not prevent a select committee from exercising restraint where the rule does not strictly apply. The need for restraint may arise when there are other matters that may impact on any legal proceedings. For instance, the question of whether a site engineer is in regular social contact with a contractor of the site should be looked into with caution if the contractor is charged with bribery and the criminal proceedings are pending or ongoing. Another circumstance that may call for restraint is where public interest considerations are relevant.

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