

立法會
Legislative Council

LC Paper No. CB(3)231/2023

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Tel : 3919 3300

Date : 28 March 2023

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 29 March 2023

**Request for special leave of the Legislative Council (“LegCo”)
to give evidence of Council proceedings**

The Department of Justice has submitted a request for special leave of the Council under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and Rule 90 of the Rules of Procedure (“RoP”) for seven officers of and persons employed by the Council to give evidence in respect of contents of minutes, records of evidence or documents laid before LegCo or its committees, or proceedings at LegCo or its committees in the criminal proceedings in respect of *HKSAR v WONG Ka-ho & 12 others* (DCCC 606-610, 1069/2020 & DCCC 259/2021) (“the Request”). The case has been scheduled to be heard between 29 May and 28 July 2023. The Request is attached in LC Paper No. CB(3)231/2023(01) for Members’ reference.

2. In accordance with RoP 90(2), the President has directed that the Request be placed on the Agenda for the Council meeting of 29 March 2023.

3. Members are invited to note that under RoP 90(2), unless on a motion which may be moved without notice at the above meeting by any Member the Council determines that such leave shall be refused, the Council shall be deemed to have ordered that such leave be granted.

(Miranda HON)
for Clerk to the Legislative Council

Encl.

律政司
刑事檢控科

香港中環下亞厘畢道18號
律政中心西座10樓
圖文傳真：852-2536 8184



DEPARTMENT OF JUSTICE

Prosecutions Division
10/F, West Wing, Justice Place
18 Lower Albert Road
Central, Hong Kong
Fax: 852-2536 8184

本司檔號 Our Ref: DCCC 606-610, 1069/2020 & DCCC 259/2021
來函檔號 Your Ref:
電話號碼 Tel. No.: 3902 8885 (Mr Kenny Siu); 3902 8279 (Ms Jackie Lai)

27 March 2023

Mr. Kenneth CHEN
Secretary General of the Legislative Council
The Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong

By Email (secgen@legco.gov.hk)
and By Post

Dear Mr. CHEN,

HKSAR v. WONG Ka-ho & 12 others

(DCCC 606-610, 1069/2020 & DCCC 259/2021)

**Application for Special Leave of the Legislative Council (the ‘LegCo’)
for officers of and persons employed by the Council to give evidence in respect
of contents of minutes / record of evidence/ documents laid before the LegCo or
proceedings at the LegCo**

This is an application for special leave of the LegCo under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (the ‘**Ordinance**’) and rule 90 of the Rules and Procedure of the Legislative Council of the Hong Kong Special Administrative Region (Instrument No. A501) for the following officers of and persons employed by the LegCo to give evidence in the criminal proceedings instituted against the 13 defendants of the captioned case, who have been prosecuted for various offences in respect of the storming of the LegCo Complex by protestors on or about 1 July 2019 (the ‘**Event**’):-

	Name	Role	Remarks
1	Mr CHEN Wei-on Kenneth	Secretary General	Witness on (i) the LegCo’s colour alert mechanism, (ii) the issue of Red Alert on 1 July 2019 and its effect, and (iii) the relevant LegCo papers
2	Ms. HON Lut-fo	Principal Council Secretary (as she then was)	

3	Mr. CHAN Chun Francis	Senior Security Officer	Witness of the Event and issue of Red Alert on 1 July 2019
4	Mr. LAI Chung-wai	Senior Council Secretary	Witness on the damage and interruption to LegCo operation caused by the Event
5	Mr. LAM Hong-kam	Senior Council Secretary	Witness on the repair of LegCo property after the Event
6	Mr. CHAN Wing-yin	Senior Council Secretary	Witness on the Basic Law booklets inside the Chamber of the LegCo and the visiting arrangement
7	Mr. MAK Kwong-wah	Security Assistant	Witness on CCTV footages of the LegCo Complex related to the Event

The 13 defendants have been prosecuted for various offences, including:

- (a) ‘Riot’, contrary to section 19(1) and (2) of the Public Order Ordinance (Cap. 245),
- (b) ‘Contravening an administrative instruction issued under section 8(3) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)’, contrary to section 20(b) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). The defendants are being accused of having “failed to behave in an orderly manner within the precincts of the Chamber of the LegCo or *comply with a direction given by the LegCo for the purpose of keeping order*”. The Prosecution will rely on the LegCo’s issue of the Red Alert on 1 July 2019 in pursuing this charge; and
- (c) ‘Criminal damage’, contrary to section 60(1) of the Crimes Ordinance (Cap. 200).

The above-named LegCo officers, in particular Mr Chen and Ms Hon, are likely required to give evidence at the upcoming trial about the issue of the Red Alert, including its legal basis, and whether it was an appropriate measure to be taken at the material time on 1 July 2019.

We note that some of these matters have been raised before the LegCo or its committees, and/or have been canvassed in documents laid before the LegCo or its committees. In this regard:

- (a) Mr. Chen has provided a related written reply in a document placed before the Finance Committee for a special meeting held from 6 to 9 April 2020 (copy enclosed herewith);

- (b) Ms Hon is likely to be asked questions about the documents which she has provided to the police relating to the Colour Alert Mechanism and the issue of Red Alert. It appears to us that some of these documents may fall within the scope of section 7 of the Ordinance;
- (c) The security arrangements under the Red Alert have been made the subject of discussions by members of LegCo, for example, in the special meeting of the House Committee on 25 October 2019 (copy enclosed herewith).

For the purpose of the criminal proceedings, the evidence of the above-named witnesses will be necessary in the trial of the captioned case which is scheduled to be heard in the District Court **between 29 May 2023 and 28 July 2023**, and as referred to above, may involve contents of documents laid before the LegCo and its committees, or proceedings held before the LegCo or its committees.

Please do not hesitate to contact me, Mr Kenny Siu (3902 8885) or Ms Jackie Lai (3902 8279) if we can be of any further assistance.

Yours faithfully,



(William TAM, SC)
Deputy Director of Public Prosecutions

Encl.

c.c. DSIP Frank HONG, OC OCTB B1-1 (by fax only: 2570 8305)

《立法會(權力及特權)條例》 (第 382 章)

7. 未經許可不得就立法會或任何委員會的會議程序作證

- (1) 如未經立法會特別許可，任何議員或立法會人員，以及受僱在立法會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、或就提交立法會或任何委員會的文件內容(視屬何情況而定)、或就立法會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) 在立法會休假或休會待續期間，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，則可按照議事規則給予。(由 2002 年第 23 號第 126 條修訂)

(由 2000 年第 71 號第 3 條修訂)

Legislative Council (Powers and Privileges) Ordinance (Cap. 382)

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 Rules of Procedure. (Amended 71 of 2000 s. 3)

《香港特別行政區立法會議事規則》

90. 就立法會會議程序提供證據一事取得許可的程序

- (1) 為取得根據《立法會(權力及特權)條例》(第 382 章)第 7 條所需的立法會許可，以就會議紀要、作證紀錄或提交立法會、委員會或小組委員會會議席上省覽的任何文件的內容，或就立法會、委員會或小組委員會的任何會議或審查程序，在立法會以外的地方提供證據，要求該許可的人須向立法會秘書書面陳述其請求及說明其理由，並須提供立法會秘書在個別情況下按立法會主席的指示所進一步要求的資料。(2017 年第 14 號法律公告)
- (2) 許可的請求須列入立法會主席所指定會議的議程內；除非立法會藉任何議員在該次會議動議的一項可無經預告的議案，決定拒絕給予許可，否則立法會須當作已命令給予許可。
- (3) 立法會秘書須以書面將立法會的決定通知該要求許可的人。
- (4) 凡有人在立法會休假、休會待續或解散期間，向立法會要求取得第(1)款所述的許可，可由立法會主席給予，如立法會主席不能執行主席職務，則可由主持立法會會議的議員給予許可。

Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region

90. Procedure for Obtaining Leave to Give Evidence of Council Proceedings

- (1) For the purpose of obtaining the leave of the Council under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) in order that evidence may be given elsewhere in respect of the contents of minutes, records of evidence or any document laid before the Council or a committee or subcommittee, or in respect of any proceedings or examination held before the Council or a committee or subcommittee, the person seeking such leave shall submit to the Clerk a written statement of the request and the reasons therefor and such further information as the Clerk, on the direction of the President, may require in any particular case.
- (2) The request for leave shall be placed on the Agenda for such meeting as the President may appoint and, unless on a motion which may be moved without notice at that meeting by any Member the Council determines that such leave shall be refused, the Council shall be deemed to have ordered that such leave be granted.
- (3) The Clerk shall give written notice of the decision of the Council to the person by whom the request for leave is made.
- (4) Where the leave of the Council referred to in subrule (1) is sought during any recess or adjournment or dissolution of the Council such leave may be given by the President or, if the President is unable to act, by the Member presiding.

CONTROLLING OFFICER'S REPLY

LC003

(Question Serial No. 3972)

Head: (112) Legislative Council Commission
Subhead (No. & title): (000) Operational expenses
Programme: (2) Council Business Services
Controlling Officer: Secretary General, Legislative Council Secretariat
(Kenneth CHEN)
Director of Bureau: Secretary General, Legislative Council Secretariat

Question:

Under this Programme, the Administration Division implements the building management and security policies formulated by The Legislation Council ("LegCo") Commission in the management of the facilities. In this connection, will LegCo provide, since the social movements which started in early June 2019, the number of occasions on which the Police entered the precincts of LegCo, the reasons for the entry, the number of police officers entering on each occasion, their duration of stay, and the floors and rooms which they entered? Did the Police seek the consent of the President of LegCo each time before entering the precincts of LegCo? Were the police officers, upon their entry, accompanied and monitored by the security staff of LegCo?

Asked by: Hon CHAN Chi-chuen (LegCo internal reference no.: 252)

Reply:

The Legislative Council ("LegCo") Secretariat will seek Police assistance in the following circumstances:

- (a) when an amber or a red alert is issued under the colour alert mechanism approved by The LegCo Commission ("the Commission"), the Police may be requested to enter the LegCo Complex for standby or active duties respectively and
- (b) when untoward or security incidents occur in the LegCo Complex and/or in its vicinity which are beyond the coping capability of the Secretariat's security staff.

The above circumstances aside, the Police may enter the precincts of LegCo to conduct investigation or collect evidence in relation to incidents that occurred therein.

2. Under the arrangement agreed by the Commission, the Secretary General of the LegCo Secretariat ("the Secretary General") will consult the Chairman and the other two ex-officio members of the Commission before requesting the Police to enter the Complex to handle untoward incidents, where circumstances permit. Before the Police enter the Complex to collect evidence in relation to reported crimes, the Secretary General will seek the clearance of the Chairman and Deputy Chairman of the Commission. Since June 2019, the Police entered the precincts of LegCo on various occasions to handle security incidents and the Secretary General followed the aforesaid arrangements and consulted the Chairman and the other two ex-officio members of the Commission.

3. When the Police perform duties in the LegCo Complex, they are normally accompanied by the Secretariat's security staff who provide assistance if needed. The only incident in which the Police were unaccompanied by the Secretariat's security staff was on 1 July 2019 evening when all security staff had at one time evacuated the Complex on the Police's advice during the storming and intrusion of the LegCo Complex. In the early morning of 2 July 2019, the Secretariat's security staff returned to the Complex upon the Police's request for assistance in conducting investigation.

- End -

Action

been suspended from July 2019 onwards, and the expenditure incurred for employing the temporary security staff as well as whether the Secretariat's manpower resources available for the operation of subcommittees on policy issues would be affected. Ms CHAN and Dr KWOK also expressed dissatisfaction about LCC not providing Members with any relevant information and SG not attending this meeting.

6. Mr IP Kin-yuen, Dr KWOK Ka-ki, Mr Alvin YEUNG, Mr WU Chi-wai reiterated their views and concerns raised at the last special HC meeting about the security arrangements for the LegCo Complex, particularly those made on 12 June 2019. These Members took the view that relevant information should be made available to facilitate candidates for the HC Chairman to expound their stance on such issues and other Members to put questions to them during the election forum to be conducted. Mr IP added that if issues relating to the security arrangements for the LegCo Complex on 12 June 2019 were to be discussed by LCC, he hoped that he would be invited to attend the relevant LCC meeting(s). Dr KWOK considered it of the utmost importance to uphold the dignity of LegCo, and therefore, he considered it unacceptable for police officers to be permitted to station in the LegCo Complex and use the facilities therein arbitrarily on 12 June 2019. Mr YEUNG and Mr WU commented that security arrangements had not been implemented uniformly by the security staff of the Secretariat in recent months. Mr YEUNG considered it imperative for LCC to put in place a mechanism for determining the special security arrangements for the LegCo Complex when the Red alert or Amber alert was issued, and make available guidelines and provide sufficient training for the security staff of the Secretariat. He added that in making security arrangements for the LegCo Complex, particularly those involved giving permission for police officers to station in the LegCo Complex, due regard should be given to the constitutional principle of the separation of powers. Mr WU also considered that the Secretariat staff should be requested to implement security arrangements in a consistent manner and demonstrate neutrality when rendering their services. He considered it unreasonable for LCC not to provide Members with information which, in his view, was not confidential, e.g. statistical data in relation to the security arrangements for the LegCo Complex as requested in his letter dated 18 October 2019.

7. Mr AU Nok-hin, Ms Claudia MO and Mr CHAN Chi-chuen also expressed dissatisfaction with the security arrangements for the LegCo Complex in recent months, and they took the view that the issues under discussion would be major issues of concern during the election forum to be conducted. Mr AU and Ms MO were gravely concerned about Mr AU being scratched allegedly by a security staff of the Secretariat after the Chief Executive's Question and Answer Session on 17 October 2019 had ended. Mr AU said that he felt that he had not been fairly treated by the security staff of the Secretariat on various occasions, the details of which had been set out in his letter to the LCC Chairman. He considered it necessary for LCC to conduct a review of related matters, including finding out who gave instructions on the way the security staff of the Secretariat carried out their work. Mr CHAN said that he was particularly concerned about the special security arrangements when the Red alert was issued. He recalled that after the incident on 1 July 2019, he stayed overnight at his office in the LegCo Complex. After midnight of 1 July 2019, police officers had knocked on his office door and requested to conduct a search of his office, and when he left the LegCo Complex in the daytime on 2 July 2019, police officers had requested to check his bag and claimed that they had the power to do so. Mr CHAN added that even though he gave his consent on both occasions, he was concerned whether the security staff of the Secretariat had assisted police officers in opening the doors of other Members' offices, and whether police officers really had the powers to carry out such work in the LegCo Complex.

8. Mr CHAN Hak-kan said that as an LCC member for the 2018-2019 session, he would like to point out that the term of office of LCC members would expire shortly, and therefore, issues raised by various Members could only be discussed at a future LCC meeting after LCC members for the 2019-2020 session were elected at an HC meeting, which could only be held after the election of the Chairman and Deputy Chairman of HC was completed. At the request of Mr CHAN and at the invitation of Mr Dennis KWOK, the Clerk advised that the term of office of LCC members should be one year or until the next HC meeting held for the election of LCC members, whichever was the earlier. As the election of LCC members for the 2018-2019 session was held on 26 October 2018, the term of office of LCC members would expire on 25 October 2019, i.e. the day of this HC meeting. As LCC members for the 2019-2020 session were to be elected at an HC meeting, LCC meetings for the new session had yet to be scheduled.