

Legislative Council

LC Paper No. LS 20/98-99

Information Paper for the House Committee Meeting of the Legislative Council on 24 July 1998

Legal Implications of the Inquiry Proceedings by the Commission of Inquiry on the Privileges and Immunities of Members

Background

On 21 July 1998, the Chief Executive in Council appointed a Commission of Inquiry ("the Commission") under the Commissions of Inquiry Ordinance (Cap. 86) ("the CIO") to inquire into the operation of the new Hong Kong International Airport. The terms of reference of the Commission are as follows :

- a. To examine the planning and preparation for the opening of the new airport including the adequacy of communication and coordination between all interested parties.
- b. To examine the decision to open the new airport on 6 July 1998 and the extent to which it was ready to begin operation on that date.
- c. To examine the operation of the new airport since it opened on 6 July 1998 (including but not limited to flight information display system, franchised air cargo services, ramp handling, baggage handling and air side security) and to identify the roles of the various parties involved.
- d. To identify problems encountered in the operation of the new airport and to establish their causes and where the responsibility for each of them lies.

It has also been specified that the terms of reference do not include matters to do with civil liability or quantification of loss or damage.

2. The appointment of the Commission, with its inquiry proceeding being deemed to be judicial proceeding, has generated interest among some Members as to the legal implications for the inquiry to be carried out by the proposed LegCo Select Committee (Appendix 1).

3. The purposes of this paper are to explain :

- a. The nature of the inquiry proceeding to be conducted by the Commission under the CIO and legal issues related to such proceeding.
- b. Privileges and immunities of members of a LegCo Select Committee.
- c. Privileges of witnesses appearing before a LegCo Select Committee under a summons.

Inquiry proceeding of the Commission

4. Section 4 of the CIO provides for the powers of the Commission (Appendix 2). It empowers the Commission, among other things, to summon any person to give evidence on oath. Section 11 of the CIO provides that every inquiry held under the Ordinance shall be deemed to be a judicial proceeding. It further provides that any conduct which would constitute contempt of the Court of First Instance or of a judge, if it were committed towards the Court of First Instance or a judge as the case may be, shall be a contempt of the Commission and punished by a judge of the Court of First Instance as a contempt of the Court of First Instance (section 11(2)). The legal effect of section 11(2) is to apply the common law offence of contempt of court to a Commission.

5. In general terms, words spoken or otherwise published, or acts done, outside court which are intended or likely to interfere with or obstruct the fair administration of justice are punishable as criminal contempts of court. The commonest examples of such contempts are (a) publications which are intended or likely to prejudice the fair trial or conduct of criminal or civil proceedings; (b) publications which prejudge issues in pending proceedings; (c) publications which scandalise, or otherwise lower the authority of, the court; (d) acts which interfere with or obstruct persons having duties to discharge in a court of justice; (e) acts which interfere with persons over whom the court exercises a special jurisdiction; (f) acts in abuse of the process of the court; (g) acts in breach of duty by persons officially connected with the court or its process: paragraph 7 of Volume 9 of Halsbury's Laws of England (4th Edition).

6. In addition to the common law offence of contempt of court, section 8 of the CIO provides for certain conducts to be contempt offences which may be dealt with by a Commission summarily. For example, it makes it an offence punishable with fine and imprisonment for a person who fails without reasonable excuse to attend at the specified time and place before the Commission, refuses to answer question put to him by the Commission, wilfully interrupts the proceedings of the Commission.

Privileges and Immunities of Members of a LegCo Select Committee

7. Section 3 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the LegCo (P&P) 0") provides that freedom of speech and debate in the proceedings before a LegCo committee (including a select committee) shall not be liable to be questioned in any court or place outside the Council (Appendix 3). Section 4 of the LegCo (P&P) 0 provides that no civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to, a committee (including a select committee).

8. These immunities are provided so that Members may discharge their duties as legislators without fear of legal liabilities. Because of the breadth of these immunities, a convention, normally called sub judice rule, has developed as a self-imposed restraint by legislators. In brief, this rule means when a matter is under the consideration of a court of law awaiting a decision or verdict, it should not be discussed or criticised. This is not an absolute rule in that it only applies if the discussion or reference to the case would prejudice it. In the Rules of Procedure of the LegCo, the sub judice rule is reflected in Rules 25(1)(g) and 41(2) (Appendix 4).

9. In addition to the Rules of Procedure, previous Select Committees of the Legislative Council had decided that :

a. During open hearings, members should only ask question for the purpose of establishing facts in connection with the inquiry. Members should not make comments or statements during these sessions.

b. All Members, including non-select committee members, should refrain from making

comments outside the proceedings.

The rationale for these decisions was mainly for the enhancement of credibility and integrity of the inquiry proceedings and to ensure fairness to parties concerned with the inquiry. These decisions, if followed, may have the effect of not exposing Members to the risk of legal liabilities arising from their activities outside of proceedings of the Council or committee.

Privileges of witnesses appearing before a LegCo Select Committee under a summons

10. Section 16(1) of the LegCo (P&P) O requires a person being lawfully ordered to attend a committee (including a select committee) to give evidence, unless such evidence is of a private nature and does not affect the subject of inquiry, notwithstanding that in doing so it may tend to incriminate that person or his spouse (Appendix 5). Section 16(2) provides that the evidence given under subsection (1) to be inadmissible in any proceedings for an offence or for the recovery of a penalty against such person or his spouse, unless such evidence amounts to perjury. Therefore, it will not be an excuse under section 16, for a witness appearing before a LegCo select committee under a summons to refuse to give evidence by saying that the evidence he is going to give is sub judice and hence may be punishable with contempt under section 8 or 11 of the CIO. Under section 17 of the LegCo (P&P) O, any person who disobeys a lawful order of a select committee to attend or produce documentary evidence or refuses to answer lawful and relevant questions commits an offence and is liable to a fine of \$10,000 and to imprisonment for 12 months. Under section 26 of the same Ordinance, no prosecution under the Ordinance shall be instituted except with the consent of the Secretary for Justice.

Encl

Prepared by

Legal Service Division
Legislative Council Secretariat
24 July 1998

1998年7月29日（星期三）
立法會會議席上
劉江華議員就「委任專責委員會」提出的決議案

決議案措辭

“議決委任一個專責委員會調查赤鱘角新香港國際機場自1998年7月6日開始運作時所出現的問題的原委及有關事宜；委員會展開調查的日期，由委員會經考慮行政長官委派的調查新機場運作的小組所作出的調查報告後訂定，或為本會議決委任該委員會的日期起計三個月後（以較早者為準）；而該委員會在執行其職務時獲授權根據《立法局（權力及特權）條例》（第382章）第9(2)條行使該條例第9(1)條所賦予的權力。”

**Resolution on "Appointment of Select Committee"
to be moved by Hon LAU Kong-wah
at the Legislative Council meeting on Wednesday, 29 July 1998**

Wording of resolution

"Resolved that a select committee be appointed to inquire into the circumstances leading to the problems surrounding the commencement of the operation of the new Hong Kong International Airport at Chek Lap Kok since 6 July 1998, and related issues, with the date for commencement of inquiry being either the date as determined by the committee after it has considered the investigation report of the team appointed by the Chief Executive to investigate the operations of the new airport, or upon the lapse of three months after the date when this resolution was passed by this Council, whichever is the earlier; and that in the performance of its duties the committee be authorised under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance."

1998年7月29日（星期三）
立法會會議席上
李永達議員對劉江華議員
就“委任專責委員會”提出的決議案作出的修訂

刪除“委員會展開調查的日期，由委員會經考慮行政長官委派的調查新機場運作的小組所作出的調查報告後訂定，或為本會議決委任該委員會的日期起計三個月後（以較早者為準）；”。

**Hon LEE Wing-tat's amendment to
Hon LAU Kong-wah's resolution
on "Appointment of Select Committee"
at the Legislative Council meeting on Wednesday, 29 July 1998**

To delete ", with the date for commencement of inquiry being either the date as determined by the committee after it has considered the investigation report of the team appointed by the Chief Executive to investigate the operations of the new airport, or upon the lapse of three months after the date when this resolution was passed by this Council, whichever is the earlier".

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CHAPTER 86

COMMISSIONS OF INQUIRY

To provide for commissions of inquiry and for purposes connected therewith.

[12 July 1968].

1. Short title

This Ordinance may be cited as the Commissions of Inquiry Ordinance.

2. Appointment of Commission *Ref. Executive 2/8*

(1) The ~~Governor~~ in Council may appoint one or more Commissioners hereinafter referred to as a Commission) to inquire into the conduct or management of any public body, the conduct of any public officer or into any matter whatsoever which is, in his opinion, of public importance.

(2) When appointing a Commission under subsection (1) the ~~Governor~~ in Council may—

- (a) nominate a Chairman if 2 or more Commissioners are appointed, and confer on such Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question arising during the proceedings;
- (b) fix the quorum at meetings thereof if 2 or more Commissioners are appointed;
- (c) appoint a secretary to the Commission, assistant secretaries and other staff;
- (d) appoint a legal adviser to the Commission;
- (e) appoint additional Commissioners or persons in substitution for Commissioners who may die, resign, refuse to act, or become incapable of acting.

(3) Where a new Commissioner has been appointed under subsection (2), it shall not be necessary for any evidence which may have been taken before the Commission prior to such appointment to be retaken.

第86章

調查委員會條例

本條例旨在就調查委員會及相關目的訂定條文。

[1968年7月12日]

1. 簡稱

本條例可引稱為《調查委員會條例》。

2. 調查委員會的委任 *行政局在行政會議*

(1) ~~總督~~會同行政局可委任一名或多於一名委員(以下稱為委員會)，調查任何公共機構的經營或管理、任何公職人員的行為或其認為與公眾有重大關係的任何事宜。

(2) ~~總督~~會同行政局根據第(1)款委任委員會時——

- (a) 如委任2名或多於2名的委員，可指定一人為主席，並授權主席於委員會在任何情況下對調查程序中出現的任何問題表示贊成及反對的票數相等時，可作第二次投票或投決定票；
- (b) 如委任2名或多於2名的委員，可訂定委員會會議的法定人數；
- (c) 可委任委員會秘書一名、助理秘書及其他職員；
- (d) 可委任一名委員會法律顧問；
- (e) 可委任額外的委員或人士，以替代去世、辭職、拒絕行事或無能力行事的委員。

(3) 凡有新委員根據第(2)款獲委任，於該項委任前已在委員會席前錄取的證據，無須再次錄取。

(4) The appointment of a Commission shall be published in the Gazette.

3. Directions to Commission

The Governor in Council may specify the subject of the inquiry and may direct—

- (a) when and where the inquiry is to be held, to whom and by what time a report thereon is to be rendered, and may from time to time enlarge the time within which such inquiry is to be held and such report rendered;
- (b) without prejudice to the powers of the Commission to receive and consider such other evidence as it may think fit, what material should be received and considered by the Commission;
- (c) what matters should be outside the terms of reference of the Commission;
- (d) that the evidence of certain persons or classes of persons be taken, either orally or in writing, and that certain documents or classes of documents be inspected by the Commission;
- (e) without prejudice to the powers conferred upon the Commission by section 4(1)(i), that the holding of the inquiry or parts thereof be in camera; (*Amended 49 of 1976 s. 2*)
- (f) that the Commissioners take the oath or affirmation in the form set out in the Schedule; and (*See Form 1*)
- (g) that the Commission shall have and exercise the powers conferred by section 9 to punish all or any of the contempts specified in section 8.

4. Powers of Commission

(1) The Commission may, for the purpose of complying with the directions issued under section 3 and for conducting the inquiry generally—

- (a) receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible as evidence in civil or criminal proceedings;
- (b) determine the manner in which such material shall be received and what persons or class of persons shall be permitted or required to give evidence:

Provided that the contents of any document submitted to the Commission, not being of a scurrilous or offensive nature, shall be considered by the Commission, notwithstanding that the person submitting such document is, in addition, permitted or required to give evidence;

(4) 委員會的委任，須在憲報公布。

3. 向委員會發出指示

總督會同行政局可指明調查標的，並可就以下事項發出指示——

- (a) 調查研訊於何時何地進行，有關報告於何時之前向何人提交，並可不時延展進行調查研訊及提交報告的期限；
- (b) 在不損害委員會收取及考慮其認為適當的其他證據的權力的原則下，委員會應收取及考慮何等資料；
- (c) 何等事宜應不屬委員會職權範圍；
- (d) 某些人士或某些類別人士的證據以口頭或書面方式錄取，以及某些文件或某些類別文件由委員會查閱；
- (e) 在不損害第4(1)(i)條授予委員會的權力的原則下，調查研訊或部分調查研訊以非公開形式進行； (*由1976年第49號第2條修訂*)
- (f) 委員以附表所列表格的格式作出宗教式或非宗教式宣誓；及 (*見表格1*)
- (g) 委員會具有並須行使第9條授予的權力，就第8條指明的所有或任何一項藐視罪施加懲罰。

4. 委員會的權力

(1) 為遵從根據第3條發出的指示及為在一般情況下進行調查研訊，委員會可——

- (a) 收取及考慮以口頭證據、書面陳述、文件或以其他方式提供的任何資料，即使該等資料不會在民事或刑事法律程序中被接納為證據；
- (b) 決定收取該等資料的方式，以及何人或何等類別人士須獲允許或必須作證；

但任何呈交委員會的文件的內容，如性質並非粗鄙或令人反感者，委員會須予以考慮，即使呈交該文件的人除呈交文件外亦獲允許或必須作證；

- (c) require any person who wishes to give evidence before the Commission to submit a summary in writing of the evidence proposed to be given;
- (d) summon any person in the form set out in the Schedule to attend to give evidence or to produce any article or document; (See Form 2)
- (e) issue warrants of arrest to compel the attendance of any person not complying with a summons issued under paragraph (d);
- (f) administer oaths and affirmations;
- (g) examine on oath, affirmation or otherwise any person attending before the Commission and require such person to answer all questions put by or with the consent of the Commission and produce any article or document in his possession or under his control;
- (h) award any person attending before the Commission such sum as in the opinion of the Commission represents the loss to that person occasioned by the time spent in such attendance;
- (i) hold in camera, or exclude any person (including any person implicated or concerned therein and his legal representatives) from, the whole or any part of the inquiry:
 - Provided that any legal representative entitled to appear by virtue of the provisions of section 6-
 - (i) may only be excluded from such part of the inquiry as is held in camera;
 - (ii) shall not in any event be so excluded while his client is giving evidence;
- (j) prohibit the publication to or disclosure by any person attending before the Commission of all or part of the material received by the Commission;
- (k) enter and inspect any premises;
- (l) issue warrants for the searching of premises and the seizure therein of any article or document or any class of articles or documents specified in the warrant (as being likely to be of evidential value for the purposes of the inquiry);
- (m) determine the procedure to be followed at the inquiry and the form of any summons, warrant, or other document made or issued by the Commission;
- (ma) where the Commission has been appointed to inquire into the conduct or management of a public body or any other body of persons, corporate or unincorporate, then, subject to subsection (3), appoint, on such terms as to remuneration as the Financial Secretary may approve, one or more inspectors-

- (c) 要求任何意欲在委員會席前作證的人呈交有關擬提供的證據的書面摘要；
- (d) 以附表所列表格的格式傳召任何人出席作證或出示任何物品或文件；（見表格 2）
- (e) 發出逮捕令，以強迫任何不遵從根據 (d) 段發出的傳票的人出席；
- (f) 監誓；
- (g) 對到委員會席前的任何人，進行經宗教式或非宗教式宣誓後或不經宣誓的訊問並要求該人回答由委員會提出或經委員會同意而提出的所有問題，和要求該人出示其管有或控制的任何物品或文件；
- (h) 判給任何到委員會席前的人一筆款項，該款項為委員會認為代表該人因到委員會席前所花時間而蒙受的損失；
- (i) 以非公開形式進行全部或部分調查研訊，或拒絕任何人（包括任何受牽連或牽涉在內的人及其法律代表）出席全部或部分調查研訊：
 - 但憑藉第 6 條的條文有權出席的任何法律代表——
 - (i) 只可被拒出席調查研訊以非公開形式進行的部分；
 - (ii) 在任何情況下，不得在其當事人作證時被拒出席；
- (j) 禁止向任何到委員會席前的人發表或禁止任何該等人士披露委員會所收取的全部或部分資料；
- (k) 進入及視察任何處所；
- (l) 發出手令以搜查處所，並在其內檢取手令所指明的任何物品或文件或任何類別的物品或文件（就調查研訊而言，該等物品或文件相當可能具有可作為證據的價值）；
- (m) 決定進行調查研訊時須依循的程序，及委員會作出或發出的任何傳票、手令或其他文件的格式；
- (ma) 在獲委調查屬法團或非屬法團的任何公共機構或任何其他團體的經營或管理時，在符合第(3)款的規定下，按財政司批准的薪酬條款，委任一名或多於一名的審查員——

Chief Executive

- (i) to inspect all the books and documents of or relating to the affairs of such body; and
- (ii) if the Commission is satisfied that such body has, or has had, an association with any other public body or body of persons, corporate or unincorporate, which is or may be relevant to the subject of the Commission's inquiry, to inspect all the books and documents of or relating to the affairs of such other body, and to report thereon to the Commission in such manner and within such period or further period as the Commission may direct; and (Added 49 of 1976 s. 3)
- (n) exercise such other powers as may be necessary for the purposes of the inquiry.

(2) Without prejudice to the powers conferred on a Commission by subsection (1)(ma), where the Commission consists of one Commissioner he may himself, and where the Commission consists of more than one Commissioner one or more of the Commissioners, selected by the Commission may, subject to subsection (3), inspect the books and documents referred to in subsection (1)(ma), and in so doing he or they shall, for the purposes of this Ordinance, be deemed to have been duly appointed an inspector or inspectors, as the case may be, under subsection (1)(ma). (Added 49 of 1976 s. 3)

(3) The power to appoint an inspector or inspectors under subsection (1), and the powers conferred by subsection (2), shall not be exercised by a Commission or Commissioner without the consent of the Governor in Council, and in giving such consent the Governor in Council may limit the power of inspection to inspection only of the books and documents referred to in subsection (1)(ma)(i) or, where consent is given in relation to the inspection of books and documents referred to in subsection (1)(ma)(ii), may limit the power of inspection to inspection only of the books and documents of or relating to the affairs of a particular public body or other body of persons, corporate or unincorporate. (Added 49 of 1976 s. 3)

5. Conduct of inquiry

Without derogating from the generality of the power conferred under section 4(1)(m) the Commission may— (Amended 49 of 1976 s. 4)

- (a) order the manner in which any person shall give his oral evidence and may specify that this shall be by way of cross-examination without any examination-in-chief, and
- (b) determine who may address the Commission, on what matters and in what order.

行政監督局行政會議

- (i) 查閱該機構或團體的所有簿冊及文件或與該機構或團體事務有關的所有簿冊及文件；及
- (ii) 如委員會信納該機構或團體與或曾與任何其他屬法團或非屬法團的公共機構或團體有聯繫，而該聯繫與委員會調查標的有關連或可能有關連，則查閱該另一機構或團體的所有簿冊及文件或與該另一機構或團體事務有關的所有簿冊及文件，
- 並以委員會指示的方式及在委員會指示的期間或延展期間內，就此向委員會作出報告；及 (由 1976 年第 49 號第 3 條增補)

(n) 行使為調查研訊目的所需的其他權力。

(2) 在不損害第(1)(ma)款授予委員會的權力的原則下，凡委員會只有一名委員，在符合第(3)款的規定下，該委員本人可查閱第(1)(ma)款所提述的簿冊及文件；凡委員會有多於一名的委員，在符合第(3)款的規定下，其中獲委員會揀選的一名或多於一名的委員可查閱該等簿冊及文件；就本條例而言，如此進行查閱的該委員或該等委員，須當作為已根據第(1)(ma)款妥為委任的審查員。(由 1976 年第 49 號第 3 條增補)

(3) 委員會或委員未經總督會同行政局同意，不得行使根據第(1)款委任審查員的權力及第(2)款授予的權力；總督會同行政局給予同意時，可規定查閱權力只限於查閱第(1)(ma)(i)款所提述的簿冊及文件；總督會同行政局如同意查閱第(1)(ma)(ii)款所提述的簿冊及文件，則可規定查閱權力只限於查閱屬法團或非屬法團的某公共機構或其他團體的簿冊及文件或與該機構或團體事務有關的簿冊及文件。(由 1976 年第 49 號第 3 條增補)

5. 調查研訊的進行

在不減損第 4(1)(m) 條授予的權力的概括性的原則下，委員會可—— (由 1976 年第 49 號第 4 條修訂)

- (a) 就任何人以口頭作證時須採用的方式作出命令，並可指明該人無須經接受訊問即可用接受盤問方式作證，及
- (b) 決定何人可向委員會陳詞、就何事陳詞及各人陳詞的次序。

6. Right to representation

(1) Any person whose conduct is the subject of an inquiry, or who is implicated or concerned in the subject matter of the inquiry, shall, subject to the provisions of section 4, be entitled to be represented by a barrister or solicitor at the inquiry.

(2) For the purpose of subsection (1), the Commission shall determine whether the conduct of any person is the subject of the inquiry or whether a person is in any way implicated or concerned in the subject matter of the inquiry.

(3) ^{Chief Executive} The ~~Governor~~, any Government department and any public officer shall, notwithstanding the provisions of subsections (1) and (2) but subject to the provisions of section 4, be entitled to be represented at the inquiry by a legal officer, or by a barrister or solicitor who may—

- (a) address the Commission on any matter on which he is so instructed by the Chief Secretary or by the Attorney General, and (*Amended L.N. 226 of 1976*)
- (b) produce evidence in such form as the Commission may permit on any matter.

(4) The Commission may appoint a legal officer nominated by the Attorney General, a barrister or a solicitor to act as counsel for the Commission.

7. Use of evidence in civil and criminal proceedings

Evidence given by any person before the Commission shall not be admissible against him in any civil or criminal proceedings by or against him, except where he is charged with any offence under Part V (Perjury) of the Crimes Ordinance (Cap. 200) or is proceeded against under section 8 or 9.

7A. Production of documents, and evidence, to Commission's inspectors

(1) It shall be the duty of all officers and agents of a public body or other body of persons to produce to an inspector appointed under section 4(1)(ma) to inspect its books and documents, all books and documents in their custody or power of or relating to such body's affairs or the affairs of any other body of persons the books and documents of which the inspector is appointed under section 4(1)(ma) to inspect, and otherwise to give to the inspector all assistance that they are reasonably able to give.

6. 由他人代表的權利

(1) 任何人如其行為是調查標的，或受牽連或牽涉在調查標的內，則除第 4 條另有規定外，該人有權在調查研訊中由大律師或律師代表。

(2) 就第 (1) 款而言，委員會須決定某人的行為是否調查標的，或某人是否在任何方面受牽連或牽涉在調查標的內。

(3) 儘管有第 (1) 及 (2) 款的規定，但除第 4 條另有規定外，^{行政總裁} 總督、任何政府部門及任何公職人員均有權在調查研訊中由律政人員或由大律師或律師代表，該律政人員、大律師或律師並可——

- (a) 就布政司或律政司對其有所指示的任何事宜，向委員會陳詞，及 (*由 1976 年第 226 號法律公告修訂*)
- (b) 就任何事宜，以委員會允許的形式出示證據。
- (4) 委員會可委任律政司所提名的律政人員或委任一名大律師或律師作為委員會的代表律師。

7. 在民事及刑事法律程序中使用證據

任何人在委員會席前提供的證據，不得在由該人提出或針對該人提出的任何民事或刑事法律程序中，被接納為針對該人的證據，但如該人被控以《刑事罪行條例》(第 200 章) 第 V 部 (宣誓下作假證供) 所訂的任何罪行，或根據第 8 或 9 條被檢控，則屬例外。

7A. 向委員會的審查員出示文件及提供證據

(1) 公共機構或其他團體的所有高級人員及代理人，均有責任向根據第 4(1)(ma) 條獲委查閱該機構或團體的簿冊及文件的審查員，出示所有在他們保管或權力管轄下的該機構或團體或任何其他團體事務的簿冊及文件，或與該機構或團體或任何其他團體事務有關的簿冊及文件，而該等其他團體須為審查員根據第 4(1)(ma) 條獲委查閱其簿冊及文件的團體；該等人員及代理人並有責任在其他方面向審查員提供其能合理提供的一切協助。

(2) In this section, any reference to officers or to agents of a public body or other body of persons shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section "agents" (代理人) shall include the bankers and solicitors of such body and any person employed by such body as auditor, whether such person is or is not an officer of such body.

(Added 49 of 1976 s.5)

8. Contempts to be offences

- (1) Any person who-
- (a) fails without reasonable excuse to attend at the time and place specified in a summons issued under section 4;
 - (b) refuses to take an oath or make an affirmation on being required to do so under section 4;
 - (c) refuses to answer any question put by or with the consent of the Commission or to produce any article or document in his possession or under his control on being required to do so under section 4;
 - (ca) being an officer or agent of a public body or other body of persons within the meaning of section 7A-
 - (i) after the appointment of a Commission and with intent to avoid or prevent production, destroys, suppresses, defaces or makes away with any book or document that it would be his duty to produce to an inspector in the event of an inspector being appointed under section 4(1)(ma), or
 - (ii) refuses, without lawful authority or reasonable excuse, to produce any such book or document to an inspector so appointed, or
 - (iii) refuses, without lawful authority or reasonable excuse, to answer any question put to him by an inspector so appointed with respect to the affairs of such body or any other body the books and documents of which the inspector has been appointed to inspect; (Added 49 of 1976 s.6)
 - (d) wilfully interrupts the proceedings of the Commission or otherwise misbehaves during any hearing of the Commission;
 - (e) having been summoned to attend, leaves the place in which a Commission is being held without the permission of the Commission,

shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 and to imprisonment for 3 months.

- (2) Any person who-
- (a) wilfully hinders or deters any person from attending, giving evidence or producing any article or document;

(2) 在本條中，凡提述公共機構或其他團體的高級人員或代理人之處，須包括過去及現在的高級人員或代理人（視屬何情況而定），而為本條的施行，“代理人” (agents) 包括該機構或團體的銀行及律師，以及任何獲該機構或團體委聘為核數師的人，不論該人是否該機構或團體的高級人員。

(由 1976 年第 49 號第 5 條增補)

8. 藐視屬罪行

- (1) 任何人——
- (a) 無合理辯解而沒有在根據第 4 條發出的傳票所指明的時間及地點出席；
 - (b) 拒絕應根據第 4 條提出的要求而作出宗教式或非宗教式宣誓；
 - (c) 拒絕回答由委員會提出或經委員會同意而提出的任何問題，或拒絕應根據第 4 條提出的要求，出示其管有或控制的任何物品或文件；
 - (ca) 身為第 7A 條所指的公共機構或其他團體的高級人員或代理人——
 - (i) 在有委員會委出後，意圖避免出示或阻止出示在有審查員根據第 4(1)(ma) 條獲委任時他會有責任向審查員出示的任何簿冊或文件，而將該等簿冊或文件銷毀、隱藏、污損或帶走，或
 - (ii) 無合法權限或合理辯解而拒絕向獲如此委任的審查員出示任何該等簿冊或文件，或
 - (iii) 無合法權限或合理辯解而拒絕回答獲如此委任的審查員就該機構或團體或任何其他團體的事務而提出的問題，而該等其他團體須為審查員獲委查閱其簿冊及文件的團體；(由 1976 年第 49 號第 6 條增補)
 - (d) 故意中斷委員會的調查程序的進行，或在委員會的任何聆訊中有其他不當行為；
 - (e) 經被傳召出席而在未經委員會允許下離開委員會正進行研訊的地方，

即屬犯罪，一經循簡易程序定罪，可處罰款 \$1,000 及監禁 3 個月。

- (2) 任何人——
- (a) 故意妨礙或阻嚇任何人出席、作證或出示任何物品或文件；

- (b) threatens, insults or causes any loss to be suffered by any person who has attended before the Commission, on account of such attendance;
- (c) threatens, insults or causes a loss to be suffered by any Commissioner at any time on account of the performance of his duties as a Commissioner;
- (d) publishes or otherwise discloses any material which the Commission had prohibited him from publishing or disclosing;
- (e) publishes or otherwise discloses any material received by the Commission in camera,

shall be guilty of an offence and liable on conviction upon indictment to a fine of \$10,000 and to imprisonment for 1 year.

(3) It shall be a good defence in the case of a prosecution under subsection (2)(e) for the person charged to prove to the satisfaction of the court that he did not know nor had any reason for knowing that the material published or disclosed had been received by the Commission in camera.

9. Contempts dealt with by Commission

(1) The Commission may, if so empowered under section 3, deal summarily as a contempt with any offence specified in section 8 which is committed in its presence, and may impose the sentence prescribed by that section.

(2) In the case of contempts not committed in the presence of the Commission, it may, if so empowered under section 3, summon the offender to appear before it at the time and place specified in the summons, there to show cause why the offender should not be sentenced for the contempt, and may impose the sentence prescribed by section 8.

(3) The Commission may issue warrants of arrest to compel the attendance of any person not complying with a summons issued under subsection (2).

(4) Any sentence of imprisonment imposed under this section may be remitted where the Commission is of the opinion that the contempt has been purged.

(5) Any person aggrieved by any decision, order or sentence of the Commission in exercise of the powers conferred by subsection (1) or (2) may appeal to a judge of the ^{1st Court of First Instance} High Court, in the same manner as if it were an order of a magistrate in respect of which an appeal lies under section 113 of the Magistrates Ordinance (Cap. 227), in accordance with rules made by the Chief Justice.

- (b) 因某人曾到委員會席前而對他加以威脅或侮辱，或導致他蒙受任何損失；
- (c) 因任何委員執行其作為委員的職責而在任何時間對他加以威脅或侮辱，或導致他蒙受損失；
- (d) 發表或以其他方式披露委員會禁止其發表或披露的資料；
- (e) 發表或以其他方式披露委員會在非公開研訊中收取的資料，

即屬犯罪，一經循公訴程序定罪，可處罰款\$10,000及監禁1年。

(3) 在根據第(2)(e)款提出的檢控中，如被告人能提出證明，令法院信納他不知道所發表或披露的資料是委員會在非公開研訊中收取的，而他亦無任何理由知道該事實，即為好的免責辯護。

9. 由委員會處理的藐視罪

(1) 委員會如根據第3條獲賦予權力，可將在其席前所犯的第8條所指明的任何罪行作為藐視罪而循簡易程序處理，並可施加該條訂明的刑罰。

(2) 對於並非在委員會席前所犯的藐視罪，委員會如根據第3條獲賦予權力，可傳召犯罪者於傳票上指明的時間及地點到委員會席前，當場提出其不應因該藐視罪而被判處刑罰的因由，委員會亦可施加第8條訂明的刑罰。

(3) 委員會可發出逮捕令，以強迫任何不遵從根據第(2)款發出的傳票的人出席。

(4) 凡委員會認為該藐視罪已予抵償，可減免根據本條所處的監禁刑罰。

(5) 任何人因委員會在行使第(1)或(2)款所授予的權力時所作的任何決定、命令或判處而感到受屈，可按照首席大法官訂立的規則，向高等法院法官提出上訴，猶如該決定、命令或判處是根據《裁判官條例》(第227章)第113條可提出上訴的裁判官命令一樣。

人原款以此 2/20 1/20 1/20 1/20 1/20 1/20 1/20 1/20 1/20 1/20

10. Commission to have powers of judge

For the purposes of enforcing the payment of any fine imposed or giving effect to any warrant of arrest or sentence of imprisonment or for other like purposes, the Commission shall have the powers of a judge. In the exercise of such powers and for the purpose of issuing warrants, summoning persons and the exercise of other like powers the Chairman may do all necessary acts in the name of the Commission.

11. Inquiry to be a judicial proceeding *Court of First Instance 198*

(1) Every inquiry held under this Ordinance shall be deemed to be a judicial proceeding.

(2) Any conduct which would constitute contempt of the ~~High Court~~ or of a judge, if it were committed towards the ~~High Court~~ or a judge as the case may be, shall be a contempt of a Commission and may be dealt with and punished by a judge of the ~~High Court~~ as a contempt of the ~~High Court~~.

12. Protection of Commission and witnesses

(1) No Commissioner shall be liable to any suit or other proceeding for any act or thing done by him bona fide as such Commissioner:

Provided that nothing in this subsection shall be deemed to limit the power of the ~~High Court~~ to make an order of mandamus, certiorari or prohibition in relation to proceedings before a Commission.

(2) All evidence given before a Commission shall be absolutely privileged, and no witness giving such evidence shall be liable to any suit or other civil proceeding in respect thereof.

(3) A legal officer, barrister or solicitor appearing before a Commission, whether as counsel for the Commission or otherwise under or by virtue of section 6, shall be entitled to the same immunities as if he were appearing for a party in proceedings before the ~~High Court~~. (*Added 49 of 1976 s. 7*)

13. Police and bailiffs to assist Commission

Police officers and bailiffs of the court shall assist any Commission conducting an inquiry under this Ordinance for such purposes as the Commission may require and may do all such things as are necessary for the purpose of rendering such assistance.

14. Cost of inquiry

The cost of any inquiry conducted under this Ordinance, including any sums awarded under section 4(1)(h), shall be a charge on the general revenue of the Colony.

10. 委員會具有大法官的權力

為強制執行任何已施加的罰款的繳付，或為使任何逮捕令或監禁刑罰得以執行，或為其他類似目的，委員會具有大法官的權力。在行使該等權力時及為發出手令、傳召任何人及行使其他類似權力，主席可以委員會名義作出一切必要的作為。

11. 調查研訊屬司法程序 *入房法法院 198*

(1) 根據本條例進行的調查研訊，須當作為司法程序。

(2) 任何行為，假若對高等法院或大法官作出會構成藐視高等法院罪或藐視大法官罪（視屬何情況而定），即屬藐視委員會罪，可由高等法院大法官作為藐視高等法院罪處理及施加懲罰。

12. 對委員會及證人的保障

(1) 委員無須因其以委員身分真誠作出的任何作為或任何事情，而在任何訟案或其他法律程序中負上法律責任：

但本款不得當作限制高等法院就在委員會席前進行的調查程序而作出履行義務令、移審令或禁止令的權力。

(2) 在委員會席前提供的所有證據均享有絕對特權，提供該等證據的證人，無須因該等證據而在任何訟案或其他民事法律程序中負上法律責任。

(3) 到委員會席前的律政人員、大律師或律師，不論是根據或憑藉第6條以委員會的代表律師身分或以其他身分出席，其所享有的豁免權，均猶如其在高等法院席前進行的法律程序中代表其中一方出庭一樣。（由1976年第49號第7條增補）

13. 警方及執達主任須協助委員會

任何委員會根據本條例進行調查研訊時，警務人員及法院執達主任須在該委員會所要求的各方面協助委員會，並可為提供該等協助而作出一切需要的事情。

14. 調查研訊費用

根據本條例進行調查研訊的費用，包括根據第4(1)(h)條判給的款項，須由香港政府一般收入支付。

5. Protection of person publishing true account

Subject to section 8(2)(d) no person shall be liable to any civil or criminal proceedings by reason of his publishing a true account of any evidence taken in public before a Commission or of any report of a Commission published by the authority of the Governor. A Chief Executive 1999

SCHEDULE

FORM 1 [s. 3]

Form of oath or affirmation to be taken by a Commissioner

I, swear by Almighty God (solemnly promise and declare) that I will diligently inquire into the matters prescribed in the instrument appointing this Commission and will duly and faithfully execute the powers and trusts vested in me by the Commissions of Inquiry Ordinance (Chapter 86) according to the best of my knowledge and judgment.

FORM 2 [s. 4]

Summons to a witness

To A.B. [name of person summoned and his address].

You are hereby summoned to appear before the Commission appointed by His Excellency the Governor to inquire [state subject matter of inquiry] at [place] upon the day of at o'clock in the noon and to give evidence respecting such inquiry, and you are required to bring with you [specify documents, etc.]

Given under the hand of Commissioner, this day of 19.....

Signature

15. 對發表真實記載的人的保障

除第 8(2)(d) 條另有規定外，任何人均無須因其就在委員會席前公開錄取的任何證據，或就由總督授權發表的委員會報告，發表真實記載，而在任何民事或刑事法律程序中負上法律責任。

附表

表格 1 (第 3 條)

委員作出的宗教式或非宗教式宣誓的格式

本人.....，謹對全能上帝(天主)宣誓(謹鄭重承諾及聲明)，本人將盡力調查委任本委員會的文書中所訂明的事宜，並盡本人所知及所判斷，忠實執行《調查委員會條例》(第 86 章)屬於本人的權力及信託。

表格 2 (第 4 條)

傳召證人的傳票

致：A.B. (被傳召的人的姓名及其地址)。

現傳召你於.....年.....月.....日.....午.....時到(地點).....

.....在總督委任調查(述明調查標的).....的調查委員會席前，並就該項調查作證。你必須攜同(指明文件等).....出席。

由委員.....於 19.....年.....月.....日簽署發出。

簽署.....

“committee” (委員會) means—

- (a) a standing or select committee or any other committee of the Council;
- (b) a subcommittee of any committee referred to in paragraph (a);
(Replaced 11 of 1994 s. 3)

“Council” means the Legislative Council;

“journals” (議事錄) means the minutes of the Council or the official record of the votes and proceedings thereof;

“member” (議員) means a member of the Council;

“officer of the Council” (立法局人員) means the Clerk or any other officer or person acting within the precincts of the Chamber under the orders of the President and includes any police officer on duty within the precincts of the Chamber;

“precincts of the Chamber” (會議廳範圍) means the Chamber and offices of the Council and any adjacent galleries and places provided for the use or accommodation of members of the public and representatives of the press, television and radio, and subject to any exceptions made by the President under subsection (2) includes, during the whole of any day the Council or a committee is sitting, the entire building in which the Chamber is situated and any forecourt, yard, garden, enclosure or open space adjoining or appertaining to such building and used or provided for the purposes of the Council; (Amended 11 of 1994 s. 3)

“President” (主席) means the President of the Council, and includes any other member of the Council when presiding at a sitting of the Council;

“Standing Orders” (會議常規) means the Standing Orders of the Council for the time being in force.

(1A) For the purposes of the definition of “committee” in subsection (1) the reference to any other committee of the Council shall be construed as including a panel consisting only of members and paragraph (b) of that definition shall be construed and have effect accordingly. (Added 11 of 1994 s. 3)

(2) The President may, by notice published in the Gazette, order that any part of a building, forecourt, yard, garden, enclosure or open space referred to in the definition in subsection (1) of “precincts of the Chamber” shall be excluded from that definition, either generally or for a specific purpose and either temporarily or permanently.

PART II

PRIVILEGES AND IMMUNITIES

1. Freedom of speech and debate

There shall be freedom of speech and debate in the Council or proceedings before a committee, and such freedom of speech and debate shall not be liable to be questioned in any court or place outside the Council.

“委員會” (committee) 指——

- (a) 立法局的任何常務委員會、專責委員會或其他委員會；
- (b) (a) 段所提述的任何委員會的小組委員會； (由 1994 年第 11 號第 3 條代替)

“秘書” (Clerk) 指立法局秘書或任何以其代理身分行事的人； (由 1994 年第 11 號第 3 條代替)

“會議常規” (Standing Orders) 指當其時有效的立法局會議常規；

“會議廳” (Chamber) 指立法局進行會議程序的會議廳，以及其內為公眾人士與報界、電視台及電台的代表而提供的任何旁聽席及地方，包括為與立法局會議程序有關的用途而專用的任何大堂、辦事處或其他範圍；

“會議廳範圍” (precincts of the Chamber) 指會議廳及立法局辦事處及毗鄰的旁聽席以及供公眾人士與報界、電視台及電台的代表使用或用以容納他們的地方，而除主席根據第(2)款作出例外規定者外，在立法局或任何委員會舉行會議當日全部時間，此詞亦包括會議廳所座落的整座建築物，以及為立法局而使用或提供的任何與該建築物毗鄰或屬於它的前院、庭院、花園、圍場或空地； (由 1994 年第 11 號第 3 條修訂)

“議事錄” (journals) 指立法局會議紀錄或立法局表決及會議程序的正式紀錄；

“議員” (member) 指立法局議員。

(1A) 就第(1)款中“委員會”的定義而言，凡對立法局任何其他委員會的提述，須解釋為包括一個純粹由議員組成的委員小組，而該定義(b)段亦須據此解釋和具有效力。 (由 1994 年第 11 號第 3 條增補)

(2) 主席可藉憲報公告，命令將第(1)款“會議廳範圍”定義內所提述的建築物、前院、庭院、花園、圍場或空地的任何部分，不包括在該定義內；此舉可以為一般目的，或為某一特定目的，可以是臨時性，亦可以是永久性的。

第 II 部

特權及豁免權

3. 言論及辯論的自由

在立法局內及委員會會議程序中有言論及辯論的自由，而此種言論及辯論的自由，不得在任何法院或立法局外的任何地方受到質疑。

4. Immunity from legal proceedings

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.

5. Freedom from arrest

No member shall be liable to arrest—

- (a) for any civil debt (except a debt the contraction of which constitutes a criminal offence) whilst going to, attending at or returning from a sitting of the Council or a committee;
- (b) for any criminal offence whilst attending at a sitting of the Council or a committee.

6. Service of civil process and exemptions

(1) No process issued by any court in Hong Kong or elsewhere in the exercise of its civil jurisdiction shall be served or executed within the precincts of the Chamber while the Council is sitting, nor shall any such process be served or executed through the President or any officer of the Council unless it relates to a person employed within the precincts of the Chamber.

(2) Except by leave of the Council obtained in accordance with the Standing Orders, a member, the Governor or any public officer designated by the Governor for the purpose of attending sittings of the Council, while so designated, shall not be required to attend as a witness in any civil proceedings on a day when the Council is sitting. (*Amended 11 of 1994 s. 4*)

(3) A member shall be exempted from service as a juror in accordance with section 5 of the Jury Ordinance (Cap. 3).

7. Evidence of proceedings in the Council or any committee not to be given without leave

(1) No member or officer of the Council, and no person employed to take minutes or keep any record of evidence before the Council or a committee, shall give evidence elsewhere in respect of the contents of such minutes or record of evidence, or of the contents of any document laid before the Council or committee, as the case may be, or in respect of any proceedings or examination held before the Council or committee, as the case may be, without the special leave of the Council.

(2) During a recess or adjournment of the Council, the special leave referred to in subsection (1) may be given by the President or, if the President is unable to act owing to his absence from Hong Kong or incapacity, in accordance with the Standing Orders.

4. 有關法律程序的豁免權

不得因任何議員曾在立法局或任何委員會席前發表言論，或在提交該局或委員會的報告書中發表的言論，或因他曾以呈請書、條例草案、決議、動議或其他方式提出的事項而對他提起民事或刑事法律程序。

5. 免遭逮捕

任何議員——

- (a) 在前往立法局或任何委員會會議途中，在出席會議或會議後回程中，可免因民事債項（如訂約承擔則構成刑事罪行的債項除外）而遭逮捕；
- (b) 在出席立法局或任何委員會會議時，可免因刑事罪行而遭逮捕。

6. 民事法律程序文件的送達及豁免

(1) 立法局舉行會議時，不得在會議廳範圍內送達或執行由香港或其他地方的法院行使其民事司法管轄權而發出的法律程序文件，亦不得經由主席或任何立法局人員送達或執行任何此等文件，但如該法律程序文件是與受僱於會議廳範圍內的人有關的，則不在此限。

(2) 除按照會議常規獲立法局許可外，議員、總督或由總督為有關立法局會議的出席而指定的任何公職人員（獲如此指定時），在立法局舉行會議之日，無須在任何民事法律程序中列席作為證人。（由 1994 年第 11 號第 4 條修訂）

(3) 議員按照《陪審團條例》（第 3 章）第 5 條，須獲豁免出任陪審員。

7. 未經許可不得就立法局或任何委員會的會議程序作證

(1) 如未經立法局特別許可，任何議員或立法局人員，以及受僱在立法局或任何委員會會議席上錄取會議紀要或保存證據紀錄的人，不得就上述會議紀要或證據紀錄的內容、或就提交立法局或任何委員會的文件內容（視屬何情況而定）、或就立法局或任何委員會所進行的會議程序或訊問（視屬何情況而定），在其他地方作證。

(2) 在立法局休會或押後會議期間，第 (1) 款所提述的特別許可，可由主席給予；如主席因不在香港或喪失履行職務能力以致不能行事者，則可按照會議常規給予。

record or document before the Council or committee shall not, unless excused under section 13, be excused—
 (a) from answering any relevant question put to that person in the proceedings or producing any such paper, book, record or document; or
 (b) from complying with any order made in or in connexion with the proceedings,

on the ground that to do so may tend to expose that person, or the wife or husband of that person, to proceedings for an offence or for the recovery of a penalty.

- (2) Subject to subsection (3), no statement or admission made by a person—
 (a) in answering a question put to him in any proceedings to which subsection (1) applies; or
 (b) in complying with any order made in any such proceedings, shall, in proceedings for any offence or for the recovery of any penalty, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

(3) Nothing in subsection (2) shall render any statement or admission made by a person as there mentioned inadmissible in evidence against that person in proceedings for an offence under section 32 (which relates to false statements on oath made otherwise than in a judicial proceeding) or section 36 (which relates to false statutory declarations and other false statements without oath) of the Crimes Ordinance (Cap. 200).

PART IV

OFFENCES AND PENALTIES

17. Contempts

Any person who—

- (a) disobeys any lawful order made by the Council or a committee requiring him to attend or produce any papers, books, documents or records before the Council or committee, unless such attendance or production is excused under section 13; or
 (b) refuses to be examined before, or to answer any lawful and relevant question put by, the Council or a committee during the course of any examination, unless such refusal is excused under section 13; or

條獲免遵行，否則不得以如此行事可使該人或其妻子或丈夫就某一罪行或就追討罰款而被人向其提出法律程序為理由，而獲免——

- (a) 在該等會議程序中回答任何向其提出的有關問題，或出示任何上述文據、簿冊、紀錄或文件；或
 (b) 遵從在該等會議程序中所作出的，或因與該等會議程序有關而作出的任何命令。

(2) 除第(3)款另有規定外，任何人在以下情況中所作的陳述或承認——

- (a) 在第(1)款所適用的任何會議程序中回答向其提出的問題時；或
 (b) 在遵從任何上述會議程序中所作出的命令時，

在就任何罪行或就追討罰款而進行的法律程序中，不得被接納為對該人或其妻子或丈夫不利的證據（除非兩人在作出該陳述或承認後始行結婚）。

(3) 在就《刑事罪行條例》（第 200 章）第 32 條所指的罪行（關於在司法程序以外的情況下經宣誓後作出的虛假陳述）或第 36 條所指的罪行（關於虛假法定聲明及其他未經宣誓的虛假陳述）而進行訴訟時，第(2)款所述任何人所作的任何陳述或承認，不得因該款的任何規定而不獲接納為對該人不利的證據。

第 IV 部

罪行及罰則

17. 藐視罪

凡任何人——

- (a) 不服從立法局或任何委員會所作出的合法命令，而該命令是要求他到立法局或該委員會列席，或要求他到立法局或該委員會席前出示任何文據、簿冊、文件或紀錄的，除非該人已根據第 13 條獲免列席或出示；或
 (b) 在訊問過程中，拒絕接受立法局或任何委員會的訊問，或拒絕回答由立法局或任何委員會所提出的任何合法及有關的問題，除非該人已根據第 13 條獲免回答；或

or the disclosure of any communication or the production of any such paper, book, record or document, to the same right or privilege as before a court of law.

(2) No person, other than a public officer acting with the consent of the Governor, shall before the Council or a committee—

- (a) give any evidence; or
 - (b) produce any paper, book, record or document, relating to the correspondence concerning—
 - (i) any naval, military or air force matter or of any other matter relating to the security of Hong Kong; or
 - (ii) the responsibilities of Her Majesty's Government in the United Kingdom otherwise than with respect to the administration of Hong Kong by its Government,
- nor shall secondary evidence be received by or produced before the Council or a committee of the contents of any such paper, book, record or document.

15. Determination of questions relating to evidence and production of documents before the Council or committee

Where at any time any question arises in the Council or a committee in regard to—

- (a) the right or power of the Council or a committee to hear, admit or receive oral evidence; or
- (b) the right or power of the Council or a committee to peruse or examine any paper, book, record or document or to order, direct or call upon any person to produce any paper, book, record or document before the Council or committee; or
- (c) the right or privilege of any person (including a member of the Council or committee) to refuse to produce any paper, book, record or document or to lay any paper, book, record or document before the Council or committee,

that question may, subject to this Ordinance and except in so far as express provision is made therein for the determination of that question, be determined in accordance with the usage and practice of the Council which applied prior to the commencement of this Ordinance or applies thereafter by virtue of any resolution of the Council.

16. Limitation on privilege against incrimination of self or spouse

(1) In any proceedings in the Council or a committee, any person lawfully ordered to attend to give evidence or to produce any paper, book,

上述文據、簿冊、紀錄或文件方面，須享有權利或特權，與他在法院所享有的權利或特權相同。

(2) 除在總督同意下行事的公職人員外，任何人不得在立法局或任何委員會席前就有關的信息互通——

- (a) 作證；或
 - (b) 出示任何文據、簿冊、紀錄或文件，而該信息互通是與以下各項有關的——
 - (i) 任何海、陸、空軍事宜或與香港保安有關的任何其他事宜；或
 - (ii) 聯合王國的女皇政府所負的責任 (該等責任是與香港政府管治香港無關者)，
- 此外，有關上述任何文據、簿冊、紀錄或文件的內容的次要證據，亦不得由立法局或任何委員會收取，或在立法局或該委員會席前出示。

15. 關於在立法局或委員會席前作證或出示文件等問題的裁定

凡在立法局或任何委員會內任何時間產生關於以下事項的問題——

- (a) 立法局或任何委員會聆聽、接納或收取口頭證據的權利或權力；或
- (b) 立法局或任何委員會閱讀或審查任何文據、簿冊、紀錄或文件的權利或權力，或命令、指示或傳喚任何人到立法局或該委員會席前出示任何文據、簿冊、紀錄或文件的權利或權力；或
- (c) 任何人 (包括立法局議員或委員會成員) 拒絕到立法局或委員會席前出示任何文據、簿冊、紀錄或文件或拒絕將其提交的權利或特權，

則除本條例另有規定外，以及除非本條例對該問題的裁定有明文規定，否則該問題可按照本條例生效日期前適用於立法局的常習及慣例予以裁定，或按照本條例生效日期後立法局憑藉決議而適用的常習及慣例予以裁定。

16. 免使自己或配偶入罪的特權的限制

(1) 在立法局或任何委員會的任何會議程序中，任何人如被合法地命令列席並在立法局或委員會席前作證或出示任何文據、簿冊、紀錄或文件，則除非已根據第 13

Appendix 4

(2) A Member shall give notice of a question by delivering to the office of the Clerk, not later than 7 clear days before the meeting at which an answer is required from the Government, a copy thereof signed by the Member; provided that for questions requiring an answer at the second meeting of the first session of a term the period of notice shall not be less than 4 clear days.

(3) A Member may not ask more than two questions of which notice has been given at any one meeting and not more than one of those questions shall require an oral reply:

Provided that the President may, if in his opinion an additional question is an important one of public concern, allow a Member to ask that additional question.

(4) If a Member asks the permission of the President to ask a question without notice on the ground that it is of an urgent character and relates to a matter of public importance, the President may permit the question to be asked without notice, if he is satisfied that it is of that nature and that sufficient private notice of the question has been or is to be given by the Member concerned to the Government to enable the question to be answered.

25. Contents of Questions

(1) A question shall conform to the following rules:

- (a) A question shall not include the names of persons, or statements which are not strictly necessary to make the question intelligible.
- (b) A question shall not contain a statement which the Member who asks the question is not prepared to substantiate.
- (c) A question shall not contain arguments, inferences, opinions, imputations or epithets, or tendentious, ironical or offensive expressions.
- (d) A question shall not contain independent questions or be so complex that it cannot reasonably be answered as a single question.
- (e) A question shall not refer to proceedings in a committee before that committee has made its report to the Council.
- (f) A question shall not seek information about a matter which is of its nature secret.

- (g) A question shall not reflect on the decision of a court of law or be so drafted as to be likely to prejudice a case pending in a court of law.
- (h) A question shall not be asked for the purpose of obtaining an expression of opinion, the solution of an abstract legal question, or the answer to a hypothetical proposition.
- (i) A question shall not be asked whether statements in the press or of private individuals or private concerns are accurate.
- (j) A question shall not be asked about the character or conduct of any person mentioned in Rule 41(7) (Contents of Speeches) and a question shall not be asked about the character or conduct of any other person except in his official or public capacity.
- (k) A question shall not be asked seeking information which can be found in accessible documents or ordinary works of reference.
- (l) A question which has been fully answered shall not be asked again during the same session.

(2) If the President is of the opinion that a question of which a Member has given notice to the Clerk or which a Member has sought to ask without notice infringes any of the provisions of Rule 22 (Nature of Questions) or of this Rule, he may direct -

- (a) that it be placed on the Agenda of the Council with such alterations as he may direct; or
- (b) in the case of a question which a Member has sought to ask without notice, that it may be so asked with such alterations as he may direct; or
- (c) that the Member concerned be informed that the question is out of order.

26. Asking and Answering of Questions

(1) Every question in respect of which a Member has given due notice under the provisions of Rule 24 (Notice of Questions) and which complies with the provisions of Rule 25 (Contents of Questions) shall be put on the Agenda for the meeting at which the Member has stated that he wishes to ask it.

41. Contents of Speeches

(1) A Member shall restrict his observations to the subject under discussion and shall not introduce matter irrelevant to that subject.

(2) 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.

(3) Except as otherwise provided in Rule 66 (Bills Returned for Reconsideration), it shall be out of order to attempt to reconsider a specific question on which the Council has taken a decision during the session, except in debate on a motion to rescind that decision moved with the permission of the President.

(4) It shall be out of order to use offensive and insulting language about Members of the Council.

(5) A Member shall not impute improper motives to another Member.

(6) The name of the Chief Executive shall not be used to influence the Council.

(7) The conduct of the Chief Executive or Members of the Executive Council or Members of the Legislative Council otherwise than in the performance of their official duties shall not be raised.

(8) The conduct of Judges or other persons performing judicial functions shall not be raised.

42. Behaviour of Members during Meeting

During a meeting of the Council -

- (a) all Members shall enter or leave the Council properly attired and with decorum;
- (b) no Member shall cross the floor of the Council unnecessarily;
- (c) Members shall not read newspapers, books, letters or other documents, except such matter therein as may be directly connected with the business of the Council; and