

立法會
Legislative Council

LC Paper No. LS22/07-08

Paper for the Panel on Security

**Police's Practice Regarding Handling
of Searches of Detainees and Related Matters**

At the meeting of the Panel held on 30 October 2007, members discussed the matters related to the police's handling of searches of persons arrested in relation to the Lee Tung Street case. The Administration raised the issue of sub judice. The Panel requested the Administration to provide the advice of the Department of Justice on whether and how the disclosure of information relating to the Police's handling of detainees will prejudice the trial of the case. The Panel also instructed the Legal Service Division to advise.

2. The Administration has since provided supplementary information on this issue (LC Paper No. CB(2)451/07-08(03) refers). Annex A to the supplementary information is a paper prepared by the Department of Justice. In the paper the Department of Justice informed members that a total of 13 persons will be prosecuted for one or both offences of obstruction of a public place (contrary to section 4(28) of the Summary Offences Ordinance, Cap. 228), or obstructing a police officer in the due execution of his duty (contrary to section 36(b) of the Offences against the Person Ordinance, Cap. 212). The Department of Justice is of the view that in the course of the trial it must be anticipated that evidence will be adduced in regard to not only the alleged offences themselves, but also the manner in which the various defendants were handled by the police from the time of their arrest until they were released on bail. That evidence may include evidence relating to the manner in which the defendants were searched, perhaps as part of the defendants' defence. It may, for example, be used to support a stay application or to attack the credibility of prosecution witnesses, some of whom were also involved in the searching process.

3. It has also been confirmed by the Administration that the persons arrested in the Lee Tung Street case have been brought before the magistrate's court, and a pre-trial review of the case was held on 23 November 2007. The trial was fixed for 4 July 2008 and 15 days were set aside for the trial.

4. In considering whether a matter pending in court should be discussed in the Legislative Council, the starting point would be section 3 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). The section provides Members with the freedom of speech and debate, and 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 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 (which includes a panel), or by reason of any matter brought by him therein by petition, bill, resolution, motion or otherwise. Section 8A of the Ordinance extends the same privileges and immunities to certain public officers, but do not extend to deputations addressing the Panel nor their written submissions.

5. Despite the privileges provided by the Ordinance, the Legislative Council has imposed upon itself certain restrictions in relation to contents of speeches in Rule 41(2) of the Rules of Procedure, which provides that:—

"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."

The rule reflects what is commonly known as the *sub judice* rule. By Rule 43 of the Rules of Procedure, the rule applies to proceedings in a panel unless the chairman of the panel orders otherwise. The Legislative Council has not formulated any further general guidelines beyond what has been expressly provided for in the Rules of Procedure. In the case of the Security Panel, the precise application of the rule is at the discretion of the Chairman of the Panel. Nevertheless, the following principles from 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) such references would include commenting on, inquiring into and making of findings on such matters;
- (c) matters awaiting adjudication would include matters in respect of which a charge has been laid or proceedings have been initiated by the filing of the appropriate documents; 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.

6. Applying Rule 43 to the circumstances of the Lee Tung Street case, there is, in fact, a case pending trial in a court of law. Any reference which, in the opinion of the Chairman of the Panel, might prejudice that case should not be made. In the context of the charge(s) against the persons arrested in the case, the facts relating to the acts of the police officers involved in handling of the persons arrested or detained for the case would be relevant in the pending trial. Apart from the

points that the Department of Justice has advised members in its paper, members may also note that in a trial for obstructing a police officer in the due execution of his duty, the acts of the persons charged and the acts of the police officers concerned would be relevant. If the police officers concerned have acted in an unlawful manner, they will be considered not acting in the due execution of their duty, and the charge could not stand. Also, if cautioned statements are involved, the handling of the arrested persons in the police station could again be relevant. The reason is, for the cautioned statements to be admitted by the court as evidence, the prosecution is required to prove that the cautioned statements were given voluntarily. The manner in which the accused persons were handled in the police station may be raised by the defence to challenge the admissibility of the statements. As discussion on the handling of the persons arrested in the Lee Tung Street case is likely to touch on matters which would be relevant in the pending trial, the Panel may wish to consider if it is preferable to discuss those matters at this stage.

7. Matters not directly related to the trial, such as the general policy, procedures and administration of body searches, or the proper control of the powers of police officers, although might be relevant, are unlikely to be at issue in the trial.

8. In discussing this agenda item, as a matter of precaution, it would be advisable for members to avoid making references which might prejudice the case pending in court by framing questions as neutrally as possible, and refraining from making any comments or prejudgments on any issue.

9. The above precautions might be more difficult to apply in respect of deputations. There is always a risk that a deputation's response to a question would stray beyond the scope of the question. As a common practice measures such as reminding the deputations at the start of the meeting by the Chairman, stating clearly the objective of the meeting and the approach to be adopted, could be considered. Deputations could be asked to exercise self-restraint in their questions and responses. In the course of the meeting, the Chairman may also stop a person from speaking if references are being made to issues pending adjudication in the trial. Deputations may also be reminded that the protections to Members and certain public officers under the Legislative Council (Powers and Privileges) Ordinance do not extend to deputations addressing the Panel nor their written submissions.

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