

Chapter 2 Information and evidence relevant to the particulars of the misbehaviour set out in the Schedule to the censure motion

2.1 This Chapter sets out the information and evidence gathered by the Investigation Committee relevant to the particulars of the misbehaviour set out in the Schedule to the censure motion. In this connection, the Investigation Committee has made reference to the written evidence provided by Hon KAM Nai-wai and witnesses, the evidence given by them at hearings, an open statement issued by Ms Kimmie WONG Lai-chu on 3 December 2009 to all Members of the Legislative Council (“LegCo”), verbatim transcripts of the relevant press conferences and interviews gathered by the Clerk to the Investigation Committee as instructed by the Investigation Committee, as well as the relevant appointment letter of Ms WONG. The relevant documents are set out in Appendices 2.1 to 2.11.

Ms WONG’s employment in the Member’s Office of Hon KAM Nai-wai

2.2 After being elected as a LegCo Member in September 2008, Mr KAM started recruiting staff to assist him in discharging his LegCo duties. Ms WONG sent Mr KAM an email on 18 November 2008, expressing an interest in the post of Personal Assistant to a LegCo Member. She also indicated in the email that she had served as the election campaign manager of Ms Mandy TAM Heung-man, a former LegCo Member, and prior to that, she had worked in the media for 15 years. According to the records of the Accounts Office of the LegCo Secretariat, Ms WONG worked as a Personal Assistant in the Member’s Office of Ms TAM during

the period between 30 November 2007 and 30 September 2008 when Ms TAM was a LegCo Member.

2.3 At first, Mr KAM did not consider employing Ms WONG because the monthly salary of \$27,000 to \$28,000 (Ms WONG was paid \$35,000 a month when she was employed in the Member's Office of Ms TAM) that she asked for exceeded his budget and was higher than those of other staff members then employed by him. These staff members' salaries ranged between \$8,000 and \$13,000 a month payable under the LegCo Members' operating expenses reimbursement system. Ms WONG subsequently called Mr KAM, expressing once again her interest in the Personal Assistant post. They then met once but Mr KAM still did not offer her the job. Later, Ms TAM called Mr KAM and recommended Ms WONG to him, saying that she was "a capable person".

2.4 Taking into account the fact that he was a newly elected LegCo Member, in particular a directly elected Member, Mr KAM thought he needed to hire a staff member who had good relationships with the press to write press releases for him and assist him in organizing activities, with a view to boosting his popularity by attracting media coverage. After cutting other expenses, Mr KAM made a job offer to Ms WONG with a monthly salary of \$25,000, which was accepted by her. With effect from 15 December 2008, Ms WONG took up the post of Personal Assistant to Mr KAM, and started working in Mr KAM's Member's Office at Central Government Offices (West Wing). They subsequently signed an appointment letter, i.e. employment contract (**Appendix 2.1**) on 29 December 2008, which stipulated a probation period of three months and a monthly salary of \$22,500, i.e. the amount for which Mr KAM

applied each month for reimbursement by the LegCo Secretariat in respect of Ms WONG's salary. As Mr KAM separately paid Ms WONG a monthly allowance of \$2,500, her total monthly remuneration was \$25,000. The contract also stipulated that, after the probation period, either party intending to terminate the employment contract was required to give the other party one month's written notice or a payment in lieu of notice.

2.5 The main duties of Ms WONG were to follow up all the LegCo business of Mr KAM, including publicity and liaison (in particular with the press), community liaison activities, handling of cases, study of incidents and information gathering, as well as coordination work in organizing events. With regard to organizing events, such as forums, Ms WONG needed to take care of various tasks solely on her own (commonly known as "one-man operation"), including preparing the budget, finding topics, contacting speakers, identifying and decorating venues, getting things ready for guests, liaising with the press on the day of the event, writing press releases and so on.

2.6 Apart from Ms WONG, Ms Anita LUI Suet-ching was the only other staff member who worked in Mr KAM's Member's Office at Central Government Offices (West Wing). Ms LUI had been employed as an Executive Assistant to Mr KAM since 21 November 2008. Her main duties included undertaking all administrative and secretarial work related to Mr KAM's roles as LegCo Member and District Council member.

2.7 The Investigation Committee notes that both Ms WONG and Ms LUI were employed solely by Mr KAM, and he had, as required, signed on the Claim for Reimbursement of Operating Expenses by

Members of the Legislative Council Form (Form A), certifying that the relevant expenses were expenses which “arose out of my LegCo duties”.

2.8 Mr KAM told the Investigation Committee that on the whole, he found himself getting along well with Ms WONG. Unlike the work undertaken by Ms TAM, who was a former LegCo Member from a functional constituency, his work often included holding district functions and dealing with district affairs, and hence Ms WONG needed a period of time to adapt herself before she could “get on top of her job”, even though she had worked as an assistant to Ms TAM. Mr KAM stated that he considered Ms WONG’s work performance during the initial six months of her employment (i.e. from 15 December 2008 to June 2009) “acceptable and satisfactory” when the two of them were still “adapting to each other and seeking each other’s cooperation”. During that period, Ms WONG was able to meet the basic requirements, and in meeting these basic requirements, her performance on the whole was “good”, but after June 2009, Mr KAM was not satisfied with certain parts of Ms WONG’s performance. In appraising the performance of his staff members, Mr KAM used the following standards: “excellent” for the best staff members whose work attitude was positive and with initiative, followed by “good”, “ordinary” and then “poor”.

Afternoon tea meeting on 15 June 2009

2.9 Mr KAM told the Investigation Committee that during a function organized by his Office at Lei Tung Estate in early June 2009, Ms WONG disclosed to him that she was disturbed by “problems relating to her boyfriend” and she sought his assistance on two matters. Mr KAM

subsequently provided assistance to her on the one that involved the police. Since then, Ms WONG talked to Mr KAM about her relationship problems on quite a number of occasions, and among them there was one involving another failed relationship. However, she only spoke about how she was disturbed by these matters and her views in this respect but she did not ask Mr KAM to do anything. Mr KAM noticed that Ms WONG was depressed during that period, and occasionally she sounded emotional and upset when she spoke. Mr KAM recalled that he had talked to her again about her relationship problems on 13 or 14 June 2009.

2.10 According to the evidence given by Mr KAM, on 15 June 2009 between 4:00 pm and 5:00 pm, Mr KAM found that there was still some time before attending class (a Master Programme in Public Administration pursued by him at that time) at around 6:00 pm, he went to Ms WONG's desk and invited her to have afternoon tea with him. According to the evidence given by Ms LUI, when Mr KAM asked Ms WONG to go out with him, he requested Ms WONG to take her handbag with her, which Ms LUI understood to mean that Mr KAM and Ms WONG would be discussing work until after duty hours, and hence she would not return to the Member's Office. Mr KAM told the Investigation Committee that he could not remember too clearly whether he had asked Ms WONG to take her handbag with her, but even if he had, it was just because she had to carry her identity card when going out and not to imply that Ms WONG would not need to return to the Member's Office, and it would not have been possible that he had thought about having other activities with her following the tea meeting. He then drove her to the shopping mall at International Finance Centre ("IFC"). On arrival, he went with Ms WONG to a restaurant called Café Costa on the third floor of the mall to have afternoon tea, which lasted for less than one hour.

2.11 Mr KAM explained to the Investigation Committee that he invited Ms WONG to have afternoon tea because he was concerned that her emotional and relationship problems might affect her work. Moreover, it was Ms WONG who took the initiative to disclose to him her relationship problems and sought help from him, and therefore he thought that being her employer, he should help her deal with these problems.

2.12 Regarding the reason for choosing to talk to Ms WONG in a restaurant, Mr KAM explained that as he needed to drive to Kowloon side to attend class after the tea meeting in any event, he thought it would be better for them to have the conversation outside. As he usually chose to cross the harbour via Western Harbour Crossing to avoid traffic congestion, the IFC in Central was in the same direction and he was more familiar with this mall because he had been there with his wife¹ for an interview. He therefore chose a restaurant in that mall. In deciding the location of the tea meeting, Mr KAM had not considered how long it would take for Ms WONG to get back to the Member's Office afterwards or whether she would go back to the Member's Office at all.

2.13 Mr KAM explained that he did not choose to talk to Ms WONG in the Member's Office because she had indicated that she did not want to let other people, especially Ms LUI, know about her relationship problems. Given that he seldom closed his office door when handling official business, Ms LUI might find it odd if he closed the door when he talked to Ms WONG. In the past, whenever he and Ms WONG

¹ At the hearing on 29 May 2010, Mr KAM said that he and his wife had attended an interview at that restaurant (lines 523 to 524 of IC Paper No. V2(C)). Yet, when making comments on the draft Report subsequently, he denied this, saying that only he himself had been interviewed there (paragraphs A.4 and A.5 of Appendix 1.14).

talked about her relationship problems, they did that away from the sight of Ms LUI, such as in the corridor outside the offices of the Members.

2.14 According to the evidence given by Ms LUI, she found it strange for Mr KAM to request Ms WONG to go out with him to discuss their work because it seemed that Mr KAM did not want her to know what they were going to discuss. While Ms LUI was curious as to the kind of work they would be discussing, she did not ask any question further about it as both of them were unwilling to mention it.

2.15 At the afternoon tea meeting on 15 June 2009, Mr KAM talked to Ms WONG about her relationship problems, and shared with her his love life with his wife. Mr KAM explained to the Investigation Committee that at that time he was hoping that, by using the empathy skill, a skill commonly used in professional social work training, Ms WONG would feel that he had also experienced ups and downs in his love life, and thus could put himself in her shoes and understand how she felt about her relationship problems. He was in all sincerity to help her regain self-confidence, pull herself together, and concentrate on her work.

2.16 In the course of sharing his personal love life with Ms WONG, Mr KAM told Ms WONG that he had good feelings towards her. In her open statement (**Appendix 2.2**) issued to all LegCo Members on 3 December 2009, Ms WONG said, “KAM Nai-wai confessed to me that he had good feelings towards me. I was astonished at that moment and rejected him right away. I indicated my wish to resign several times.” Mr KAM said at the hearings that he also felt that Ms WONG’s reaction at that moment was that she was a bit taken by surprise and shocked, while he

was also astonished and quite taken by surprise when seeing her reaction. He realized there and then that she perceived that his expression of good feelings was making advances to her². Mr KAM also said that he could not recall whether he had immediately apologized to her for expressing good feelings towards her at the tea meeting.

2.17 Upon hearing Ms WONG's indication to resign following his expression of good feelings towards her, Mr KAM was flustered, and he tried to dissuade her. Subsequently, he paid the bill and left the restaurant together with Ms WONG. Ms WONG did not tender her resignation at the end. She said in her open statement, "As I needed a job, therefore, with KAM Nai-wai's dissuasion for a few times, I stayed in my post." Mr KAM pointed out at a hearing that after the tea meeting, Ms WONG made no more mention of her intention to resign.

2.18 Ms WONG said in her open statement that at the tea meeting, while making it clear that he did not want her to resign, Mr KAM requested her to "return home and think twice about our relationship." Mr KAM's response at a hearing was that he could not recall that he had made such a remark, but he did say that "You go back and think clearly whether you need to resign," when Ms WONG said she would resign.

2.19 Mr KAM told his wife that evening about the afternoon tea meeting with Ms WONG. As he thought that he might have been wrong

² Please refer to lines 127 to 129 of the Verbatim Transcript of the relevant part of the radio programme Tipping the Points attended by Mr KAM (**Appendix 2.9**), which was broadcast on Channel 1 of the Hong Kong Commercial Radio in the evening of 6 October 2009.

in telling Ms WONG that he had good feelings towards her, he admitted to his wife that he had done wrong. Subsequently on the Hong Kong Commercial Radio programme Tipping the Points broadcast on Channel 1 in the evening of 6 October 2009, he said that he felt that his wife “was feeling uncomfortable at heart” at that time, but she definitely did not ask for a divorce because of this, or express any dissatisfaction with the incident.

2.20 With regard to what he had exactly said in telling Ms WONG that he “had good feelings” towards her, Mr KAM said at the hearing on 14 July 2010: “as it had been so many months ago, all I can remember are only bits and pieces of the conversation. As to how every word was said, there is no way I can repeat from memory. Yet, of course, the context of our conversation did make reference to Ms WONG’s relationship problems and her work situation.”³ At the hearing on 21 October 2010, Mr KAM made a supplement about the way he said the expression “have good feelings” towards Ms WONG at the tea meeting on 15 June 2009: it was either “I had also encountered this kind of situations in the past. In fact, your work performance is not bad, quite good indeed, and I too have good feelings towards you.” or “Actually your work performance in the past was quite good, not bad at all, and I have good feelings towards you. As with these matters, you needn’t worry yourself too much about them.”⁴

³ Please refer to lines 305 to 309 of the Verbatim Transcript of the hearing on 14 July 2010 (IC Paper No. V6(C)).

⁴ Please refer to lines 358 to 360 and 448 to 449 of the Verbatim Transcript of the hearing on 21 October 2010 (IC Paper No. V7(C)).

The working relationship between Mr KAM and Ms WONG after the afternoon tea meeting

2.21 Ms WONG said in her open statement, “After I had rejected KAM Nai-wai’s advances to me⁵, he still sought to meet me in private on numerous occasions. In order to stop KAM Nai-wai from having false expectations⁶, I turned down all unnecessary and non-work-related invitations. Although I kept a distance from KAM Nai-wai on a personal level, I still did my best to discharge my duties at work.” According to the written statement of Hon Emily LAU, Deputy Chairman of the Democratic Party, Ms WONG told her in the evening of 24 September 2009, the day on which she was dismissed by Mr KAM, “KAM Nai-wai apologized to her after the incident, but he called her many times. As she found the calls annoying, she did not answer any of them.” According to the evidence given by Mr KAM, Ms WONG refused to attend a meeting with him on 18 June 2009 organized by the Hong Kong Monetary Authority for assisting the Octave Notes victims. Following that, Mr KAM requested Ms WONG on more than one occasion to sit down to talk in order to find out why she had not attended the aforesaid meeting and whether she had any problem at work. However, all such requests were turned down by Ms WONG. It was not until early July that Ms WONG sat down to talk to Mr KAM.

2.22 In his evidence, Mr KAM said that given his temperament, if a subordinate refused to sit down to discuss official business with him, it was

⁵ Mr KAM denied that his expression of good feelings towards Ms WONG was meant for expressing affection towards her or seeking her love. Please refer to paragraph 2.104 of this Chapter.

⁶ A typo in the open statement (in Chinese) of Ms WONG: “暇想” (false expectations) should be written as “遐想”.

possible that he would dismiss the subordinate. As to why he did not dismiss Ms WONG, Mr KAM explained that he “understood that she was depressed, sometimes in an unstable mood, and under such circumstances, coupled with some misunderstanding on her part, she did not want to attend the meeting.”

2.23 According to Mr KAM’s understanding, Ms WONG was unwilling to sit down to speak with him because she felt that Mr KAM’s expression of good feelings towards her was “an indication that he probably had some feelings for her”. Mr KAM felt that should the situation continue, office work would be affected. He therefore sent an email to Ms WONG on 22 June 2009 to let her know that he just wanted to discuss work with her, to make it clear that he would only concentrate on his own work and that he did not have any other intentions. He also asked her “not to think in a wrong direction”. The email sent by Mr KAM to Ms WONG reads as follows:

“Dear Kimmie,

I fully understand the problems you are facing.

Today, I just wish to make it clear that I will only concentrate⁷ on my work in future. I hope that you can assist me in boosting my popularity and I shall carry on the fight for democracy. I don’t have any other intentions in my mind.

⁷ A typo in the email (in Chinese) of Mr KAM : “尊注” (concentrate) should be written as “專注”.

At any rate, as always, I shall be glad to assist you in solving your problems, but I also hope that you can be more devoted to your work.

Besides, I have just received the assignments (see attachment) of Mass Media & Public Administration, a new subject of my MPA programme. Can you help me in this regard?⁸

Kam Wai”

2.24 In the above email, Mr KAM asked Ms WONG to help him with the assignments of the Master Programme in Public Administration which he was pursuing then. Mr KAM explained to the Investigation Committee that he just meant to request Ms WONG to search for some information and textbooks on mass media for him, as she was a veteran mass media worker. He intended to complete the assignments on his own after finding such information. Mr KAM said at a hearing that Ms WONG had never responded to him as to whether she would provide him with such assistance, and neither had he pursued it.

2.25 Mr KAM said at the hearings that Ms WONG finally sat down to talk to him in early July 2009. During the conversation, Mr KAM apologized to her for having expressed good feelings towards her at the afternoon tea meeting on 15 June 2009, “I wish to apologize to you because

⁸ When the relevant parts of the draft of this Report were sent, pursuant to paragraph 22 of the Practice and Procedure, to Mr KAM for comments, he proposed to the Investigation Committee that this subparagraph and paragraph 2.24 be deleted from the Report for the reason that the information therein was irrelevant. The Investigation Committee disagrees to Mr KAM’s viewpoint (see paragraph 3.30 of Chapter 3).

the incident has led you to have such comprehension and has caused such a problem.” Mr KAM also said he had told Ms WONG at that meeting, “Come on, you need to work in a more proactive manner. You can’t go on like this.” and “We need to work together. The way you behave does not work.” Mr KAM told the Investigation Committee that, in retrospect, he felt that the remarks he made to Ms WONG at that meeting could be regarded as a verbal warning, though the word “warning” had not been used. Mr KAM also said that Ms WONG had admitted at the meeting that she needed to improve her work attitude and she undertook to make improvements. Mr KAM said that as he considered he had clarified the matter with Ms WONG at that meeting, as far as he was concerned, the incident was over and the problem arising from that afternoon tea meeting had also been solved.

2.26 During the summer recess of July and August 2009, Mr KAM did not spend too much time in the Member’s Office because he seldom returned to the Member’s Office during that period as one of his family members had contracted human swine influenza in July. Besides, he went on leave overseas from 4 to 20 August. According to the information provided by Mr KAM, during the period from December 2008 (when Ms WONG assumed her post) to 24 September 2009 (when she was dismissed), there were 628 emails exchanged between him and Ms WONG, i.e. over 60 emails a month on average. There were 91 and 94 emails in July and August 2009 respectively. The Investigation Committee requested Mr KAM to provide copies of all the emails between him and Ms WONG from April to September 2009 but Mr KAM turned down the request because he thought, after consulting his lawyers, that the emails between him and Ms WONG were completely irrelevant to the particulars

of the misbehaviour set out in the Schedule to the censure motion. He was also of the view that the request had exceeded the scope of the investigation, and that the request was a fishing expedition for evidence on a false pretext, an investigation approach which he considered to be neither fair nor impartial. Mr KAM also said at the hearings that emailing was only one of the means through which he communicated with his staff members, and could not comprehensively reflect the work performance of Ms WONG. The Investigation Committee does not agree with Mr KAM's argument as the emails in question may assist the Investigation Committee in understanding the working relationship between Mr KAM and Ms WONG during the period from April to September 2009, which would enable it to make a more impartial and comprehensive assessment of the overall work performance of Ms WONG. Nevertheless, after weighing the possible benefits it may derive from the emails against the manpower and other resources involved in seeking the special authorization of LegCo to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), the Investigation Committee decided not to take any further action to seek such authorization to order Mr KAM to produce copies of the relevant emails.

2.27 Mr KAM cited several examples to the Investigation Committee and submitted copies of the relevant emails to illustrate that there were problems with the performance of Ms WONG in July and August 2009, which failed to meet his requirements. Mr KAM pointed out that all such examples involved work that was within the scope of work of Ms WONG. He also felt that there were problems with the attitude of Ms WONG. The following paragraphs outline the examples cited by Mr KAM.

2.28 Mr KAM wrote in the Supervision Brief (**Appendix 2.3**), which he issued to all LegCo Members on 9 December 2009, that on 10 August 2009, “KAM Nai-wai sent an email to WONG Lai-chu from Europe to say that there were a lot of mistakes in the ‘Work Report of KAM Nai-wai’, and requested WONG Lai-chu to check it carefully. These errors had already been pointed out by KAM Nai-wai previously, but they were not corrected in the latest version.” The email was sent at 6:42 pm (Hong Kong time; applicable to all time marks mentioned below), and the email (in English) reads as follows:

“Dear Kimmie

There are lot of mistake in the C & W report. I remember I made a written amendment on it.

But the revision, which u sent to me, haven’t made any amendment? Why?

Pls check it carefully. and check all the gammer⁹ of district report.

Regards

Kam Wai”

2.29 On 12 August 2009¹⁰, Mr KAM called Ms WONG from

⁹ A typo in the email (in English) of Mr KAM – “gammer” should be spelt as “grammar”.

¹⁰ As Mr KAM had sent an email to Ms WONG in the morning of 13 August 2009, and in it he mentioned “Yesterday, I asked you to write an article on shoe-shining stalls”, so the date on which Mr KAM made the telephone call to Hong Kong should be 12 August 2009, instead of 13 August 2009 (the date on which he claimed in the Supervision Brief to have made the call).

Europe shortly after 5:00 pm¹¹ to ask her to write and issue a press release on shoeshiners in Central on his behalf, but she did not act as instructed. Mr KAM said at a hearing that, among the several examples he had cited to illustrate that her work performance or attitude was no so good, this incident was one he minded more. At 9:47 am on the following day (13 August 2009), Mr KAM sent an email to Ms WONG. The email reads as follows:

“Dear Kimmie,

Yesterday, I asked you to write an article on shoe-shining stalls, which I think is your most fundamental duty.

I hope someone can assist me in keeping up the liaison with the media while I am not in Hong Kong.

If you think this job is not within your scope of work, I think we need to discuss seriously how to handle it.

Kam Wai”

2.30 Ms WONG replied to Mr KAM at 10:18 am, i.e. about half an hour after he had sent her the email. She said in the email:

“Yesterday, I was busy the whole day writing the Work Report, revising its contents afresh¹². I did not even

¹¹ Although Mr KAM said at the hearing on 29 May 2010 that the time should be “shortly after 4 o’clock” (see line 1580 of the Verbatim Transcript (IC Paper No. V2(C)), he said the time was “shortly after 5 o’clock” in the Supervision Brief; and Ms WONG also mentioned in her reply email to him that it was “almost 6 o’clock” when Mr KAM called her (the email is reproduced in full in the next paragraph).

¹² A typo in the email (in Chinese) of Ms WONG – “從新” (afresh) should be written as “重新”.

have the time for a proper meal. In addition, I had to handle the entire tree forum by myself, including the slogans, invitations, site inspection, audio equipment and easy-mount frames, and the budget, all on my own. The guests also asked me to prepare this and that for them. At the time you called me, it was almost six o'clock, the time for me to attend class. I really felt dizzy and ran out of energy. At that juncture, you had been talking for two minutes without coming to the point. I really could not take it. I subsequently sent an SMS to ask you to send me an SMS to allow me to follow up. Please note that my workload has not become lighter while you are on leave. Hope you will understand."

2.31 At 2:44 pm of the same day, Mr KAM responded to Ms WONG by email. In the email, he advised Ms WONG that she should not put too much effort on the tree issue, and said that he hoped she could put more effort on the air issue instead because he was the spokesman of the Democratic Party on environmental affairs. Mr KAM also said in the email that as he thought that the planning of events was not Ms WONG's specialty, he intended to reassign, upon his return to Hong Kong, such work to other staff members so that she could concentrate on writing speeches, articles, press releases, blogs, work reports as well as liaising with the press. Mr KAM also reminded Ms WONG that should anything extraordinary happen, she might need to work on holidays or after office hours. Mr KAM said at a hearing that his impression was that in the end Ms WONG did not write the press release on shoe-shining stalls. The email (in English) reads as follows:

“Dear Kimmie

Pls don't put to much¹³ effort on the tree issue, I hope I can put more afford¹⁴ on the air issue because I am the spokeman¹⁵ of DP envirnmental¹⁶ issue.

[REDACTED]

[REDACTED]

[REDACTED] 17

I think you are not the expertise on the planning of events. I will discuss this issue when I back to HK. I think the planning of event may be taken over by Kelvin or Monkey and u may be major on the writing of speech, article, press release, blog, working report and the liaise with media. Sometime u need to work on holiday or after office hour when there is a suddenly issue.
Any way, discuss it later.

Regards

Kam Wai”

¹³ A typo in Mr KAM's email (in English) – “to much” should be spelt as “too much”.

¹⁴ Another typo in Mr KAM's email (in English) – “afford” should be spelt as “effort”.

¹⁵ Another typo in Mr KAM's email (in English) – “spokeman” should be spelt as “spokesman”.

¹⁶ Another typo in Mr KAM's email (in English) – “envirnmental” should be spelt as “environmental”.

¹⁷ As this paragraph is irrelevant to the matter stated in the censure motion and in response to Mr KAM's request, the Investigation Committee has obliterated it.

2.32 At 11:00 am on 25 August 2009, Mr KAM sent an email to Ms WONG, requesting her to carry out, as soon as possible within that day, publicity work on the tree forum by sending emails, launching blogs and posting articles on the website of the Democratic Party. Mr KAM explained at a hearing that, although the tree forum was held in the name of the Democratic Party, it was actually organized by his Member's Office because he was the spokesman of the Democratic Party on environmental affairs. In addition, as the Democratic Party did not have a lot of manpower, it was necessary for Ms WONG to take up the relevant work.

2.33 At 12:59 pm on 26 August 2009, Ms WONG sent an email to Mr KAM requesting to take a day's leave on 28 August (Friday).

2.34 At 9:20 pm on 27 August 2009, Mr KAM replied to Ms WONG by email. In the email, he said he was dissatisfied with Ms WONG's "sudden" request for taking leave on 28 August because he had planned to discuss with Ms WONG on that day the arrangements of the tree forum to be held on Sunday (which should be 30 August¹⁸). With regard to whether Ms WONG knew that Mr KAM would usually hold a meeting on the eve of a certain event to discuss the relevant arrangements, Mr KAM told the Investigation Committee that this was just his work practice, and he had not issued any guideline to his staff stipulating that no one should take leave on the eve of an event. Before sending this email to Ms WONG, Mr KAM had not informed her of such a practice either verbally or in writing. According to the evidence given by Mr KAM, Ms WONG took leave on 28 August as scheduled.

¹⁸ The Supervision Brief issued by Mr KAM stated that the tree forum was to be held on 29 August, which was a Saturday. As such, it appears that there was an error with the date.

2.35 At 10:07 pm on 28 August 2009, Mr KAM sent an email to Ms WONG to express his disappointment with her publicity work for the tree forum. The email (in English) reads as follows:

“Dear Kimmie

I disappoint with the arrangement of publicity of tree forum.

It is too late. I just received SMS by DP today afternoon.

Why there is no English version for the email? Why there was no final approval for the email? Do u know there are some wrong in the email?

In my blog, the banner have been posted on Tuesday.

Today, I know our vice-chairlady Emily will conduct a forum for the school drug on this Sunday. So, we need to inform our DP member earlier.

Pls evaluate the events.

Regards

Kam Wai”

2.36 Mr KAM told the Investigation Committee he was under the impression that as early as March or April and no later than June of 2009, he had mentioned to Ms WONG the plan to organize the tree forum, which was the first forum Ms WONG organized for his Member’s Office.

2.37 At 10:23 pm on 28 August 2009, Mr KAM sent an email to Monkey, one of his employees, with a copy to Ms WONG. In the email, Mr KAM gave instructions to Monkey on the preparatory work for a forum on air pollution. He also requested Ms WONG to liaise with Monkey and another staff member “ah keung” to make some suggestions on the subject of the forum and guest speakers, and to monitor the progress of the preparatory work and report to him accordingly.

2.38 At 11:19 am on 11 September 2009, Mr KAM sent an email to Ms LUI and Ms WONG, requesting them to start MSN sessions (chat room) while he was attending LegCo meetings, so that Mr KAM could communicate with them and make work arrangements.

2.39 At 12:35 am on 20 September 2009 (Sunday), Mr KAM sent an email concurrently to four staff members, namely Ms LUI, Ms WONG, Monkey and Kelvin YIM. In the email, Mr KAM requested Ms LUI to make arrangements for him to have a work meeting with the four of them at 12:30 pm on 22 September in the Member’s Office in the Central Government Offices to discuss the “central program and location program” of the Democratic Party, as well as the preparations for the new LegCo session. Mr KAM said in his Supervision Brief, “As KAM Nai-wai was dissatisfied with the progress of the arrangements for the Forum on Air Pollution, he sent an email to request for a meeting to be arranged with four staff members including WONG Lai-chu to discuss the division of labour for pre-forum preparatory work, district activities and work for the new LegCo session”. According to the evidence given by Mr KAM, the meeting was eventually held at about 4:30 pm on 23 September 2009.

Mr KAM invited Ms WONG and Ms LUI to go out for lunch

2.40 At noon of 22 September 2009¹⁹, Mr KAM, standing at the entrance to his room in the Member's Office, asked Ms WONG and Ms LUI whether they had time to go out for lunch with him. He then returned to his seat to do some work, awaiting their replies.

2.41 With regard to the purpose of inviting the two staff members to go out for lunch, Mr KAM told the Investigation Committee, "After I returned from my summer vacation overseas, I found that none of the work had been completed. I was at that time slightly hot-tempered, and did criticize and scold those colleagues ... By September, I felt that mere scolding would not help, and I must find a way to ease the atmosphere. So I decided to take her (them) out to enjoy a meal together, and organize some activities." Mr KAM also said that the lunch concerned was a working lunch with two purposes: first, hoping to conduct communication and liaison on work; second, to discuss work issues. However, Mr KAM said that he had not told them then the lunch was intended for discussing business. According to the evidence given by Ms LUI, when Mr KAM extended the invitation, he did not state that he intended to discuss work arrangements with them during the lunch.

¹⁹ Ms WONG said in her open statement that Mr KAM invited her and Ms LUI to go out for lunch in the morning on 23 September 2009, conducted a work meeting with staff members on 24 September and dismissed her with immediate effect on "the following day". Hence, according to the text of the statement, Ms WONG was dismissed on 25 September. However, according to the copy of the Notice of Termination of Employment, which was attached to the supplementary written statement (IC Paper No. K6(C)) submitted by Mr KAM on 3 May 2010, Mr KAM terminated the employment of Ms WONG on 24 September 20. Besides, Mr KAM also said at a hearing that, after checking his own records, the lunch invitation was made on 22 September as he had a medical appointment that day. As such, the day on which Mr KAM invited Ms WONG to go out for lunch should have been 22 September.

2.42 According to the evidence given by Ms LUI, as she already had a lunch appointment with friends, she immediately told Mr KAM this to turn down his invitation after he had proposed it, and Mr KAM forthwith asked Ms WONG whether she would go out for lunch with him. Ms LUI told the Investigation Committee, “Ms WONG said that she had brought food, so she would not dine out with him.” Ms WONG stated in her open statement that she “did not respond” to Mr KAM’s invitation. Mr KAM said at a hearing that while Ms LUI had already replied that she would not have lunch with him when he returned to his seat, he did not receive any response from Ms WONG, and he was not aware at that moment whether Ms WONG had brought food or not. He subsequently left the Member’s Office in a hurry to attend to some matters.

2.43 In her open statement, Ms WONG stated, “KAM Nai-wai called me after leaving the office, once again inviting me to go out for lunch with him alone. After I turned him down, he asked if I could have lunch with him on the following day, and I stated clearly that I could not.” Mr KAM explained to the Investigation Committee that as Ms WONG did not give him an immediate reply in the Member’s Office, he called her as a matter of courtesy while waiting for his turn to see the doctor, asking her whether she would go out for lunch with him. But he did not have any recollection that he had asked her to have lunch with him on the following day.

2.44 According to the evidence given by Ms LUI, Ms WONG told her later that Mr KAM had called to ask Ms WONG if she would go out for lunch with him.

2.45 Ms WONG said in her open statement that when Mr KAM returned to the Member's Office in the afternoon of the day on which he invited her to lunch, he requested her to go to another room to discuss official business with him. Mr KAM told the Investigation Committee that as he was not quite satisfied with the work performance of Ms WONG, he decided to conduct a work meeting on 23 September 2009 so as to reassign some of Ms WONG's duties to other staff members. Therefore, he planned to hold a preparatory meeting with Ms WONG in the afternoon of 22 September, telling her what could be done in relation to work arrangements.

2.46 Mr KAM told the Investigation Committee that he originally planned to raise at the preparatory meeting a number of issues for discussion. These issues included "the air pollution forum", "the tree forum", how contingencies should be handled in the future, how the image could be built up, how the Public Accounts Committee should be handled, as well as personnel arrangements. However, Ms WONG suggested at the preparatory meeting that the relevant issues be discussed at the work meeting to be held on the following day, "Perhaps you may withhold the discussion until 23 September." Mr KAM scribbled a note on the above items for discussion on a piece of paper before the preparatory meeting. Mr KAM submitted a copy of that note at the hearing on 30 June 2010 (**Appendix 2.4**), and explained it.

Mr KAM dismissed Ms WONG

2.47 At 4:30 pm on 23 September 2009 (Wednesday), Mr KAM held a work meeting with his staff in the Member's Office. According to

the evidence given by Ms LUI, as a researcher of the Democratic Party was on sick leave on that day, Ms WONG had to assume the task of writing a press release on the activities of Mr KAM. According to the evidence given by Mr KAM, the press release was on the replacement of old buses by the CityBus and New World First Bus. Ms WONG stated in her open statement that in order to finish writing the press release in time, she was writing the press release and taking part in the meeting simultaneously. According to the evidence given by Ms LUI, Ms WONG requested for the staff meeting to be held in the Member's Office so that she could write the press release at the same time, to which Mr KAM did not raise any objection. Mr KAM said at the hearings that in order to allow Ms WONG to write the press release, all the staff members sat in a circle in the Member's Office to hold the meeting. Ms WONG said in her open statement that, regarding her writing a press release while attending the meeting, "KAM Nai-wai was dissatisfied, and immediately asked other colleagues to leave the office and go to another venue to continue with the meeting, and that I joined the meeting as soon as I had finished writing the press release."

2.48 Mr KAM said at the hearings that at that moment he considered the press release Ms WONG was writing did not carry much news value, so there was no urgent need to send it out to the media. He thought it would not make much difference for the press release to be issued at 4:30 pm or 6:00 pm. As the meeting was convened for the purpose of discussing the redistribution of the duties of Ms WONG, he thought she should focus on the meeting. In addition, he expected that the

meeting would not last too long²⁰, and experienced staff members should be able to finish writing the press release within half an hour. Therefore, he considered that Ms WONG should have enough time to write the press release after the meeting and be able to finish it before she was off duty that day. The Investigation Committee asked Mr KAM whether he had told Ms WONG what he was thinking at that moment. Mr KAM responded that he had said this to Ms WONG: “I hope you will stop writing the press release and go back to it after the meeting.”

2.49 As Ms WONG did not stop writing the press release immediately as instructed by him, Mr KAM scolded her in a relatively angry tone. Mr KAM said at a hearing that he scolded Ms WONG then, “How can we hold the meeting ... with you not making any response, and just keeping your head down and I not seeing your face?” According to the evidence given by Ms LUI, Ms WONG did not keep her head down. She was writing the press release at her desk, facing the computer monitor, whereas Mr KAM, Ms LUI and two other staff members were sitting in front of Ms WONG. As a partitioning panel was installed at Ms WONG’s desk, there might be a chance that their line of sight was blocked. With regard to Ms WONG’s relatively few responses to the discussion topics, Ms LUI believed that this was because the earlier part of the meeting was about work in the districts. Mr KAM said at a hearing that the atmosphere at that moment was “rather unpleasant”. According to the observation of Ms LUI, Mr KAM was rather agitated. Mr KAM, however, did not

²⁰ Mr KAM said that a work meeting would usually last for only half an hour or 45 minutes, and it would not be longer than an hour. Please refer to lines 1368 to 1369 of the Verbatim Transcript of the hearing on 30 June 2010 (IC Paper No. V5(C)) and lines 598 to 599 of the Verbatim Transcript of the hearing on 14 July 2010 (IC Paper No. V6(C)).

consider himself to be very agitated at that moment, but admitted that he was indeed very unhappy.

2.50 Mr KAM told the Investigation Committee that in his opinion, Ms WONG refused to stop writing the press release because she needed to attend a class at 6:00 pm that evening, which explained why she wished to finish the work first before joining the discussion of the meeting. According to the evidence given by Ms LUI, Mr KAM had never indicated how long the meeting would last, and she did not know whether Ms WONG needed to attend class that evening. Ms LUI said that, even if Ms WONG had to attend class in the evening, she would generally finish her work before leaving the office. She said that if there was a task which had to be completed urgently, Ms WONG would not leave on the dot.

2.51 Mr KAM pointed out at the hearings that one of the reasons for, and which triggered, his dismissal of Ms WONG was her refusal to comply with his instructions to stop writing the press release so as to join the discussion on the redistribution of duties. Mr KAM also said that after scolding Ms WONG at the work meeting, he thought that it would no longer be possible for them to work together, and the idea of dismissing her thus emerged.

2.52 In the evening of the same day, i.e. 23 September (Wednesday), Hon Emily LAU, Deputy Chairman of the Democratic Party, received a call from Ms Mandy TAM, Ms WONG's former employer. Ms TAM told her that there was a sexual harassment case involving a LegCo Member of the Democratic Party, whose name Ms TAM did not mention. Ms LAU told Ms TAM that she was very busy as she had just

returned to Hong Kong from a LegCo delegation to Central Europe, and she would not have time to meet Ms TAM and the complainant until the weekend.

2.53 At about 10:00 am, or slightly earlier, of the following day, i.e. 24 September 2009 (Thursday), Mr KAM asked Ms LUI, soon after her arrival at the office, to retrieve Ms WONG's employment contract (i.e. the appointment letter) for him. After a while, Mr KAM asked Ms WONG to go to his room. After closing the door, he informed Ms WONG of his decision to dismiss her. Mr KAM said then, "As we cannot work together anymore, I wish to dismiss you with immediate effect by paying you one month's salary in lieu of notice." At that juncture, Ms WONG asked Mr KAM whether there was any chance of his decision being reversed, to which he responded, "You need to change your work attitude because we need to continue working together. In future, if we need to work, you must change your work attitude before we can go on working together." The dialogue did not lead to any conclusion. At that moment, neither side signed any paper. Mr KAM pointed out at a hearing that he did not really recognize or feel that Ms WONG had shown any "anger", such as "banging on the table", nor did she indicate that she would lodge a complaint. Ms WONG then left the room, and Mr KAM also left the Member's Office afterwards.

2.54 According to the evidence given by Ms LUI, after leaving Mr KAM's room, Ms WONG told her that she had just been dismissed with immediate effect by Mr KAM. Ms LUI was shocked about this at that moment, but she did not ask Ms WONG right away about the reason for her dismissal as Mr KAM was still in the Member's Office. Ms WONG packed her belongings and left without saying anything.

Ms WONG sought assistance from Hon Emily LAU

2.55 At noon of the same day, i.e. 24 September 2009, Ms LAU received another call from Ms TAM saying that the complainant she mentioned the previous night had just been dismissed, and she therefore hoped to meet Ms LAU as soon as possible. At that moment, Ms LAU did not know who the LegCo Member of the Democratic Party and the complainant were that Ms TAM had in mind, but she agreed to meet Ms TAM and the complainant that evening after the meeting of the Central Committee of the Democratic Party.

2.56 At about 5:00 pm on the same day, Mr KAM returned to the Member's Office and asked Ms LUI whether Ms WONG had left. Ms LUI told him that Ms WONG had left in the morning after packing her personal belongings, and had not returned to the office. Mr KAM did not have any reaction to this, and further asked Ms LUI whether Ms WONG had said anything to her. Ms LUI told Mr KAM that Ms WONG had given an account of some of her work. Mr KAM forthwith instructed Ms LUI to work out the correct amount of salary of that month and payment in lieu of notice, which were payable to Ms WONG. He also instructed Ms LUI that the cheque should be ready for Ms WONG's collection within seven days from her dismissal. According to the evidence given by Ms LUI, Mr KAM had never explained to her why he dismissed Ms WONG.

2.57 Mr KAM told the Investigation Committee that while the dialogue between him and Ms WONG in the morning of 24 September 2009 when he told her that he would dismiss her did not lead to any conclusion and both sides did not sign any paper, he did not find it

surprising that Ms WONG packed her belongings and left the office. According to his understanding, Ms WONG left because she did not accept the demand for her to improve her work attitude, and she felt that she could not continue working in his Member's Office.

2.58 At about 6:00 pm on the same day, i.e. 24 September 2009, when Mr KAM was about to leave the Member's Office, a fellow member of the Democratic Party told him in person that there was a hearsay about a female assistant complaining that she had been unreasonably dismissed by him, and the cause for the dismissal involved the relationship between a man and a woman or relationship problem. Mr KAM was unwilling to divulge to the Investigation Committee the identity of that party member. Hon Fred LI, Hon James TO, Hon CHEUNG Man-kwong, Hon Andrew CHENG, Hon LEE Wing-tat and Hon WONG Sing-chi all told the Investigation Committee that they were not the party member in question, and they did not know who that member was. Mr KAM told the Investigation Committee that at that moment he considered the hearsay to be untrue, and hence it had to be dealt with seriously. He therefore decided to report the incident to Hon Albert HO, Chairman of the Democratic Party, and Ms LAU, Deputy Chairman of the Democratic Party, in the evening. After leaving a class at about 9:00 pm, Mr KAM returned to the headquarters of the Democratic Party, and sat in at the meeting of the Central Committee of the Democratic Party held that night. When the meeting finished at about 10:00 pm, Mr KAM took the initiative to give Mr HO and Ms LAU an account of his dismissal of Ms WONG.

2.59 As Ms LAU was in a hurry to go to meet the complainant and Ms TAM (see paragraph 2.55), the meeting between Mr KAM, Mr HO and

Ms LAU lasted for 10 to 15 minutes only. As such, Mr KAM just briefly described what happened, saying that he had expressed good feelings towards Ms WONG, but he did not give a detailed account of the incident or have an in-depth discussion with them. According to the evidence given by Ms LAU, it was at that moment that she realized that the sexual harassment case mentioned by Ms TAM might be related to the dismissal of Ms WONG by Mr KAM. After Mr KAM had finished reporting the incident, Ms LAU said, “Ms TAM and the assistant have already lodged a complaint with me, and I am now dashing off to meet them.” She went on to say, “Perhaps let us first find out what Ms Mandy TAM has to say, and then see what needs to be followed up when I return.” Ms LAU told the Investigation Committee that it did not come as a shock to her when Mr KAM suddenly told her and Mr HO about the incident on his own accord. Mr KAM told the Investigation Committee that he informed his wife later that evening of his dismissal of Ms WONG.

2.60 At about 10:30 pm on the same day, Ms LAU arrived at the Diamond Hill MTR Station by MTR and Ms TAM was waiting for her at the gate. Ms TAM took Ms LAU to a room in the management office of the Galaxia, where Ms WONG was already there. Prior to this meeting, Ms LAU did not know Ms WONG. Ms TAM was present throughout the meeting, and she also spoke.

2.61 Ms LAU described the situation to the Investigation Committee as follows: “She [Ms WONG] said that a few months ago, KAM Nai-wai invited her to have afternoon tea at a restaurant, and told her he had affection for her. She found this unacceptable and immediately told him so. KAM Nai-wai apologized to her afterwards, but he called her

many times. She found the calls annoying, and she therefore did not answer any of them. Ms WONG also said that a few days ago, he lost his temper over some work-related problems, and even dismissed her with immediate effect that morning (i.e. 24th of the month), which made her angry and unhappy. She said that her monthly income was \$25,000, and work was very important to her because she needed to provide financial support to her family. She hoped that the Democratic Party and I would deal with the matter impartially and fairly. I asked her what she wished us to do. She said she was very confused. I told her that there was no need to hurry; she could tell me after thinking through it, and I would also relay the matter to Albert HO, Chairman of the Democratic Party. I told her I understood that she did not want the incident to be made public and she promised not to spread any information about it, but I respected her right to lodge a complaint with any institution and make public the incident. The meeting lasted for about half an hour.”

Democratic Party probed into the dismissal of Ms WONG by Mr KAM

2.62 After meeting with Ms WONG and Ms TAM, Ms LAU called Mr HO to tell him about the meeting in detail. As it was already rather late, Mr HO only said “yes” and did not make other response.

2.63 On the following day, i.e. 25 September 2009, Mr KAM called Ms LAU and asked her about her meeting with Ms WONG and Ms TAM. She told him the details of the meeting.

2.64 Ms WONG said in her open statement that Ms LAU called her on the day (i.e. 25 September 2009) following their meeting, saying that

she could arrange for Ms WONG to take up a job in the Democratic Party. Ms WONG then thanked her, but did not accept the offer, nor did she make any demand. Ms LAU told the Investigation Committee that as she did not approve of Mr KAM's immediate dismissal of Ms WONG, and as Ms WONG had stressed at the meeting on 24 September 2009 that work and income were very important to her, she considered that the problem of Ms WONG's employment should be dealt with first. After discussing with Mr HO, she thought that it was wrong for Mr KAM to have dismissed Ms WONG with immediate effect, and as Ms WONG needed to support her family financially, work income was of great importance to her. Ms LAU therefore called Ms WONG and offered to arrange for her to work at the headquarters of the Democratic Party, and to meet with Mr HO.

2.65 On 27 September 2009 before the General Meeting of the Democratic Party, Ms LAU told Mr HO that Ms WONG had asked to meet him and sought their assistance to deal with her dismissal. Mr HO agreed to meet Ms WONG. Meanwhile, Ms LAU requested Mr HO to seek legal advice on the *prima facie* factual elements of sexual harassment. Mr HO called the Hong Kong Human Rights Monitor that evening to seek preliminary legal advice.

Ms LUI resigned

2.66 On 28 September 2009, Ms LUI tendered her resignation to Mr KAM, effective on 27 October 2009. Ms LUI told the Investigation Committee that she resigned because Mr KAM had accused her of criticizing him behind his back. She felt that he did not trust her, and thus it was difficult to maintain a good employer-employee relationship. In

addition, she felt disgusted after learning the cause of Ms WONG’s dismissal and considered such an employer unacceptable. According to Ms LUI’s understanding, the cause of Ms WONG’s dismissal was: “Mr KAM’s expression of good feelings towards Ms WONG was rejected right away by her, and he therefore gradually became highly critical of her work performance. As Ms WONG did not want Mr KAM to have any misunderstanding that there might be a prospect for them to develop a relationship beyond that between an employer and an employee, she became formal²¹ and cold towards him, thus affecting her working relationship with Mr KAM. Mr KAM eventually could not tolerate it anymore and dismissed her with immediate effect.”

2.67 Regarding Ms LUI’s tendering her resignation shortly after Ms WONG’s departure, Mr KAM said that he did not ask Ms LUI the reasons for her resignation, nor did he urge her to stay on because he found that the atmosphere of the Member’s Office was not very good throughout September 2009, and he had criticized her and had been somewhat dissatisfied with her (as Mr KAM heard that she had criticized him behind his back, and that she had disclosed to a staff member the news that Mr KAM intended to dismiss him). He considered his working relationship with Ms LUI to be rather tense prior to her resignation.

Ms WONG sought justice

2.68 On 29 September 2009, Ms WONG returned to the Member’s Office to sign the Notice of Termination of Employment (with date printed

²¹ A typo in the written reply (in Chinese) of Ms LUI to further questions raised by the Investigation Committee: “工事化” (formal) should be written as “公事化”.

as 24 September 2009) and collect the cheque for her salary for September, one month's salary in lieu of notice, as well as payments for annual leave and compensatory leave. Ms LUI was tasked to calculate the amount of money payable to Ms WONG and prepare the cheque. When Ms WONG was signing the acknowledgement of receipt for the cheque, Ms LUI told her that as there was little time, the amount on the cheque might be incorrect, and she would therefore check it again. Should there be any error, she would contact Ms WONG again to issue her a further cheque for the difference. Ms WONG said she understood and hoped that Ms LUI could complete the checking as soon as possible.

2.69 At noon of 30 September 2009, Mr HO and Ms LAU met with Ms WONG and Ms TAM in the office of Mr HO's law firm. The meeting lasted for about half an hour. During the meeting, Ms WONG complained that Mr KAM had dismissed her unreasonably, and she mentioned that he had expressed good feelings towards her a few months ago, and she rejected him. She told the two Members that she thought her dismissal might be connected to that incident. Mr HO told the Investigation Committee that Ms WONG had not put forward any concrete facts to connect the two incidents. However, Mr HO said at that time that if there was such a connection, the dismissal was immoral and unacceptable. He and Ms LAU therefore suggested that Ms WONG could separately lodge a complaint with institutions such as the Equal Opportunities Commission, but Ms WONG responded that she just hoped that the Democratic Party would deal with the matter fairly, and she had no intention of letting it escalate. According to the evidence given by Mr HO and Ms LAU, Ms WONG had made three demands at that time: (1) Mr KAM to brief the caucus of the Democratic Party (consisting of nine LegCo Members) on the

incident; (2) Mr KAM to issue a letter of apology to her, affirming her good performance record and ability; and (3) Mr KAM to pay her \$150,000 as compensation. Ms LAU pointed out that “Ms WONG said that she would consider the incident to be resolved should KAM Nai-wai fully comply with the three aforesaid demands. She also made it clear that she did not wish to make public the incident.”

2.70 Ms WONG said in her open statement that at the meeting, “Ms Emily LAU raised again that I might stay on to work for the Democratic Party. I stated clearly that I did not want to work in the Democratic Party and only agreed to accept the additional compensation for unreasonable dismissal ... ” Mr HO pointed out that at the meeting, he had briefly mentioned whether it was necessary to help Ms WONG find another job, but she stated clearly that she was not interested in working in the Democratic Party or the Member’s Office of any Member of the Democratic Party.

2.71 Ms WONG said in her open statement that she had made the following demands at the meeting:

- “1) KAM Nai-wai to issue a letter of apology in his personal capacity, explaining in detail the reasons for dismissing me, in particular, to give an account of the fact that he had confessed his feelings to me and admit that it was unreasonable to have dismissed me, and to make a sincere apology;
- 2) the Office of Legislative Council Member Hon KAM Nai-wai to issue a reference letter to clarify that there was no problem with my work performance; and

3) all Legislative Council Members of the Democratic Party to be informed that KAM Nai-wai had confessed his feelings to me, and the reason for my dismissal had nothing whatsoever to do with my work performance, so as to do me justice.”

2.72 The Investigation Committee notes that the above three demands as set out in Ms WONG’s open statement were not quite the same as those mentioned by Mr HO and Ms LAU (see paragraph 2.69). In particular, the compensation of \$150,000 was not mentioned in Ms WONG’s three demands, and she stated in the open statement that she “only agreed to accept additional compensation for unreasonable dismissal”.

2.73 Ms WONG also stated in her open statement that, apart from agreeing to her three demands, Mr HO also “added the following two courses of action:

- (1) all the Legislative Council Members of the Democratic Party are to censure KAM Nai-wai; and
- (2) staff members of the offices of the Democratic Party to be informed that my dismissal was not due to any problem with my work performance.”

2.74 Ms LAU pointed out that Ms WONG had definitely not raised the two aforesaid courses of action at their meeting on 30 September 2009, and it would be impossible for Mr HO to have agreed that Mr KAM be censured by all LegCo Members of the Democratic Party because the

incident had yet to be investigated. According to the written statement submitted by Mr HO, the first of the three demands made by Ms WONG included “judging between right and wrong as well as reprimanding” Mr KAM by caucus members of the Democratic Party. As for the compensation of \$150,000, Mr HO pointed out that the amount was proposed by Ms WONG. He believed the amount was probably calculated by Ms WONG to be the total amount of her salary for six months. He also believed that it could be the legal maximum amount of compensation for unreasonable dismissal, and she considered that it would be relatively difficult to find another job as it was already the end of the year (it was near October then) and she did not intend to work for Mr KAM anymore, so she felt that she should be entitled to that amount of compensation.

2.75 After meeting with Ms WONG, Mr HO relayed her demands to Mr KAM, and asked him to give an account of the incident at the caucus meeting of the Democratic Party on 2 October 2009.

2.76 On 2 October 2009, the Democratic Party held its caucus meeting to discuss Mr KAM’s dismissal of Ms WONG. Before the meeting started, Mr KAM and Mr TO discussed the incident (details in paragraph 2.114). LegCo Members of the Democratic Party who attended the caucus meeting included Hon Albert HO (the Chairman), Hon Emily LAU (Deputy Chairman), Hon Fred LI, Hon James TO, Hon CHEUNG Man-kwong, Hon Andrew CHENG, Hon LEE Wing-tat and Hon WONG Sing-chi as well as Mr KAM. Mr KAM gave an account of the incident to caucus members and said he would consider the demands made by Ms WONG. Mr HO told the Investigation Committee that Mr KAM had

admitted that he had a hot temper and said he had dismissed Ms WONG with immediate effect on a moment of impulse; Mr KAM had also admitted that he had told Ms WONG that he had good feelings towards her on one occasion a few months ago, but stressed that he did not intend to make advances to her; and Mr KAM had apologized to Ms WONG as she reacted very strongly. Mr HO also told the Investigation Committee that Mr KAM had denied that he dismissed Ms WONG due to relationship problems between them, and that all the caucus members were of the view that it was inappropriate for Mr KAM to have said he “had good feelings” for Ms WONG and they chided Mr KAM for being wrong in dismissing with immediate effect a staff member who had not committed any major mistake. As such, they requested Mr KAM to try all means to see how the situation could be remedied, and also told him to improve his temper and his relationship with his employees. With regard to whether and how Mr KAM had explained the meaning he wished to convey in telling Ms WONG that he had good feelings towards her, the evidence given in this regard by caucus members other than Mr HO and Ms LAU is set out in paragraph 2.114.

2.77 On 3 October 2009, Mr HO, Ms LAU, Mr KAM and other LegCo Members of the Democratic Party held an informal meeting to discuss the incident. The meeting lasted for more than an hour. As Mr KAM denied the allegations made by Ms WONG, all participants of the meeting considered that an independent inquiry should be conducted to find out what actually happened before a conclusion could be drawn. They also agreed to invite the Hong Kong Human Rights Monitor to assist in setting up the inquiry.

2.78 In the afternoon of 3 October 2009, through a staff member working in the Offices of LegCo Members of the Democratic Party in the Central Government Offices, Mr KAM sent Ms WONG a personal letter of apology, a letter of recommendation and a cheque for \$150,000. Mr KAM informed Mr HO afterwards that Ms WONG had indicated her acceptance of the contents of the letters and had received the cheque. Mr KAM also called Ms LAU to inform her that Ms WONG had received the cheque and his letters, and that Ms WONG hoped the incident would come to an end and not be made public.

2.79 The personal letter of apology written by Mr KAM to Ms WONG reads as follows:

“3 October 2009

Dear Ms Kimmie WONG,

I would like to thank you for the contribution you made to my office during the past few months.

On 24 September 2009, due to my inability to manage my hot temper, I dismissed you with immediate effect by paying you one month’s salary in lieu of notice, which caused you embarrassment and humiliation, thus hurting your dignity²². I deeply regretted it afterwards.

During this period of time, some of my words made you feel disturbed and unhappy. For this, I would like to offer you my most sincere apologies.

²² A typo in the letter of apology (in Chinese) of Mr KAM to Ms WONG : “尊” (dignity) should be written as “尊嚴” (dignity).

Also, throughout the period you worked as my personal assistant, you performed well in your work. To make up for the mistake I committed that day, I am willing to compensate you with a sum of HK\$150,000, being your salary for six months, so that you can have sufficient time to find another job. Please accept my offer.

If you still have other complaints, I am willing to face the impartial handling of such complaints by the Democratic Party.

(Signed by Mr KAM)"

2.80 The letter of recommendation (in English) issued by Mr KAM to Ms WONG reads as follows:

"
TO WHOM IT MAY CONCERN
Sept 24, 2009

This is to certify that Miss Wong Lai Chu, Kimmie, holder of HKID: [REDACTED] was employed as my Personal Assistant for the period from Dec 15, 2008 to Sept 24, 2009.

During her employment with me, Miss Wong was responsible for the following duties

1. To liaise with the press and media and prepare press invitations and releases

2. To prepare my work reports, including liaising with the designer and the printer
3. To update my blog and facebook regularly
4. To arrange and organize special events

Miss Wong has good Chinese and English language skills, has discharged her responsibility to my satisfaction. She is knowledgeable, diligent, and hardworking and is works well under pressure.

Miss Wong has a very good relationship with the media and got along well with her colleagues

I have no hesitation in recommending her to you and I wish her a very bright future.

Best Regards

(signed)

Mr. Kam Nai Wai”

The incident came to light

2.81 On 4 October 2009, the Apple Daily, with a front-page headline of “KAM Nai-wai sacked a female assistant following his unsuccessful advances to her. The Democratic Party will investigate thoroughly the incident suspected to have involved sexual harassment”,

was the first newspaper to report on Mr KAM's dismissal of a female assistant. It was reported that the female assistant had lodged a complaint with the Democratic Party. Hon Albert HO, Chairman of the Democratic Party, forthwith called an emergency meeting to discuss the incident with the leadership core of the Party.

2.82 Mr KAM called a press conference in the afternoon of the same day. Reporters asked Mr KAM questions such as whether he had sexually harassed the female assistant (i.e. Ms WONG), whether he had done anything to make her misunderstand and lodge the complaint, whether he had dismissed her due to his unsuccessful advances to her, whether he had made advances to her (the verbatim transcript of the press conference is in **Appendix 2.5**²³), to which Mr KAM replied all with denials. Mr KAM also said at the press conference that as he did not wish to hurt or affect anyone, he refused to comment on the work performance of the female assistant dismissed by him. The press conference lasted for about 26 minutes.

2.83 In reply to the question of whether he had made advances to the female assistant (i.e. Ms WONG), Mr KAM said at the press conference that "I did not", and he did not mention that he had told the female assistant that he had good feelings towards her. According to the evidence given by Mr HO, following his hearing of Mr KAM's response to the question in this manner, he felt a bit uncomfortable. After the press conference had finished, Ms WONG called Mr HO and said, "He has indeed spoken those words to me."

²³ See lines 60 to 61, 99 to 100, 189, 273 to 274, 381 to 382 and 397 to 398 of Appendix 2.5.

2.84 According to the evidence given by Ms LAU, Ms WONG also called her after Mr KAM’s press conference had finished and said that she was unhappy with what Mr KAM had said at the press conference in two aspects:

- (1) Mr KAM’s saying that he did not make advances to her did not accord with the facts; and
- (2) Mr KAM did not affirm her ability in work.

2.85 Ms LAU relayed the views of Ms WONG to Mr HO afterwards.

2.86 After Mr KAM’s press conference had finished, Hon Albert HO, Chairman of the Democratic Party, and Mr SIN Chung-kai, Deputy Chairman, called another press conference in the afternoon of the same day. Hon Emily LAU, another Deputy Chairman, was absent due to other commitments. Mr HO confirmed at the press conference that he and Ms LAU met with a former employee of Mr KAM on 30 September 2009. The employee had made a verbal complaint and subsequently accepted the way the Democratic Party dealt with the matter. Mr KAM had also given an account of the incident to the LegCo Members of the Democratic Party.

2.87 Mr HO also said at the press conference that Mr KAM had called him before the commencement of the press conference, asking him to tell reporters on his behalf that he considered the work performance of Ms WONG to be “satisfactory on the whole”, and that “she was a competent and dutiful staff member with good performance” (the verbatim transcript of the press conference is in **Appendix 2.6**). Mr KAM said at a

hearing that he had made it clear to Mr HO in the telephone conversation that he had never sought the love of Ms WONG. With regard to reporters' questions on whether Mr KAM's female assistant (i.e. Ms WONG) had complained of being sexually harassed, or of being dismissed by Mr KAM because of his unsuccessful advances to her, Mr HO told reporters at the press conference that as he had not obtained the consent of the female assistant to disclose details of her complaint, he could only adopt the stance of "neither confirming nor denying the allegations" on that day.

2.88 According to the evidence given by Ms LAU, when Mr KAM called her that evening, she informed him of Ms WONG's views on what he had said at the press conference.

2.89 In the morning of 5 October 2009, Ms Mandy TAM was interviewed by "Talkabout", a programme of Radio Television Hong Kong, by telephone. Ms TAM said that she had previously employed the female assistant dismissed by Mr KAM, and she knew about the entire dismissal process and had accompanied the female assistant at her meeting with Mr HO regarding the dismissal (the verbatim transcript of the telephone interview is in **Appendix 2.7**).

2.90 On 5 October 2009, Mr HO met with Mr KAM and "pointed out to him (roughly): even though your own intention was not to 'make advances' when you expressed that you 'have good feelings' towards WONG Lai-chu, but objectively, she might have perceived your words differently. Hence, you should have made full disclosure in answering the relevant questions raised by reporters. I think your mere denial of having made advances to her was incomplete and unfair. As Chairman, I am

duty-bound to request you to make clarification with the media.” Mr KAM agreed to consider the request of Mr HO.

2.91 On 5 October 2009, the News Channel of Cable TV reported: “The incident of dismissal of the female assistant by KAM Nai-wai, LegCo Member of the Democratic Party, has heated up. Despite his repeated denial of having dismissed the assistant due to his unsuccessful advances to her, we have learnt that he admitted to the Democratic Party that he had expressed good feelings towards her, and he also admitted that he had done wrong. Albert HO, Chairman of the Democratic Party, takes the view that he has committed a highly immoral mistake. If the incident goes public, it is highly likely that he will have to resign.” It also reported: “Albert HO has also told the complainant that solely on what KAM Nai-wai himself had admitted, it was a grave mistake and highly immoral, and any person will perceive the subsequent dismissal of the complainant was due to his unsuccessful advances to her. Should the incident be made public, it is highly likely that KAM Nai-wai would have to resign. On whether it constitutes sexual harassment, it can only be confirmed by a detailed investigation.” (The verbatim transcript of the news coverage is in **Appendix 2.8.**)

2.92 In response to the news report of News Channel of Cable TV, Mr HO pointed out at a hearing that the quotations in the report were “totally incorrect”. Mr HO said that at the caucus meeting of the Democratic Party, he had not, on the basis of this incident alone, stated as a factual statement that “he had committed a highly immoral mistake”, as the claim that Mr KAM had dismissed the female assistant because of unsuccessful advances to her had yet to be substantiated by facts. At that

time, he was merely making a hypothetical remark and analysis of the proposition, i.e. if it was proved to be true, it would be an immoral act. Mr KAM told the Investigation Committee that he had never heard Mr HO said at the caucus meeting that ‘he has committed a highly immoral mistake. If the incident goes public, it is highly likely that he will have to resign.’

2.93 In the dusk of the same day, i.e. 6 October 2009, Mr KAM attended an interview on a radio programme (the verbatim transcript of the relevant part of the programme is at **Appendix 2.9**). On the programme, he admitted, openly for the first time, that he had told his female assistant (i.e. Ms WONG) that he had good feelings towards her during an afternoon tea meeting in June 2009 but he was not thinking of making advances to her. He said that he realized there and then that Ms WONG perceived that his saying “have good feelings” was “making advances” to her. The explanation given by Mr KAM on the radio programme for telling his female assistant he had good feelings towards her was that there was some “sharing of feelings” between him and Ms WONG during the afternoon tea meeting, including the ups and downs as well as the plain and uneventful periods of his love life with his wife which spanned two to three decades; and as he “was at one moment sentimental and touched” in this sharing process, he expressed good feelings towards Ms WONG. Mr KAM also disclosed on the radio programme that he had called his female assistant to invite her to go out for lunch with him, and this might have given her the impression that he wanted to go on a date with her (please refer to paragraph 2.43).

2.94 Mr KAM said on the radio programme that he considered Ms WONG's "overall performance in the past was good".

2.95 As to why he attended the radio programme, Mr KAM told the Investigation Committee that subsequent to the press conference on 4 October 2009, some media made highly inaccurate reports of the incident within the following two days (i.e. 5 and 6 October). In particular, in a telephone interview on the programme of the Radio Television Hong Kong "Talkabout", Ms Mandy TAM, Ms WONG's former employer, made some incomplete and untrue remarks. In addition, Mr HO had reminded him of the need to clarify and rectify the situation (please refer to paragraph 2.90). Mr KAM therefore attended the aforesaid radio programme and disclosed that he "had said the expression of having good feelings towards her [Ms WONG]". Mr KAM pointed out that when he said he "was at one moment sentimental and touched" at the radio programme, he was just describing the atmosphere of the afternoon tea meeting. When Ms WONG talked about her relationship problems, he made use of some relatively emotional words (the so-called "putting oneself into other people's shoes") to make her feel that there would always be ups and downs in relationships and every one would encounter such situations. He considered that this explanation did not contradict nor conflict with his saying that he was just applying the empathy skill in telling Ms WONG that he had good feelings towards her.

2.96 On 8 October 2009, the Democratic Party held a Central Committee meeting, at which Mr KAM gave an account of the incident. The Central Committee decided to invite the Hong Kong Human Rights Monitor to assist in making arrangements for conducting an independent

inquiry into the incident, and that the Democratic Party would bear all the expenses and would provide administrative support. An extract of the minutes of the meeting is on page 3 of **Appendix 2.10**.

The LegCo decided to conduct an investigation

2.97 On 9 October 2009, LegCo House Committee agreed that the allegations about Mr KAM's dismissal of his assistant be followed up by way of a motion, to be moved by the Chairman of the House Committee, Hon Miriam LAU Kin-yee under Rule 49B (1A) of the Rules of Procedure of the Legislative Council ("RoP"), to censure Mr KAM in accordance with Article 79(7) of the Basic Law.

2.98 On 19 November 2009, the Democratic Party held a Central Committee meeting, at which members learnt that Ms WONG had informed the Hong Kong Human Rights Monitor that she would not assist in the investigation, and hence the Hong Kong Human Rights Monitor indicated that it would not conduct the investigation. The chairman of the Disciplinary Committee of the Democratic Party advised the Central Committee that upon completion of the investigation of Mr KAM by LegCo, the Disciplinary Committee would commence its investigation. An extract of the minutes of the meeting is on page 2 of Appendix 2.10.

2.99 On 24 November 2009, Ms Miriam LAU gave notice of her intention to move a motion to censure Mr KAM under Rule 49B(1A) of the RoP at the Council meeting of 9 December 2009. The notice of the censure motion was also signed by Dr Hon Joseph LEE, Hon IP Kwok-him and Hon Mrs Regina IP, in compliance with the requirement under

Rule 30(1A) of the RoP that the notice of a censure motion shall be signed by three other Members.

2.100 On 3 December 2009, Ms WONG issued an open statement (Appendix 2.2) through her lawyers to all LegCo Members, elaborating on the circumstances leading to her dismissal and her subsequent complaint to the Democratic Party about the dismissal.

2.101 On 9 December 2009, Mr KAM issued a Supervision Brief on Ms WONG's work performance (Appendix 2.3) to all LegCo Members. The Brief listed a number of examples which Mr KAM considered illustrative of her work performance being not so good.

2.102 Ms Miriam LAU moved a motion to censure Mr KAM under Rule 49B(1A) of the RoP at the Council meeting of 9 December 2009 (Appendix 1.1).

2.103 According to the evidence given by Mr KAM, Ms WONG cashed on 11 January 2010 the cheque in the amount of \$150,000 given to her by Mr KAM.

Mr KAM explained to the Investigation Committee about his telling Ms WONG that he had good feelings towards her

2.104 Regarding his telling Ms WONG that he had good feelings towards her, Mr KAM explained in his written statement that in his mind he was approving of Ms WONG's abilities and affirming her relationship

with colleagues and her performance in work such as media liaison.²⁴ “Good feelings” was the term he used in expressing friendliness in a working relationship towards her, and in doing so, he hoped he could ease her emotional distress, thus boosting her self-confidence. Mr KAM stressed that “In saying the term ‘good feelings’ under the circumstances of that day, my intention was not to express the kind of affectionate feelings between a man and a woman, and I did not mean at all to make advances or seek love.” With regard to the understanding of Ms WONG, as quoted by Ms LUI, i.e. that Mr KAM had confessed his feelings to her in the afternoon tea meeting and he had hoped to develop “a relationship beyond that between an employer and an employee”, Mr KAM told the Investigation Committee that as far as his intention, thought and impression were concerned, he had never said or thought of such an idea, nor could he comprehend why Ms WONG had such a feeling.

2.105 Mr KAM stressed that in telling Ms WONG that he had good feelings towards her, he had hoped this could motivate her to do better in her work, and it was his impression that he would occasionally tell his staff members that he “had good feelings” towards them to indicate that he approved of their good work performance. Mr KAM told the Investigation Committee that he could not find any record which showed that he had used the expression “have good feelings” to recognize the work performance of his staff members. On this point, Ms LUI told the Investigation Committee that “Mr KAM had never used the term ‘good feelings’ to affirm my work performance. During the summer recess of 2009 and before Mr KAM went on a vacation overseas with his family, he

²⁴ Such an explanation as given by Mr KAM first appeared in his written statement submitted on 15 March 2011 (Appendix 2.11).

had interviewed me and affirmed my work performance. At that time, he used words such as ‘satisfied’ and ‘appreciate’ and he asked me to keep up the hard work.” With regard to Ms LUI’s remark, Mr KAM responded at the hearing on 21 October 2010 that he did not use the expression “have good feelings” to express his views about Ms LUI’s work performance because unlike Ms WONG, Ms LUI had not encountered any relationship problems.

2.106 As to why Mr KAM had told Ms WONG that he had good feelings towards her on the basis of her work performance despite the fact that her work performance had not been rated as “excellent” by him, Mr KAM explained to the Investigation Committee that judgement should not be made solely on the basis of the expression “have good feelings”, because there was a context to this expression. The context was that Ms WONG had relationship problems, and against such a background they had an afternoon tea meeting, and in the course of the conversation, he said some comforting words to her out of “empathy”, and it was under such circumstances that he said he “had good feelings” towards her. Mr KAM stated that the thought behind his saying he had “good feelings” towards Ms WONG was that her performance deserved “approval” and commendation, but this did not mean that there was no need for her to improve her performance. He just hoped to ease her emotional distress, so as to boost her self-confidence.

2.107 Mr KAM also explained to the Investigation Committee that he had not revealed to reporters in the press conference on 4 October 2009 that he had told his female assistant (i.e. Ms WONG) that he had good feelings towards her because he had to protect the privacy of Ms WONG; otherwise, he would need to talk about her relationship problems.

2.108 When asked by the Investigation Committee why he did not mention on the radio programme that the expression “have good feelings” was meant to affirm the work performance of Ms WONG, Mr KAM explained that at that moment he was only disclosing limited details of the incident. Should he elaborate on the incident, he would have to disclose more personal information about Ms WONG, and he felt that it was necessary for him to protect the privacy of Ms WONG. Besides, the focus at that juncture was to put right some inaccurate reports, so it might not be possible for him to recall the causes and consequences of the incident in a focussed manner and give clear answers to each and every question.

2.109 Mr KAM said at a hearing that when he gave an account of the incident to caucus members of the Democratic Party, he had not specifically mentioned the term “empathy” because the focus of discussion then was on the complaint lodged by a staff member who had been dismissed by him with immediate effect and it was necessary to deal with the complaint. Mr KAM also said that while he had briefed caucus members of the Democratic Party on what happened at the afternoon tea meeting, he did not elaborate on each and every point.

2.110 Ms Emily LAU said at a hearing that in their day to day contact, she did not discuss relationship problems with Mr KAM, and LegCo Members of the Democratic Party did not need to inform senior members of the Party about the employment or dismissal of their own assistants. Ms LAU said that she recalled clearly that when Mr KAM gave an account of the dismissal to her and Mr HO on 24 September 2009, he admitted that he had told Ms WONG that he “had affection” for her. As Ms LAU understood it, Mr KAM was talking about personal affairs and

relationships, i.e. his private affairs; and that when he said he “had affection” for Ms WONG, it carried the same meaning as “had good feelings” towards Ms WONG as both referred to the relationship between a man and a woman, and not the friendliness in a working relationship. While Ms LAU could not recall how Ms WONG mentioned “had affection”, she considered Ms WONG’s description of what happened at the afternoon tea meeting in her open statement was more or less the same as what she had said.

2.111 Mr KAM told the Investigation Committee that he had never mentioned to anyone that he “had affection” for Ms WONG, and the expression “had good feelings” as said by him was definitely not the same as “had affection”. In his consciousness, thought, behaviour and words, he had never told Ms WONG that he “had affection” for her, nor had he made any such gesture or had any such thought. However, he could not stop Ms WONG from having her own thoughts. This was all along his stance and viewpoint.

2.112 Mr HO told the Investigation Committee that “Because, as you know, the most important thing for us, as lawyers, is to pay heed to the critical issue: what you said at that moment was very important. I remember clearly, from the beginning to the end, what Hon KAM Nai-wai had said was that he ‘had good feelings’... if he had ever said ‘had affection’, I would have confronted him: why do you modify now what you have said? I will not let him modify, in this way in front of us, what he has said”. In Mr HO’s opinion, when an employer had a relatively close working relationship with an employee, they might of course have some private conversations. Mr HO considered that the expression “have good

“feelings” alone was insufficient to confirm objectively that Mr KAM’s own intention was to make advances. Nevertheless, in his opinion, if a person told a colleague of having “had good feelings” towards him or her, particularly if it involved a man and a woman, it would easily cause misunderstanding, regardless of the speaker’s own wish. Mr HO also considered it unwise for Mr KAM to tell a woman with relationship problems that he had “good feelings” towards her because it would easily cause misunderstanding. According to the evidence given by Mr KAM and Mr HO, caucus members of the Democratic Party also found it inappropriate for Mr KAM to have said the expression “have good feelings” towards Ms WONG. Mr HO also told the Investigation Committee that at the caucus meeting of the Democratic Party on 2 October 2009, while Mr KAM did not elucidate his intended meaning when he said he “had good feelings” towards Ms WONG, he did say that “had good feelings” was not intended to express love between a man and a woman. Mr HO believed that Mr KAM was expressing his concern and good intentions to a friend at that moment.

2.113 Mr KAM told the Investigation Committee that, although he might not have said the sentence “I said I had good feelings towards her in order to affirm her work” when he gave an account of the dismissal to Mr HO and Ms LAU for the first time on 24 September 2009, it was his impression that he had said at the caucus meeting something of similar wording, i.e. when he told Ms WONG that he had good feelings towards her, he was actually affirming her work performance. The Investigation Committee pointed out to Mr KAM that both Mr HO’s and Ms LAU’s evidence did not substantiate that he had indicated at the caucus meeting that he told Ms WONG that he “had good feelings” towards her was for

approving of her abilities and affirming her work performance. Mr KAM responded that the Investigation Committee should not make a judgement relying solely on the evidence of these two Members as there were other Members of the Democratic Party who had attended the caucus meeting. The Investigation Committee therefore invited all other Members of the Democratic Party who had attended the caucus meeting (i.e. Hon Fred LI, Hon James TO, Hon CHEUNG Man-kwong, Hon Andrew CHENG, Hon LEE Wing-tat and Hon WONG Sing-chi) to be witnesses to provide further information to the Investigation Committee. The Investigation Committee asked them the question, “During the period between 24 September 2009 (when Mr KAM dismissed Ms WONG) and 4 October 2009 (when the dismissal incident came to light), did Mr KAM explain what he meant when he said he ‘had good feelings’ towards Ms WONG, including explanations related to private relationships or work performance, and how did he explain it?”

2.114 In this connection, Hon CHEUNG Man-kwong said, “I did not associate the expression [had good feelings] with private relationships, nor did I specifically pursue whether it was related to work performance.” Hon James TO said that before the start of the caucus meeting, he had made enquiries with Mr KAM and had shared with him his personal experience: more than a decade ago, Mr TO had comforted a female secretary, who was depressed as she had been dumped by her boyfriend, by saying, “You are so beautiful. It is very easy for men to have good feelings towards you. So you don’t have to worry about the lack of admirers in the future. Just don’t give up on yourself.” Mr TO also said that, in saying such words, he was deliberately praising the secretary in order to boost her self-confidence. Mr TO also said that he then asked Mr KAM, “Was it

because Ms WONG was not bad looking and she was competent at work, and you just hoped to make her regain self-confidence?” Mr KAM then responded to Mr TO that it was exactly what he had meant in saying those words to Ms WONG in the hope of boosting her self-confidence, but then he had been misunderstood. Hon WONG Sing-chi indicated in his written statement to the Investigation Committee that he “can’t remember the specific details of Mr KAM’s explanation on ‘had good feelings’, but I have never felt that there was any private relationship between Mr KAM and Ms WONG Lai-chu”. He also said at a hearing that when he heard Mr KAM repeat the words “had good feelings” at the caucus meeting, his reaction was “a bit doubtful about whether it was true and why Mr KAM had said those words”. Hon LEE Wing-tat said, “As far as I can recall, KAM Nai-wai did not explain the meaning of ‘had good feelings’ in detail, nor did I ask him about the meaning of ‘had good feelings’ at the caucus meeting or on other occasions.” Both Hon Fred LI and Hon Andrew CHENG told the Investigation Committee that they had already forgotten details of the caucus meeting as it was a long time ago.

Mr KAM explained to the Investigation Committee his immediate dismissal of Ms WONG

2.115 On 12 February 2010, the Investigation Committee wrote to Mr KAM to invite him to give a written response to the information provided by the mover of the censure motion. Mr KAM submitted his written response (i.e. his written statement, **Appendix 2.11**) on 15 March 2010. Mr KAM pointed out in his written statement that in June 2009, as Ms WONG had emotional distress, she showed problems in her work attitude. Examples included not attending a meeting organized by the

financial regulatory body (see paragraph 2.21), not concentrating on work (see paragraph 2.23), refusing to write a press release (see paragraphs 2.29 to 2.31), suddenly requesting to take leave on the eve of an event that she was responsible for organizing (see paragraphs 2.33 and 2.34), and not implementing publicity initiatives on schedule (see paragraph 2.35), etc.. Mr KAM pointed out that all these examples served to illustrate that there were problems with her work attitude between June and September 2009, and that such a change in work attitude eventually made her unable to complete tasks which he had assigned to her. Mr KAM also pointed out that he had on numerous occasions sent emails to Ms WONG to express his dissatisfaction and issued verbal warnings to her, but she had persistently failed to show any improvement for three months without any reasonable explanation. It was under such circumstances that he finally decided to dismiss Ms WONG.

2.116 Mr KAM told the Investigation Committee that he had dismissed Ms WONG because there were problems with her work performance and attitude. Also, as he had given her one month's salary as payment in lieu of notice at the time of dismissal, he had already acted in compliance with the requirements stipulated in the employment contract and legislation. With regard to why he paid an additional compensation of \$150,000 to Ms WONG four days after (i.e. on 3 October 2009) she had collected on 29 September 2009 the amount payable to her under the employment contract and legislation, Mr KAM explained that he did so as he had dismissed Ms WONG with immediate effect because of his hot temper, and that he had spoken some words which had made Ms WONG feel disturbed and unhappy. Also, he knew that Ms WONG might face financial difficulties as it would be relatively difficult for one to find a

media job at the end of a year. As such, he felt that if it was within his ability, he should give her some assistance. Mr KAM had not thought of helping Ms WONG to cope with her financial difficulties by other means (such as lending money to her) because Ms WONG's demands were made to him through a third party, and he thought he would comply if he could. With regard to the demand for cash compensation made by Ms WONG, Hon James TO told the Investigation Committee that his reaction at the caucus meeting of 2 October 2009 was that "concessions are preferred in order to settle the matter amicably", and it would not be asking too much to include "a fee for putting up with scoldings" in the compensation for the dismissal as Mr KAM vented his temper on subordinates. Mr TO added that other participants of the meeting also thought that Mr KAM should accept Ms WONG's request because the immediate dismissal would hurt the self-esteem of the staff member concerned.

2.117 With regard to the work performance and attitude of Ms WONG, the Investigation Committee notes that Mr KAM said on the radio programme on 6 October 2009 that Ms WONG's "overall performance in the past was good". Yet, Mr KAM stated in the written statement (Appendix 2.11) he submitted to the Investigation Committee on 15 March 2010 that this assessment was valid only for the initial six months (i.e. Stage I) of her employment. When asked why he had not made this clear on the radio programme, Mr KAM explained that in his opinion, he should not, as a former employer, openly discuss the inadequacies of and his dissatisfaction about the work of a former employee (i.e. Ms WONG). With regard to the remark he made openly that the overall performance of Ms WONG was good, he said that on the one hand, it was for approving of her work performance in the initial six

months of employment, and on the other hand, it would make it easier for her to find another job.

2.118 Mr KAM denied that he had dismissed Ms WONG because he had been rejected after telling her that he “had good feelings” towards her, and that her dismissal was related to her refusal of his invitation to go out for lunch two days prior to the dismissal.

The overall working relationships between Mr KAM, Ms LUI and Ms WONG

2.119 The Investigation Committee has also looked into the overall working relationship between Mr KAM and the two staff members who worked in his Member’s Office (i.e. Ms WONG and Ms LUI). With regard to what he required of Ms WONG in her work, Mr KAM stated that as Ms WONG was a veteran media worker and had worked in a LegCo Member’s Office before, he expected Ms WONG to be able to take up more work. When compared with Ms WONG and Ms LUI, staff members in district offices usually had much heavier workload but lower salaries. As such, he expected Ms WONG and Ms LUI to work even harder, but they usually left the office very punctually. As to the time for getting off duty, Mr KAM said he could not remember it very clearly, but they usually left between 6:00 pm and 6:30 pm, and no later than 7:00 pm. The Investigation Committee notes that it was stipulated in the employment contract of Ms WONG that her total working hours in a week was 44 hours, and overtime work would not be compensated by allowance but by time off (the ceiling on accumulated overtime being 40 hours). On her departure, Ms WONG was paid an amount of overtime allowance equivalent to salary for 11 hours.

2.120 According to the evidence given by Ms LUI, she communicated with Mr KAM mainly by face-to-face discussions and electronic communication, for example, by making use of the time when Mr KAM returned to the Member's Office and by email to discuss work arrangements with him. Ms LUI said that Mr KAM relied more on MSN (chat-room) to communicate with staff members. However, as no record would be kept for discussions in MSN, and she felt that Mr KAM said something different each time on the same issue, Ms LUI used emails more to communicate with Mr KAM in finalizing work arrangements in order to avoid misunderstanding when discussing work and to facilitate future follow-up and avoid mistakes.

2.121 Ms LUI provided the Investigation Committee with an example to illustrate that Mr KAM might say something different on different occasions on the same issue. For example, when a staff member asked Mr KAM what activity themes he expected to be covered in the district newsletter, Mr KAM mentioned several activity themes. However, when that staff member asked him the same question at a later time on the same day or the following day, Mr KAM then mentioned some other activity themes.

2.122 Mr KAM stated that he was not aware that the reason behind Ms LUI's using emails more for communicating with him was to avoid different versions in verbal messages. Mr KAM also pointed out that as he "worked his way up from elementary positions", he had thorough knowledge and understanding of the overall operation of an office and he knew how to proceed with each and every step. As such, he often had his own way of doing things and perception, and often felt dissatisfied with the

work of his colleagues. Mr KAM said that he had a hot temper, and “could easily become irritated and then started scolding staff members, questioning them why a certain job cannot be done”. Mr KAM said that he had said to each staff member, “See what you have done! How can you submit something like this to me?” He was often dissatisfied with the performance of his employees. While this regularly occurred both before and after June 2009, he became particularly irritated, and short-tempered with “anger almost flaring up” during the summer recess, as he found that none of the tasks could be accomplished. He scolded staff members by saying, “What’s wrong with you? Still have not finished? How can that be? Why has it taken so long and still it is not yet done?” Mr KAM considered that he had not done well in controlling his temper, and he often criticized the work of colleagues and showed his dissatisfaction. According to the evidence given by Mr KAM, Ms LUI had also told him that he did not have a good working relationship with colleagues in general. Mr KAM considered that his relationship with employees, management style and temper all needed a comprehensive review and improvement.

2.123 Ms LUI pointed out that while Ms WONG had said that Mr KAM assigned work hastily, resulting in Ms WONG not having enough time to make good preparation, Ms WONG had not mentioned whether she was overworked or not. Mr KAM’s response to this remark was that in a Member’s Office, many matters were urgent, and had to be rushed, but he considered this was the normal mode of operation in a Member’s Office.

2.124 Ms LUI pointed out that “During Ms WONG’s employment, Mr KAM had said on numerous occasions that her work failed to meet his expectations, and his attitude and tone in talking to her was no different

from those he used when talking to other staff members. As regards Mr KAM's dissatisfaction, Ms WONG, like other staff members, did not show any strong reaction, but would ask Mr KAM in detail about his demands, so as to get the tasks done. However, during the summer recess (exact period forgotten), Mr KAM imposed harsher work requirements on Ms WONG than before, while Ms WONG took stronger offence towards Mr KAM's dissatisfaction than before. Since then, Ms WONG told me she would communicate with Mr KAM mainly by email so as to avoid misunderstanding in the process, which might in turn affect her performance.”

2.125 Ms LUI quoted the following example to illustrate that Mr KAM had imposed harsher work requirements on Ms WONG than before: “In the past, when Mr KAM was dissatisfied with a document or an activity proposal submitted by a staff member, he would make amendments to it himself before passing it back to the relevant staff member for implementation. Sometimes he would add a teasing remark, ‘What kind of rubbish have you submitted to me?’ The atmosphere was not too solemn. Yet, during the summer recess, when Mr KAM was unhappy with Ms WONG, his attitude became harsh, thus making the atmosphere rather tense.”

2.126 With regard to the above remarks of Ms LUI and the example she gave, Mr KAM pointed out that on his return (i.e. 20 August 2009) from his summer vacation, he found that none of the tasks assigned to Ms WONG had been completed, and as a result, he had to take them back and do the work himself. As Mr KAM became very irritated, he vented his ill-temper and discontent on her, as well as scolded and criticized her.

2.127 On 24 September 2009, Ms WONG was dismissed with immediate effect.

2.128 On 28 September 2009, Ms LUI tendered her resignation to Mr KAM, which came into effect on 27 October.