

立法會
Legislative Council

LC Paper No. LS76/16-17

Proposed Committee stage amendment to exclude the proceedings of the Legislative Council from the application of the Apology Bill

Legal effect of apologies in applicable proceedings under the Apology Bill

The Apology Bill ("the Bill") seeks to promote and encourage the making of apologies by providing, among others, that a person's apology¹ must not be taken into account in determining fault, liability or any other issue to the prejudice of that person in "applicable proceedings" which are broadly defined to include judicial, arbitral, administrative, disciplinary and regulatory proceedings, and other proceedings conducted under an enactment² (clause 6(1)).

Legal effect of apologies in proceedings other than the applicable proceedings under the Bill

2. Under clause 6(2) of the Bill, "applicable proceedings" do not include criminal proceedings or proceedings specified in the Schedule, namely those conducted under the Commission of Inquiry Ordinance (Cap. 86), the Control of Obscene and Indecent Articles Ordinance (Cap. 390) and the Coroners Ordinance (Cap. 504). In the aforesaid proceedings, a person's apology could therefore be taken into account by the decision maker in determining fault, liability or any other issue to the prejudice of that person.

Whether the Bill applies to the Legislative Council proceedings

3. Upon our enquiry, the Administration has clarified that in its review of apology legislation in over 50 overseas jurisdictions, it did not

¹ Under the Bill, a person's "apology" means an expression (whether oral, written or by conduct) of the person's regret, sympathy or benevolence, and includes any part of the expression that is an express or implied admission of the person's fault or liability or a statement of fact in connection with the matter in respect of which the apology is made.

² "Enactment" is not defined in the Bill, but under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), it has the same meaning as Ordinance which includes any Ordinance enacted by the Legislative Council and any subsidiary legislation made under any such Ordinance.

note any express provision extending the application of the apology legislation to parliamentary proceedings.

Proposed Committee stage amendment by the Administration

4. While the Administration considers that the Bill does not apply to the proceedings of the Legislative Council ("LegCo")³, given the broad definition of "applicable proceedings" under the Bill, and the uncertainty as to whether proceedings of LegCo and its committees, panels and subcommittees would fall within that definition, the Administration will propose, for the avoidance of doubt, a Committee stage amendment ("CSA") to the Schedule to exclude specifically LegCo proceedings from the application of the Bill. The proposed exclusion is couched in the following terms:

"Proceedings of the Legislative Council, including proceedings of a committee, panel or subcommittee established or mandated by the Legislative Council to discharge a function or exercise a power of the Legislative Council."

5. Under Article 73 of the Basic Law ("BL"), the powers and functions of LegCo include enacting, amending or repealing laws, examining and approving Government budgets, approving taxation and public expenditure, debating the policy addresses of the Chief Executive ("CE"), raising questions on the work of the Government, debating any issue concerning public interests, endorsing the appointment and removal of senior judges, receiving and handling complaints, impeaching CE, and summoning persons concerned to testify or give evidence. BL 72 and BL 79 further set out the powers and functions of the President of LegCo, while BL 75 empowers LegCo to make its own Rules of Procedure ("RoP"). Under BL 79(6) and (7), a Member may be relieved of his duties due to a criminal conviction and sentence to imprisonment for one month or more, or censured for misbehaviour or breach of oath, by a vote of two-thirds of the Members of LegCo present.

Legal Service Division's view on the proposed CSA

6. In our view, the proposed CSA, if passed, would have the effect of excluding from the application of the Bill:

- (a) proceedings of LegCo and its various committees (including select committees and investigation committees), panels and subcommittees conducted under RoP, whether any powers under section 9 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) are exercised or not; and

³ See LC Paper No. CB(4)669/16-17(01), item (k).

- (b) the impeachment of CE (including proceedings of the independent investigation committee chaired by the Chief Justice under a mandate given by LegCo) under BL 73(9).

The disapplication of the Bill to LegCo proceedings would mean that subject to RoP (for example, rules as to relevance), Members would continue to be able to refer to a person's apology, and take such apology into account, in making speeches, asking questions, moving and debating motions, and writing reports for the purposes of the above proceedings.

7. It is noted that the proposed CSA does not specifically refer to the receipt and handling of complaints pursuant to BL 73(8), which is an informal part of the operation of LegCo⁴ and not conducted by any committee, panel or subcommittee under RoP. However, the Administration considers, and we agree, that the handling of complaints does not constitute any of the proceedings described in clause 6(1) of the Bill⁵. As such, it is quite clear that the Bill would not apply to the receipt and handling of complaints under BL 73(8). Accordingly, there is no need for the proposed CSA to exclude the receipt and handling of complaints from the application of the Bill.

Prepared by
Legal Service Division
Legislative Council Secretariat
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⁴ Paragraph 15.19 of *A Companion to the history, rules and practice of the Legislative Council of the Hong Kong Special Administrative Region*.

⁵ See LC Paper No. CB(4)1086/16-17(01), item (f).