

**Chapter 4 Establishing the facts and whether the facts as
established constitute grounds for the censure of
Hon HUI Chi-fung**

4.1 In this Chapter, based on the information and evidence set out in Chapter 3 and in accordance with RoP 73A(2), IC will consider whether the "facts" stated in the Schedule to the censure motion can be established, and give its views on whether or not the facts as established constitute grounds for the censure of Hon HUI Chi-fung.

Facts to be established

4.2 Under RoP 73A(2), IC shall be 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. Accordingly, the scope of IC's investigation shall be confined to the particulars of Hon HUI Chi-fung's alleged misbehaviour as set out in the Schedule to the censure motion. Based on the Schedule, IC has identified six facts to be established as detailed in the ensuing paragraphs.

First fact to be established — Whether Hon HUI Chi-fung, in the morning of 24 April 2018 when the Bills Committee on Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill was holding its meeting, grabbed the Mobile Phone and documents of a female officer of the Security Bureau at the four-lift lobby on the second floor of the Legislative Council Complex

4.3 IC notes that the Bills Committee was holding its meeting in Conference Room 1 when Hon HUI Chi-fung entered the four-lift lobby at 9:41:30 am on 24 April 2018, where Ms LEUNG Ngok-sze was standing there with the Mobile Phone and a piece of paper in her hand.⁶¹ IC also

⁶¹ Paragraphs 3.2 and 3.3 of Chapter 3.

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notes that Ms LEUNG was a female officer of the Security Bureau from the evidence given by Mr Daniel LIU⁶² and Mr Mark FU Chuen-fu.⁶³

4.4 IC notes from the CCTV footage that Hon HUI Chi-fung approached Ms LEUNG Ngok-sze face-to-face in the four-lift lobby and appeared to say something to her at 9:41:42 am. While the CCTV footage did not have audio recording, IC notes that at that time, Ms LEUNG stepped back. Mr HUI stepped forward towards Ms LEUNG, grabbed the paper from her and read it.⁶⁴ IC also notes from the evidence given by Mr Mark FU Chuen-fu and what Mr HUI had told the press at the media interview on 25 April 2018 that the paper grabbed by Mr HUI contained the membership list of the Bills Committee and Members' photos.⁶⁵

4.5 IC also notes from the CCTV footage that, after reading the paper, it appeared that Hon HUI Chi-fung reached out his hand to try to grab the Mobile Phone from Ms LEUNG Ngok-sze but he was not successful, as Ms LEUNG moved her hand holding the Mobile Phone to behind her back and tried to evade. Mr HUI kept on trying to grab the Mobile Phone and grabbed it at last. He then ran out of the four-lift lobby and Ms LEUNG chased after him.⁶⁶ IC considers that the CCTV footage has clearly shown that Mr HUI had grabbed the Mobile Phone from Ms LEUNG without her consent and with force.

4.6 Hon HUI Chi-fung's own account of the incident is broadly consistent with what was shown in the CCTV footage, as stated in paragraphs 4.4 and 4.5 above. IC notes from i-CABLE's footage that at the media interview on 25 April 2018, Mr HUI had said that, when he saw Ms LEUNG Ngok-sze on 24 April 2018, she was holding a piece of paper and the Mobile Phone. He believed that Ms LEUNG was recording information about his whereabouts and so he asked her whether she was doing so, but Ms LEUNG denied. He then asked if Ms LEUNG could let him have a look at the paper in her hand, and he grabbed it from her and read. After reading it, he asked Ms LEUNG what she was recording on the Mobile Phone but she did not reply. Therefore, he grabbed the

⁶² Footnote 12 of Chapter 3.

⁶³ Paragraph 3.6 of Chapter 3.

⁶⁴ Paragraph 3.3 of Chapter 3.

⁶⁵ Paragraph 3.16 of Chapter 3.

⁶⁶ Paragraph 3.3 of Chapter 3.

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Mobile Phone and examined whether there was any information about him in the Mobile Phone.⁶⁷

4.7 IC also notes that at the above media interview, Hon HUI Chi-fung had said in English that *"I think it's not correct when I don't have her consent to grab the phone and to look at what's inside, and so I understand that she's just a staff member of the Government, and I feel sorry for such an act"*. Later in that interview, he said that without the consent of Ms LEUNG Ngok-sze, he *"grabbed the phone and looked inside, and this is not a correct way of doing things"* (in English). In response to a question raised during RTHK's interview on the same day, Mr HUI confirmed that he had grabbed the paper and the Mobile Phone from Ms LEUNG without her consent.⁶⁸

4.8 IC further notes from i-CABLE's footage that at the media interview on 25 April 2018, Hon HUI Chi-fung repeatedly admitted that without Ms LEUNG Ngok-sze's consent, it was not right for him to grab the Mobile Phone from her and said he would apologize to her. Mr HUI wished to apologize to Ms LEUNG who might be frightened and upset during her work, and said that he felt sorry for Ms LEUNG's feelings. Then, at the media interview on 26 April 2018 as recorded in i-CABLE's footage, Mr HUI said that what he had done in the alleged incident was very, very wrong and was grossly inappropriate. He considered that his behaviour must have caused great pressure and disturbance to Ms LEUNG, resulting in public disappointment. Mr HUI apologized to Ms LEUNG and the public, and bowed.⁶⁹

4.9 Based on the above, IC considers that the material parts of the first fact have been established: Hon HUI Chi-fung, in the morning of 24 April 2018 when the Bills Committee was holding its meeting, grabbed the Mobile Phone and a piece of paper (i.e. the document containing the membership list of the Bills Committee and Members' photos) of a female officer of the Security Bureau at the four-lift lobby. IC notes from the CCTV footage that Ms LEUNG Ngok-sze was holding a piece of paper in the four-lift lobby while "documents" as stated in the English text of the Schedule to the censure motion should mean more than one piece of paper. Nevertheless, IC is of the view that the specific number of pages of papers

⁶⁷ Paragraph 3.23 of Chapter 3.

⁶⁸ Paragraph 3.25 of Chapter 3.

⁶⁹ Paragraphs 3.28 and 3.29 of Chapter 3.

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grabbed by Mr HUI is immaterial, and this does not affect IC's view as to whether he should be censured as stated below.

Second fact to be established — Whether the female officer of the Security Bureau followed Hon HUI Chi-fung and demanded him to return the Mobile Phone to her, but to no avail, and whether the officer burst into tears when reporting the incident

4.10 IC notes from the CCTV footage that after Hon HUI Chi-fung had grabbed the Mobile Phone, he ran out of the four-lift lobby at 9:42:33 am, ran along Corridor A and then rushed through Entrance A between 9:42:34 am and 9:42:42 am. During that time, Ms LEUNG Ngok-sze chased after Mr HUI all the way from the four-lift lobby but stopped in front of Entrance A. Ms LEUNG then took out another mobile phone and appeared to make a call. Mr Mark FU Chuen-fu was walking around along Corridor B at that time. Mr FU appeared to talk to a man in Corridor B at 9:47:43 am, and then they together approached Ms LEUNG. The three people appeared to talk to each other in Corridor B between 9:47:52 am and 9:48:31 am. Ms LEUNG later went to Corridor A at 9:48:46 am.⁷⁰

4.11 IC notes from i-CABLE's footage that Hon HUI Chi-fung told the press on 25 April 2018 that he had grabbed the Mobile Phone from Ms LEUNG Ngok-sze to see if any information inside the Mobile Phone was about him. At that time, Ms LEUNG tried to get back the Mobile Phone, and he therefore took it to the nearest toilet on the second floor of the LegCo Complex.⁷¹

4.12 IC notes from the CCTV footage that Hon HUI Chi-fung rushed through Entrance A at 9:42:42 am. He later came out of the area behind Entrance A at 9:58:01 am and went to Corridor A.⁷² IC also notes from the CCTV footage that at 9:57:56 am, Hon WU Chi-wai was talking to Mr Mark FU Chuen-fu in Corridor A. After Mr HUI came out of

⁷⁰ Paragraphs 3.3 and 3.4 of Chapter 3.

⁷¹ Paragraph 3.13 of Chapter 3.

⁷² Paragraph 3.4 of Chapter 3.

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Entrance A and went to Corridor A, he passed by Mr FU and Mr WU. Mr HUI and Mr FU seemed to have some communication, then Mr HUI seemed to hand something over to Mr FU at 9:58:15 am.⁷³

4.13 The account of Mr Mark FU Chuen-fu given to IC is broadly consistent with what was shown in the CCTV footage and what Hon HUI Chi-fung said on 25 April 2018 in i-CABLE's footage, as stated in paragraphs 4.10 to 4.12 above. Mr FU told IC at its hearing on 6 November 2019 that at first, he saw Ms LEUNG Ngok-sze standing outside Entrance A on 24 April 2018, but he did not pay attention to her. After a male officer of THB had told Mr FU that the Mobile Phone held by a female colleague was grabbed, Mr FU and that male officer then approached Ms LEUNG and asked her what had happened. Ms LEUNG told Mr FU that Mr HUI had grabbed the Mobile Phone and pointed at Entrance A, saying that Mr HUI had gone to the direction of Entrance A after grabbing the Mobile Phone.⁷⁴ After that, Mr FU had tried to look for Mr HUI but in vain.⁷⁵

4.14 IC also notes from the evidence given by Mr Mark FU Chuen-fu that, when Mr FU was talking to Hon WU Chi-wai in Corridor A, Mr FU saw Hon HUI Chi-fung coming from the direction of Conference Room 1 carrying the Mobile Phone in his hand. When Mr FU was about to ask Mr HUI to stop, Mr HUI turned around and asked Mr FU whether he wanted to get back the Mobile Phone. Mr FU replied in the affirmative and Mr HUI handed the phone to Mr FU.⁷⁶ Mr FU subsequently confirmed with Ms LEUNG Ngok-sze that the phone returned by Mr HUI was the Mobile Phone.⁷⁷

4.15 IC also notes from the evidence given by Mr Mark FU Chuen-fu that Ms LEUNG Ngok-sze looked frightened and was agitated when she first told him about the incident on 24 April 2018 in Corridor B, and was agitated and burst into tears when reporting the incident again later that day in Room 112.⁷⁸

⁷³ Paragraph 3.5 of Chapter 3.

⁷⁴ Paragraph 3.6 of Chapter 3.

⁷⁵ Paragraph 3.7 of Chapter 3.

⁷⁶ Paragraph 3.8 of Chapter 3.

⁷⁷ Paragraph 3.10 of Chapter 3.

⁷⁸ Paragraph 3.14 of Chapter 3.

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4.16 Another witness Mr Daniel LIU told IC that when Ms LEUNG Ngok-sze talked to Mr Sonny CHOW (who was also a witness) in Room 112, she was frightened but not crying at that time. Mr LIU told IC that he felt that Ms LEUNG was nervous when talking in Room 112. Her speech was not smooth, and it seemed that she was unhappy and insecure.⁷⁹

4.17 According to the evidence given by Mr Daniel LIU as well as Mr Sonny CHOW, it was Mr Cassius LAU Fu-sang who had asked Mr LIU to call Mr CHOW to go to Room 112.⁸⁰ According to Mr CHOW, he had only talked to Ms LEUNG Ngok-sze briefly while inside Room 112. He told IC that Ms LEUNG looked scared and he asked her whether she was fine, whether she was hurt and if ambulance service was required. Mr CHOW also told IC that Ms LEUNG had said nothing while Mr LAU told him that Ms LEUNG was fine.⁸¹ Mr CHOW then asked Mr LAU what assistance could be provided by the Security Office of the LegCo Secretariat. Mr LAU replied that he would need to discuss with his senior officers on how to deal with the matter, and asked Mr CHOW to leave first and wait for his call. Mr CHOW and Mr LIU then left and reported the matter to their senior.⁸²

4.18 IC has carefully considered the evidence of Mr Daniel LIU, Mr Sonny CHOW and Mr Mark FU Chuen-fu. While Mr FU gave evidence that Ms LEUNG Ngok-sze did burst into tears when reporting the incident to him in Room 112, Mr LIU and Mr CHOW gave evidence that they did not see Ms LEUNG cry. IC considers that Mr LIU and Mr CHOW might not witness Ms LEUNG cry at the material time as they might have left Room 112 at some stage. They therefore might have met Ms LEUNG in Room 112 at a time different from that when Mr FU saw Ms LEUNG burst into tears. After considering all the circumstances, IC

⁷⁹ Paragraph 3.15 of Chapter 3.

⁸⁰ Line 51 on page 2 to line 63 on page 3 of the verbatim transcript of Mr Daniel LIU attending a closed hearing of IC on 25 June 2019 (Appendix 10). Lines 57 to 68 on page 3; and line 375 on page 14 to line 386 on page 15 of the verbatim transcript of Mr Sonny CHOW attending a closed hearing of IC on 6 November 2019 (Appendix 11).

⁸¹ Line 100 on page 4 to line 116 on page 5; and lines 397 to 404 on page 15 of the verbatim transcript of Mr Sonny CHOW attending a closed hearing of IC on 6 November 2019 (Appendix 11).

⁸² Lines 92 to 99 on page 4; and lines 224 to 228 on page 9 of the verbatim transcript of Mr Sonny CHOW attending a closed hearing of IC on 6 November 2019 (Appendix 11).

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accepts the evidence of Mr FU that Ms LEUNG did burst into tears when reporting the incident to him.

4.19 Based on the above, IC considers that the second fact has been established: the female officer of the Security Bureau followed Hon HUI Chi-fung and demanded him to return the Mobile Phone to her, but to no avail, and the officer burst into tears when reporting the incident. IC is of the view that even if it could not be established that Ms LEUNG Ngok-sze did burst into tears at the material time, this is immaterial and does not affect IC's view as to whether Mr HUI should be censured as stated below.

Third fact to be established — Whether Hon HUI Chi-fung, after grabbing the Mobile Phone and documents of the female officer of the Security Bureau quickly hid himself in a men's toilet on the second floor of the Legislative Council Complex and stayed there for 10-odd minutes

4.20 IC notes from the CCTV footage that Hon HUI Chi-fung rushed through Entrance A opening to a space which could lead to Conference Room 1 or the toilet area (which consisted of the gentlemen's toilet, ladies' toilet and accessible toilet) at 9:42:42 am. Mr HUI later came out of the area behind Entrance A at 9:58:01 am and went to Corridor A.⁸³ IC also notes from the CCTV footage covering Conference Room 1 that, between 9:42:42 am and 9:58:01 am, it did not capture Mr HUI returning to Conference Room 1.⁸⁴ The only reasonable inference is that Mr HUI went to the toilet after rushing through Entrance A at 9:42:42 am.

4.21 IC notes from i-CABLE's footage that Hon HUI Chi-fung told the press during the media interview on 25 April 2018 that, after he had grabbed the Mobile Phone from Ms LEUNG Ngok-sze, Ms LEUNG tried to get back the Mobile Phone, and he therefore took it to the nearest toilet on the second floor of the LegCo Complex. While inside the toilet, he looked at the Mobile Phone and browsed what information was contained

⁸³ Paragraph 3.4 of Chapter 3.

⁸⁴ Paragraph 3.7 of Chapter 3.

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in it for about 10 minutes.⁸⁵ During RTHK's interview, Mr HUI said that he thought that he had kept the Mobile Phone for about 10 minutes, and he had focused on seeing whether there was any personal data about him.⁸⁶

4.22 Mr Mark FU Chuen-fu also told IC that when Ms LEUNG Ngok-sze first reported the incident to him, she pointed at Entrance A, saying that Hon HUI Chi-fung had gone to the direction of Entrance A. He then tried to look for Mr HUI, including viewing from the inside of the Photo Room to see whether Mr HUI was in Conference Room 1, but Mr HUI was not there.⁸⁷

4.23 Based on the above, IC considers that the material parts of the third fact have been established, i.e. Hon HUI Chi-fung, after grabbing the Mobile Phone and document of the female officer of the Security Bureau, quickly hid himself in a toilet on the second floor of the LegCo Complex and stayed there for 10-odd minutes. IC acknowledges that there is no evidence as to whether the toilet in question was in fact the men's toilet. Nevertheless, IC is of the view that the specific kind of toilet Mr HUI hid himself in is immaterial, and this does not affect IC's view as to whether he should be censured as stated below.

Fourth fact to be established — Whether Hon HUI Chi-fung admitted openly that he had browsed the information contained in the Mobile Phone of the female officer of the Security Bureau and recorded the information therein "by his own means"

4.24 IC notes from i-CABLE's footage that Hon HUI Chi-fung told the press on 25 April 2018 that he found a large amount of Members' personal data in the Mobile Phone, including records of their movements in and out of the LegCo Complex and its conference rooms during meetings in the past three months (including time, specific locations, whether Members were present, etc.). Mr HUI also told the press that the Mobile Phone contained some personal data of all LegCo Members.⁸⁸

⁸⁵ Paragraph 3.13 of Chapter 3.

⁸⁶ Paragraph 3.22 of Chapter 3.

⁸⁷ Paragraphs 3.6 and 3.7 of Chapter 3.

⁸⁸ Paragraph 3.19 of Chapter 3.

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4.25 IC notes that Hon HUI Chi-fung was asked at RTHK's interview whether he had seen any personal information of Ms LEUNG Ngok-sze in the Mobile Phone which was unrelated to LegCo. Mr HUI replied that he had focused on seeing whether there was any personal data about him. He said that he had also seen the information about the whereabouts of other Members at the same time as such information was saved together with his in the same file.⁸⁹

4.26 IC also notes that during RTHK's interview, Hon HUI Chi-fung was asked whether he had downloaded the information which he considered to have infringed upon his privacy from the Mobile Phone, or just memorized it. Mr HUI replied that he had recorded it by his own means and he was going to pass such information to the Privacy Commissioner for Personal Data.⁹⁰

4.27 Based on the above, IC considers that the fourth fact has been established: Hon HUI Chi-fung admitted openly that he had browsed the information contained in the Mobile Phone of the female officer of the Security Bureau and recorded the information therein "by his own means".

Fifth fact to be established — Whether the Mobile Phone was provided by the Government, and whether it might contain sensitive internal information of the Government

4.28 According to the evidence given by Mr Daniel LIU, Ms LEUNG Ngok-sze had told him that the Mobile Phone grabbed by Hon HUI Chi-fung was provided by the Government. Mr Mark FU Chuen-fu also told IC at its hearing that, when Ms LEUNG first told him that the Mobile Phone had been grabbed, she said that the Mobile Phone belonged to the Government. According to Mr FU, his colleagues were each issued a mobile phone in the morning on the day they worked, and the mobile phone was assigned in a way that each officer would not necessarily use the same mobile phone he or she had last used.⁹¹

⁸⁹ Paragraph 3.22 of Chapter 3.

⁹⁰ Paragraph 3.24 of Chapter 3.

⁹¹ Paragraph 3.17 of Chapter 3.

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4.29 IC has considered whether the Mobile Phone grabbed by Hon HUI Chi-fung contained internal information of the Government. According to Mr Mark FU Chuen-fu, he had asked the male officer of THB mentioned in paragraph 3.6 above, who was an information technology officer, about the functions of the Mobile Phone and what it could access. The male officer of THB said that the Mobile Phone could access the Google Spreadsheet. Mr FU then asked whether the access right of the Mobile Phone could be removed. As the male officer replied in the negative, Mr FU asked him to delete the spreadsheet. Mr FU also told IC that the Mobile Phone did not have email or WhatsApp functions.⁹²

4.30 In response to IC's enquiries, Mr Mark FU Chuen-fu said that the information on the Google Spreadsheet was about the locations of Members, including whether they were inside the conference rooms of the LegCo Complex, as known to his colleagues. To his understanding, the Mobile Phone should be able to access certain files on their Google Drive besides the Google Spreadsheet, but he was not sure about the details of those other files.⁹³ In response to IC's further enquiries, Mr FU said that the Government did not make the information on the Google Spreadsheet available for public access and had no intention to do so.⁹⁴ In view of the above, IC considers that the Mobile Phone contained internal information of the Government.

4.31 IC has further discussed whether the Mobile Phone contained sensitive information and members had different views. Some considered that as the information was only about the whereabouts of Members in the LegCo Complex, little sensitivity should be involved. Some considered it difficult to draw conclusion on this point without looking at the actual information in the Mobile Phone. On the other hand, some considered that there was no need for IC to prove that the information contained in the Mobile Phone was actually "sensitive" or not, as the fifth fact to be established is only concerned with whether the Mobile Phone "might" contain sensitive internal information of the Government.

4.32 Based on the above, IC considers that the fifth fact has been established: the Mobile Phone was provided by the Government and

⁹² Paragraph 3.18 of Chapter 3.

⁹³ Paragraph 3.20 of Chapter 3.

⁹⁴ Paragraph 3.21 of Chapter 3.

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contained internal information of the Government. Although there is no direct evidence to establish that the information is indeed sensitive information, IC is of the view that the Mobile Phone might contain sensitive internal information of the Government.

Sixth fact to be established — Whether the acts of Hon HUI Chi-fung were acts of ramming the female officer of the Security Bureau

4.33 Referring to the first fact in paragraphs 4.3 to 4.9 above, IC has established that though Ms LEUNG Ngok-sze had strived to protect the Mobile Phone, Hon HUI Chi-fung grabbed it with force and against her will.⁹⁵ As mentioned in paragraph 4.7 above, Mr HUI had told the press during the media interview on 25 April 2018 (in English) that *"I think it's not correct when I don't have her consent to grab the phone and to look at what's inside, and so I understand that she's just a staff member of the Government, and I feel sorry for such an act"*. Later in that interview, he said that without the consent of Ms LEUNG, he *"grabbed the phone and looked inside, and this is not a correct way of doing things"* (in English).⁹⁶

4.34 IC agrees that acts of ramming could occur with or without the element of intent. When one rams into another person, he or she might do it intentionally or by accident. Based on the established facts mentioned above, it was Hon HUI Chi-fung who approached Ms LEUNG Ngok-sze in the four-lift lobby, grabbed Ms LEUNG's paper and the Mobile Phone in her hand against her will, ran away from Ms LEUNG who tried to get the Mobile Phone back, and hid himself in the toilet to browse the information on the Mobile Phone for more than 10 minutes. IC therefore considers that the acts of Mr HUI were intentional and with force. IC considers that the sixth fact has been established: the acts of Mr HUI were acts of ramming the female officer of the Security Bureau. IC is of the view that his acts were in fact more serious than acts of ramming as stated in the sixth fact.

⁹⁵ Paragraph 3.10 of Chapter 3.

⁹⁶ Paragraph 3.25 of Chapter 3.

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**Whether the facts as established constitute grounds for the censure of
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4.35 On the basis of the established facts mentioned above and in accordance with RoP 73A(2), IC needs to give its views on whether or not the facts as established constitute grounds for the censure of Hon HUI Chi-fung. In order to arrive at that conclusion, IC needs to consider whether the acts of Mr HUI as established amount to misbehaviour under BL 79(7).

"Misbehaviour" under Article 79(7) of the Basic Law

4.36 IC notes that "misbehaviour" is not defined in BL 79(7), nor is it defined in any relevant legislation or RoP. IC also notes that the issue of "misbehaviour" was considered by IC-CCT. IC-CCT was of the view that the disqualification on account of "misbehaviour" under BL 79(7) should be distinguished from the disqualification under BL 79(6)⁹⁷ in that this term should not include the criminal offence under BL 79(6) committed by a Member, and the term "misbehaviour" should also be distinguished from the misconduct under RoP 81(2), 85 and 45(2).⁹⁸

4.37 IC also notes that the issue of what behaviour should be regarded as falling within the meaning of "misbehaviour" under BL 79(7) was considered by the Committee on Rules of Procedure of LegCo ("CRoP") in 1999 and IC-KNW. CRoP's view then was that it would be more appropriate for the Council of the day to make a decision on the kinds of behaviour which would be regarded as "misbehaviour". IC-KNW considered that it was by no means easy to formulate clear and explicit criteria for defining "misbehaviour". It further observed that BL 79(7)

⁹⁷ In accordance with BL 79(6), when a member of LegCo is convicted and sentenced to imprisonment for one month or more for a criminal offence and is relieved of his or her duties by a motion passed by two-thirds of the members of LegCo present, he or she is no longer qualified for the office.

⁹⁸ The misconduct under RoP 81(2), 85 and 45(2) refers respectively to Members' premature publication of evidence, improper handling of their interests, and grossly disorderly conduct committed at Council or committee meetings; and such improper handling of interests includes failure to comply with RoP 83 (Registration of Interests), 83A (Personal Pecuniary Interest to be Disclosed), 83AA (Claims for Reimbursement of Operating Expenses or Applications for Advance of Operating Funds) or 84(1) or (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest).

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has not explicitly stipulated that "misbehaviour" should cover only the conduct of Members in the discharge of their duties as Members.

4.38 IC understands that the mechanism under BL 79(7) entails potentially the most serious consequence to a Member in that the Member will be disqualified from the office if he or she is censured by a vote of two-thirds of the Members present. BL 79(7) does not provide for any lesser penalty if the seriousness of the Member's misbehaviour is not considered by LegCo as reaching the level as to warrant disqualification. IC considers that this "all or nothing" dichotomy is not the most desirable way of handling Members' misbehaviour of various degrees of severity. However, it is precisely because of the "all or nothing" outcome that IC has to exercise great prudence in forming its views on whether Hon HUI Chi-fung's acts amount to misbehaviour under BL 79(7).

Whether the acts of Hon HUI Chi-fung as established amount to misbehaviour under Article 79(7) of the Basic Law

4.39 In the absence of the definition of "misbehaviour" under BL 79(7), IC needs to form its views on whether the acts of Hon HUI Chi-fung as established amount to misbehaviour under BL 79(7). In doing so, IC considers it very useful to base its views on the facts established above as well as whether the following allegations in the censure motion are substantiated:

- (a) Mr HUI's acts are unacceptable, even when the perpetrator is an ordinary citizen;
- (b) Mr HUI showed no respect for public officers, acted violently and seriously infringed upon the privacy of the female officer of the Security Bureau; and
- (c) Mr HUI failed to fulfil the public's expectation of a LegCo Member and tarnished LegCo's reputation.

Whether Hon HUI Chi-fung's acts are unacceptable, even when the perpetrator is an ordinary citizen

4.40 IC considers that the facts established above have clearly shown that the acts of Hon HUI Chi-fung in grabbing the paper and the Mobile Phone, which Ms LEUNG Ngok-sze (a public officer performing official duties) was holding against her will are intentional and with force. He

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then, without the consent of Ms LEUNG, browsed the information contained in the Mobile Phone (which did not belong to him) for about 10 minutes and recorded the information by his own means. IC considers it self-evident that such acts are unacceptable wherever they take place and whether they are committed by a Member or an ordinary citizen.

4.41 Based on the above, IC is of the view that the allegation that Hon HUI Chi-fung's acts are unacceptable, even when the perpetrator is an ordinary citizen, has been substantiated.

Whether Hon HUI Chi-fung showed no respect for public officers, acted violently and seriously infringed upon the privacy of the female officer of the Security Bureau

4.42 According to paragraphs 4.28, 4.30 and 4.32 above, the Mobile Phone of Ms LEUNG Ngok-size was provided by the Government and contained internal information of the Government, which might or might not be sensitive. However, according to Mr Mark FU Chuen-fu as mentioned in paragraph 4.28 above, his colleagues were each issued a mobile phone in the morning on the day they worked, and the mobile phone was assigned in a way that each officer would not necessarily use the same mobile phone he or she last used.⁹⁹ Thus, there is no evidence to suggest that the Mobile Phone contained any personal information of Ms LEUNG. In this connection, IC agrees that there is no concrete evidence to substantiate that Hon HUI Chi-fung had infringed upon Ms LEUNG's privacy.

4.43 IC has considered whether Hon HUI Chi-fung showed no respect for public officers. A member holds the view that, unlike an act of violence or infringement of privacy which could be observed, it is a subjective judgment to say whether one has shown respect to another person or not. However, IC agrees that one can hardly say that a person shows respect to another person to whom he or she used verbal or physical violence according to the generally held moral standard. Furthermore, even if one dislikes the duties performed by a public officer, this could not rationalize his or her acts of violence against the public officer concerned in the circumstances.

⁹⁹ Paragraph 3.17 of Chapter 3.

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4.44 Based on the above (especially the established facts), IC considers that the allegation that Hon HUI Chi-fung acted violently and showed no respect to a public officer has been substantiated and, in fact, "showing no respect" is too mild an allegation.

Whether Hon HUI Chi-fung failed to fulfil the public's expectation of a Legislative Council Member and tarnished the Legislative Council's reputation

4.45 In considering whether this allegation is substantiated, IC considers it useful to make reference to the "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such" (**Appendix 16**) ("the Advisory Guidelines"),¹⁰⁰ which have been issued to all Members at the beginning of each term since 2009. The Advisory Guidelines clearly state that "*a Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council*", and "*should conduct himself in such a way as not to place himself in a position which may be contrary to the generally assumed standard of conduct expected of a Member of the Council*".¹⁰¹

4.46 IC considers that as it has been substantiated in paragraph 4.41 above that Hon HUI Chi-fung's acts are unacceptable, even when the perpetrator is an ordinary citizen, it is a logical inference that such acts would certainly be unacceptable to members of the public even if they are committed outside the LegCo Complex. It follows that nobody would expect that his or her mobile phone would be grabbed in a place as highly regarded as the LegCo Complex, nor would anyone expect that an honourable person such as a LegCo Member would grab another's phone against his or her will. In the light of the Advisory Guidelines as stated above, IC considers that Mr HUI's acts have brought discredit upon LegCo, and he has conducted himself in a way that has placed himself in a position which may be contrary to the generally assumed standard of conduct expected of a LegCo Member.

¹⁰⁰ The Advisory Guidelines are issued by the Committee on Members' Interests under RoP 73(1)(d) to all Members (and published on the LegCo website). The Advisory Guidelines concern how Members should handle their interests and the standard of behaviour expected of Members.

¹⁰¹ Paragraphs 1 and 2 of the Advisory Guidelines (Appendix 16).

**Report of the Legislative Council Investigation Committee established under
Rule 49B(2A) of the Rules of Procedure in respect of the motion
to censure Hon HUI Chi-fung**

4.47 Based on the above, IC is of the view that the allegation that Hon HUI Chi-fung failed to fulfil the public's expectation of a LegCo Member and tarnished LegCo's reputation has been substantiated.

Whether the acts of Hon HUI Chi-fung as established amount to misbehaviour under Article 79(7) of the Basic Law and whether the facts as established constitute grounds for the censure of Mr HUI

4.48 By virtue of BL 79(7), a Member may be censured for misbehaviour. IC has found that the material parts of the allegations in the censure motion have been substantiated and the acts of Hon HUI Chi-fung as established amount to misbehaviour under BL 79(7). In IC's view, Mr HUI's acts have brought discredit upon LegCo, and he has conducted himself in a way that has placed himself in a position which may be contrary to the generally assumed standard of conduct expected of a LegCo Member. IC comes to the view that the facts stated in the Schedule to the censure motion as established constitute grounds for the censure of Mr HUI.