

For information  
On 7 May 2012

**Legislative Council  
Panel on Transport and Panel on Financial Affairs**

**Joint Subcommittee on Issues Relating to  
Insurance Coverage for the Transport Sector**

**The Making of false oaths in legal proceedings of civil claims arising  
from traffic accidents**

This paper is prepared pursuant to the request set out in item 11 of the Joint Subcommittee's issues to be studied as at 27 April 2012 (LC Paper No. CB(2)1846/11-12). The paper provides further information on the making of false statements in legal proceedings of civil claims.

2. If any person makes a false statement in any judicial proceedings, he or she may be guilty of the offence of perjury under section 31 of the Crimes Ordinance, Cap. 200 and shall be liable on conviction to imprisonment for seven years<sup>1</sup>.

3. According to Order 41A Rule 9 of the Rules of the High Court, Cap. 4A (or the equivalent provisions in the Rules of District Court, Cap 336H)<sup>2</sup>, the making of a false statement in a document which

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<sup>1</sup> Section 31 provides as follows:

“If any person lawfully sworn as a witness or as an interpreter, either generally or in a particular judicial proceeding, wilfully makes a statement in any judicial proceeding which is material in that proceeding and which he knows to be false or does not believe to be true, he shall be guilty of perjury and shall be liable on conviction upon indictment to imprisonment for 7 years and to a fine.”

<sup>2</sup> Order 41A, rule 9 provides as follows:

- “(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.
- (2) Proceedings under this rule may be brought only-

is verified by a “statement of truth” may constitute civil contempt of court.

4. In *Kinform Ltd v Tsui Loi & Others* [2011] 5 HKC 426, Deputy District Judge H Au-Yeung held that in cases where a person was being prosecuted for contempt by reason of his having verified a false statement by a statement of truth, the plaintiff must prove beyond reasonable doubt in respect of the following:

- (a) The falsity of the statement in question;
- (b) That the statement had, or if persisted in would be likely to have, interfered with the course of justice in some material respects; and
- (c) That at the time it was made, the maker of the statement had no honest belief in the truth of the statement and knew of its likelihood to interfere with the course of justice.

5. The following paragraph of the Reasons for Sentence of the court should be noted:

“Like the commission of the offence of perjury, the giving of a false statement verified by a statement of truth would undermine the whole process of our system of justice and the Court will not tolerate such an act. A clear message has to be sent to all litigants that they must not lie when they put forward their case in the form of pleadings or witness statements.” (at page 448I)

6. Besides, a breach of a court order or acts amounting to failure to give proper discovery of documents under Order 24, rule 16(2) of the Rules of the High Court, Cap 4A or true and frank disclosure may also constitute civil contempt of court and the persons concerned may be

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- (a) by the Secretary for Justice or a person aggrieved by the false statement; and
  - (b) with the leave of the Court.
- (3) The Court shall not grant the leave under paragraph (2) unless it is satisfied that the punishment for contempt of court is proportionate and appropriate in relation to the false statement.
- (4) Proceedings under this rule are subject to the law relating to contempt of court and this rule is without prejudice to such law.”

pursued in accordance with Order 52 the Rules of the High Court, Cap. 4A (or Order 52 of the Rules of District Court, Cap 336H).

7. Persons aggrieved in any legal proceedings may apply to the court asking the court to impose penalty on any person who has committed civil contempt of court. In legal proceedings where there is a suspicion of any person making a false statement, the judge may not necessarily handle the allegation or make a referral of the matter due to different reasons. One reason is that a judge in civil proceedings makes findings of fact on a balance of probabilities. The mere fact that the judge accepts the evidence of one witness does not suggest that the other witnesses have made any false statement. If the aggrieved person has reasonable grounds to suspect that any person has made a false statement thus committing an offence, that person may make a complaint to the Police. The relevant law enforcement department will conduct further investigation. If necessary, the Department of Justice will provide advice in relation to the relevant investigation. If there is sufficient evidence to support the complaint, the Department of Justice will prosecute the offender for appropriate offences.

**Department of Justice**  
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