

**Paper for the meeting of the
Subcommittee on Review of the LegCo Redress System
to be held on 29 October 1998**

At the last meeting of the Subcommittee, Members asked for some guidelines in relation to potential legal liabilities arising from interviews and case conferences under the LegCo redress system. We have identified four major areas for Members' consideration. These are defamation, breach of confidentiality, disclosure of personal data, and purporting to give professional advice.

Defamation

2. Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of the society generally or tends to make them shun or avoid him. If the defamatory statement is made in writing or some other permanent form, the tort of libel is committed and the law presumes damage. If the defamation is oral or in some other transient form, it constitutes the tort of slander, which is not actionable without proof of special damage. The main defences to an action for libel or slander are justification (i.e. that the words are true) and fair comment on a matter of public interest.

3. When dealing with complaint cases, it is advisable not to make any comment which may fall into the description of defamation above, in particular on the validity of the complaint, the matter or person which is the subject of the complaint, or the complainant's person, conduct or credibility.

Breach of confidentiality

4. Members of a legislature are not within the established categories of professional relationships in which there is a duty of confidentiality. Nevertheless it is a principle of the law of tort that a duty of confidence arises when confidential information comes to the knowledge of a person, in circumstances where he has notice, that the information is confidential, with the effect that it would be just in all the circumstances that he would be precluded from disclosing the information to others. This rule will not apply if the information has become generally known, or is useless or trivial or should be disclosed on the ground of public interest.

5. In the circumstances, Members could be in breach of a duty of confidence if any information supplied to them in confidence is released without the express consent of the person who supplied the information. We recommend that written consent be obtained from the information supplier before any disclosure is made.

Disclosure of personal data

6. Under the Personal Data (Privacy) Ordinance (Cap. 486) personal data shall not, without the express consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of collection or for a directly related purpose. In the Ordinance personal data is defined as any data relating directly or indirectly to a living individual and from which it is practicable for the identity of the individual to be directly or indirectly ascertained. Applied to the handling of complaint cases, it means that the identity and other personal particulars of the complainant should not be disclosed unless it is for the purpose of handling the complaint. Disclosure other than for this purpose requires the express consent of the complainant. It is advisable that written consent be obtained before disclosure.

Giving of advice

7. Members may often be asked by complainants to advise on their cases or what should best be done. In law, a person who makes a negligent statement could be liable to the person who suffered economic loss through reliance upon the statement. The criteria of liability is the assumption of responsibility on the part of the person giving the advice, and the reasonable reliance on that advice by the person receiving it. Once it is established that the relationship between the adviser and advisee is such that it is reasonable for the advisee to rely on the advice given and that the advisee has so acted to his detriment, he has a prima facie case.

8. Hence, it is advisable that Members should be careful when giving advice on the merit or the conduct of the complainant's case. Members may also wish to note that legal advice provided by the Legal Service Division on a particular case is for Members' information only. When relating the advice to the public a Member might be held to be giving advice and thus incur legal liabilities.

9. At the last meeting Members' were concerned that complainants may inadvertently incur legal liability when making use of the LegCo redress system. However, in view of the potential liability of rendering advice and the complexity of the law in defamation, it would not be practicable for Members nor the Secretariat to advise complainants in detail on their comments or conducts. Should Members prefer to remind complainants before interviews and case conferences, it might be done by a short note stating the matters a complainant should pay attention to, with a caveat that when they are in doubt they should seek their own professional advice. Whether to pursue this approach and, if so, what is the precise procedure could be considered in an appropriate occasion in future.

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