

Executive Summary

Background

1. On 4 October 2009, a local newspaper reported that Hon KAM Nai-wai had dismissed a female assistant and the female assistant had lodged a complaint with the Democratic Party, the party to which Mr KAM belonged, that Mr KAM had dismissed her unreasonably after his advances were rejected by her. A large number of media reports and articles relating to the incident emerged on the following days and, in the week that followed, the Complaints Division of Legislative Council Secretariat received a lot of views submitted by the public on the matter. These views were generally on the need for an inquiry to investigate whether the allegation of sexual harassment was founded, whether there had been improper use of public money in the course of the dismissal, including whether the dismissal was reasonable, and whether the matter had a negative impact on the integrity of the Member. Duty Roster Members for that week decided that it would propose to the House Committee that the Committee on Members' Interests be specially authorized by resolution of the Council to inquire into the matter, and to submit a report to the Council.

2. The House Committee deliberated on this matter at its meetings on 9 and 16 October 2009. Members noted that the Rules of Procedure ("RoP") had already provided for a mechanism to implement Article 79(7) of the Basic Law ("BL 79(7)") for the purpose of dealing with allegations of misbehaviours of Members. BL 79(7) provides that the President of the Legislative Council ("LegCo") shall declare that a Member

is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members present. After deliberations, Members agreed that although it was the House Committee's decision to request its Chairman Hon Miriam LAU to activate the mechanism mentioned above, it would be more appropriate for Ms LAU to move the censure motion under Rule 49B(1A) of RoP in her personal capacity as a Member, and that the mover of the motion and the three other Members jointly signing the notice of the motion should be responsible for drafting the wording of the censure motion.

The censure motion

3. Hon Miriam LAU moved a motion to censure Mr KAM at the Council meeting on 9 December 2009. The wording of the censure motion is as follows:

“That this Council, in accordance with Article 79(7) of the Basic Law, censures Hon KAM Nai-wai for misbehaviour (details as particularized in the Schedule to this motion).

Schedule

Details of misbehaviours of Hon KAM Nai-wai are set out below:

- (a) **Hon KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity**

There were media reports on 4 October 2009 that Hon KAM Nai-wai dismissed his female assistant because of his unsuccessful advances to her. The female assistant was employed with public funds to assist him in performing his duties as a Legislative Council Member. At his press conference held on the same day, Mr KAM:

- (i) denied that he had made advances to his female assistant and did not disclose that he had expressed affection towards her; and
- (ii) denied that he had dismissed his female assistant because of his unsuccessful advances, and pointed out that the employment contract with his female assistant was terminated by giving one-month payment in lieu of notice which was in accordance with the employment contract, but did not mention that he had expressed affection towards her.

However, after the media subsequently reported that he had actually made advances to his female assistant, Mr KAM admitted on 6 October 2009 on a radio programme that he had expressed affection towards his female assistant when he was alone with her on one occasion in mid-June 2009.

(b) Hon KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her

In mid-June 2009, Hon KAM Nai-wai expressed affection towards his female assistant. Subsequently, he noticed some signs of his female assistant rejecting him. Between early September and mid-September 2009, Mr KAM invited his female assistant to dine out and was also refused by her. Subsequently on 24 September 2009, he terminated the employment contract with his female assistant with immediate effect without reason assigned, although her overall work performance was judged by him to be good.”

The Investigation Committee

4. In accordance with Rule 49B(2A) of RoP, the debate on the censure motion stood adjourned and the matter stated in the motion was referred to an investigation committee. The Investigation Committee was established on 8 January 2010. Under Rule 73A(2) of RoP, the Investigation Committee is responsible for establishing the facts stated in the censure motion and giving its views on whether or not the facts as established constitute grounds for the censure. Upon completion of its work, the Investigation Committee is required to submit to the Council a report for all Members’ reference when the debate on the censure motion resumes. It is then a question for the Council to decide whether the

Member under investigation should be censured, and thus disqualified from the office.

5. The Investigation Committee has held 57 meetings, including 11 hearings. Apart from Mr KAM who attended hearings as the Member under investigation, seven other LegCo Members of the Democratic Party, Hon Andrew CHENG who was a member of the Democratic Party at the relevant time, as well as Ms Anita LUI who worked in the same office of the female assistant dismissed by Mr KAM, also attended hearings as witnesses. Ms Kimmie WONG, the female assistant dismissed by Mr KAM on 24 September 2009, was also invited to be a witness, but she declined to take part in the investigation for reasons given in paragraph 1.66 of Chapter 1. After careful consideration, the Investigation Committee decided not to require the attendance of Ms WONG at its hearings. The Investigation Committee would seek to establish the facts stated in the censure motion based on evidence and give its views on whether or not the facts as established constitute grounds for the censure pursuant to Rule 73A(2) of RoP.

Findings and conclusions

Facts to be established

6. The Investigation Committee notes that there are two allegations in the censure motion:

- (a) Hon KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity; and

- (b) Hon KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her.

7. Each of these two allegations is supported by certain facts set out in the Schedule to the censure motion:

- (a) Mr KAM expressed good feelings towards a female assistant (i.e. Ms WONG) when he was alone with her on one occasion (i.e. afternoon tea meeting) in mid-June 2009 (the exact date was 15 June);
- (b) Subsequent to his expression of good feelings towards the female assistant in mid-June 2009, Mr KAM noticed signs of resistance from the female assistant; and between early September and mid-September (the exact date was 22 September), Mr KAM invited her to dine out and was refused by her;
- (c) Mr KAM dismissed the female assistant on 24 September 2009;
- (d) Mr KAM did not give any reasons for the dismissal when he dismissed the female assistant;
- (e) Mr KAM considered the overall work performance of the female assistant during the employment period to be good;

- (f) Mr KAM denied at a press conference called by him on 4 October 2009 that he had made advances towards the female assistant, and he did not disclose that he had expressed good feelings towards her; and
- (g) Mr KAM admitted on a radio programme (i.e. Tipping the Points) on 6 October 2009 that he had expressed good feelings towards the female assistant when he was alone with her on one occasion in mid-June 2009.

8. After investigation, the Investigation Committee has established the facts set out in paragraph 7(a), (b), (c), (e), (f) and (g) but not (d).

Findings - First allegation

(on the basis of the facts under paragraph 7(a), (f) and (g) above)

9. The first allegation refers to Mr KAM's making inconsistent remarks to the media and withholding of key information, causing the public to have doubts about his integrity. In considering whether the remarks made by Mr KAM at the two media meetings were "inconsistent", the Investigation Committee focuses on whether Mr KAM's expression of good feelings towards Ms WONG could reasonably be understood as making advances to her, and whether Ms WONG and any ordinary person perceived it as such. The Investigation Committee also studied whether the key information which is alleged to have been withheld by Mr KAM, i.e. that Mr KAM "had expressed good feelings towards the female assistant", was crucial to the understanding of why the female assistant had complained that she was unreasonably dismissed, and whether Mr KAM's

failure to disclose that fact was due to forgetfulness or an oversight or a conscious decision of Mr KAM not to disclose it.

10. After considering the evidence put before it, the Investigation Committee finds that under the circumstances at the time, Mr KAM's expression of good feelings towards Ms WONG can reasonably be regarded as an expression of affection between a man and a woman, i.e. an act that carried the meaning of making advances. It therefore considers that there were "inconsistencies" in the remarks made by Mr KAM in the two media meetings.

11. On the withholding of information, the Investigation Committee does not accept Mr KAM's claim that he did not disclose "his expression of good feelings towards the female assistant" in order to protect the privacy of Ms WONG. The Investigation Committee considers that it was a conscious decision of Mr KAM not to disclose a piece of information which was crucial to the understanding of the circumstances of the relationship between Mr KAM and Ms WONG, and he had indeed "withheld key information".

12. The Investigation Committee concludes that the first allegation is established.

Findings - Second allegation

(on the basis of the facts set out under paragraph 7(b), (c) and (e) above)

13. This allegation refers to Mr KAM being alleged to have been unfair in dismissing his female assistant, whose overall performance was assessed to be good, after she rejected Mr KAM's expression of good

feelings towards her. In examining whether Mr KAM had acted unfairly, the Investigation Committee studied the evidence produced by Mr KAM to substantiate his claim that Ms WONG was dismissed because of Ms WONG's work attitude between June and September 2009, and her failure to show improvement during those three months without any reasonable explanation. The Investigation Committee however finds that Mr KAM had on record reaffirmed on quite a number of occasions that Ms WONG's overall work performance was good, but there was also no evidence to indicate that Mr KAM dismissed Ms WONG because of her refusal of his lunch invitation.

14. The Investigation Committee believes that although there is no information suggesting that Mr KAM had any intention to dismiss Ms WONG since he was rejected at the afternoon tea meeting, it was likely that Ms WONG's rejection of Mr KAM's advances to her had made it difficult, if not impossible, for them to work together subsequently. The Investigation Committee is unable to establish that Mr KAM had dismissed Ms WONG under the circumstances as described in the second allegation, and therefore cannot form a view that Mr KAM was "unfair" in dismissing his female assistant as alleged in the censure motion.

15. Nevertheless, the Investigation Committee considers that Mr KAM did not follow good personnel management practices by issuing warnings with disciplinary implications to Ms WONG so as to give the employee the opportunity to make improvements. As such, it was indeed improper for Mr KAM to have dismissed Ms WONG with immediate effect.

Conclusion

16. To sum up, the Investigation Committee finds that Mr KAM had made inconsistent remarks to the media and withheld key information from them, and concludes that as a result of this, the public was likely to have doubts about his integrity. The Investigation Committee also considers that to a certain extent, Mr KAM's misbehaviour has adversely impacted on the overall image of LegCo Members as well as that of LegCo.

17. The Investigation Committee also finds that Mr KAM's expression of good feelings towards Ms WONG was inappropriate, and in so doing, he had caused pain to his subordinate and made their employer-employee relationship complicated and tense. Mr KAM's failure to take appropriate remedial actions had also led to the continued deterioration of their relationship and loss of mutual trust and cooperation which should have existed between them. In the end, Mr KAM had resorted to dismissing Ms WONG with immediate effect even though she had not made any serious mistakes. The Investigation Committee expresses regrets at the behaviour of Mr KAM as a supervisor.

18. The Investigation Committee notes that the disqualification of a Member from the office is the most severe sanction that may be imposed on an individual LegCo Member, and has the effect of overturning the decision made by voters in an election. The Investigation Committee considers that Mr KAM's conduct was improper in that it failed to live up to the public's expectations on the integrity and ethical standards of a LegCo Member, but that his misconduct was not so grave as to warrant disqualification from the office as a LegCo Member. In other words, the

facts as established do not, in the Investigation Committee's view, constitute sufficient grounds for the censure of Mr KAM under BL 79(7).

Other observations and views

19. The Investigation Committee has also expressed the following views in the Report:

- (a) LegCo should consolidate the experience drawn from this investigation and conduct a review on the mechanism for the disqualification of a Member from the office, including the number of Members required to initiate a censure motion, what evidence and information Members have to put forward when initiating the censure motion, and whether a preliminary investigation should be conducted to establish whether there is a prima facie case; and
- (b) LegCo should consider afresh the need to review the current mechanism in order to ensure that there are appropriate mechanisms and proportionate sanctions for dealing with complaints against Members' misconduct of varying gravity, so as to safeguard the credibility of LegCo.