

立法會
Legislative Council

LC Paper No. CB(2) 417/09-10

Ref : CB2/H/5/09

House Committee of the Legislative Council

**Minutes of the 6th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 27 November 2009**

Members present :

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Ms Amy YU	Senior Council Secretary (2)3
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

Action

I. Confirmation of the minutes of the 5th meeting held on 20 November 2009
(*LC Paper No. CB(2) 363/09-10*)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on the meeting with the Chief Secretary for Administration

2. The Chairman said that there was nothing special to report.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 20 November 2009 and tabled in Council on 25 November 2009
(*LC Paper No. LS 19/09-10*)

3. The Chairman said that four items of subsidiary legislation were gazetted on 20 November 2009 and tabled in the Council on 25 November 2009.

4. Members did not raise any queries on these four items of subsidiary legislation.

5. The Chairman reminded Members that the deadline for amending these items of subsidiary legislation was 16 December 2009.

Action

IV. Further business for the Council meeting on 2 December 2009

(a) Questions

(LC Paper No. CB(3) 192/09-10)

6. The Chairman said that Mr WONG Sing-chi, Ms Starry LEE and Mr Fred LI had replaced their oral questions.

(b) Members' motions

Proposed resolution to be moved by Hon TAM Yiu-chung under Article 75 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 169/09-10 dated 20 November 2009.)

7. The Chairman said that at the House Committee meeting on 13 November 2009, Members noted that Mr TAM Yiu-chung, Chairman of the Committee on Rules of Procedure, would move a motion at the Council meeting to amend the Rules of Procedure (RoP) for implementing the procedural arrangements for holding debates in Council on subsidiary legislation and other instruments tabled in Council to which no amendment had been proposed.

8. In response to Dr Margaret NG, the Chairman said that when the Subcommittee on Rules of the High Court (Amendment) Rules 2009 reported its deliberations at the last House Committee meeting, Members had been informed that Dr Margaret NG, in her capacity as Chairman of the Subcommittee, would move a motion to repeal the Amendment Rules at the Council meeting on 2 December 2009. The Chairman added that the deadline for giving notice of amendments to the Amendment Rules had expired on 25 November 2009.

V. Business for the Council meeting on 9 December 2009

(a) Questions

(LC Paper No. CB(3) 191/09-10)

9. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the meeting.

(b) Bills - First Reading and moving of Second Reading

10. The Chairman said that no notice had been received yet.

Action

(c) **Government motion**

11. The Chairman said that no notice had been received yet.

(d) **Members' motions**

(i) **Motion to censure Hon KAM Nai-wai under Rule 49B(1A) of the Rules of Procedure (RoP)**

(Wording of the motion issued vide LC Paper No. CB(3) 185/09-10 dated 24 November 2009.)

12. The Chairman said that she would move the above motion in her individual capacity and the wording of the motion had been issued to Members.

13. Mr LEE Cheuk-yan said that he noted from the Chairman's letter to Members dated 20 November 2009 on the censure motion that Mr KAM Nai-wai's former assistant had responded through her lawyer on 17 November 2009 that "due to immense pressure and strain caused by this matter, she has decided to disengage from further involvement in any investigation". Given that the assistant would not come forth to assist in the investigation, he sought clarification on whether procedurally the House Committee could withdraw the censure motion since the Chairman was only acting on behalf of Members.

14. The Chairman pointed out that the House Committee could not withdraw the censure motion. She also stressed that it was not appropriate to debate the merits of the censure motion at the House Committee meeting. She drew Members' attention to Rule 49B(2A) of RoP under which upon the moving of the motion, the debate should be adjourned and the matter stated in the motion should be referred to an investigation committee unless the Council, on a motion which might be moved without notice by any Member, otherwise ordered. This procedure enabled Members to decide the further action to be taken upon the moving of the censure motion at the Council meeting.

15. Mr LEE Cheuk-yan said that while he could move a motion without notice for not referring the matter to an investigation committee under RoP 49B(2A), he considered it procedurally in order for the House Committee to withdraw the motion as the Chairman was acting on behalf of Members.

16. The Chairman said that it was in the light of views expressed at the House Committee meetings that she and three Members had drawn up the censure motion based on the facts available to them. The wording of the motion had been circulated to all Members. While Members were entitled to their own views on the adequacy of the details of the misbehaviour as set out in the motion, she did not consider the House Committee meeting an appropriate forum for discussion. She stressed that she had drawn Members' attention to RoP 49B(2A), and it was for the Council to decide on the further action to be taken upon the moving of the censure motion.

Action

17. Dr Margaret NG said that she was well aware of the background of the matter. In her view, the mover of a censure motion under RoP 49B(1A) should be convinced that the alleged misbehaviour, if established, warranted the disqualification of the Member concerned from office. She sought clarification on whether the Chairman and the three Members who had jointly signed the notice for the censure motion were so convinced. She stressed that this point had to be made clear as it would have significant implications on the procedure under RoP 49B(1A).

18. The Chairman said that she and the three Members who jointly signed the motion had held several meetings and had drafted the wording prudently after thorough consideration of the relevant facts. Whilst she and the three Members had come to their view on the matter, she appreciated that different Members might have different views on the matter.

19. Dr Margaret NG said that whether the alleged misbehaviour was established was another matter. She considered it necessary to seek clarification on whether the Chairman, as the mover of the motion, believed that the alleged misbehaviour, if established, constituted sufficient grounds for disqualification. In her view, should this not be the case, it would not be appropriate to proceed with the motion.

20. The Chairman said that the moving of the motion was proceeded in accordance with the procedure stipulated under RoP 49B. She reiterated that it was inappropriate for Members to debate the censure motion at the House Committee meeting. When the motion was moved at the Council meeting, she and the three Members would express their views on the matter.

21. Mr LAU Kong-wah considered it unfair for Dr Margaret NG to query the moving of the motion by the Chairman. He recalled that the original proposal of the Duty Roster Members (DRMs) was to refer the matter to the Committee on Members' Interests (CMI) for follow-up, and it was Dr Margaret NG who had suggested that the mechanism under RoP 49B should be invoked instead. Some Members including Mr LEUNG Yiu-chung had indicated support for Dr NG's proposal. He had expressed his concern then that Members' move to resort to taking such a drastic step to follow up the matter was to let the matter eventually die down in effect. He had all along stressed that the matter should be handled in a fair and impartial manner. He pointed out that the decision to invoke the mechanism under RoP 49B(1A) was made unanimously by Members after lengthy and thorough discussions, and it would not be appropriate for Members to overturn their decision at the present stage or challenge the moving of the motion by the Chairman who had acted in accordance with the decision of Members. Mr LAU further said that while the assistant had indicated earlier that she was willing to assist in the wording of the schedule to the censure motion, she had changed her mind shortly afterwards and decided to disengage herself from further involvement in any investigation due to immense pressure. In his view, Members should also investigate why the assistant had changed her mind. He added that Mr LEE

Action

Cheuk-yan, as leader of trade unions, should ensure that the assistant's rights as an employee were safeguarded. Mr LAU stressed the need for the matter to be handled in a fair and impartial manner.

22. Ms Cyd HO said that the matter stemmed from the wish of CMI to change its terms of reference on a one-off basis to empower it to investigate into the matter. The Chairman pointed out that this was not so. Rather, the matter originated from a proposal from DRMs.

23. In continuing, Ms Cyd HO said that when the matter was discussed by the House Committee, Members did not agree with the DRMs' proposal. Dr Margaret NG had then pointed out that under the existing system, the only mechanism for initiating an investigation into complaints relating to the conduct of a Member was by invoking RoP 49B(1A). The preconditions were that an investigation should and could be conducted. As she had pointed out at the House Committee meeting on 6 November 2009, there had been oversight in deciding on the invocation of the mechanism under RoP 49B(1A) to follow up the matter. Although the Chairman was initially entrusted with the moving of the censure motion on behalf of Members, it had subsequently been clarified that the censure motion should be moved in a Member's individual capacity. She appealed to Members to consider whether the details of the alleged misbehaviour as set out in the censure motion was adequate for the moving of such a motion under RoP 49B(1A), which could lead to the disqualification of a Member from office. She requested to put on record that she did not support the moving of the censure motion as currently drafted.

24. Mr LEUNG Yiu-chung said that according to his understanding, when the decision to invoke the mechanism under RoP48B(1A) to follow up the matter was made, Members agreed to entrust the Chairman and the three Members who would jointly sign the notice for the censure motion to explore the feasibility of drafting the motion. Should the Chairman and the three Members consider there to be insufficient basis for moving the motion after taking into account the available information, they could decide not to proceed with the motion. They were not bound to proceed with the drafting and moving of the motion. That was the reason why Dr Margaret NG had sought clarification with the Chairman on the adequacy of the details of the alleged misbehaviour for the moving of the censure motion.

25. The Chairman said that her understanding of what had been agreed by Members at the House Committee meetings appeared to be different from what some Members had just said. She pointed out that the House Committee's decision was not for her to explore the feasibility of drafting the censure motion. She added that she and the three Members considered the available information adequate for moving a censure motion under RoP 49B(1A). However, Members were entitled to their own views.

Action

26. Mr Paul TSE sought clarification on whether he could move without notice a motion of not referring the matter stated in the censure motion to an investigation committee upon the moving of the motion under RoP 49B(2A). Upon confirmation by the Chairman, he indicated that he would move such a motion.

27. Mrs Regina IP considered some of the remarks on the Chairman unfair. She said that she was one of the DRMs who had handled the complaints against Mr KAM Nai-wai. Having considered the advice of the Secretariat including that of the Legal Adviser, DRMs proposed that the matter be referred to CMI for follow-up. When the proposal was considered at the House Committee meeting, Dr Margaret NG considered it inappropriate for CMI to investigate the matter and pointed out that the only way to follow up the matter was by invoking Rule 49B(1A). Members therefore had agreed to take such an approach and to request the Chairman to move the censure motion. The moving of the censure motion was not initiated by the Chairman. Mrs IP added that the Chairman and the three Members who had jointly signed the notice for the censure motion had discussed the drafting of the motion and held the consensual view that the Chairman had taken up the task in the light of the decision of the House Committee. While these Members considered the information adequate for the moving of the censure motion, she shared the Chairman's view that it would be for the Council to decide on the matter.

28. Dr Margaret NG said that she understood the background leading to the moving of the censure motion. She had no intention of inhibiting Members from exercising their rights to move a censure motion. The RoP provided for the mechanism for dealing with such a motion. Her concern all along had been that due process should be followed and the spirit of invoking RoP 49B(1A) should be upheld. She recalled that one of the issues brought up by DRMs was an allegation of sexual harassment. Since no Member had raised objection to following up the matter when it was discussed at the House Committee meeting, the only way that the matter could be followed up was by invoking the mechanism under RoP 49B(1A). Dr NG considered it necessary to clarify the purpose of RoP 49B(1A). She pointed out that the Committee on Rules of Procedure (CRoP) considered it not necessary to provide a definition of misbehaviour which was serious enough to disqualify a Member from office. CRoP held the view that it would be for the Council of the day to make a decision on the kind of behaviour which warranted the invocation of RoP 49B(1A), and the responsibility should rest with the mover of the censure motion to provide details of the misbehaviour of the Member concerned. Dr NG added that when the House Committee first considered the DRMs' proposal, there was a concern about unreasonable dismissal of the assistant because of sexual harassment, and Members did not know then whether the assistant would come forth to assist in the investigation. As the particulars detailed in the Schedule to the censure motion were different from the issues of concern first considered by Members, she therefore sought clarification from the Chairman as mover of the motion.

Action

29. The Chairman said that she and the three Members had discussed the matter several times and came to the view that the information available was adequate for drafting a censure motion under RoP 49B(1A). Whether the alleged misbehaviour could be established was another matter. The Chairman added that the issues referred by the DRMs to the House Committee for consideration were not only an allegation of sexual harassment.

30. Dr Margaret NG clarified that she understood that an allegation of sexual harassment was one of the three issues referred by the DRMs to the House Committee for consideration. In her view, the only point which the Chairman needed to clarify was whether the allegations as set out in the censure motion, if established, would justify the disqualification of the Member from office.

31. The Chairman said that Members were entitled to different views on the matter.

32. Mr LEE Cheuk-yan said that the circumstances had changed. He pointed out that previously Members did not know whether the assistant would come forth to assist in the investigation. As the assistant had indicated her unwillingness to do so and had not assisted in the drafting of the motion, he was concerned that without her participation, the information as contained in the censure motion relied only on media reports and was built on speculations. The situation had come to a stage where there was only the accused without the plaintiff. He considered that the views of the assistant should be respected. In his view, as the House Committee had authorized the Chairman to move the censure motion, the House Committee was in a position to reconsider the matter given a change in circumstances.

33. The Chairman referred Members to her letter concerning the moving of the censure motion. She clarified that the information as set out in the Schedule to the motion was not based on media reports or speculations.

34. Dr Margaret NG reiterated that the Chairman did not require authorisation of the House Committee to move the censure motion and no such authorisation had been given.

35. Mr LAU Kong-wah proposed that in order to provide for Members' reference an accurate account of the discussions which had led to the moving of the censure motion and to facilitate Members' consideration of the motion at the Council meeting, verbatim transcripts of the relevant discussions at the House Committee meetings should be prepared and issued to Members before the Council meeting.

36. Members agreed to the proposal.

Action

(ii) Motion to be moved by Dr Hon Priscilla LEUNG Mei-fun

37. The Chairman said that the subject of the motion to be moved by Dr Priscilla LEUNG was "Reviewing afresh the use of land at the Kowloon waterfront".

(iii) Motion to be moved by Hon WONG Yuk-man

38. The Chairman said that the subject of the motion to be moved by Mr WONG Yuk-man was "Resignation en masse of Members returned from five geographical constituencies as a referendum".

39. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 2 December 2009.

VI. Position on Bills Committees and subcommittees

(LC Paper No. CB(2) 364/09-10)

40. The Chairman said that there were 11 Bills Committees, five subcommittees under the House Committee (i.e. two subcommittees on subsidiary legislation and three subcommittees on policy issues) and seven subcommittees under Panels in action.

VII. Any other business

Legislative Council (LegCo) Building Open Day

41. The Chairman reminded Members that the annual LegCo Building Open Day would be held on 28 November 2009. The event would start at 9:30 am with an opening ceremony, and guided tours of the LegCo Building for the public would begin from around 10:00 am. She appealed to Members to participate actively in the Open Day.

42. There being no other business, the meeting ended at 2:57 pm.