

# 立法會

## *Legislative Council*

LC Paper No. LS147/02-03

### **Paper for the meeting of the Committee on Members' Interests on 15 July 2003**

The Chairman of the House Committee has referred a letter from the YUA Current Affairs Society ("the Society") dated 29 May 2003 to the Committee on Members' Interests ("CMI") for consideration. The purpose of this paper is to provide the relevant legal and procedural background to assist members.

2. In the letter, the Society raised the questions below -
  - (a) whether some Members have breached the Legislative Council Oath by burning copies of the National Security (Legislative Provisions) Bill ("the Bill"); and
  - (b) whether the act of the Members is up to the ethical standard expected of them when they continue to scrutinize the Bill after burning copies of it.

#### **The Legislative Council Oath**

3. Article 104 of the Basic Law provides that when assuming office, Members of the Legislative Council must, in accordance with law, swear to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region.
4. Section 19 of the Oaths and Declarations Ordinance (Cap. 11) requires Members of the Legislative Council to take the Legislative Council Oath ("the Oath") and prescribes its text. A copy of the Oath is in Appendix II to the Notice of Meeting (LC Paper No. CMI/15/02-03) circulated to members earlier.

#### **Sanction for misbehaviour or breach of oath and provisions in the Rules of Procedure**

5. Under Article 79(7) of the Basic Law, when a Member is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members present, the President of the Legislative Council shall declare that the Member is no longer qualified for the office.

6. The procedure for the sanction under Article 79 of the Basic Law is provided in Rules 49B and 73A of the Rules of Procedure. Where a Member considers that a fellow Member has breached the Oath, he may move a motion under Rule 49B. The matter will then be referred to an investigation committee unless the Council otherwise orders. The constitution and procedure of an investigation committee is provided in Rule 73A. An investigation committee is responsible for establishing the facts stated in the motion, and giving its views on whether the facts as established constitute grounds for the censure. The investigation committee is required to report to the Legislative Council. Under Rule 49(B)(3), the passage of such a motion requires a two-thirds majority vote of the Members present. Under Rule 49(B)(4), where the Legislative Council has decided to censure a Member, the President shall declare forthwith that the Member is no longer qualified for his office.

7. In the light of the above provisions, it would seem that it is intended that whether a particular conduct of a Member is a misbehaviour or breach of oath should be determined by the Legislative Council according to the rules set down in Rules of Procedure.

#### **Terms of reference of the CMI**

8. The establishment and functions of the CMI is contained in Rule 73(1) of the Rules of Procedure. One of the functions of the CMI is "to consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters". According to this provision, it would appear that the function of the CMI is to consider matters of ethics generally, and to give advice and guidelines on such matters when it deems necessary. It has not been given the function or power to determine whether the conduct in a particular case is appropriate or up to the ethical standard, although in the process of performing the function of giving advice and issuing guidelines the CMI may look into a particular incident.

#### **Advisory guidelines issued by the CMI to Members**

9. Pursuant to the functions stated in Rule 73(1)(d), the CMI has issued "Advisory Guidelines on Matters of Ethics in relation to the conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such". The guideline in relation to conduct of Members is in paragraph I(1) and is given in general terms:

"(a) A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council."

**Previous advice on a similar issue**

10. Members may recall that the Legal Adviser has advised the Bills Committee on National Security (Legislative Provisions) Bill on whether a Member opposing the enactment of the Bill would be acting in breach of the Legislative Council Oath. The Legal Adviser's advice is that it is the constitutional duty of Members to consider bills, and expression of opposition to the enactment of the Bill as a form of discharging that duty does not amount to a breach of the Legislative Council Oath for not upholding the Basic Law (LC Paper No. LS113/02-03).

**Whether burning copies of the National Security (Legislative Provisions) Bill is a breach of the Oath**

11. Unlike the national or regional flag and emblem, there is no prohibition in the criminal law against desecration of a copy of a Bill.

12. The act of burning copies of the Bill could be a symbolic or non-verbal expression of opposition or protest. It would seem, from a practical point of view, that in the absence of further information on the incident and other relevant facts, it might not be fair to conclude that the Members concerned had breached their Oath.

13. In view of the functions of the CMI and the provisions in the Rules of Procedure, it would appear that the question should ultimately be a matter for the Legislative Council to act in accordance with Rules 49B and 73A.

**Whether the act of the Members is up to the ethical standard expected of them when they continue to scrutinize the Bill after burning copies of it**

14. The scrutiny of bills is one of the constitutional powers and duties of Members. They are entitled to form their own opinion on what is being proposed in a bill. It is also a matter for them to decide how that opinion should be expressed. Unless the means of the expression of opinion is a breach of the law that expression, by itself, should not carry legal implications.

15. On the ethical implications of the manner such opinion is expressed, it is for the Member concerned to determine in the first instance whether the act would bring discredit upon the Legislative Council. Ultimately, should another Member consider the act warrants sanction by the Legislative Council, this would again be a matter for the Legislative Council to act in accordance with Rules 49B and 73A.

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