
INFORMATION NOTE

Impartiality of Speakers

1. Purpose

1.1 This paper provides general background information on the characteristics attached to the office of a Speaker of a legislature, in particular his impartiality and the principles generally adopted by Speakers of selected overseas legislatures in voting and speaking. The paper also explains how impartiality has been practised in the Legislature Council (LegCo) before and after the establishment of the Hong Kong Special Administrative Region.

2. Background

2.1 The powers and functions of the President of LegCo are set out in Article 72 of the Basic Law. Among the various powers and functions, the President presides over meetings of the Council. In accordance with Article 75, LegCo makes its own rules of procedure. The President conducts meetings and considers matters before him according to LegCo's Rules of Procedure (RoP). Rule 44 of RoP provides that the President shall be responsible for the observance of the rules of order in the Council and his decision on a point of order shall be final.¹ Rule 45 empowers the President to direct a Member to discontinue his speech and to order a Member whose conduct is grossly disorderly to withdraw from the Council.²

¹ "Rule 44. *Decision of Chair Final*
The President in Council, the Chairman in a committee of the whole Council or the chairman of any standing or select committee shall be responsible for the observance of the rules of order in the Council and committee respectively. His decision on a point of order shall be final."

² "Rule 45. *Order in Council and Committee*
(1) *The President, the Chairman of a committee of the whole Council or the chairman of any standing or select committee, after having called the attention of the Council or the committee to the conduct of a Member who persists in irrelevance or tedious repetition of his own or other Members' arguments in the debate, may direct him to discontinue his speech.*
(2) *The President, the Chairman of a committee of the whole Council or the chairman of any standing or select committee shall order a Member whose conduct is grossly disorderly to withdraw immediately from the Council or the committee for the remainder of that meeting; and the Clerk or clerks of any committees shall act on orders received by him from the Chair to ensure compliance with this order.*"

2.2 There is nothing in RoP to restrict or guide how the President should exercise his right to speak or to vote in the Council. There is no precedent that the President has participated in debates. There is also no precedent that the President has moved any motion or spoken on a matter which concerns the Council.

2.3 As to any matter not provided for in RoP, Rule 92 provides that the President may, if he thinks fit, be guided by the practice and procedure of other legislatures when deciding on the practice and procedure for the Council. Presidents of LegCo, before or after 1997, have made reference to the practice adopted by the Speakers of overseas legislatures, in particular the Speaker of the House of Commons of the United Kingdom (UK), in exercising their rights to speak and to vote.

2.4 No study has been conducted on how the President of the Hong Kong legislature should cast his vote. In response to the request of some Members who find it necessary to obtain information on overseas practices before the election of the President of the Fourth LegCo, the Secretariat has conducted a quick research on the Speaker's participation in debates and voting in selected places. These places are the UK, Canada, Australia, South Africa and the United States (US). A summary of the findings is given in the **Appendix**.

3. Characteristics attached to the office of Speaker

3.1 According to *Erskine May's "Parliamentary Practice"*, the chief characteristics attaching to the office of the Speaker in the House of Commons of the UK are authority and impartiality. The Speaker presides over debates of the House and enforces the observation of all rules for preserving order in its proceedings. Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, with the existence of many conventions which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized.³ In particular, the Speaker takes no part in debate. He votes only when the voices are equal, and only in accordance with rules which preclude an expression of opinion over the merits of a question. The same principle is also found in *Beauchesne's "Rules & Forms of the House of Commons of Canada"*⁴, and the same practice is followed in the House of Representatives of Australia⁵ and the National Assembly of South Africa⁶.

³ *Erskine May Parliamentary Practice* (2004), p.220.

⁴ Beauchesne (1989), p.49.

⁵ Parliament of Australia (2008a), p.164.

⁶ National Assembly (2004), p.20.

Voting

3.2 As far as voting is concerned, Speakers in the UK, Canada and Australia only exercise a casting vote when there is a tie. Such casting vote should be given in accordance with the following guiding principles:

- (a) that the Speaker should always vote for further discussion, where this is possible;
- (b) that where no further discussion is possible, decisions are not to be taken except by a majority; and
- (c) that a bill is left in its existing form rather than being amended.

3.3 Regarding voting, South Africa and the US have adopted somewhat different practices. In the National Assembly of South Africa, in addition to a casting vote, the Speaker may cast a deliberative vote⁷ when a question has to be decided with a supporting vote of at least two-thirds of the Members of the Assembly.⁸ In the House of Representatives of the US, the Speaker is not required to vote in ordinary proceedings, except when his vote is decisive or when the House is engaged in voting by ballot.⁹

3.4 In the Hong Kong setting, the President only has his own vote as a LegCo Member. He does not have a casting vote as the "majority vote" required for the passage of motions, bills or amendments is only attained under RoP "when the Members voting in favour of a question exceed half of the number of Members present at the time of voting."¹⁰ In other words, where there is a tie, the President can only declare that there is no majority of Members present in support of the motion and the motion is negated. There is no need for a casting vote as in the case of the UK, Canada and Australia.

⁷ A deliberative vote is the normal vote cast by all Members of the House when a question is put. In Hong Kong, it is known as the original vote.

⁸ National Assembly (2004), p.21.

⁹ House of Representatives (2008), p.1.

¹⁰ See Rule 46(4) of the Rules of Procedure of the Legislative Council.

3.5 As to whether the President may cast an original vote on a motion which requires a two-thirds majority vote of all the Members of the Council, there were several occasions on which a two-thirds majority vote of all the Members was required. For example, at the Council Meeting of 21 December 2005, the Council debated on the motion on the "Amendment to the Method for the Formation of the Legislative Council". As the motion was related to the method for the formation of LegCo, amendment to Annex II of the Basic Law was required. The amendments had to be made with the endorsement of a two-thirds majority of all the Members of the Council. When the said motion was put to vote, 60 Members, including the President, were present. Only 59 Members voted, with 34 voting in favour of the motion, 24 against and one in abstention. The President did not exercise her vote on that occasion.

3.6 As regards voting by ballot, the only occasion where a secret ballot is conducted at Council meetings is for the election of the President. All Members present, including the candidates nominated for the office of the President, are to vote in the secret ballot. Due to time constraint, the Secretariat has not been able to look into the circumstances where the Speaker's vote is considered decisive and has therefore been exercised.

Participation in debates

3.7 The Speaker's right to speak in a debate is quite limited in those countries practising the Westminster system. Apart from speaking in defence of the Parliament's estimates or on parliamentary matters within the responsibilities of the Speaker, it is quite unusual for a Speaker to speak from the floor or to take part in a debate. In this respect, Canada is very strict on any matter which may compromise the Speaker's impartiality. In order to ensure complete impartiality, the office-bearer of the Speaker usually relinquishes all affiliation with any parliamentary party. The Speaker cannot be consulted, from the floor of the House, as to the consequences of the passage of a resolution. In addition, the Speaker will not give a decision upon a constitutional question nor decide a question of law.

3.8 In South Africa, the Speaker takes part in debates from the floor by convention on rare occasions, such as reporting on matters relating to the Parliament and its administration. The Speaker also initiates debates on topics of special importance, as a mechanism for the collective leadership in the Assembly without requiring the House to take a decision at the end of the debates. In the US, the Speaker has the right to participate in debates.

Appendix

Speakers' participation in debates and voting in selected places

	United Kingdom (House of Commons)	Canada (House of Commons)	Australia (House of Representatives)	South Africa (National Assembly)	United States (House of Representatives)	Hong Kong (Legislative Council)
Speaker's participation in debates	The Speaker is entitled to speak in a Committee of the Whole, but no Speaker has exercised this right since 1870.	The Speaker does not intervene in a Committee of the Whole except on occasions defending their Estimates.	Although there is no standing order prohibiting a Speaker's participation in debates, it is unusual and is regarded as out of character with the status and role of the Speaker unless the matter under debate is of a peculiarly parliamentary nature falling within the responsibilities of the Speaker.	The Speaker takes part in debates from the floor by convention on rare occasions only, such as reporting on matters relating to Parliament and its administration.	The Speaker has the right of participation in debates.	There is no provision on participation in debates by the President in the Basic Law, Standing Orders (before 1997) and Rules of Procedure (after 1997). Rule 92 of the Rules of Procedure provides that the President may, if he thinks fit, be guided by the practice and procedure of other legislatures when deciding on the practice and procedure for the Council.
Occasions when the Speaker participating in debates	Not applicable.	(a) Defending the Estimates of the House of Commons in the standing committee ¹¹ ; and (b) considering matters of procedure and reform of the rules at the House committees ¹² .	(a) Considering bills in the committee stage ¹³ ; (b) considering matters relating to Parliament and its administration ¹⁴ ; (c) considering the Estimates for Parliament ¹⁵ ; and (d) under special circumstances ¹⁶ .	(a) Speaking on the subsequent debate on the state-of-the-nation addressed by the President ¹⁷ ; and (b) Speaker's debates ^{18, 19} .	Speaking on the floor in various occasions.	Not applicable.

¹¹ Speaker Parent spoke in relation to the Estimates of the House of Commons in 1994, 1995, 1996, 1997 and 1998.

¹² For example, (a) Speaker Bosley appeared before the Special Committee on the Reform of the House of Commons in 1985; (b) Speaker Fraser appeared before the Standing Committee on Elections, Privileges, Procedure and Private Members' Business in 1989; and (c) Speaker Fraser appeared before the Special Committee on the Review of the Parliament of Canada Act in 1990.

¹³ For example, Speaker Nairn participated in the debate in the Committee on the Australian Broadcasting Bill in 1942.

¹⁴ Speaker Rosevear spoke in connection with the Speaker's administration on a motion to discharge members from attendance at the Joint Committee on Social Security in 1944.

¹⁵ The chairman of the 1979 Estimates Committee took the view that 'Mr Speaker represented the ministerial position for Parliament'. As such, questions regarding the estimates were put to the Speaker and answered by him.

¹⁶ For example, Speaker Child spoke to the second readings of the Parliamentary Privileges Bill and the Public Service (Parliamentary Departments) Bill as she sponsored the bills jointly with the President of the Senate.

¹⁷ The Speaker spoke on some challenges facing Parliament in 2004.

¹⁸ Introduced in 1999, Speaker's debates are debates on topics of special importance initiated by the Speaker. These debates are not conducted in a party-political context but as a mechanism for the collective leadership in the Assembly to give the country guidance on national issues. Speaker's debates are regarded as an opportunity to discuss a topic of national importance without the House being required to take a decision at the conclusion of the debate as with the consideration of draft resolutions.

¹⁹ Examples of Speaker's debates are: (a) Promotion of linguistic, cultural and religious rights in 1999; (b) Southern African Development Community regional integration in 2000; and (c) "African unity" in 2001.

Appendix (cont'd)

Speakers' participation in debates and voting in selected places

	United Kingdom (House of Commons)	Canada (House of Commons)	Australia (House of Representatives)	South Africa (National Assembly)	United States (House of Representatives)	Hong Kong (Legislative Council)
Principles under which the Speaker exercises a casting/ deliberative vote	The Speaker casts his votes according to the following principles: (a) always votes for further discussion, where that is possible; (b) where no further discussion is possible, decisions are not to be taken except by a majority; and (c) leaving a bill in its existing form rather than having it amended.	The Speaker votes to maintain the status quo according to the following principles: (a) whenever possible, leaving the matter open for future consideration and allowing for further discussion; (b) whenever no further discussion is possible, taking into account that the matter be brought back in the future and be decided by a majority of the House; and (c) leaving a bill in its existing form rather than having it amended.	The Speaker votes in accordance with the United Kingdom voting principles.	(a) The Speaker gives a casting vote when the vote is tied; and (b) he may cast a deliberative vote when a question has to be decided with a supporting vote of at least two-thirds of the Members of the Assembly.	The Speaker is not required to vote in ordinary legislative proceedings, except when his vote is decisive or when the House is engaged in voting by ballot.	<u>Before 1997</u> According to the Standing Orders, the President had a casting vote in addition to his original vote. <u>After 1997</u> There is no provision for a casting vote by the President in both the Basic Law and Rules of Procedure.
Occasions when the Speaker exercises a casting/ deliberative vote	51 occasions the Speaker exercised a casting vote. ²⁰	(a) Five occasions in debate ²¹ ; and (b) four occasions in a Committee of the Whole ²² .	(a) 21 occasions in debate relating to: (i) enabling a further decision of the House ²³ ; (ii) enabling the debate to continue ²⁴ ; and (iii) deciding a matter before the House ²⁵ ; and (b) in the Committee of the Whole, several Speakers exercised their rights to vote in the committee previously.	On 15 November 2005, the Deputy Speaker, who was presiding at the Assembly, cast a deliberative vote in favour of the Constitutional Twelfth Amendment Bill be read a second time. ²⁶	The Speaker gave his votes on various occasions. ²⁷	<u>Before 1997</u> (a) Nine occasions in debates ²⁸ ; and (b) Five occasions in a Committee of the Whole ²⁹ . <u>After 1997</u> Not applicable.

²⁰ Please refer to Boothroyd (2008).

²¹ Debates held on (a) May 1870; (b) 28 February 1889; (c) 31 March 1925; (d) 11 March 1930; and (e) 4 December 1963.

²² The Committee of the Whole held on (a) 20 June 1904; (b) 15 April 1920; (c) 23 June 1922; and (d) 26 March 1928.

²³ Speaker Holder gave his casting vote on a second reading amendment to the Bonuses for Manufactures Bill in 1902.

²⁴ There were such occasions in 1914, 1935, 1963, 1991 and 1992 where the Speaker gave his casting vote on a motion for the closure, of which a Member might move that a vote be taken to decide a question under consideration immediately but without further debate.

²⁵ There were such occasions in 1913, 1914, 1931, 1938 and 1972.

²⁶ The Bill had to be passed by the National Assembly with a supporting vote of at least two-thirds of its Members.

²⁷ Please refer to washingtonpost.com (2008).

²⁸ For example, debates held on: (a) 22 November 1995; (b) 31 January 1996; (c) 10 July 1996; (d) 13 November 1996; (e) 5 March 1997; and (f) 30 April 1997.

²⁹ For example, they happened during the committee stage on: (a) 16 December 1996; (b) 15 January 1997; (c) 11 June 1997; (d) 24 June 1997; (e) 25 June 1997; and (f) 27 June 1997.

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