

立法會

Legislative Council

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Paper for the House Committee Meeting on 9 December 2016

Principles on application of the *sub judice* rule in proceedings of the Council or its committees

Purpose

This paper sets out the principles on the application of the *sub judice* rule in proceedings of the Council or its committees.

Freedom of speech and the *sub judice* rule

2. Section 3 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) provides Members with the freedom of speech and debate, and such freedom of speech and debate is not liable to be questioned in any court or place outside the Council. Under section 4 of Cap. 382, no civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to the Council or a committee, or by reason of any matter brought by him therein by petition, bill, resolution, motion or otherwise.

3. Despite the privileges provided in Cap. 382, the Legislative Council ("LegCo") has imposed upon itself certain restrictions in relation to contents of speeches in Rule 41(2) of the Rules of Procedure ("RoP"), which provides that:

"Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case."

The rule reflects what is commonly known as the *sub judice* rule. By virtue of RoP 43, the *sub judice* rule provided in RoP 41(2) applies to

proceedings in the House Committee unless the Chairman of the House Committee orders otherwise. It should be noted that LegCo has not formulated any further general guidelines beyond what has been expressly provided for in RoP. In the case of the House Committee, the precise application of the rule is at the discretion of the Chairman of the House Committee. Nevertheless, the following principles from past application of the *sub judice* rule locally and from practices and procedures in other jurisdictions may be helpful:

- (a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;
- (b) such references would include commenting on, inquiring into and making of findings on such matters;
- (c) matters awaiting adjudication would include matters in respect of which a charge has been laid or proceedings have been initiated by the filing of the appropriate documents; and
- (d) prejudice might arise from an element of explicit or implicit prejudgment in the proceedings of the legislature in two possible ways:
 - (i) the references might hinder the court in reaching the right conclusion or lead it to reach other than the right conclusion; and
 - (ii) whether the court is affected in its conclusion or not, the references might amount to an effective usurpation of the court's judicial functions.

4. In view of RoP 41(2), it would be advisable for Members to avoid making references which might prejudice cases pending in courts during a debate or discussion by framing questions as neutrally as possible, and refraining from making any comments or prejudgments on any issue required to be decided by the courts in the cases concerned.

Prepared by

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