Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai

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LEGISLATIVE COUNCIL
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE'S REPUBLIC OF CHINA

TABLE OF CONTENTS

		Page
Executive Summary		**I – V**
Chapter 1	**Introduction**	**1 – 12**
	Background	1 – 3
	Establishment and membership of the Investigation Committee	3 – 4
	Practice and Procedure	4 – 7
	Investigation process	8 – 11
	Report	12
Chapter 2	**Constitutional and statutory requirements relating to the motion to censure Dr Hon CHENG Chung-tai**	**13 – 25**
	Constitutional and statutory requirements for oath-taking	13 – 16
	Regulation of the use and protection of the national flag and regional flag	16 – 18
	Relevant court cases	18 – 25
Chapter 3	**Information and evidence relevant to the particulars of the misbehaviour set out in the Schedule to the censure motion**	**26 – 38**
	Oath-taking by Dr CHENG	26 – 28
	Distribution and display of the mock-ups of the national flag and regional flag	28 – 31
	Inverting the mock-ups	31 – 37
	Dr CHENG's relevant remarks after the relevant Council meeting	37 – 38

Chapter 4	**Establishing the facts and whether the facts as established constitute grounds for the censure of Dr Hon CHENG Chung-tai**	**39 – 53**
	Facts to be established	39 – 40
	First fact to be established	40 – 41
	Second fact to be established	41 – 43
	Third fact to be established	43 – 44
	Fourth fact to be established	44 – 45
	Fifth fact to be established	45 – 47
	Whether the facts as established constitute grounds for the censure of Dr CHENG	47 – 53

Acronyms and Abbreviations **54 – 56**

Appendices

Appendix 1.1 Voting result on the motion moved by Hon CHAN Chi-chuen under Rule 49B(2A) of the Rules of Procedure that "no further action shall be taken on the censure motion moved by Hon Paul TSE"

Appendix 1.2 Procedure for the election of Members for appointment by the President to the investigation committee

Appendix 1.3 Practice and Procedure of the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai

Appendix 1.4 Transcript provided by the Eastern Magistrates' Court setting out its reasons for verdict and sentence in respect of *HKSAR* v *CHENG Chung-tai* (ESCC 1139/2017)

Appendix 1.5 List of potential witnesses' responses

Appendix 1.6 Written statement of Hon Paul TSE

Appendix 1.7 Written statement of Dr Hon CHIANG Lai-wan

Appendix 1.8 Written statement of Hon Martin LIAO

Appendix 1.9 Written statement of Hon LAU Kwok-fan

Appendix 1.10 Written statement of Mr Alfred LEE (steward of the Legislative Council Secretariat)

Appendix 1.11 Written statement of Mr Tommy LEE (steward of the Legislative Council Secretariat)

Appendix 1.12 Dr Hon CHENG Chung-tai's reply on whether he would attend hearing

Appendix 1.13 Dr Hon CHENG Chung-tai's reply on whether he would propose witnesses for the Investigation Committee's consideration

Appendix 1.14 Dr Hon CHENG Chung-tai's reply on whether he would elect for hearings to be held in public

Appendix 1.15 Dr Hon CHENG Chung-tai's reply letter dated 9 March 2017

Appendix 1.16 Dr Hon CHENG Chung-tai's reply letter dated 29 May 2017

Appendix 1.17 Schedule of closed hearings of the Investigation Committee

Appendix 1.18 Dr Hon CHENG Chung-tai's reply letter dated 28 March 2018

Appendix 1.19 The minutes of meetings of the Investigation Committee which record the proceedings on the consideration of its Report

Appendix 2.1 Information paper prepared by the Legal Service Division of the Legislative Council Secretariat on relevant legal issues relating to the motion to censure Dr Hon CHENG Chung-tai

Appendix 2.2 Summary of facts and sentences of certain judicial decisions concerning desecrating the national flag and regional flag prepared by the Legislative Council Secretariat

Appendix 3.1 Minutes of evidence given by Hon Paul TSE at the Investigation Committee's hearing

Appendix 3.2 Minutes of evidence given by Hon Martin LIAO at the Investigation Committee's hearing

Appendix 3.3 Minutes of evidence given by Hon HUI Chi-fung at the Investigation Committee's hearing

Appendix 3.4 Minutes of evidence given by Mr Alfred LEE (steward of Legislative Council Secretariat) at the Investigation Committee's hearing

Appendix 3.5 Minutes of evidence given by Mr Tommy LEE (steward of Legislative Council Secretariat) at the Investigation Committee's hearing

Appendix 3.6 Minutes of evidence given by Dr Hon CHIANG Lai-wan at the Investigation Committee's hearing

Appendix 3.7 Minutes of evidence given by Hon LAU Kwok-fan at the Investigation Committee's hearing

Appendix 3.8 The Legislative Council Affirmation subscribed by Dr Hon CHENG Chung-tai

Appendix 3.9 Photo of the mock-ups of the national flag of the People's Republic of China and regional flag of the Hong Kong Special Administrative Region of the People's Republic of China displayed by some Members at the Council meeting of 19 October 2016.

Appendix 3.10 Photo of Dr Hon CHENG Chung-tai inverting the mock-ups of the national flag of the People's Republic of China and regional flag of the Hong Kong Special Administrative Region of the People's Republic of China placed on some Members' desks at the Council meeting of 19 October 2016.

Appendix 3.11 Photo of the mock-ups of the national flag of the People's Republic of China and regional flag of the Hong Kong Special Administrative Region of the People's Republic of China stuffed inside the glass holders with their poles stretching out of the glass holders at the Council meeting of 19 October 2016.

Appendix 3.12 Correspondence between Hon HUI Chi-fung and the Clerk to Investigation Committee

Appendix 3.13 Letter to Hon HUI Chi-fung from the Clerk to Investigation Committee dated 2 March 2018

Appendix 3.14 Letter to Hon HUI Chi-fung from the Clerk to Investigation Committee dated 15 March 2018

Appendix 3.15 Official record of proceedings of the Legislative Council meeting of 19 October 2016

Appendix 4.1 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

Executive Summary

1. At the Council meeting of 14 December 2016, Hon Paul TSE moved a motion under Rule 49B(1A) of the Rules of Procedure ("RoP") to censure Dr Hon CHENG Chung-tai ("Dr CHENG") under Article 79(7) of the Basic Law ("BL") ("the censure motion") for his conduct of inverting the mock-ups of the national flag of the People's Republic of China ("PRC") ("the national flag") and the regional flag of the Hong Kong Special Administrative Region ("HKSAR") of PRC ("the regional flag") placed on the desks of some Members at the Council meeting of 19 October 2016 ("the said Council meeting"). The wording of the censure motion is set out in paragraph 1.3 of this Report. Upon the moving of the censure motion, Hon CHAN Chi-chuen moved without notice the motion under RoP 49B(2A) that no further action should be taken on the censure motion. As Mr CHAN's motion was negatived, in accordance with RoP 49B(2A), the debate on the censure motion was adjourned and the matter stated in the censure motion was referred to the Investigation Committee ("IC").

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 of Dr CHENG. IC's membership, scope of investigation, work plan, Practice and Procedure as well as other important matters relating to the work of IC are set out in Chapter 1 of this Report. IC has also studied the constitutional and statutory requirements for oath-taking by Members as well as the use and protection of the national flag and regional flag, relevant court cases, and information and evidence relevant to the particulars of Dr CHENG's misbehaviour stated in the Schedule to the censure motion, the details of which are respectively set out in Chapters 2 and 3 of this Report.

3. From 20 February 2017 to 9 March 2018, IC conducted a total of eight closed meetings, including two hearings held in camera to obtain evidence from seven witnesses.

Established facts

4. In Chapter 4 of this Report, IC considers that the following facts have been established based on the evidence obtained during its investigation:

(a) at the said Council meetings, the mock-ups of the national flag and regional flag placed on the desks of some Members may be taken as the national flag and regional flag in terms of colour, design and appearance. Accordingly, the mock-ups inverted by Dr CHENG at that meeting were taken to be the national flag and regional flag;

(b) the purpose and manner of placing the national flags and regional flags by the Members concerned were to highlight the solemnity and pledge of taking oath to uphold BL and swear allegiance to HKSAR of PRC;

(c) despite Dr Hon CHIANG Lai-wan ("Dr CHIANG")'s repeated rebukes and the President's requests for him to return to his seat, Dr CHENG continued to invert the national flags and regional flags placed on the desks of the Members concerned, and such acts were deliberate acts;

(d) Dr CHENG persistently refused to leave the Chamber when ordered by the President to withdraw from the Council for leaving his seat at will and going to the seats of other Members to cause a disturbance; and

(e) Dr CHENG openly and deliberately humiliated the national flag and regional flag in the capacity of a Legislative Council ("LegCo") Member.

Two allegations in the censure motion

5. Regarding the established facts, IC needs to consider whether the following two allegations made in the censure motion are substantiated:

(a) Dr CHENG's relevant conduct was in breach of the LegCo Oath taken by him at the Council meeting of 12 October 2016 under BL 104 and the Oaths

and Declarations Ordinance (Cap. 11) to uphold BL and swear allegiance to HKSAR of PRC; and

(b) the aforesaid conduct constitutes "misbehaviour" under BL 79(7) as Dr CHENG openly and deliberately humiliated the national flags and regional flags in the capacity of a LegCo Member.

6. IC notes that neither "breach of oath" nor "misbehaviour" under BL 79(7) is defined in BL, the relevant legislation or RoP. In considering whether the two allegations are substantiated, IC needs to take into account the established facts, relevant constitutional and statutory requirements, relevant court cases and the degree of severity of Dr CHENG's conduct. IC has also made reference to the Reasons for Verdict and Sentence handed down by the Eastern Magistrates' Court in respect of the case of *HKSAR v CHENG Chung-tai*. However, IC understands that it itself is not a court but is established under RoP. It cannot merely rely on the court judgment when determining whether Dr CHENG's conduct constitutes "breach of oath" and/or "misbehaviour" under BL 79(7).

Whether Dr CHENG's conduct constitutes "breach of oath"

7. On the first allegation in the censure motion, i.e. Dr CHENG's relevant conduct was in breach of the LegCo Oath, IC notes that in accordance with the Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress ("the Interpretation"), the oath taken under BL 104 is a legal pledge made by LegCo Members to PRC and its HKSAR. The oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law. According to the Interpretation, in considering whether Dr CHENG's relevant conduct constitutes a breach of the LegCo Oath, IC needs to consider whether his conduct was consistent with his pledges made under the LegCo Oath to PRC and its HKSAR. At the Council meeting of 12 October 2016, Dr CHENG took the LegCo Oath by which he pledged to: (a) uphold BL; and (b) bear allegiance to HKSAR of PRC.

8. IC notes that, as pointed out by the Court of Final Appeal in its judgment on the case of *HKSAR v NG Kung Siu and LEE Kin Yun*, the national flag represents PRC with her dignity, unity and territorial integrity,

while the regional flag is the symbol of HKSAR as an inalienable part of PRC under the principle of "one country, two systems". IC considers that the symbolic meanings represented by those flags are fundamental to the enactment of BL and the relationship between the Central Authorities and HKSAR under "one country, two systems". Such meanings have clearly been reflected in BL and in the pledges enshrined in the LegCo Oath taken by Dr CHENG.

9. In IC's view, Dr CHENG's repeated, open and deliberate humiliation of those flags, despite repeated advices and warnings by Dr CHIANG and the President, would lead a reasonable person to come to the view that Dr CHENG was not willing or at least had no intention to recognize or respect the meanings represented by those flags. Dr CHENG's conduct of humiliating those flags indicated that he did not manifest an intention to genuinely and faithfully accept and commit himself to honour the pledges of upholding BL and bearing allegiance to HKSAR of PRC. IC considers that the first allegation in the censure motion is substantiated, i.e. Dr CHENG's conduct was in breach of the LegCo Oath taken by him.

Whether Dr CHENG's conduct constitutes "misbehaviour"

10. On the second allegation in the censure motion, i.e. Dr CHENG's relevant conduct constitutes "misbehaviour" under BL 79(7), IC notes that 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" ("Advisory Guidelines") clearly state that "a Member should ensure that his conduct must not be such as to bring discredit upon the 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".

11. IC considers that bringing serious discredit upon LegCo and acting contrary to the generally assumed standard of conduct expected of a LegCo Member should be the key elements constituting a Member's "misbehaviour" under BL 79(7). In considering whether Dr CHENG's relevant conduct entails the above key elements, IC notes that:

(a) Dr CHENG inverted the national flags and regional flags not only once but twice, with the first round involving 21 flags displayed by 11 Members and

the second round 16 flags displayed by eight Members;

(b) Dr CHENG did so at an open meeting broadcast live on television and online amid the concern of some Members and the public about the solemnity and validity of the oath-taking by Members;

(c) Dr CHENG continued to do so despite repeated advices and warnings by Dr CHIANG and the President;

(d) up to the publication of this Report, Dr CHENG has not made a public apology for his conduct; and

(e) Dr CHENG was convicted by the court on two counts of desecrating the national flag and regional flag by publicly and wilfully defiling them at the said Council meeting.

12. In view of the manner and circumstances in which Dr CHENG humiliated the national flag and regional flag, the message conveyed to the public by his conduct in his capacity as a LegCo Member as well as his criminal conviction for desecration of those flags, IC considers that such humiliation has undoubtedly indicated that he was disrespectful to PRC and its HKSAR and has thereby brought serious discredit on LegCo, contrary to the generally assumed standard of conduct expected of a LegCo Member. Dr CHENG's conduct of humiliating the national flag and regional flag was serious enough to amount to "misbehaviour" under BL 79(7). IC therefore considers that the second allegation in the censure motion is also substantiated.

Conclusion

13. IC considers that Dr CHENG's conduct of openly and deliberately humiliating the national flag and regional flag constitutes both "breach of oath" and "misbehaviour" under BL 79(7). IC condemns Dr CHENG's conduct, and comes to the unanimous view that the facts as established constitute grounds for the censure of Dr CHENG.

Chapter 1 Introduction

Background

1.1 Under Article 79(7) of the Basic Law ("BL"), the President of the Legislative Council ("LegCo") of the Hong Kong Special Administrative Region ("HKSAR") shall declare that a Member of LegCo is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members of LegCo present. BL 79(7) is implemented in LegCo through Rule 49B of the Rules of Procedure ("RoP"). Under RoP 49B(2A), upon moving of a motion under subrule (1A), debate shall be adjourned and the matter stated in the motion shall be referred to an investigation committee unless the Council, on a motion which may be moved without notice by any Member, otherwise orders.

1.2 The Investigation Committee established under RoP 49B(2A) in respect of the motion to censure Dr Hon CHENG Chung-tai ("IC") is the second investigation committee established in accordance with a motion moved under RoP 49B(1A) since the First LegCo.[1] RoP 73A(2) provides that IC is responsible for establishing the facts stated in the motion moved under RoP 49B(1A), and giving its views on whether or not the facts as established constitute grounds for the censure.

1.3 At the Council meeting of 14 December 2016, Hon Paul TSE moved a motion under RoP 49B(1A) to censure Dr Hon CHENG Chung-tai ("Dr CHENG") under BL 79(7) ("the censure motion") as set out below:

> "*That this Council, in accordance with Article 79(7) of the Basic Law, censures Dr Hon CHENG Chung-tai for misbehaviour (details as particularized in the Schedule to this motion).*"
>
> ***Schedule***
>
> *Details of Dr Hon CHENG Chung-tai's misbehaviour are particularized as follows:*

[1] The first one was the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai, which was formed in January 2010 and completed its work in March 2012.

(1) Sixtus LEUNG Chung-hang and YAU Wai-ching requested to take their oath/affirmation afresh at the Council meeting of 19 October 2016 as their so-called oath/affirmation taken for the first time at the Council meeting of 12 October 2016 had been ruled invalid by the President of the Legislative Council ("LegCo") on the grounds that both of them could not be serious about their oath and were unwilling to be bound by it. At the Council meeting of 19 October, some 10 Members of the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") placed the mock-ups of the national flags of the People's Republic of China ("national flags") and the regional flags of the Hong Kong Special Administrative Region of the People's Republic of China ("regional flags") on their desks in the Chamber, so as to highlight the solemnity and pledge of taking oath to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.

(2) At the Council meeting of 19 October 2016, when the President directed Members to be summoned for a quorum and all DAB Members were not present, Dr Hon CHENG Chung-tai deliberately inverted the mock-ups of the national flags and the regional flags placed on the desks of DAB Members. After Dr Hon CHIANG Lai-wan found out what happened and returned to the Chamber to rearrange the mock-ups of the national flags and the regional flags and place them in the same position and manner as before, Dr CHENG again deliberately inverted the mock-ups of the national flags and the regional flags. Eventually, the President reprimanded him for leaving his seat at will and disturbing other Members displaying objects, and ordered him to withdraw

immediately from the Council as his conduct was grossly disorderly, but he refused to leave all along. What was happening in the Chamber was broadcast live on the television throughout that period of time.

(3) The aforesaid conduct of Dr Hon CHENG Chung-tai: (i) was in breach of the LegCo Oath taken by him at the Council meeting of 12 October 2016 under Article 104 of the Basic Law and the Oaths and Declarations Ordinance (Cap. 11) to "uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China"; (ii) constitutes misbehaviour as he openly and deliberately humiliated the national flags and the regional flags in his capacity as a Member of LegCo.

1.4 At the above meeting, upon the moving of the censure motion, Hon CHAN Chi-chuen moved without notice the motion under RoP 49B(2A) that no further action should be taken on the censure motion. Mr CHAN's motion was negatived (**Appendix 1.1**). In accordance with RoP 49B(2A), the debate on the censure motion was adjourned and the matter stated in the censure motion was referred to IC.

Establishment and membership of IC

1.5 Under RoP 73A(1), IC shall consist of a chairman, a deputy chairman and five members who shall be Members appointed by the President of LegCo ("the President") in accordance with an election procedure determined by the House Committee ("HC"). The mover of the censure motion (i.e. Hon Paul TSE), the three Members jointly signing the notice of the motion (i.e. Dr Hon CHIANG Lai-wan, Hon Martin LIAO and Hon CHUNG Kwok-pan) and the Member who is the subject of the motion (i.e. Dr CHENG) shall not be appointed to IC.

1.6 At its meeting on 6 January 2017, HC endorsed the election procedure for IC (**Appendix 1.2**), which is substantially the same as the election procedure endorsed by HC for the first investigation committee. All Members were invited to make nominations for the membership of IC. Five valid nominations were received by the LegCo Secretariat by the deadline of 16 January 2017, and two more valid nominations were made at the HC meeting on 20 January 2017 at which members of IC were elected. As the total number of valid nominations received was equal to the number of places available, all the seven nominees were declared elected for appointment to IC by the President. These seven Members then elected among themselves two Members to be nominated respectively for appointment by the President as the Chairman and Deputy Chairman of IC.

1.7 In accordance with RoP 73A(1), the President appointed on 20 January 2017 the Chairman, Deputy Chairman and members of IC as follows:

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Dr Hon Junius HO Kwan-yiu, JP (Deputy Chairman)
Dr Hon Elizabeth QUAT, BBS, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung

Practice and Procedure

1.8 Under RoP 73A(13), subject to RoP, the practice and procedure of an investigation committee shall be determined by the committee. At its first meeting on 20 February 2017, IC endorsed its Practice and Procedure in **Appendix 1.3**. The Practice and Procedure is modelled on the first investigation committee's practice and procedure which was drawn up with reference to the practices and procedures of select committees of LegCo as well as the experience of overseas legislatures in the investigation of alleged misbehaviour of their members. The Practice and Procedure has been uploaded onto the LegCo website. It has also been provided for Dr CHENG and all the witnesses to facilitate their understanding of how IC operates and their rights and obligations.

Guiding principles for determining the Practice and Procedure

1.9 IC's Practice and Procedure is underpinned by the following guiding principles which were adopted by the first investigation committee when determining its practice and procedure:

(a) IC should be fair, and seen to be fair, to the Member under investigation, to the Members making the allegations, and to the other parties involved in the investigation, and it should observe the principles of following due process in its investigation;

(b) IC should adopt a fair and impartial attitude and act independently in obtaining, examining and analyzing evidence and information, and it should not have any regard to political, party or personal considerations;

(c) IC is accountable to not only LegCo but also the public. Subject to RoP 73A(4) which provides that all its meetings must be held in camera (except in circumstances specified in RoP 73A(5)), IC should be as transparent as possible in its operation; and

(d) IC should work in a conscientious and efficient manner as public resources are involved.

1.10 Given the serious consequence if the censure motion is passed, IC considers it important to observe the above principles in seeking to establish the facts stated in the censure motion and give its views on whether or not the facts as established constitute grounds for the censure of Dr CHENG.

Criminal proceedings against Dr CHENG

1.11 During its investigation, IC was aware that criminal proceedings had been brought against Dr CHENG by the Department of Justice on the offences of desecration of the national flag and desecration of the regional flag respectively under section 7 of the National Flag and

National Emblem Ordinance (116 of 1997) ("NFO") and of the Regional Flag and Regional Emblem Ordinance (117 of 1997) ("RFO") in the case of *HKSAR v CHENG Chung-tai* (ESCC 1139/2017). IC was mindful that the court was responsible for adjudicating on the criminal liability of Dr CHENG, whereas IC's investigation needed to ascertain whether Dr CHENG's relevant conduct was in breach of the LegCo Oath and constitutes misbehaviour under BL 79(7). IC considered it not necessary to put on hold its work of obtaining evidence from witnesses in camera in view of the above legal proceedings. That said, IC respected the requests of individual witnesses (i.e. Dr Hon CHIANG Lai-wan and Hon LAU Kwok-fan mentioned in paragraph 1.19) for appearing before IC to give evidence after they had testified in court on the above case. IC also did not reach any conclusion on the matter stated in the censure motion until after the court had handed down its judgment on the case.

1.12 IC noted that there were precedents in which a select committee of LegCo conducted an inquiry in parallel with pending legal proceedings arising from matters which were related to the subject of the select committee's inquiry.[2] IC also noted that the first investigation committee had not put in place measures for avoiding prejudice to a person's interest in pending legal proceedings as the matters under its investigation then had not involved any pending legal proceeding. Unlike the first investigation committee, IC, having regard to the criminal proceedings against Dr CHENG by the Department of Justice, decided to include measures in its Practice and Procedure to avoid prejudice to Dr CHENG's interest in those pending legal proceedings.[3] IC also decided that: (a) hearings be held in camera under RoP 73A(4) so as not to prejudice the legal proceedings relating to Dr CHENG (in fact, as mentioned in paragraph 1.21, Dr CHENG did not elect for hearings to be held in public and had indicated that he would not attend the hearings of IC); (b) the two witnesses mentioned in paragraph 1.11 might give evidence before IC until after they had testified in court on the case relating to Dr CHENG; and (c) IC would not reach any conclusion on the matter stated in the censure motion until after the court had handed down its judgment on the above case.

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[2] While the Select Committee on Building Problems of Public Housing Units was conducting an inquiry, there were a number of relevant criminal cases pending in court. To avoid prejudice to a person's interest in pending legal proceedings, the Select Committee held closed hearings to obtain evidence, and deferred the publication of its report until after the completion of the relevant criminal proceedings.

[3] Paragraphs 18 to 20 of IC's Practice and Procedure (Appendix 1.3).

1.13 IC was subsequently aware that the Eastern Magistrates' Court ("the Magistrate Court") convicted Dr CHENG as charged in respect of the case referred to in paragraph 1.11 on 29 September 2017. At IC's request, the Magistrate Court provided IC with a transcript which set out its reasons for verdict and sentence ("Reasons for Verdict and Sentence") (**Appendix 1.4**) (Chinese version only) on 20 October 2017. IC also noted that Dr CHENG did not appeal against the conviction and the sentence. IC therefore decided to continue to obtain evidence from individual witnesses, deliberate on the censure motion and submit its Report to LegCo.

Standard of proof

1.14 IC notes that RoP do not prescribe any standard of proof that an investigation committee should adopt or how the evidence obtained should be assessed and weighed. IC is mindful that it is not a court and therefore not subject to the standards of proof applied by courts in criminal proceedings (i.e. "proof beyond reasonable doubt") and civil proceedings (i.e. "proof on a balance of probabilities"). As IC's investigation may lead to the Member under investigation being disqualified from the office, in determining its standard of proof, IC has considered the standard of proof adopted in disciplinary proceedings in Hong Kong as well as the practice adopted by the first investigation committee. IC eventually decided that the standard of proof in line with that of the first investigation committee be adopted: the more serious the allegation, the more compelling the evidence is required to establish the allegation.[4]

1.15 Further, as IC is not a court, it is not subject to the normal rules of evidence in civil or criminal proceedings. Nevertheless, IC will consider the relevance and reliability of the evidence given by witnesses and evaluate the weight of such evidence when forming its views.

[4] Please refer to paragraphs 113 and 116, *A Solicitor v The Law Society of Hong Kong* (2008), page 117, 11 HKCFAR, the Court of Final Appeal. Paragraph 116 of the judgment stated that "…The more serious the act or omission alleged, the more inherently improbable must it be regarded. And the more inherently improbable it is regarded, the more compelling will be the evidence needed to prove it on a preponderance of probability. If that is properly appreciated and applied in a fair-minded manner, it will provide an appropriate approach to proof in disciplinary proceedings. Such an approach will be duly conducive to serving the public interest by maintaining standards within the professions and the services while, at the same time, protecting their members from unjust condemnation".

Investigation process

1.16 At its first meeting on 20 February 2017, IC decided to conduct its investigation in three stages:

(a) Stage 1 for undertaking preparatory work including inviting the Members who initiated the censure motion to provide information in support of the particulars of misbehaviour set out in the Schedule to the censure motion; gathering information relevant to the censure motion and analyzing such information; and deciding whether to conduct hearings and, if yes, the witnesses to be invited to attend its hearings to give evidence;

(b) Stage 2 for conducting hearings to obtain evidence from witnesses and deliberating on the evidence obtained; and

(c) Stage 3 for holding internal deliberations for preparing and discussing the draft report of IC.

Invitation of witnesses

1.17 In accordance with paragraph 5 of its Practice and Procedure and on the basis of the information and responses provided for IC under paragraphs 2 and 3 of its Practice and Procedure, IC considered it necessary to conduct hearings for the purpose of establishing the facts stated in the censure motion. Upon identifying a total of 43 potential witnesses in the following three groups, IC invited them to be witnesses and attend a hearing for its examination:

(a) the Member under investigation (i.e. Dr CHENG) and the four Members who initiated the censure motion;

(b) 11 Members who were distributed with and/or placed the mock-ups of the national flag and regional flag on their desks in the Chamber at the Council meeting of 19 October 2016 ("the said Council meeting") and two stewards of the LegCo Secretariat; and

(c) 25 Members who did not place the mock-ups on their desks in the Chamber but were present at the relevant part of the said Council meeting.

Witnesses attending hearings

1.18 Of the above 43 potential witnesses, the following seven agreed to be witnesses and give evidence before IC, while the other responded that they neither agreed to be witnesses nor would submit written statements to IC (**Appendix 1.5**):

(a) Hon Paul TSE, mover of the censure motion;

(b) Dr Hon CHIANG Lai-wan and Hon Martin LIAO who were two of the three Members jointly signing the notice of the censure motion;

(c) Hon LAU Kwok-fan who distributed the mock-ups of the national flag and regional flag to a number of Members in the Chamber shortly before the start of the said Council meeting;

(d) Hon HUI Chi-fung who did not place the mock-ups on his desk but was present at the relevant part of the said Council meeting;

(e) Mr Alfred LEE, steward of the LegCo Secretariat who talked to Dr CHENG when the latter was inverting the mock-ups at the said Council meeting; and

(f) Mr Tommy LEE, steward of the LegCo Secretariat who restored some of the inverted mock-ups to their original positions at the said Council meeting.

1.19 Except Hon HUI Chi-fung, all the above six witnesses submitted their written statements (**Appendices 1.6 to 1.11**) (Chinese version only) to IC.[5] Meanwhile, IC acceded to the requests of

[5] IC also invited a security assistant of the LegCo Secretariat to provide a written statement for IC's consideration. Based on the information provided in that written statement, IC considered it not necessary to invite the security assistant to attend a hearing for its examination.

Dr Hon CHIANG Lai-wan and Hon LAU Kwok-fan that they would not attend IC's hearing until after they had testified in the criminal proceedings in *HKSAR v CHENG Chung-tai*.

1.20 IC considered that the seven witnesses referred to in paragraph 1.18 were important witnesses and the evidence they provided was sufficient for the purpose of assisting IC in considering whether the facts stated in the censure motion could be established.

Dr CHENG's responses to IC's invitation

1.21 IC considers that it must be fair to Dr CHENG and observe the due process, including the principles of natural justice. It therefore wrote to Dr CHENG three times inviting him to attend hearings or assist its investigation. In response to the invitations, Dr CHENG stated in **Appendices 1.12, 1.13 and 1.14** (Chinese version only) that he: (a) would not attend the hearings of IC; (b) would not propose witnesses for IC's consideration; and (c) would not elect for hearings to be held in public as allowed under RoP 73A(5)(a). Dr CHENG also indicated that he did not wish to comment on IC's investigation and the censure motion, and he had no comments on the witnesses' written statements received by IC. Nor did he intend to submit any written statement to IC (**Appendices 1.15 and 1.16**) (Chinese version only).

<u>Meetings and hearings</u>

1.22 Under paragraphs 7 and 8 of the Practice and Procedure, which are modelled on RoP 73A(4) and (5), all IC meetings, including hearings at which the Member under investigation or a witness or witnesses appear, will be held in camera. Only the Member under investigation may elect for hearings to be held in public, and the election must be made before the first hearing. Where the Member under investigation makes such an election, all hearings shall be held in public throughout the entire investigation unless, upon an application by a witness or a request from an IC member, IC on sufficient reason decides otherwise. On behalf of IC, the Clerk to IC wrote to Dr CHENG on 2 March 2017 drawing his attention to the above provisions. In view of Dr CHENG's decision mentioned in paragraph 1.21, all hearings of IC were held in camera in accordance with

RoP 73A(4). IC considered that holding its hearings in camera helped avoid prejudice to the criminal proceedings against Dr CHENG.

1.23 Nevertheless, to enhance the transparency of IC's work, the Chairman of IC briefed the media on the progress of IC's work after each meeting.

1.24 IC conducted a total of eight closed meetings, including two hearings in camera. A schedule of the hearings is in **Appendix 1.17**.

Examination of witnesses under oath

1.25 IC decided that witnesses who would attend a hearing to give evidence to IC would be invited to choose to be examined under oath pursuant to section 11 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). IC considers that witnesses examined on oath would be conducive to IC's assessment of their credibility and the weight of their evidence. Except Mr Alfred LEE mentioned in paragraph 1.18(e), all the witnesses attending IC's hearings elected to give evidence under oath, which was administered by the Chairman of IC.

Draft findings

1.26 IC strives to ensure that its investigation and relevant procedure are fair and seen to be fair to parties whose interests or reputation may be affected by its proceedings. In accordance with paragraph 25 of the Practice and Procedure, those parts of IC's Report which set out the evidence, on the basis of which IC has established the facts stated in the censure motion ("the relevant parts of evidence"), were forwarded to the Member under investigation (i.e. Dr CHENG) and the witnesses concerned for comment.[6] Dr CHENG indicated in **Appendix 1.18** (Chinese version only) that he would not respond to and had no comments on the relevant parts of evidence. Other witnesses who were provided with the relevant parts of evidence indicated that they had no comments on the relevant parts of evidence.[7]

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[6] As this Report does not cite the evidence given by Hon Paul TSE and Hon Martin LIAO at the hearing held in camera and their written statements to establish the facts stated in the censure motion, IC considers it not necessary to forward the relevant parts of evidence in this Report to them for comment.

[7] The witnesses concerned are Dr Hon CHIANG Lai-wan, Hon LAU Kwok-fan and the two stewards of the LegCo Secretariat, namely Mr Alfred LEE and Mr Tommy LEE. IC was prepared to forward the relevant parts of evidence in this Report to Hon HUI Chi-fung for comment. However, as Mr HUI indicated that he would not sign the confidentiality undertaking, IC has decided that the relevant parts of evidence would not be forwarded to Mr HUI for comment. For details, please see footnote 66 in Chapter 3 of this Report.

Report

1.27 Under RoP 73A(12), IC shall, as soon as it has completed investigation of the matter referred to it, report to the Council thereon and IC shall be dissolved accordingly. IC has completed its investigation and submits this Report to the Council.

1.28 This Report comprises four chapters. This Chapter provides an introduction to the background of the censure motion and sets out important matters relating to the work of IC. Chapter 2 highlights the constitutional and statutory requirements for oath-taking by Members as well as the use and protection of the national flag and regional flag, which are relevant to IC's investigation. Chapter 3 sets out the information and evidence relevant to the particulars of Dr CHENG's misbehaviour stated in the Schedule to the censure motion. Chapter 4 reports on IC's consideration as to whether the facts as stated in the censure motion can be established and, if yes, gives IC's views on whether or not the facts as established constitute grounds for the censure of Dr CHENG.

1.29 In addition to the above Chapters, this Report has incorporated a number of documents in its appendices, including witnesses' written statements, the minutes of evidence in the form of verbatim transcripts in the original language used at IC's hearings, other relevant documents and the minutes of IC's meetings which record the proceedings on the consideration of this Report (**Appendix 1.19**). The whole Report will be accessible on the LegCo website at www.legco.gov.hk after it has been tabled in LegCo.

Chapter 2 Constitutional and statutory requirements relating to the motion to censure Dr Hon CHENG Chung-tai

2.1 According to the Schedule to the censure motion, the conduct of Dr CHENG inverting the mock-ups of the national flag and regional flag placed on the desks of Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB")[8] Members at the Council meeting of 19 October 2016 ("the said Council meeting") was in breach of the LegCo Oath taken by him at the Council meeting of 12 October 2016 under BL 104 and the Oaths and Declarations Ordinance (Cap. 11); and constitutes misbehaviour as he openly and deliberately humiliated the national flag and regional flag in his capacity as a Member of LegCo. This Chapter highlights the constitutional and statutory requirements for oath-taking by Members as well as the use and protection of the national flag and regional flag, which are relevant to IC's investigation.

Constitutional and statutory requirements for oath-taking

Oath-taking

2.2 BL 104 provides that:

> *"[w]hen assuming office … members … of the Legislative Council … must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China."*

2.3 The meaning of BL 104 is set out in paragraphs 1 to 3 of the Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress ("the Interpretation") (issued on 7 November 2016). According to the Interpretation, oath taking is the legal prerequisite and required procedure for public officers specified in BL 104 to assume office. The oath taken under BL 104 is a legal pledge made to the People's Republic of China ("PRC") and its

[8] As mentioned in Chapter 3 of this Report, not only the mock-ups of the national flag and regional flag placed by DAB Members were inverted by Dr CHENG at the said Council meeting. The mock-ups of the national flag and regional flag placed by some other Members were also inverted by him.

HKSAR and is legally binding. The oath taking must comply with the legal requirements in respect of its form and content. An oath taker must take the oath sincerely and solemnly. An oath taker who intentionally reads out words which do not accord with the wording of the oath prescribed by law, or takes the oath in a manner which is not sincere or not solemn, shall be treated as declining to take the oath. The oath so taken is invalid and the oath taker is disqualified forthwith from assuming the public office specified in BL 104. The oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law. An oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with law.[9] The courts in HKSAR have considered the Interpretation in relevant court judgments, and have pointed out that the Interpretation as to the true and proper meaning of BL 104 is binding on all the courts in HKSAR.[10]

2.4 The form of LegCo Oath required to be taken by Members is set out in Part IV of Schedule 2 to the Oaths and Declarations Ordinance, which is reproduced below:

> "*I swear that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.*"

2.5 Under section 7 of the Oaths and Declarations Ordinance, a member-elect may opt to make an affirmation instead of taking an oath

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9 L.N. 169 of 2016.

10 Paragraphs 20 and 22 of the Court of First Instance's judgment in *Chief Executive of the Hong Kong Special Administrative Region and Another v The President of the Legislative Council and Another* (HCAL 223, 225-226/2016), *Chief Executive of the Hong Kong Special Administrative Region and Another v Clerk to the Legislative Council and Another* (HCAL 224/2016), *Secretary for Justice v YIU Chung Yim* (HCMP 3378/2016), *Secretary for Justice v Nathan LAW Kwun Chung* (HCMP 3379/2016), *Secretary for Justice v LAU Siu Lai* (HCMP 3381/2016), and *Secretary for Justice v LEUNG Kwok Hung* (HCMP 3382/2016) (14 July 2017). See also paragraph 35 of the reasons for determination of the Appeal Committee of the Court of Final Appeal in *Chief Executive of the Hong Kong Special Administrative Region and Another v The President of the Legislative Council and Others* (FAMV 7-10/2017) (1 September 2017) .

for the purpose of the LegCo Oath. The form and content of the affirmation shall be the same as the prescribed LegCo Oath, save that an affirmation shall commence with "I, [name], solemnly, sincerely, and truly declare and affirm". The words "solemnly, sincerely" are not defined in the Oaths and Declarations Ordinance.

"Breach of oath" and "misbehaviour" under BL 79(7)

2.6 BL 79(7) provides that the President shall declare that a member of LegCo is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of LegCo present.

2.7 The phrase "breach of oath" is not defined in BL, the Oaths and Declarations Ordinance or RoP. No judicial decisions have been identified on the types of conduct which amount to breach of oath in a context similar to that of the censure motion. There were a number of cases relating to the taking of the LegCo Oath by Members but such cases mainly concerned the validity of the oath taken by Members instead of breach of oath.[11] The term "misbehaviour" is also not defined in BL or RoP. No judicial authorities have been identified on the meaning of "misbehaviour" in a context similar to that of the censure motion. Nor is there any record of discussion by the Basic Law Drafting Committee and the Basic Law Consultative Committee about the meaning or scope of "misbehaviour" referred to in BL 79(7).

2.8 What behaviour should be regarded as falling within the meaning of the two terms, namely "breach of oath" and "misbehaviour", was considered by the Committee on Rules of Procedure ("CRoP") in 1999. CRoP concluded then that it would be more appropriate for the Council of the day to make a decision on the kind of behaviour which would be regarded as "misbehaviour" or "breach of oath" leading to the disqualification of a Member from the office under BL 79(7).[12] The definition of "misbehaviour" was also considered by the first investigation committee. In its view, it was by no means easy to formulate clear and explicit criteria for defining "misbehaviour". The first investigation committee further observed that BL 79(7) has not explicitly

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[11] The relevant cases are:
- *(a)* *LEUNG Kwok Hung v Clerk to the Legislative Council* (HCAL 112/2004); and
- *(b)* *Chief Executive of the Hong Kong Special Administrative Region and Another v The President of the Legislative Council* and Others (FAMV 7-10/2017) (1 September 2017) (on appeal from CACV 224-227/2016).

[12] Paragraph 2.49 of the Progress Report of CRoP for the period July 1998 to April 1999.

stipulated that "misbehaviour" should cover only the conduct of Members in the discharge of their duties as Members. However, the first investigation committee considered that the mechanism in question should not be applicable to conduct purely related to a Member's personal or private life, unless such conduct seriously affects the reputation of LegCo as a whole.[13]

2.9 IC has attempted to study cases in overseas jurisdictions where members of legislatures had been found to be in breach of their oath by desecrating the national flag, but no such cases were found up to the publication of this Report.

Regulation of the use and protection of the national flag and regional flag

2.10 In Hong Kong, the use and protection of the national flag and regional flag are regulated by the respective Ordinances, i.e. NFO and RFO.

NFO

2.11 Under section 2 of NFO, "national flag" means the national flag of PRC adopted by resolution of the First Plenary Session of the Chinese People's Political Consultative Conference on 27 September 1949. Section 4 provides that a national flag which is damaged, defiled, faded or substandard must not be displayed or used. Section 7 provides that:

> *"A person who desecrates the national flag or national emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 years."*.[14]

2.12 Schedule 1 to NFO sets out the specifications for the national flag, which include the measurement in common use for the national flag.[15]

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13 Paragraph 5.7 of the report of the first investigation committee.

14 A level 5 fine stands at HK$50,000 (Schedule 8 to the Criminal Procedure Ordinance (Cap. 221)).

15 Paragraph (3) of Schedule 1 to NFO provides for the following measurement in common use for the national flag from which people from various circles may choose at their discretion:

a. 288 cm in length, 192 cm in height;
b. 240 cm in length, 160 cm in height;
c. 192 cm in length, 128 cm in height;
d. 144 cm in length, 96 cm in height; and
e. 96 cm in length, 64 cm in height.

Section 8 of NFO provides that a copy of the national flag that is not an exact copy but that so closely resembles the national flag as to lead to the belief that the copy in question is the national flag is taken to be the national flag for the purposes of NFO. It is noted that no definition of "copy" or "closely resemble" is provided in NFO.

2.13 Schedule 3 to NFO provides for, among others, the priority of the national flag. In particular, when the national flag is displayed, it shall be placed in a prominent position. The national flag, when displayed with another flag or flags, shall be at the centre, above the other flag or flags, or in a position of prominence.

RFO

2.14 The regulation of the use and protection of the regional flag is similar to those of the national flag. Under section 2 of RFO, "regional flag" means the regional flag of HKSAR endorsed at the Fourth Plenum of the Preparatory Committee of HKSAR on 10 August 1996. Section 4 provides that a regional flag which is damaged, defiled, faded or substandard must not be displayed or used. Section 7 provides that:

> *"A person who desecrates the regional flag or regional emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it commits an offence and is liable –*
>
> *(a) on conviction on indictment to a fine at level 5 and to imprisonment for 3 years; and*
>
> *(b) on summary conviction to a fine at level 3 and to imprisonment for 1 year."*

2.15 Schedule 1 to RFO sets out the specifications for the regional flag. There are eight different standard sizes, including the measurement of the regional flag used as a desk flag the length of which is 15 cm and the height 10 cm. If regional flags of non-standard sizes are required to meet special needs, they shall be of a scaled-up or a scaled-down size. Similar to section 8 of NFO, section 8 of RFO provides that a copy of the regional flag that is not an exact copy but that so closely resembles the regional flag as to lead to the belief that the copy in question is the regional flag is taken to be the regional flag for the purposes of RFO. Like NFO, RFO does not provide for a definition of "copy" or "closely resemble".

2.16 Schedule 3 to RFO provides for the arrangements for the display and use of the regional flag to safeguard the dignity of the regional flag. It also provides that the regional flag is the symbol of HKSAR, and each and every Hong Kong resident and organization should respect and cherish the regional flag. In HKSAR, whenever the national flag is flown together with the regional flag, the national flag is to occupy a more prominent position. When the national flag is flown alongside the regional flag, the national flag is to be on the right and the regional flag on the left. According to the Administration's relevant stipulations, when the national flag and regional flag are displayed at the same time or displayed side by side, the regional flag shall be smaller than the national flag, with the national flag on the right and the regional flag on the left.[16]

2.17 To facilitate its understanding of the subject matter of the investigation, IC has also studied the protection of national flags in some overseas jurisdictions.[17]

Relevant court cases

2.18 Section 7 of NFO and of RFO set out five criminal acts constituting desecration of the national flag and regional flag, i.e. publicly and wilfully (公開及故意) (a) burning (焚燒), (b) mutilating (毀損), (c) scrawling on (塗劃), (d) defiling (玷污) and (e) trampling on (踐踏) such flags, but none of these acts is defined in NFO or RFO. Nevertheless, there were a number of judicial decisions on cases concerning desecrating those flags in Hong Kong, namely *HKSAR v NG Kung Siu and LEE Kin Yun* (FACC 4/1999, on appeal from HCMA 563/1998), *HKSAR v KOO Sze Yiu and MA Wan Ki* (HCMA 482/2013, on appeal from ESCC 918/2013) and *HKSAR v KOO Sze Yiu* (HCMA 185/2013, on appeal from ESCC 368/2013). A summary of the facts and sentences in respect of those cases are in **Appendix 2.2**.

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16 Paragraph 3(2) of the Stipulations for the Display and Use of the National Flag and National Emblem and the Regional Flag and Regional Emblem made by the Chief Executive ("CE") under section 3(2) of NFO and section 3(1) of RFO. Both section 10 of NFO and section 9 of RFO provide that a stipulation made by CE under NFO or RFO is not subsidiary legislation.

17 Paragraphs 16 to 22 of the information paper prepared by the Legal Service Division of the LegCo Secretariat on relevant legal issues relating to the motion to censure Dr Hon CHENG Chung-tai (**Appendix 2.1**).

2.19 As mentioned in paragraph 2.1, one of the allegations in the Schedule to the censure motion is that Dr CHENG openly and deliberately humiliated the national flag and regional flag in his capacity as a Member of LegCo, which constituted misbehaviour. IC found the court judgments in the above cases useful for its consideration of the matter. IC also considered the Reasons for Verdict and Sentence of the criminal case against Dr CHENG in *HKSAR v CHENG Chung Tai* (ESCC 1139/2017). The relevant issues considered by the courts are highlighted below.

HKSAR v NG Kung Siu and LEE Kin Yun

2.20 The meaning of desecration of the national flag and regional flag by defiling them in section 7 of NFO and of RFO was considered by the Court of Final Appeal ("CFA") in *HKSAR v NG Kung Siu and LEE Kin Yun*.[18] The case concerned two Defendants carrying in their hands and waving in the air along the route of a public procession what appeared to be a defaced national flag and a defaced regional flag, and tying the two flags to some railings outside the Central Government Offices on 1 January 1998. The two Defendants were charged for the offence of desecrating the national flag and regional flag by publicly and wilfully defiling them, contrary to section 7 of NFO and of RFO.

2.21 In its judgment on the case of *HKSAR v NG Kung Siu and LEE Kin Yun*, CFA emphasized the symbolic importance of the national flag and regional flag:

> "*The national flag is the symbol of the People's Republic of China. It is the symbol of the State and the sovereignty of the State. It represents the People's Republic of China, with her dignity, unity and territorial integrity.*
>
> *The regional flag is the unique symbol of the Hong Kong Special Administrative Region as an inalienable part of the People's Republic of China under the principle of 'one country, two systems'...*
>
> *The intrinsic importance of the national flag and the regional flag to the HKSAR as such unique symbols is demonstrated by the fact that at the historic moment on the stroke of midnight on 1 July 1997, the handover ceremony in Hong Kong to mark*

[18] (1999) 2 HKCFAR 442 (FACC 4/1999, 15 December 1999).

> *the People's Republic of China's resumption of the exercise of sovereignty over Hong Kong began by the raising of the national flag and the regional flag.*"[19]

2.22 As to what amounts to desecration of the national flag and regional flag by defiling them, CFA held that:

> "*The ordinary meaning of 'defiling' plainly includes dishonouring. By carrying and waving the defaced flags during the public procession and then tying them to some railings at the end of the procession, the respondents were clearly dishonouring the flags. These acts clearly amount to desecration by defiling.*"[20]

2.23 Taking the national flag and regional flag as symbols, CFA viewed flag desecration as symbolic or non-verbal expression:

> "*[F]lag desecration is symbolic expression or non-verbal expression. A person desecrating a national flag as a means of expression would usually be expressing a message of protest. But the message he seeks to convey may not be clear. The message may be one of hatred or opposition directed to the nation. Or it may be one of protest against the ruling government. Or the person concerned may be protesting against a current policy of the government. Or some other message may be intended. One has to consider the surrounding circumstances of the flag desecration in question to ascertain the message which is sought to be communicated.*"[21]

2.24 CFA interpreted "desecration" in flag desecration in a broad sense of the word, i.e. even putting words of praise on the national flag or regional flag would constitute flag desecration:

> "*The prohibition of desecration of the national and regional flags by the statutory provisions in question is not a wide restriction of the freedom of expression. It is a limited one. It bans one mode of expressing whatever the message the*

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19 Paragraphs 3, 4 and 5 of the judgment in *HKSAR v NG Kung Siu and LEE Kin Yun* (FACC 4/1999).

20 Paragraph 36 of the judgment in *HKSAR v NG Kung Siu and LEE Kin Yun* (FACC 4/1999).

21 Paragraph 43 of the judgment in *HKSAR v NG Kung Siu and LEE Kin Yun* (FACC 4/1999).

> *person concerned may wish to express, that is the mode of desecrating the flags. It does not interfere with the person's freedom to express the same message by other modes. Further, it may well be that scrawling words of praise on the flags (as opposed to words of protest which is usually the message sought to be conveyed) would constitute offences within section 7 of both Ordinances, namely, that of desecrating the flag by scrawling on the same. If this be right, then it would mean that the prohibition not only bans expression by this mode of a message of protest, but also other messages including a message of praise. But a law seeking to protect the dignity of the flag in question as a symbol, in order to be effective, must protect it against desecration generally.*"[22]

HKSAR v KOO Sze Yiu and MA Wan Ki

2.25 The case of *HKSAR v KOO Sze Yiu and MA Wan Ki*[23] concerned two Defendants setting fire to a regional flag with a lighter or burning newspaper. They were charged with the offence of attempting to desecrate the regional flag, contrary to, among others, section 7 of RFO, and were convicted. The Court of First Instance ("CFI") of the High Court dismissed the appeals against conviction by the Defendants.[24] In this case, CFI followed the line of thinking of CFA as set out in paragraph 2.24 above:

> "*According to the analysis made by Li CJ in Ng Kung Siu, the word 'desecrate' does not bear any specific or one-way meaning. On a literal interpretation, even the act of putting words of praise on the national/regional flag would be an offence for it would constitute 'scrawling on' the flag. Therefore, be it section 7 of the National Flag Ordinance (for short) or section 7 of the Regional Flag Ordinance, its purpose is simply to preserve the dignity of the national/regional flag against desecration in the broad sense of the word.*"[25]

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22 Paragraph 44 of the judgment in *HKSAR v NG Kung Siu and LEE Kin Yun* (FACC 4/1999).

23 [2014] 4 HKLRD 565 (HCMA 482/2013, 27 March 2014).

24 In respect of this case, the Appeal Committee of CFA refused to grant leave to the Defendants to appeal to CFA in (2014) 17 HKCFAR 811 (FAMC 40/2014, 10 November 2014).

25 Paragraph 17 of the judgment in *HKSAR v KOO Sze Yiu and MA Wan Ki* (HCMA 482/2013).

HKSAR v CHENG Chung-tai

2.26 Whether Dr CHENG's act of inverting mock-ups of the national flag and regional flag at the said Council meeting amounted to desecration of such flags by defiling them was the main issue dealt with by the Magistrate Court, which handed down its reasons for verdict and sentence[26] on 29 September 2017. In that case, Dr CHENG as the Defendant was charged with two counts of desecrating the national flag and regional flag by publicly and wilfully defiling them, contrary to section 7 of NFO and of RFO.

2.27 During the trial, the Defence did not dispute the facts of the case that the Defendant had inverted the national flags and regional flags erected on the desks of some Members at the said Council meeting. The points of contention in the case were: (a) the legal meaning of "defiling" (玷污) in section 7 of NFO and of RFO; and (b) whether the Defendant's act constituted desecration of the national flag and regional flag by defiling them.[27]

2.28 The Magistrate Court did not accept the Defence's argument that in NFO and RFO, same as "defiled" (污損) in section 4, "defiling" (玷污) in section 7 must refer to an act which substantially soils a flag or inflicts physical damage on a flag. Citing the judgment of CFA in *HKSAR v NG Kung Siu and LEE Kin Yun*, the Magistrate Court pointed out the different legislative intents of sections 4 and 7 in that the purpose of section 4 is to guide people who mean to do reverence to the national flags and regional flags and emblems, while, by complete contrast, that section 7 is to protect the national flags and regional flags and emblems from people who mean to desecrate them.[28] The Magistrate Court held that "defiled" (污損) in section 4 was not equivalent to "defiling" (玷污) in section 7. Following the judgment of CFA in *HKSAR v NG Kung Siu and LEE Kin Yun*, the Magistrate Court ruled that "defiling" (玷污) encompassed "dishonouring" (玷辱). In other words, acts of physical dishonour of flags were not limited to soiling or damaging materials. Whether an act

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[26] Transcript of the Reasons for Verdict and Sentence in HKSAR v CHENG Chung Tai (ESCC 1139/2017) (Appendix 1.4).

[27] Rows R to S on page 1 of the transcript of the Reasons for Verdict and Sentence in *HKSAR v CHENG Chung Tai* (ESCC 1139/2017) (Appendix 1.4).

[28] Paragraph 76 of the judgment in *HKSAR v NG Kung Siu and LEE Kin Yun* (FACC 4/1999), and rows H to K on page 2 of the transcript of the Reasons for Verdict and Sentence in *HKSAR v CHENG Chung Tai* (ESCC 1139/2017) (Appendix 1.4).

constituted "defiling" (玷污) shall depend on the actual circumstances and conditions under which that particular act was committed.[29]

2.29 The Magistrate Court ruled that the Defendant's act constituted desecration of the national flag and regional flag:

> "*下一個問題係倒插國旗與及區旗是否以玷污嘅方式侮辱有關嘅旗幟。...有關嘅旗幟其實係有一支白色嘅旗桿，當旗桿插在杯座上，旗幟內嘅圖案就能以符合法例嘅規格方式展示，即係國旗入面嘅五星圖案會展示喺旗幟左上方，區旗嘅紫荊花圖案亦都會正面顯示出嚟，任何正常及合理嘅人都必定明白將一面國旗或區旗倒插必定會破壞有關旗幟嘅尊嚴，當被告人把國旗及區旗倒插在杯座上，使旗幟塞在杯座，旗桿伸出杯座，任何正常及合理的人都會必然認同被告是以受辱嘅方式展示旗幟。因此，本席裁定被告在案發時於會議廳倒插國旗及區旗是以玷污嘅方式侮辱國旗及區旗，被告亦肯定明白呢一點。無論被告當其時是否小心翼翼咁倒插國旗及區旗，又或者佢最终嘅目的只係希望藉此將離席議員吸引返回會議廳，其實與他是否干犯侮辱國旗及區旗嘅罪行並無關係。*"[30]

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29 Rows P to S on page 3 of the transcript of the Reasons for Verdict and Sentence in *HKSAR v CHENG Chung Tai* (ESCC 1139/2017) (Appendix 1.4).

30 Row S on page 3 to row D on page 4 of the transcript of the Reasons for Verdict and Sentence in *HKSAR v CHENG Chung Tai* (ESCC 1139/2017) (Appendix 1.4); English translation: "The next question is whether the act of inverting a national flag and a regional flag amounts to desecrating those flags by defiling them. …The flags in question actually came with a white pole. As long as the pole was placed in a glass holder, the design of the flag could be displayed in accordance with the specifications set out in the legislation, i.e. the design of five stars was displayed on the upper left of the national flag, and the bauhinia design was also displayed on the front of the regional flag. Any normal and reasonable person should understand that inverting a national flag or a regional flag certainly tarnishes the dignity of the flag. When the Defendant inverted the national flags and regional flags in the glass holders, resulting in the flags being stuffed inside the glass holders and their poles stretching out of the holders, any normal and reasonable person would definitely agree that the Defendant had caused the flags to be displayed in an insulting way. Therefore, I hold that the Defendant has, by inverting the national flags and regional flags in the Chamber at the material time, desecrated those flags by defiling them. The Defendant certainly understands this too. Whether the Defendant had inverted the national flags and regional flags with great care, or whether his aim of doing this was just to attract Members who had left their seats to return to the Chamber, is not relevant to whether he had committed the offence of desecrating the national flag and regional flag."

2.30 The Magistrate Court considered that the copies of the national flags and regional flags inverted by the Defendant closely resembled the national flag and regional flag as to lead to the belief that the copies in question were the national flag and regional flag for the purposes of NFO and RFO:

> *"…有關嘅旗幟係咪國旗同埋區旗，涉案嘅國旗及區旗並不完全符合法例嘅規格，但係根據有關嘅法例嘅第 8 條只要其相似程度足以使人相信它是國旗或區旗，有關嘅複製本已可視為國旗或區旗，由證物P7--P6 及P7 可以見到，無論係旗幟嘅顏色，長闊嘅比例，星形嘅圖案，就國旗而言喇，紫荊花形嘅圖案就區旗而言，與及圖案嘅位置，其相似程度肯定足以使人相信佢就係國旗或區旗。"*[31]

2.31 The Magistrate Court also considered the Defendant's act as a public and wilful act:

> *"顯而易見，公開就是公眾人士可以見到嘅意思，案發日約有三十名公眾人士在立法會的公眾席現場觀看會議過程，此外，公眾人士亦可以進入立法會網站觀看當日會議的錄像的網上直播，被告人兩次前往其他離席議員的座位桌前，將國旗及區旗倒插肯定是故意嘅行為，本席肯定案發日被告在會議廳內兩次公開及故意地倒插國旗及區旗。"*[32]

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[31] Rows D to F on page 4 of the transcript of the Reasons for Verdict and Sentence in *HKSAR v CHENG Chung Tai* (ESCC 1139/2017) (Appendix 1.4); English translation: "…On the question of whether the flags concerned were the national flag or regional flag, although the flags involved in the present case did not fully conform to the specifications under the legislation, a copy, according to section 8 of NFO and RFO, that so closely resembles the national flag or regional flag as to lead to the belief that it is the national flag or regional flag is taken to be the national flag or regional flag under sections 8 of the relevant Ordinances. As seen from exhibits P7—P6 and P7, the close resemblance they bore to the national flag in terms of colour, length/width ratio and the star shape design and to the regional flag in terms of the bauhinia shape design and the position of the design had definitely led to the belief that they were the national flag or regional flag."

[32] Rows G to I on page 4 of the transcript of the Reasons for Verdict and Sentence in *HKSAR v CHENG Chung Tai* (ESCC 1139/2017) (Appendix 1.4); English translation: "Apparently, "publicly" means exposing an item in such a manner that it may be readily seen by members of the public. On the material day, about 30 members of the public were on the spot observing the proceedings of the meeting in the public gallery of LegCo. Besides, members of the public could watch the live webcast of the meeting on that day by accessing the LegCo website. The Defendant walked twice to the seats of the Members who had left the meeting and inverted the national flags and regional flags on the desks. Such conduct definitely constituted a wilful act.

2.32 The Magistrate Court found the Defendant guilty of the two charges and ordered that the Defendant be fined $2,500 on each of the two charges. The time limit for Dr CHENG to appeal against the Magistrate Court's conviction and sentence has expired.

2.33 In conducting its investigation, IC has taken the above court judgments as important reference. Nevertheless, IC is fully aware that it itself is not a court and its function is not to investigate whether Dr CHENG's alleged misbehaviour violated the law or to adjudicate on the legal liability of Dr CHENG. Under RoP 73A(2), IC is 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 of Dr CHENG. It is incumbent upon IC to establish and consider the relevant facts and make its own views on whether Dr CHENG's alleged misbehaviour constitutes "breach of oath" and/or "misbehaviour" under BL 79(7) by taking into account the evidence and information obtained by IC, relevant provisions in BL and relevant legislation.

I am sure that on the material day, the Defendant publicly and wilfully inverted the national flags and regional flags twice in the Chamber."

Chapter 3 Information and evidence relevant to the particulars of the misbehaviour set out in the Schedule to the censure motion

3.1 This Chapter sets out the information and evidence gathered by IC, which are relevant to the particulars of Dr CHENG's misbehaviour as set out in the Schedule to the censure motion. IC has made reference to the relevant video footages available on the LegCo website, the official records of proceedings of the relevant Council meetings, witnesses' written statements formally produced to IC and their evidence given to IC at its hearings, etc. The relevant minutes of evidence given by seven witnesses at IC's hearings are in **Appendices 3.1 to 3.7**.

Oath-taking by Dr CHENG

3.2 At the first meeting of the Sixth LegCo on 12 October 2016, Members including Dr CHENG shall take the LegCo Oath which shall be administered by the Clerk to LegCo ("the Clerk"). According to the video footage of the above Council meeting, after the Clerk had called Dr CHENG's name inviting him to walk up to the table at the centre of the Chamber to take oath, he walked down the hallway to the table. Then he made the following remarks:

> "*各位香港人，喺過去呢幾年我地嘅抗爭運動，為左捍衛我地香港未來，已經不惜走上街頭七十幾日，甚至喺年初一嘅事件，好多年青人為左自己嘅香港犧牲未來，所以我唔認為我今日宣誓嘅形式，會構成抗爭嘅具體效果。我相信大家會明白。*"[33]

3.3 Around eight seconds later, Dr CHENG took the LegCo Oath:[34]

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[33] English translation: "*Dear Hong Kong people, our resistance movements over the past few years in fighting to defend our future have seen people take to the street for some 70 days without hesitation and many young people even sacrificed their future for their own Hong Kong in the incident on the first day of the Lunar New Year. Therefore, I do not think the way of my taking the oath today will make any specific effects of resistance. I believe that you will understand it.*"

[34] Dr CHENG opted to make an affirmation in accordance with the provisions of the Oaths and Declarations Ordinance.

"*本人鄭松泰，謹以至誠，據實聲明及確認，本人就任中華人民共和國香港特別行政區立法會議員，定當擁護《中華人民共和國香港特別行政區基本法》，效忠中華人民共和國香港特別行政區，盡忠職守，遵守法律，廉潔奉公，為香港特別行政區服務。*"[35]

3.4 Around two seconds later, Dr CHENG shouted the following words before signing the LegCo Oath in **Appendix 3.8** and returning to his seat:

"*全民制憲，重新立約，港人為大，香港萬歲。*"[36]

3.5 The Clerk as the oath administrator under the Oaths and Declarations Ordinance did not decline jurisdiction to administer the oath taken by Dr CHENG.

3.6 At the above Council meeting, the Clerk declined jurisdiction to administer the oath taken by three Members (Dr YIU Chung-yim,[37] Mr Sixtus LEUNG Chung-hang and Ms YAU Wai-ching[38]). After the meeting, a considerable number of Members requested the President to rule on the validity of the oaths taken by not only the above three Members but also another two Members (Dr LAU Siu-lai and Mr Nathan LAW[39]). Another Member (Hon WONG Ting-kwong) also sought the President's

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35 English translation: "*I, CHENG Chung-tai, solemnly, sincerely, and truly declare and affirm that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.*"

36 English translation: "Devising constitution by all people, making new covenant, Hong Kong people predominate, all hail Hong Kong."

37 According to the judgment of CFI in HCAL 226/2016 and HCMP 3378/2016 on 14 July 2017, Dr YIU Chung-yim has been disqualified from assuming the office of a member of LegCo or has vacated the same since 12 October 2016, and is not entitled to act as a member of LegCo.

38 According to the judgment of CFI on 15 November 2016, Mr Sixtus LEUNG and Ms YAU Wai-ching have been disqualified from assuming the office of a member of LegCo or have vacated the same since 12 October 2016, and are not entitled to act as a member of LegCo. Mr LEUNG and Ms YAU appealed against the decision of CFI, but their appeal was dismissed by the Court of Appeal. Their applications for leave to appeal to CFA were refused by the Appeal Committee of CFA in FAMV 7-10/2017 (1 September 2017).

39 According to the judgment of CFI on 14 July 2017 (HCAL 223 and 225/2016, and HCMP 3381 and 3379/2016), Dr LAU Siu-lai and Mr Nathan LAW have been disqualified from assuming the office of a member of LegCo or have vacated the same since 12 October 2016, and are not entitled to act as a member of LegCo.

permission for him to re-take oath. On 18 October 2016, the President ruled that the oaths taken by five Members (Dr YIU Chung-yim, Mr Sixtus LEUNG, Ms YAU Wai-ching, Dr LAU Siu-lai and Hon WONG Ting-kwong) were invalid. At those Members' requests, the President decided to allow them to re-take oath at the Council meeting of 19 October 2016 (i.e. "the said Council meeting").

Distribution and display of the mock-ups of the national flag and regional flag

3.7 As shown by the video footage of the said Council meeting, shortly before the start of the meeting, Hon LAU Kwok-fan ("Mr LAU") distributed the mock-ups of the national flag and regional flag to some Members in the Chamber. According to Mr LAU, those mock-ups were from his home, which were collected from the celebration activities for Hong Kong's return to the Motherland or the National Day.[40] He gave the mock-ups of one national flag and one regional flag to each of those Members. Those mock-ups are of the same size, each of which measures 20 cm in length and 14 cm in width, with its pole being 32 cm in length.[41]

3.8 The Members who were given those mock-ups of the national flag and regional flag by Mr LAU were mainly from DAB or seated near to Mr LAU in the Chamber. Those Members included Dr Hon CHIANG Lai-wan ("Dr CHIANG") who is one of the Members jointly signing the notice of the censure motion.[42] Except Dr CHIANG who laid those mock-ups on her desk, most of those Members displayed those mock-ups by placing them in the glass holders on their desks, with them crossed or slantwise, as shown in **Appendix 3.9**.

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40 Lines 93 to 94 on page 4 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7).

41 Written statement of Mr LAU (Appendix 1.9). IC notes that the actual length of the poles of those mock-ups of the national flag and regional flag should be about 30 cm.

42 According to the video footage of the said Council meeting, at least seven other Members (Hon Starry LEE, Hon Christopher CHEUNG, Hon CHAN Hak-kan, Hon Holden CHOW, Hon LEUNG Che-cheung, Hon Jeffrey LAM and Dr Hon Elizabeth QUAT) were distributed with the mock-ups of the national flag and regional flag and/or placed those mock-ups on their desks in the Chamber.

Reasons for distributing and displaying the mock-ups

3.9 Mr LAU told IC that as stated in his written statement (Appendix 1.9) produced to IC, his distribution of the mock-ups of the national flag and regional flag to some Members aimed at: (a) expressing his discontent with the conduct of Mr Sixtus LEUNG and Ms YAU Wai-ching which had humiliated the country, advocated secession and damaged "one country, two systems" during their oath-taking at the Council meeting of 12 October 2016;[43] and (b) highlighting the need for Members taking the LegCo Oath to respect BL. He told IC:

> "*在10月12日，我們立法會議員要進行宣誓，在那期間，游蕙禎及梁頌恆作出了一些侮辱及分離國家的行為。例如他們展示'Hong Kong is not China'，我認為這是對國家侮辱及分離國家，亦是破壞'一國兩制'"的行為，亦與《基本法》相違。所以，我在[10月]19日把一些國旗及區旗帶到立法會，派給議員展示。*"[44]

3.10 Mr LAU further told IC that he had a clear memory of bringing along the same number of mock-ups of the national flag and regional flag to the said Council meeting, and intentionally distributed the mock-ups of one national flag and one regional flag to each Member seated nearby. His intention of doing so was to emphasize Hong Kong being part of China under "one country, two systems" and the need for respecting not only HKSAR but also the country:

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[43] At that meeting, the Clerk declined jurisdiction to administer the oaths taken by Mr LEUNG and Ms YAU as they altered the contents of their oaths. Their oaths were subsequently ruled invalid by the President on the grounds that they could not be serious about their oaths and were unwilling to be bound by them, taking into account the manner of their oath-taking, namely the display of a banner bearing the words "HONG KONG IS NOT CHINA" and the use of a derogatory term for China as well as the use of expletives by Ms YAU. See paragraph 6 of the President's ruling on the validity of the LegCo Oath taken by six Members at the Council meeting of 12 October 2016.

[44] Lines 58 to 63 on page 3 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7); English translation: "*On 12 October, we LegCo Members had to take the oath. During that time, YAU Wai-ching and Sixtus LEUNG did some acts that humiliated the country and were seditious. For example, they displayed the words 'Hong Kong is not China', which I think was an act to humiliate the country and were seditious and to undermine 'one country, two systems', and a contravention of BL. Therefore, I brought some national flags and some regional flags to the Council on 19 [October] and distributed them to Members for display.*"

> "*這個我是很清晰地記得，數量是相等的，即是一支國旗配一支區旗，而派發的時候亦是一支國旗配一支區旗。因為我是要強調'一國兩制'，香港是中國的一部分，所以我們要尊重我們的香港特別行政區，同時亦要尊重國家，愛國愛港。*"[45]

3.11 Mr LAU recalled that before the day of the said Council meeting, he had not communicated with other Members about the objective of distributing those mock-ups at that meeting or how they should be placed.[46] He told IC that shortly before the meeting, he had talked about the relevant objective when distributing those mock-ups to some Members in the Chamber:

> "*我在會議前是沒有的，不過我拿回到會議之後……即我在會議廳派發的時候有對大家說，今天又要再宣誓，我們應該要展示出來，告訴他們，其實香港是中國的一部分，我們需要尊重國家，尊重'一國兩制'，希望大家也一起展示出來，就是這樣。*"[47]

3.12 Dr CHIANG told IC that she had not known about Mr LAU's distribution of those mock-ups in advance. She recalled that Mr LAU, when distributing those mock-ups to her and some other Members, appeared to say some words to her but she could not hear clearly as the Chamber was quite noisy then. Dr CHIANG did not place those mock-ups in the glass holder on her desk. She told IC that the placing of those mock-ups by some Members aimed at making a strong expression that they were Chinese:

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45 Lines 191 to 194 on page 8 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7); English translation: "*I remember that clearly. The numbers were equal, which meant one national flag for one regional flag. When I distributed them, I also handed them out in a set consisting of one national flag and one regional flag. It was because I wanted to emphasize 'one country, two systems' and the fact that Hong Kong is part of China. That is why we must respect our HKSAR. At the same time, we must respect our country, love our country and love Hong Kong.*"

46 Lines 105 to 108 on pages 4 to 5 and lines 160 to 161 on page 7 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7).

47 Lines 105 to 108 on pages 4 and 5 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7); English translation: "*I did not do that before the meeting. However, after I brought them to the meeting…I mean, when I handed them out in the Chamber, I did say to everyone that there would be oath-taking again today; we should display them and tell them that Hong Kong is in fact part of China; we need to respect our country and respect 'one country, two systems'; and I hoped that everyone would display them together. That was it.*"

> "*就這麼簡單，因為當日[2016年10月12日立法會會議]有兩位不尊重《基本法》，亦不尊重宣誓，並在宣誓過程中作出一些不尊重國家及中國人民的說話，因此我相信那天大家收到國旗和區旗而決定插在座位前面，我相信是一種強烈的表達'我是中國人'的意思。*"[48]

Inverting the mock-ups

3.13 At 11:00 am, the said Council meeting began. The President announced that the Council proceeded to the taking of the LegCo Oath. Hon WONG Ting-kwong and Dr YIU Chung-yim took the LegCo Oath one after the other. As soon as the President called upon Mr Sixtus LEUNG to take the LegCo Oath, the President's attention was drawn to the fact that a quorum was not present. The President directed the Clerk to ring the quorum bell to summon Members to the Chamber. At that time, some Members including those who had displayed the mock-ups of the national flag and regional flag on their desks had left the Chamber, while Dr CHENG was staying in his seat.

<u>First round of inverting the mock-ups by Dr CHENG</u>

3.14 At about 11:07 am, when the quorum bell was ringing, Dr CHENG left his seat, went to the vacant seats of the Members who had placed the mock-ups in the glass holders on their desks, and inverted them (i.e. turning the mock-ups upside down, resulting in them being stuffed inside the glass holders and their poles stretching out of the glass holders as shown in **Appendices 3.10 and 3.11**). At the meeting, Mr Alfred LEE (i.e. the witness mentioned in paragraph 1.18(e)), steward of the LegCo Secretariat, was on duty sitting on the right-hand side of the President and facing Members' seats. He told IC that he had witnessed Dr CHENG inverting those mock-ups,[49] and had been asked by his supervisor to approach Dr CHENG to see what he was doing:

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[48] Lines 94 to 97 on page 4 of the verbatim transcript of Dr CHIANG attending a hearing in camera (Appendix 3.6); English translation: "*It was that simple. Since two persons had disrespected BL, disrespected the oath-taking, and said something disrespectful to our country and the people of China during the oath-taking process on that day [the Council meeting of 12 October 2016], I believe that was why everyone got the national flags and regional flags and decided to place them in front of their seats. I believe it was a strong expression that 'I am Chinese'.*"

[49] Page 1 of the written statement of Mr Alfred LEE (Appendix 1.10), and line 85 on page 4, line 130 on page 6 and lines 294 to 299 on page 13 of the verbatim transcript of Mr Alfred LEE attending a hearing in camera (Appendix 3.4).

> *"第一次大約是開會後 10 多分鐘左右，當時剛開始響鐘傳召議員回來，過了一會兒，鄭議員走到建制派那邊的area，將放在那裏的國旗倒插一次。接着就是……情況就是，他倒插了大約……應該有十多二十個議員左右，把有國旗的杯放在桌面前方，他做了 10 個、8 個左右。我身旁的保安同事對我說：'上頭叫你去看看情況'，我便走出去。在我走出去的時候，我只說了一句"鄭先生"，因為上頭沒有甚麼指示要我做，只不過是叫我了解情況……"*[50]

3.15 Despite Mr LEE walking up to him, Dr CHENG walked to Hon LAU Kwok-fan's seat and inverted the mock-ups of the national flag and regional flag on Mr LAU's desk, while Mr LEE stood next to Dr CHENG. At that time, those mock-ups on the desks of some Members had been inverted by Dr CHENG. Then Dr CHENG walked to the vacant seat of Hon Jeffrey LAM and inverted those mock-ups on his desk. A total of 21 mock-ups of the national flag and regional flag displayed on 11 Members' desks were inverted by Dr CHENG.[51] Meanwhile, Mr LEE walked away from Dr CHENG and returned to his seat.

Dr CHENG's responses to Dr CHIANG

3.16 According to Dr CHIANG, she was in the ante-Chamber when Dr CHENG was inverting for the first time the mock-ups of the national flag and regional flag on some Members' desks in the Chamber. When she, in the ante-Chamber, realized Dr CHENG's act on the television screen showing live broadcast of the said Council meeting, she immediately dashed back to the Chamber witnessing Dr CHENG's act. [52]

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50 Lines 50 to 57 on page 2 of the verbatim transcript of Mr Alfred LEE attending a hearing in camera (Appendix 3.4); English translation: "*The first occasion took place about ten-odd minutes after the start of the meeting when the quorum bell for summoning Members had just been rung. After a while, Dr CHENG went to the area of the pro-establishment camp and inverted the national flags placed there once. Then…what was happening was that he inverted them for about…it should be about 10 to 20 Members who had put the glasses containing the national flags on the front of their desks, and he did this to about 10 or eight of them. The security colleague beside me said to me, 'The supervisor asks you to go over to see what is going on', so I went over there. When I went over there, I only uttered the words 'Mr CHENG' because my supervisor did not instruct me to do anything but simply told me to find out what was going on…*"

51 Those Members included Hon CHAN Han-pan, Hon LAU Kwok-fan, Hon Wilson OR, Dr Hon Elizabeth QUAT, Hon LEUNG Che-cheung, Hon Holden CHOW, Hon WONG Ting-kwong, Hon Steven HO, Hon Starry LEE, Hon Jeffery LAM and Hon Christopher CHEUNG.

52 Written statement of Dr CHIANG (Appendix 1.7), and lines 175 to 181 on page 8 of the verbatim transcript of Dr CHIANG attending a hearing in camera (Appendix 3.6).

3.17 As shown in the video footage of the said Council meeting, Dr CHIANG shouted at Dr CHENG twice, "*你搞咩呀？*"[53] while pointing at Dr CHENG and saying "*你將國旗倒轉咗！*"[54]. Dr CHENG paid no heed to Dr CHIANG and returned to his seat. Dr CHIANG then walked to the front of the desks of Hon Wilson OR and Hon Jeffrey LAM, put the mock-ups of the national flag and regional flag back to their original positions, and shouted at Dr CHENG "*你再走……夠膽走呀！*"[55] She then tried to put the inverted mock-ups on Hon Starry LEE's desk back to their original positions, and said loudly "*賤格！*"[56] She and Dr CHENG hurled abuse at each other. She proceeded to put those inverted mock-ups on the desks of Hon LEUNG Che-cheung and Hon Holden CHOW back to their original positions. At her request,[57] Mr Tommy LEE (i.e. the witness mentioned in paragraph 1.18(f)), steward of the LegCo Secretariat who was then on duty in the Chamber, came to assist her in putting those inverted mock-ups on the desks of some Members[58] back to their original positions.[59]

3.18 According to the video footage of the said Council meeting, Dr CHIANG then walked towards Dr CHENG and pointed her finger at him and said loudly, "*唔好搞國家啲嘢！你唔好掂我地啲嘢！我話比你聽我唔見咗錢，唯你是問！而家電視機直播緊，你再係咁嘅話……唔好掂我哋枱面嘅嘢！*"[60] She left the Chamber afterwards.

3.19 According to Dr CHIANG, she had clearly told Dr CHENG after his inverting of the mock-ups of the national flag and regional flag for the first time that his act was disrespect for the national flag and regional flag:

"*因為我第一次進去警告他時，我自己很清晰地*

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53 English translation: "*What are you doing?*"

54 English translation: "*You have turned the national flags upside down!*"

55 English translation: "*You go away again…dare you go!*"

56 English translation: "*Despicable!*"

57 Lines 195 to 197 on pages 8 and 9 of the verbatim transcript of Dr CHIANG attending a hearing in camera (Appendix 3.6).

58 According to the video footage of the said Council meeting, those Members included Hon WONG Ting-kwong, Dr Hon Elizabeth QUAT, Hon Steven HO, Hon LAU Kwok-fan and Hon CHAN Han-pan.

59 Lines 55 to 60 on page 3 of the verbatim transcript of Mr Tommy LEE attending a hearing in camera (Appendix 3.5).

60 English translation: "S*top messing up the country's stuff! Take your hands off our stuff! I tell you, if my money goes missing, you are the one to be held accountable! The television is doing a live broadcast, if you go on like this…hands off the stuff on our desks!*"

告訴他，他這樣做是不尊重國旗。當我說話的時候，他亦未有停止他的行動、行為，他應該十分清晰地聽到我的說話，因為我說得十分大聲，他只是一直在'吟吟沉沉'說話。所以我相信他是聽得到的，他亦沒有停止他的行為。然後，事實上，當我離開會議廳之後，他又再次同樣地把國旗和區旗倒轉。所以，我覺得他是故意違反的。"[61]

3.20 According to Mr Alfred LEE, he saw Dr CHIANG scold Dr CHENG for inverting those mock-ups. He told IC:

"*當然，exactly的對話，我已經不太記得了。'有沒有搞錯啊'，或者我大約知道的意思是，'有沒有搞錯啊'，'你這樣倒轉那些國旗'，是這樣子。*"[62]

3.21 According to Hon HUI Chi-fung's responses at IC's hearing[63], he was present at the said Council meeting throughout the period when the quorum bell was ringing. He noticed the mock-ups of the national flag and regional flag displayed on the desks of DAB Members. He saw Dr CHENG walk to the seats of Members of the pro-establishment camp but could not see what he was doing there. He also saw Dr CHENG being scolded by Dr CHIANG but could not hear clearly what she said. He then saw on the spot that those mock-ups had been inverted, and learned from

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61 Lines 140 to 146 on page 6 of the verbatim transcript of Dr CHIANG attending a hearing in camera (Appendix 3.6); English translation: "Because when I went over to warn him for the first time, I had already made it clear to him that what he did was a disrespect to the national flag. When I was speaking, he did not stop his action and behaviour. He should have heard my words very clearly because I spoke very loudly. He just kept 'murmuring'. So I believed he should be able to hear me but he did not stop his behaviour. Afterwards, in fact, after I had left the Chamber, he inverted the national flags and regional flags in the same way again. So I think he made the violation wilfully."

62 Lines 188 to 190 on page 8 of the verbatim transcript of Mr Alfred LEE attending a hearing in camera (Appendix 3.4); English translation: "*Of course, I do not quite remember the conversation exactly. 'What is wrong with it?', maybe the meaning, as I understand it, is probably 'what is wrong with it?', 'you inverted the national flags like this'. That was it.*"

63 In accordance with paragraph 22 of the Practice and Procedure of IC, the Clerk to IC wrote to Hon HUI Chi-fung on 10 August 2017 forwarding the relevant part of the draft verbatim transcript of the proceedings of the hearing held in camera on 3 July 2017 containing his evidence to him for sight and correction. On 16 October 2017, Mr HUI gave the Assistant Clerk to IC a verbal confirmation over the phone that he had no comments on the draft verbatim transcript, and the Assistant Clerk to IC recorded his confirmation in writing. On 15 March 2018, the Clerk to IC wrote to Mr HUI informing him that IC had decided to include the draft verbatim transcript (Appendix 3.3) as an appendix to this Report. Mr HUI replied in writing the next day that he had never indicated verbally or in writing that he had no comments on the draft verbatim transcript. Please refer to **Appendix 3.12** for the correspondence between Mr HUI and the Clerk to IC on the relevant matter.

the media that they had been inverted by Dr CHENG.[64] He told IC that he could not remember whether Dr CHENG had inverted those mock-ups again after being scolded by Dr CHIANG.[65] When asked whether the mocked-ups of the national flag, which are of non-standard size, displayed on the desks of some Members were the national flag, Mr HUI told IC:

"*我的判斷，那支肯定是國旗。*"[66]

Second round of inverting the mock-ups by Dr CHENG

3.22 According to the video footage of the said Council meeting, Dr CHENG left the Chamber at around 11:10 am but returned in less than 30 seconds and sat on his seat. At around 11:12 am, he left his seat, walked to Dr Hon Elizabeth QUAT's seat and inverted the mock-ups of the national flag and regional flag that were placed in a glass holder on her desk.

Dr CHENG's responses to the President's requests and order

3.23 The video footage of the said Council meeting and the Official Record of Proceedings of the meeting[67] also show that after leaving Dr QUAT's seat, Dr CHENG walked towards Hon LEUNG Che-cheung's seat. At this juncture, the President told Dr CHENG that the Council meeting was still in progress, and a headcount was being conducted due to the lack of a quorum. The President asked him to return to his seat. Despite the President's request, Dr CHENG continued to invert the mock-ups of the national flag and regional flag placed on the desks of Hon LEUNG Che-cheung and Hon Holden CHOW. The President advised Dr CHENG that he should not leave his seat at will and

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64 Lines 47 to 52 on page 2, lines 74 to 77 on page 3, lines 112 to 114 on page 5 and lines 207 to 216 on page 9 of the verbatim transcript of Mr HUI attending a hearing in camera (Appendix 3.3).

65 Lines 86 to 89 on page 4 of the verbatim transcript of Mr HUI attending a hearing in camera (Appendix 3.3).

66 Line 287 on page 12 of the verbatim transcript of Mr HUI attending a hearing in camera (Appendix 3.3); English translation: "*According to my judgment, they were definitely national flags.*" In accordance with paragraph 33 of the Practice and Procedure, the Clerk to IC wrote to Mr HUI on 2 March 2018 inviting him to sign a confidentiality undertaking (**Appendix 3.13**) and advising him that upon receiving his signed undertaking, IC would forward the relevant part of this Report which sets out the evidence on the basis of which IC had established the facts stated in the censure motion (i.e. paragraph 3.21) to him for comment. However, since Mr HUI replied that he would not sign the undertaking, the Clerk to IC subsequently informed him in writing that the aforementioned part of this Report would not be forwarded to him for comment (**Appendix 3.14**). The content of paragraph 3.21 is therefore not commented upon by Mr HUI.

67 Official Record of Proceedings of the Council meeting of 19 October 2016 (**Appendix 3.15**).

should not go to the seats of other Members to cause a disturbance.[68] Despite the President's advice, Dr CHENG proceeded to the front of the vacant seat of Hon WONG Ting-kwong and inverted those mock-ups placed on his desk. The President further advised Dr CHENG that if he did not return to his seat, his conduct would be ruled grossly disorderly. Dr CHENG continued to walk to the front of the vacant seat of Hon Steven HO to invert those mock-ups placed on his desk. When Dr CHENG was inverting those mock-ups placed on Hon Wilson OR's desk, the President told Dr CHENG that he was giving him a final warning. Dr CHENG continued to invert those mock-ups placed on the desks of Hon CHAN Han-pan and Hon LAU Kwok-fan. A total of 16 mock-ups of the national flag and regional flag placed on eight Members' desks were inverted by Dr CHENG.

3.24 According to the video footage of the said Council meeting, at around 11:13 am, the President ordered Dr CHENG to withdraw from the Council. Despite the President's order, Dr CHENG returned to his seat. He then took pictures of Dr CHIANG who had returned to the Chamber, putting the inverted mock-ups of the national flag and regional flag on the desks of Dr Hon Elizabeth QUAT and Hon LEUNG Che-cheung back to their original positions.

3.25 The President directed the Secretariat staff to enforce his order to require Dr CHENG to withdraw from the Council but Dr CHENG refused to leave. Dr CHIANG walked towards the front of Dr CHENG's desk and condemned him loudly, saying "*你企喺度道歉，出去！*"[69] Then Dr CHENG in his seat shouted loudly at the President, saying "*第一，你冇任何道理，趕我離開立法會。第二，建制派離開咗嗰會議廳，請你響完鐘叫佢哋返到嚟先至講。第三，你自己話嘅，你上任嘅時候，係會按照一切嘅規例……*".[70] Dr CHENG remained in his seat and refused to withdraw from the Council.

3.26 At around 11:18 am, the quorum bell had rung for 15 minutes. Due to the lack of a quorum, the President announced that the said Council meeting be adjourned.

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68 Page 82 of the Official Record of Proceedings of the Council meeting of 19 October 2016 (Appendix 3.15).

69 English translation: "*Stand right here and apologize! Get out!*"

70 English translation: "*Firstly, you do not have any grounds to expel me out of LegCo. Secondly, Members of the pro-establishment camp have left the Chamber. Please ring the bell and wait until they are summoned back before you speak. Thirdly, you have said it yourself, when you take up the office, you would follow all the rules…*"

3.27 On the same day, after the said Council meeting, Mr LAU reported to the Police concerning Dr CHENG's acts of inverting the mock-ups of the national flag and regional flag at that meeting. He told IC:

> "*我認為他倒插國旗和區旗之後，是一而再，連續倒插了國旗和區旗，這個行為是屬於玷污了我們的國旗和區旗，是侮辱了我們的國家和香港。所以，我之後去了報警。在報警前和報警後，我都沒有跟他討論過這件事。*"[71]

Dr CHENG's relevant remarks after the said Council meeting

3.28 Regarding Dr CHENG's acts of inverting the mock-ups of the national flag and regional flag at the said Council meeting, Hon Paul TSE proposed to move the censure motion at the Council meeting of 14 December 2016. At the HC meeting on 25 November 2016, Dr CHENG expressed his disagreement with the censure motion and cast doubt on whether those mock-ups of the national flag and regional flag could be taken as the national flag and regional flag. He also highlighted the meaning of turning the national flag upside down in the United States ("the US"):

> "……*如果我當日的行為是違反了國旗法的話，其實大可大家已經報警，將這件事交由我們的司法程序及司法機關處理。至於在司法機關處理不了，為何呢？因為在我們的國旗法裏，是就着我們國旗的尺寸有一定的限制，而我相信當日那個東西，到了法庭上大家都會認為是一個展示品，為何這樣說呢？由一個很基本的角度出發，如果由謝偉俊議員剛才所講的，那個東西是這樣莊嚴、這樣神聖的話，你是不會將兩支國旗插在我們的杯座上面的。你怎能說服大眾，如果你當日那兩支展示品是國旗的話，會插在我們放水杯的杯座上面呢？……當你建制派能夠將自己國旗帶入我們的議事廳，但是捨它而去，*

[71] Lines 175 to 178 on pages 7 and 8 of the verbatim transcript of Mr LAU attending a hearing in camera (Appendix 3.7); English translation: "*In my view, after he inverted the national flags and regional flags, he did this again and inverted the national flags and regional flags repeatedly. Such an act defiled our national flags and regional flags, and humiliated our country and Hong Kong. That was why I made a report to the Police afterwards. I had not discussed the matter with him, neither before nor after my reporting to the Police.*"

以流會去解決當時的政治爭拗的時候，請問國德何在呢？如果大家真是真心背負你的國家的時候，我不相信你會這樣輕易離棄你的國旗在議事廳，所以我會認為今日謝議員這個做法，只是他作為一個政治鬥爭、一個政治表態展示的行為，而且香港人會看在眼內.....”

“.....其實關於.....如果假設那展示品是國旗的話，將那個東西調轉是有一個含意的。在軍方的背景下，這是一個‘Call for Help’的signal，就是一個國家有危難的時候，將國旗倒轉是希望能夠得到大家的關注。這一點在美國的國旗，即Flag Code裏面是寫得好清楚的.....。”[72]

[72] English translation: “*…if my behaviour on that day had violated the national flag law, everyone, in fact, might make a report to the Police and handled the matter by way of legal proceedings and brought the case before the judicial authority. As to why the judicial authority could not handle the matter, the reason is that the size of the national flag is specifically prescribed in the national flag law. I believe that, in the court, the objects on that day would be regarded by everyone as mock-ups. Why say so? From a fundamental point of view, if, as Mr TSE has just said, the objects were so solemn and sacred, you would not put the two national flags in our glass holders. How can you convince the public that the two mock-ups which were put in the glass holders for holding our glasses on that day were the national flags?...When you, the pro-establishment camp, brought the national flags to the Chamber but then left them behind and walked out in a bid to resolve the prevailing political controversies by causing the meeting to be aborted, where is the moral of the country? If everyone carries the burden of the country with their heart, I do not believe that you would leave your national flags behind in the Chamber so casually. So, I will consider what Mr TSE does today is merely a practice of political struggles and a political gesture which in the eyes of Hong Kong people…if the mock-ups are assumed to be the national flags, their inversion has a meaning. In a military sense, this is a ‘Call for Help’ signal, i.e. when the country is in distress and danger, the purpose of turning the national flag upside down is to attract attention. This is written very clearly in the US Flag Code.*”

Chapter 4 Establishing the facts and whether the facts as established constitute grounds for the censure of Dr Hon CHENG Chung-tai

4.1 In this Chapter, based on the information and evidence set out in previous Chapters 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 Dr CHENG.

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 is confined to the particulars of Dr CHENG's alleged misbehaviour as set out in the Schedule to the censure motion. Based on those particulars, IC has identified the following five facts to be established:

(a) whether the mock-ups of the national flag and regional flag placed on the desks of some Members[73] at the Council meeting of 19 October 2016 ("the said Council meeting") are taken to be the national flag and regional flag for the purposes of NFO and RFO;

(b) whether the purpose and manner of placing the mock-ups by the Members concerned at the said Council meeting were to highlight the solemnity and pledge of taking oath to uphold BL and swear allegiance to HKSAR of PRC;

(c) whether Dr CHENG's repeated acts of inverting those mock-ups placed on the desks of the Members concerned at the said Council meeting were deliberate acts;

[73] IC notes that the wording of the censure motion only mentions that DAB Members placed the mock-ups of the national flag and regional flag at the said Council meeting, and the mock-ups were inverted by Dr CHENG. However, as mentioned in Chapter 3 of this Report, some other Members also displayed the mock-ups at that time and those mock-ups were also inverted by Dr CHENG.

(d) whether Dr CHENG, when ordered by the President to withdraw from the Council for leaving his seat at will and disturbing other Members displaying objects, and committing grossly disorderly conduct, persistently refused to leave the Chamber at the said Council meeting; and

(e) whether Dr CHENG openly and deliberately humiliated the national flag and regional flag in the capacity of a LegCo Member at the said Council meeting.

First fact to be established - Whether the mock-ups of the national flag and regional flag placed on the desks of some Members at the said Council meeting are taken to be the national flag and regional flag for the purposes of NFO and RFO

4.3 To establish the first fact, IC needs to determine the extent to which the mock-ups closely resemble the national flag and regional flag prescribed by NFO and RFO in that they would be taken to be the national flag or regional flag under section 8 of the two Ordinances.

4.4 As pointed out in paragraphs 2.12 and 2.15, Schedule 1 to NFO and to RFO set out respectively the specifications for the national flag and regional flag, including their shape, colour, designs and standard sizes. Despite the specifications, sections 8 of NFO and of RFO provide that a copy of the national flag or regional flag that is not an exact copy but that so closely resembles the national flag or regional flag as to lead to the belief that the copy in question is the national flag or regional flag would be taken to be the national flag or regional flag. However, the terms "copy" and "closely resemble" are not defined in NFO or RFO.

4.5 IC notes that the mock-ups, which look like desk flags, did not fully conform to the respective specifications for the national flag and regional flag under Schedule 1 to NFO and to RFO. For instance, they were of non-standard size, and the mock-ups of the national flag, when displayed with those of the regional flag on Members' desks at the said Council meeting, were not in a position of prominence. Nevertheless, IC notes that the mock-ups of those flags are in red and rectangular in shape.

The upper left of the face of the mock-up of the national flag is studded with five yellow five-pointed stars, while at the centre of the mock-up of the regional flag is a white five-petal bauhinia in swaying motion.

4.6 IC considers that objectively viewed, the mock-ups closely resemble the national flag and regional flag in terms of colour, design and appearance, and such close resemblance has led to the belief that they are taken as the national flag and regional flag. Such close resemblance was not questioned by witnesses at IC's hearings, and not challenged by the Defence in the case of *HKSAR v CHENG Chung-tai*. IC also notes that the Magistrate Court came to the view that the flags in question bore a close resemblance to the national flag and regional flag as to lead to the belief that they were the national flag and regional flag for the purposes of NFO and RFO.[74]

4.7 Based on the above findings, IC is of the view that the first fact has been established: the mock-ups of the national flag and regional flag placed on the desks of some Members at the said Council meeting were taken to be the national flag and regional flag. Accordingly, the mock-ups inverted by Dr CHENG at that meeting were taken to be the national flag and regional flag (as the first fact has been established, the mock-ups will be referred to as the national flags and regional flags in the ensuing paragraphs).

Second fact to be established - Whether the purpose and manner of placing the national flags and regional flags by the Members concerned at the said Council meeting were to highlight the solemnity and pledge of taking oath to uphold BL and swear allegiance to HKSAR of PRC

4.8 To establish the second fact, IC needs to ascertain why the Members concerned placed the national flags and regional flags at the said Council meeting, and whether the manner of such placing served the said purpose.

4.9 IC notes that at the Council meeting of 12 October 2016, the manner of the oath-taking by Mr Sixtus LEUNG and Ms YAU Wai-ching

[74] Paragraph 2.30 of Chapter 2.

(namely the display of a banner bearing the words "HONG KONG IS NOT CHINA", the use of a derogatory term for China as well as the use of expletives) aroused public discontent about their disrespect for China as Hong Kong's sovereign state. The oaths taken by them, among others, were ruled invalid by the President on the grounds that they could not be serious about their oaths and were unwilling to be bound by them. At their request, the President allowed them to take oath afresh at the Council meeting of 19 October 2016.[75]

4.10 It was against this background that Hon LAU Kwok-fan distributed the national flags and regional flags to some Members seated near to him for display at the said Council meeting where arrangements had been made for Mr LEUNG and Ms YAU, among others, to re-take oath.

4.11 IC notes that Mr LAU's distribution and display of those flags sought to: (a) express his discontent with the above-mentioned conduct of Mr LEUNG and Ms YAU; (b) highlight the need for Members taking the LegCo Oath to respect BL; and (c) emphasize Hong Kong as part of China.[76] According to Mr LAU, he had not communicated with other Members about his idea above or how those flags should be displayed until he distributed them to some Members shortly before the said Council meeting.[77] IC also notes that Dr CHIANG understood why those flags should be displayed, although she, when given those flags by Mr LAU, did not clearly hear what Mr LAU said to her.[78] As only two Members, Mr LAU and Dr CHIANG, agreed to be witnesses and attend IC's hearing, IC is unable to ascertain the purpose of the other Members displaying those flags.

4.12 Nevertheless, given the background against which Mr LAU distributed those flags and in particular the grave concern of some Members and the public about the oath-taking by Mr LEUNG and Ms YAU, IC considers it reasonable to conclude that the Members displaying those flags shared the same concern, i.e. the solemnity of oath-taking by Members. Further, the oath under BL 104 is to swear to uphold BL and swear allegiance to HKSAR of PRC, which includes, among others, recognizing HKSAR as an inalienable part of PRC. These are pledges of utmost constitutional importance in which the solemnity of

75 Paragraphs 3.6 and 3.9 of Chapter 3.
76 Paragraphs 3.9 and 3.10 of Chapter 3.
77 Paragraph 3.11 of Chapter 3.
78 Paragraph 3.12 of Chapter 3.

oath-taking lies. In IC's view, such solemnity and pledges were clearly manifested by the display of those flags by those Members.

4.13 Based on the above findings, IC is of the view that the second fact has been established: the purpose and manner of placing the national flags and regional flags by the Members concerned at the said Council meeting were to highlight the solemnity and pledge of taking oath to uphold BL and swear allegiance to HKSAR of PRC.

Third fact to be established - Whether Dr CHENG's repeated acts of inverting the national flags and regional flags placed on the desks of the Members concerned at the said Council meeting were deliberate acts

4.14 To establish the third fact, IC needs to ascertain that Dr CHENG's repeated acts of inverting the national flags and regional flags at the said Council meeting were deliberate. According to the New Shorter Oxford English Dictionary (Thumb Index Edition), "deliberate" means, among others, "intentional", "purposeful" and "not rash or hasty". The Contemporary Chinese Dictionary (Xiandai Hanyu Cidian) (現代漢語詞典) also says that "故意" means "有意識地(那樣做)" (intentionally (to do that)).

4.15 As set out in paragraphs 3.14 to 3.24, Dr CHENG inverted those flags twice when the Members displaying them were not present in the Chamber. In the first round, he inverted a total of 21 flags (11 national flags and 10 regional flags) displayed by 11 Members (including Mr LAU who distributed those flags).[79] Some of those flags were inverted by Dr CHENG when Mr Alfred LEE, steward of the LegCo Secretariat, stood beside him or when he was being scolded by Dr CHIANG. His first round of inverting those flags lasted about one and a half minute, according to the video footage of the said Council meeting.

4.16 IC notes from the video footage of the said Council meeting that about three minutes later, despite Dr CHIANG's scolding and her

[79] In addition to Mr LAU, those Members included Hon CHAN Han-pan, Hon Wilson OR, Dr Hon Elizabeth QUAT, Hon LEUNG Che-cheung, Hon Holden CHOW, Hon WONG Ting-kwong, Hon Steven HO, Hon Starry LEE, Hon Jeffrey LAM and Hon Christopher CHEUNG.

effort to put the inverted national flags and regional flags back to their original positions, Dr CHENG again inverted a total of 16 flags (eight national flags and eight regional flags) displayed by eight Members[80] after Dr CHIANG had left the Chamber. He continued to do so in defiance of the President's requests and order.[81] His second round of inverting the flags lasted about one minute.

4.17 IC considers that objectively viewed, given Dr CHENG's repeated acts of inverting the national flags and regional flags, his ignorance of Dr CHIANG's rebukes concerning his acts of inverting those flags and his disregard for the President's requests and order, any reasonable person would not take his acts as merely a prank or an accidental or unintentional act. IC further considers that if Dr CHENG had merely committed the acts unintentionally, he would have stopped doing so immediately after being reminded or warned by Dr CHIANG and the President at the said Council meeting. However, he did not stop at that time. As such, IC is satisfied that Dr CHENG was well aware of his acts of inverting those flags, and did so deliberately at the material time.

4.18 Based on the above findings, IC is of the view that the third fact has been established: Dr CHENG's repeated acts of inverting the national flags and regional flags placed on the desks of the Members concerned at the said Council meeting were deliberate acts.

Fourth fact to be established - Whether Dr CHENG, when ordered by the President to withdraw from the Council for leaving his seat at will and disturbing other Members displaying objects, and committing grossly disorderly conduct, persistently refused to leave the Chamber at the said Council meeting

4.19 As described in paragraphs 3.22 to 3.25, when Dr CHENG went to the vacant seats of other Members to invert the national flags and regional flags for the second time, the President did request him to return to his seat three times but he disregarded such requests and continued to invert those flags. The President finally ruled Dr CHENG's disregard for

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[80] Those Members were Dr Hon Elizabeth QUAT, Hon LEUNG Che-cheung, Hon Holden CHOW, Hon WONG Ting-kwong, Hon Steven HO, Hon Wilson OR, Hon CHAN Han-pan and Hon LAU Kwok-fan.

[81] Paragraph 3.23 of Chapter 3.

his requests as a grossly disorderly conduct and ordered him to withdraw from the Council. Nevertheless, Dr CHENG defied the President's withdrawal order, and returned to his seat instead of leaving the Chamber. While the President directed the Secretariat staff to enforce his withdrawal order, Dr CHENG continued to refuse to withdraw from the Council. Dr CHENG stayed in his seat shouting loudly at the President until the adjournment of the said Council meeting.

4.20 IC notes that the above requests or order made by the President concerned Dr CHENG's conduct of leaving his seat at will and going to the seats of other Members to cause a disturbance and his non-compliance with the President's order.[82]

4.21 Based on the above findings, IC is of the view that the fourth fact has been established: Dr CHENG, when ordered by the President to withdraw from the Council for leaving his seat at will and going to the seats of other Members to cause a disturbance, persistently refused to leave the Chamber at the said Council meeting.

Fifth fact to be established - Whether Dr CHENG openly and deliberately humiliated the national flag and regional flag in the capacity of a LegCo Member at the said Council meeting

4.22 On top of the above established facts, the remaining question for IC to consider, in establishing the fifth fact, is whether such acts amount to humiliation of the national flag and regional flag openly and deliberately.

4.23 According to the Oxford Dictionary Thesaurus, "humiliation" means, among others, "disgrace", "dishonour" and "degradation". The Oxford Advanced Learner's English-Chinese Dictionary says that the meaning of "humiliate" includes "使(某人)感到羞恥或不光彩; 使喪失尊嚴或自尊" (make (sb) feel ashamed or disgraced; lower the dignity or self-respect of). The Contemporary Chinese Dictionary (Xiandai Hanyu Cidian) (現代漢語詞典) says that "羞辱" means, among others, "恥辱" (shame) or "使受恥辱" (put to shame). In Chinese-English or English-Chinese Dictionaries, both "羞辱" and

[82] Paragraph 3.25 of Chapter 3.

"侮辱" can mean "humiliate".[83] IC notes that the word "humiliation" is not used in the English version of NFO and of RFO where the word "desecration" is used. However, the Chinese expression of "humiliation" (羞辱 or 侮辱) is similar or identical to that of "desecration", and "侮辱" is used in the Chinese version of the two Ordinances. As such, "humiliation" of the national flag and regional flag may be construed with reference to the meaning of "desecration" of those flags under the two Ordinances.

4.24 Section 7 of NFO and of RFO set out five forms of desecration of those flags, which include "defiling" (玷污). In its judgment on the case of *HKSAR v NG Kung Siu & LEE Kin Yun*, CFA held that the ordinary meaning of "defiling" plainly included "dishonouring" (玷辱).[84] In the case of *HKSAR v CHENG Chung-tai*, the Magistrate Court ruled that "defiling" encompassed "dishonouring", and acts of physical dishonour of flags were not limited to soiling or damaging materials. It further ruled that Dr CHENG's acts of inverting those flags were desecration of those flags by defiling them.[85]

4.25 Based on what paragraphs 4.23 and 4.24 set out, the meaning of "humiliation" clearly encompasses "dishonouring", humiliation of the national flag and regional flag as an act of physical dishonour of those flags should not be limited to soiling or inflicting physical damage on them but should include bringing disgrace to them or inflicting damage on their dignity.

4.26 As pointed out by the Magistrate Court in *HKSAR v CHENG Chung-tai*, as long as the pole of each flag was placed by Members in a glass holder, the design of the flag could be displayed in accordance with the specifications set out in Schedule 1 to NFO and to RFO, i.e. the design of five stars was displayed on the upper left of the national flag, and the bauhinia design was displayed on the front of the regional flag.[86] IC considers that objectively viewed, when Dr CHENG inverted those flags resulting in them being stuffed inside the glass holders

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83 For example, The Concise English-Chinese Dictionary (1995 Edition published by The Commercial Press) says that "humiliate" includes the meaning of "羞辱", while The Pinyin Chinese-English Dictionary (1995 Edition published by The Commercial Press) says that "侮辱" means, among others, "humiliate".

84 Paragraph 2.22 of Chapter 2.

85 Paragraphs 2.28 to 2.32 of Chapter 2.

86 From line T on page 3 to line A on page 4 of the transcript of the Reasons for Verdict and Sentence in respect of the case of *HKSAR v CHENG Chung-tai* (ESCC 1139/2017) (Appendix 1.4), and paragraph 2.29 of Chapter 2.

and their poles stretching out of such holders, any reasonable person should understand that he did not want to see those flags (including the five-star design and the bauhinia design) to be displayed or he attempted to degrade the display of those flags. IC further considers that the way he inverted those flags, which are the unique symbols of PRC and its HKSAR, did tarnish the dignity of those flags or smear the reputation of PRC and its HKSAR.

4.27 In IC's view, Dr CHENG's humiliation of those flags was further manifested by the facts that: (a) he inverted those flags not only once but twice, with the first round involving 11 Members and 21 flags and the second round eight Members and 16 flags;[87] and (b) he did so deliberately amid the concern of some Members and the public about the solemnity and validity of the oath-taking by certain Members.

4.28 In addition, IC notes that the said Council meeting at which Dr CHENG inverted those flags was an open meeting, which was observed by members of the public in the public gallery of LegCo, broadcast live on both television and the LegCo website, and widely reported by the media. In IC's view, at the material time, Dr CHENG was certainly aware that what he did in the capacity of a LegCo Member at the meeting was widely seen by the public and the relevant proceedings would become permanent records in LegCo.

4.29 Based on the above findings, IC is of the view that the fifth fact has been established: Dr CHENG openly and deliberately humiliated the national flags and regional flags in the capacity of a LegCo Member at the said Council meeting.

Whether the facts as established constitute grounds for the censure of Dr CHENG

4.30 Based on the facts established 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 Dr CHENG. In doing so, IC needs to consider whether the following two allegations made in the censure motion are substantiated:

(a) Dr CHENG's relevant conduct was in breach of the LegCo Oath taken by him at the Council meeting of

[87] Paragraphs 3.15 and 3.23 of Chapter 3.

12 October 2016 under BL 104 and the Oaths and Declarations Ordinance to uphold BL and swear allegiance to HKSAR of PRC; and

(b) the aforesaid conduct constitutes "misbehaviour" under BL 79(7) as Dr CHENG openly and deliberately humiliated the national flags and regional flags in the capacity of a LegCo Member.

"Breach of oath" and "misbehaviour" under BL 79(7)

4.31 BL 79(7) provides that the President shall declare that a member of LegCo is no longer qualified for the office when he or she is censured for breach of oath or misbehaviour by a vote of two-thirds of the members of LegCo present.

4.32 IC notes that neither "breach of oath" nor "misbehaviour" under BL 79(7) is defined in BL, the relevant legislation or RoP. IC considers that the disqualification on account of "breach of oath" or "misbehaviour" under this Article should be distinguished from the disqualification under BL 79(6)[88] in that these two terms should not include the criminal offence under BL 79(6) committed by a Member. Meanwhile, the term "misbehaviour" under BL 79(7) should also be distinguished from the misconduct under RoP 81(2), 85 and 45(2).[89]

4.33 As explained in paragraph 2.8, the issue of what behaviours should be regarded as falling within the meaning of "breach of oath" and/or "misbehaviour" under BL 79(7) was considered by CRoP in 1999 and the first investigation committee. 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 "breach of oath" or "misbehaviour". The first investigation committee considered that it was by no means easy to formulate clear and explicit criteria for defining "misbehaviour".

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88 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.

89 The misconduct under RoP 81(2), 85 and 45(2) refers 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 Interests 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).

Relevant considerations

4.34 In considering whether the two allegations in the censure motion are substantiated, IC needs to form its view on what constitutes "breach of oath" and/or "misbehaviour" under BL 79(7). IC considers it necessary for Members to act properly to set a good example to the public, and to ensure that their standard of conduct be commensurate with the importance of their constitutional role as Members of LegCo.

4.35 IC has made reference to the Reasons for Verdict and Sentence handed down by the Magistrate Court, and understands that the court had applied the standard of proof in criminal proceedings (i.e. "proof beyond reasonable doubt") in convicting Dr CHENG on two counts of desecrating the national flag and regional flag by publicly and wilfully defiling them at the said Council meeting, contrary to section 7 of NFO and of RFO. However, IC is not a court and is established under RoP. According to 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 of Dr CHENG. As such, in determining whether the conduct of Dr CHENG constitutes "breach of oath" and/or "misbehaviour", IC cannot merely rely on the court judgment relating to NFO and RFO.

4.36 IC also 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. In IC's view, this "all or nothing" dichotomy is not the most desirable way of handling Members' misbehaviour of varying degrees of severity (which is a subject worthwhile to be examined by CRoP). However, it is precisely because of the "all or nothing" outcome that IC has to exercise great prudence in forming its views on whether Dr CHENG's conduct constitutes "breach of oath" and/or "misbehaviour" under BL 79(7).

4.37 Having regard to the serious consequence of the two allegations in the censure motion, IC has adopted the following standard of proof: the more serious the allegation, the more compelling the evidence is required to establish the allegation.[90] In considering whether

[90] Paragraph 1.14 of Chapter 1, i.e. the more serious the act or omission alleged, the more inherently improbable must it be regarded. And the more inherently improbable it is regarded, the more compelling will be the evidence needed to prove it on a preponderance of probability.

the allegations are substantiated, IC has taken into account the established facts, the relevant constitutional and statutory requirements, and the degree of severity of Dr CHENG's conduct.

Whether Dr CHENG's conduct was in breach of the LegCo Oath

4.38 On the first allegation in the censure motion, the key question for IC's consideration is whether Dr CHENG's conduct as particularized in the Schedule to the censure motion was in breach of the LegCo Oath taken by him at the Council meeting of 12 October 2016.

4.39 IC notes that according to the Interpretation on BL 104,[91] the oath taken under BL 104 is a legal pledge made by the specified public officers to PRC and HKSAR. The oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law. An oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with law.[92] As such, in considering whether Dr CHENG's conduct constitutes a breach of oath, IC may consider whether his conduct was consistent with his pledges made under the LegCo Oath to PRC and HKSAR.

4.40 At the Council meeting of 12 October 2016, Dr CHENG took the LegCo Oath by which he pledged to: (a) uphold BL; and (b) bear allegiance to HKSAR of PRC.[93]

4.41 IC notes CFA's observations that the national flag represents PRC with her dignity, unity and territorial integrity, while the regional flag is the symbol of HKSAR as an inalienable part of PRC under the principle of "one country, two systems".[94] IC considers that the symbolic meanings represented by those flags are fundamental to the enactment of BL and the relationship between the Central Authorities and HKSAR under "one country, two systems". Such meanings are clearly reflected in BL and in the pledges enshrined in the LegCo Oath taken by Dr CHENG.

4.42 In IC's view, Dr CHENG's repeated, open and deliberate humiliation of those flags, despite repeated warnings by Dr CHIANG and the President, would lead a reasonable person to come to the view that Dr CHENG was not willing or at least had no intention to recognize or

91 Paragraph 2.3 of Chapter 2.
92 Paragraph 2.3 of Chapter 2.
93 Paragraph 3.3 of Chapter 3.
94 Paragraph 2.21 of Chapter 2.

respect the meanings represented by those flags. IC considers that Dr CHENG's humiliation of those flags indicated that he did not manifest an intention to genuinely and faithfully accept and commit himself to honour the pledges of upholding BL and bearing allegiance to HKSAR of PRC.

4.43 Given Dr CHENG's failure to meet the above two pledges, IC is of the view that Dr CHENG did not and could not sincerely believe in and strictly abide by the LegCo Oath. As such, IC considers that the first allegation in the censure motion is substantiated, i.e. Dr CHENG's conduct was in breach of the LegCo Oath taken by him at the Council meeting of 12 October 2016.

Whether Dr CHENG's conduct constitutes "misbehaviour" under BL 79(7)

4.44 In the absence of the definition of "misbehaviour" under BL 79(7), IC, when determining whether the second allegation in the censure motion is established, needs to form its views on whether Dr CHENG's humiliation of the national flag and regional flag in the capacity of a LegCo Member amounts to "misbehaviour" under BL 79(7).

4.45 In this connection, IC considers it very 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" ("Advisory Guidelines")[95], which have been issued to all Members at the beginning of each term since 2009. The Guidelines clearly state that "a Member should ensure that his conduct must not be such as to bring discredit upon the 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". [96] In addition, IC notes the view of the first investigation committee that the censure mechanism under BL 79(7) should be applicable to a Member's conduct seriously affecting the reputation of LegCo as a whole.[97]

4.46 On the above basis, IC considers that bringing serious discredit upon LegCo and acting contrary to the generally assumed standard of

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95 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 Guidelines concern how Members should handle their interests and the standard of behaviour expected of Members.

96 Paragraphs 1 and 2 of the Advisory Guidelines (**Appendix 4.1**).

97 Paragraph 2.8 of Chapter 2.

conduct expected of a LegCo Member should be the key elements constituting a Member's "misbehaviour" under BL 79(7). In considering whether Dr CHENG's acts of inverting the national flags and regional flags entail the above key elements, IC notes that:

(a) Dr CHENG inverted those flags not only once but twice, with the first round involving 21 flags displayed by 11 Members and the second round 16 flags displayed by eight Members;

(b) he did so at an open meeting broadcast live on television and online amid the concern of some Members and the public about the solemnity and validity of the oath-taking by certain Members;

(c) he continued to do so despite repeated advices and warnings by Dr CHIANG and the President;

(d) up to the publication of this Report, he has not made a public apology for his conduct; and

(e) he was convicted by the Magistrate Court on two counts of desecrating the national flag and regional flag by publicly and wilfully defiling them at the said Council meeting, contrary to section 7 of NFO and of RFO, and was fined $5,000 in total for the two charges.

4.47 IC considers that when compared to the offence of desecrating the national flag and regional flag by publicly and wilfully burning them[98], Dr CHENG's act of defiling by inverting those flags was less serious in nature and the sentence imposed by the Magistrate Court against him was relatively lenient. Nevertheless, in view of the manner and circumstances in which he humiliated those flags, the message conveyed to the public by his conduct in his capacity as a LegCo Member as well as his criminal conviction for desecration of those flags, IC considers that such humiliation has undoubtedly indicated that he was disrespectful to PRC and its HKSAR and has thereby brought serious discredit on LegCo, contrary to the generally assumed standard of conduct expected of a LegCo Member.

98 "Summary of facts and sentences of certain judicial decisions concerning desecrating the national flag and regional flag" prepared by the LegCo Secretariat (Appendix 2.2).

Dr CHENG's conduct of humiliating those flags was serious enough to amount to "misbehaviour" under BL 79(7). IC therefore finds the second allegation in the censure motion substantiated.

Whether the facts as established constitute grounds for the censure

4.48 By virtue of BL 79(7), a Member may be censured for either misbehaviour or breach of oath. IC has found that both allegations in the censure motion are substantiated, i.e. Dr CHENG's conduct constitutes both "breach of oath" and "misbehavior" under BL 79(7). In IC's view, Dr CHENG's conduct has not only brought serious discredit on LegCo but also tarnished the dignity of PRC and its HKSAR. He conducted himself in such a way as to place himself in a position which is contrary to the generally assumed standard of conduct expected of a LegCo Member. IC condemns Dr CHENG's conduct, and comes to the unanimous view that the facts as established constitute grounds for the censure of Dr CHENG.

Acronyms and Abbreviations

Advisory Guidelines	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
BL	Basic Law
CE	Chief Executive
CFA	Court of Final Appeal
CFI	Court of First Instance of the High Court
CRoP	Committee on Rules of Procedure
DAB	Democratic Alliance for the Betterment and Progress of Hong Kong
Dr CHENG	Dr Hon CHENG Chung-tai
Dr CHIANG	Dr Hon CHIANG Lai-wan
HC	House Committee
HKSAR	Hong Kong Special Administrative Region
IC	Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai
LegCo	Legislative Council

Mr LAU	Hon LAU Kwok-fan
National flag	National flag of the People's Republic of China
NFO	National Flag and National Emblem Ordinance (116 of 1997)
PRC	People's Republic of China
Reasons for Verdict and Sentence	Transcript provided by the Eastern Magistrates' Court setting out its reasons for verdict and sentence in respect of HKSAR v CHENG Chung-tai (ESCC 1139/2017)
Regional flag	Regional flag of the Hong Kong Special Administrative Region of the People's Republic of China
RFO	Regional Flag and Regional Emblem Ordinance (117 of 1997)
RoP	Rules of Procedure
the censure motion	Motion moved by Hon Paul TSE under Rule 49B(1A) of the Rules of Procedure to censure Dr Hon CHENG Chung-tai
the Clerk	Clerk to the Legislative Council
the Interpretation	Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress (issued on 7 November 2016)
the Magistrate Court	Eastern Magistrates' Court

the President	President of the Legislative Council
the relevant parts of evidence	Those parts of the Report of the Investigation Committee which set out the evidence on the basis of which the Investigation Committee has established the facts stated in the censure motion
the said Council meeting	Council meeting of 19 October 2016
the US	the United States

Appendix 1.1

點名表決DIVISION: 1
日期 DATE: 14/12/2016
時間 TIME: 07:44:19 下午 PM

動議 MOTION: 根據《議事規則》第 49B(2A)條動議，‘不得就謝偉俊議員動議的譴責議案再採取任何行動’ 的議案
MOTION UNDER RULE 49B(2A) OF THE RULES OF PROCEDURE THAT NO FURTHER ACTION SHALL BE TAKEN ON THE CENSURE MOTION MOVED BY HON PAUL TSE

動議人 MOVED BY: 陳志全 CHAN Chi-chuen

	功能團體 Functional Constituencies	地方選區 Geographical Constituencies	最後結果 Final Result
出席 Present	32	28	
投票 Vote	31	28	
贊成 Yes	11	16	
反對 No	20	12	
棄權 Abstain	0	0	
結果 Result	否決 Negatived	通過 Passed	否決 Negatived

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員	MEMBER	投票	VOTE
功能團體 Functional Constituencies			
梁君彥	Andrew LEUNG	出席	PRESENT
涂謹申	James TO	贊成	YES
梁耀忠	LEUNG Yiu-chung	贊成	YES
石禮謙	Abraham SHEK	反對	NO
張宇人	Tommy CHEUNG		
李國麟	Prof Joseph LEE	贊成	YES
林健鋒	Jeffrey LAM	反對	NO
黃定光	WONG Ting-kwong	反對	NO
李慧琼	Starry LEE	反對	NO
陳健波	CHAN Kin-por	反對	NO
何俊賢	Steven HO	反對	NO
易志明	Frankie YICK	反對	NO
姚思榮	YIU Si-wing	反對	NO
馬逢國	MA Fung-kwok	反對	NO
莫乃光	Charles Peter MOK	贊成	YES
梁繼昌	Kenneth LEUNG	贊成	YES
郭榮鏗	Dennis KWOK	贊成	YES
張華峰	Christopher CHEUNG	反對	NO
葉建源	IP Kin-yuen	贊成	YES
廖長江	Martin LIAO	反對	NO
潘兆平	POON Siu-ping	反對	NO
盧偉國	Ir Dr LO Wai-kwok	反對	NO
鍾國斌	CHUNG Kwok-pan	反對	NO
吳永嘉	Jimmy NG	反對	NO
何啟明	HO Kai-ming	反對	NO
周浩鼎	Holden CHOW	反對	NO
邵家輝	SHIU Ka-fai	反對	NO
邵家臻	SHIU Ka-chun	贊成	YES
陳沛然	Dr Pierre CHAN	贊成	YES
陳振英	CHAN Chun-ying		
陸頌雄	LUK Chung-hung	反對	NO
劉國勳	LAU Kwok-fan	反對	NO
劉業強	Kenneth LAU		
鄺俊宇	KWONG Chun-yu	贊成	YES
姚松炎	Dr YIU Chung-yim	贊成	YES

議員	MEMBER	投票	VOTE
地方選區 Geographical Constituencies			
陳克勤	CHAN Hak-kan	反對	NO
梁美芬	Dr Priscilla LEUNG		
黃國健	WONG Kwok-kin	反對	NO
葉劉淑儀	Mrs Regina IP		
謝偉俊	Paul TSE	反對	NO
梁國雄	LEUNG Kwok-hung	贊成	YES
毛孟靜	Claudia MO	贊成	YES
田北辰	Michael TIEN		
胡志偉	WU Chi-wai	贊成	YES
陳志全	CHAN Chi-chuen	贊成	YES
陳恒鑌	CHAN Han-pan	反對	NO
梁志祥	LEUNG Che-cheung	反對	NO
麥美娟	Alice MAK	反對	NO
郭家麒	Dr KWOK Ka-ki	贊成	YES
郭偉强	KWOK Wai-keung	反對	NO
張超雄	Dr Fernando CHEUNG	贊成	YES
黃碧雲	Dr Helena WONG	贊成	YES
葛珮帆	Dr Elizabeth QUAT	反對	NO
蔣麗芸	Dr CHIANG Lai-wan	反對	NO
楊岳橋	Alvin YEUNG	贊成	YES
尹兆堅	Andrew WAN	贊成	YES
朱凱廸	CHU Hoi-dick	贊成	YES
何君堯	Dr Junius HO	反對	NO
林卓廷	LAM Cheuk-ting	贊成	YES
柯創盛	Wilson OR	反對	NO
容海恩	YUNG Hoi-yan		
陳淑莊	Tanya CHAN	贊成	YES
張國鈞	CHEUNG Kwok-kwan	反對	NO
許智峯	HUI Chi-fung	贊成	YES
鄭松泰	Dr CHENG Chung-tai		
譚文豪	Jeremy TAM	贊成	YES
羅冠聰	Nathan LAW	贊成	YES
劉小麗	Dr LAU Siu-lai	贊成	YES

秘書 CLERK_____

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Appendix 1.2

Procedure for the election of Members for appointment by the President to the investigation committee

1. An election of Members shall be held at a meeting of the House Committee, the date of which ("election date") shall be appointed by the House Committee.

2. The Legislative Council Secretariat shall issue a circular and a nomination form to the Members of the Legislative Council at least seven clear days before election date, inviting nominations to be made.

3. Each nomination form shall be for the nomination of one Member and shall be signed by one Member as the proposer, one Member as the seconder, and by the nominee Member to signify his consent to the nomination.

4. Duly completed nomination forms shall be delivered to the Legislative Council Secretariat at least three clear days before the election date.

5. In cases where the number of nominations received by the Legislative Council Secretariat by the deadline for nomination is less than seven, further nominations may be proposed, at the House Committee meeting at which the election is conducted, by any Member and seconded by another, with the proposed nominee signifying his consent to the nomination.

6. In the case where the number of nominations received under paragraphs 4 and 5 is equal to seven, the Chairman of the House Committee shall declare the nominees duly elected.

7. In cases where the number of nominations received under paragraphs 4 and 5 is more than seven, a poll shall be taken at the House Committee meeting at which the election is conducted and Members should cast their votes by using the electronic voting system, whereby a Member may vote for not more than seven nominees. The nominees who get the highest numbers of votes will be declared elected.

8. In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes, a separate poll shall be taken in respect of that nominee and such other nominee(s) in accordance with the manner of election provided in paragraph 7.

9. If, after a separate poll is held under paragraph 8, there is still a nominee who would have been elected but for there being one or more other nominees having been given the same number of votes, lots shall be drawn by the Chairman of the House Committee among such nominees to determine which of them will take up the remaining place/places.

10. Immediately after the election of Members for appointment to the investigation committee, the meeting of the House Committee shall be suspended for 10 minutes to enable the elected Members to elect amongst them the two Members to be nominated for appointment respectively as Chairman and Deputy Chairman of the investigation committee by the President.

11. The meeting of the House Committee will then resume and House Committee will be asked to endorse the results of the election of the Chairman and Deputy Chairman of the investigation committee.

Practice and Procedure of the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai

Terms of reference

The Investigation Committee ("IC") is responsible for establishing the facts stated in the censure motion moved under Rule 49B(1A) of the Rules of Procedure ("RoP"), and giving its views on whether or not the facts as established constitute grounds for the censure of the Member who is the subject of the motion (RoP 73A(2)).

The investigation process

Collation of information before hearings

2. The IC will first invite:

(a) the Members who initiated the censure motion (i.e. the mover and the three Members who jointly signed the notice of the motion) to provide in writing information in support of the particulars of misbehaviour set out in the schedule to the censure motion and any information which may assist the IC in carrying out its work; and

(b) the Member who is the subject of the censure motion ("Member under investigation") to respond in writing to the censure motion and information provided under (a) above by the Members who initiated the censure motion, and to provide any information which may assist the IC in carrying out its work.

3. The IC will also instruct the Clerk to the IC to gather information relevant to the censure motion.

Meetings and hearings

4. For the purposes of this Practice and Procedure, meetings of the IC at which the Member under investigation or a witness or witnesses appear to give evidence or to produce documents are referred to as "hearings".

5. On the basis of the information and responses provided to the IC under paragraphs 2 and 3 above, the IC will decide if it is necessary to conduct hearings for the purpose of establishing the facts stated in the censure motion. If it is considered necessary, the IC will decide on the persons to be called to attend its hearings to give evidence. These persons may include the Members who initiated the censure motion, the Member under investigation and any person whom the IC considers to be able to provide information which will be relevant and useful to the investigation.

6. Subject to paragraph 7, all meetings of the IC, including hearings at which the Member under investigation or a witness or witnesses appear, will be held in private (RoP 73A(4)).

7. Only the Member under investigation may elect for hearings to be held in public, and the election must be made before the first hearing. Where he makes such an election, all hearings shall be held in public throughout the entire investigation unless, upon an application by a witness or a request from a member of the IC, the IC on sufficient reason decides otherwise (RoP 73A(5)(a) and (b)).

8. Any witness and the Member under investigation may apply to the IC for any hearing or any part of it to be held in private where an election for hearings to be held in public has been made by the Member under investigation. Similarly, any member of the IC may request, throughout the investigation, that any hearing or any part of it be held in private (RoP 73A(5)(b)). Such an application or request may be made after an election for hearings in public has been made by the Member under investigation, before or after the relevant person(s) attends a hearing, or during a hearing. In deciding whether or not to grant such an application or accede to such a request, the factors that the IC will take into account include whether the evidence to be obtained concerns matters of privacy and whether sufficient protection is accorded to the person(s) concerned.

9. Where appropriate, the IC may hold a hearing at a venue away from the Legislative Council ("LegCo") Complex.

10. Apart from hearings, meetings of the IC to consider the following matters are held in private: procedural matters, progress of its work, logistical arrangements for hearings, the evidence obtained, the draft report of the IC and any other matters relevant to or arising from the IC's work.

Witnesses

11. Witnesses are to be invited to attend hearings to be examined and to provide information to the IC. If considered necessary by the IC and authorized by the Council to exercise the power to summon under section 9(1) of Cap. 382, the IC may order the attendance of witnesses by summons. Only witnesses summoned under section 9(1) to give evidence or to produce any paper, book, record or document at a hearing will enjoy the same right or privilege as before a court of law in accordance with section 14(1) of Cap. 382.

12. In determining whether witnesses should be invited or summoned, the IC will have regard to factors including the views of the witnesses, whether the relevant hearings will be held in private or public, and whether sufficient protection is accorded to the witnesses concerned.

13. The Member under investigation will be informed of the witnesses whom the IC has decided to call and he may propose additional witnesses for the IC's consideration.

Accompanying persons

14. The Member under investigation and witnesses appearing before the IC may be accompanied by a maximum of three persons, including no more than one legal adviser. During a hearing, the witness must not engage in discussions with the accompanying persons nor receive any prompting, whether oral or in writing, from such persons but he may, with the permission of the Chairman, seek advice from his legal adviser.

Conduct of hearings

15. The IC may ask the Member under investigation to submit a written statement to the IC before attending the relevant hearings. The IC may also forward the written statement and relevant information submitted by him, or relevant parts thereof, to the relevant witnesses, who may make a written response, to which the Member under investigation may respond.

16. Also, the IC may ask the witnesses to submit written statements to the IC before attending the relevant hearings. The IC may also forward the written statement and relevant information submitted by a witness, or relevant parts thereof, to the Member under investigation, who may make a written response, to which the witness may respond.

17. Hearings are conducted for the examination of witnesses by way of questions and answers in order to establish the facts stated in the schedule to the censure motion. Members should not make comments or statements during these hearings. Hearings are normally conducted in the following manner:

(a) the Chairman opens a hearing by stating the purpose of the hearing and reminds the witness of the role of the accompanying persons;

(b) where it is decided that the witness should be examined on oath, the Chairman will administer the oath under section 11 of Cap. 382 before the examination starts;

(c) the Chairman will first ask a witness to formally produce his written statement to the IC and if he has anything to add;

(d) the Chairman will then ask the witness an appropriate opening question, giving him an opportunity to state his case;

(e) the Chairman will then allow members to put questions to the witness; and

(f) the Chairman will decide whether a question or evidence is relevant to, and within the scope of, the IC's investigation.

<u>Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings</u>

18. In accordance with RoP 41(2), a Member shall not make reference in his/her speech to a case pending in a court of law in such a way as, in the opinion of the President or the Chairman, might prejudice that case. This Rule applies to the proceedings of the IC by virtue of RoP 43.

19. If there are pending legal proceedings arising from matters which are related to the subject of the IC's inquiry, the following measures will be adopted to avoid possible prejudice to a person's interest in pending legal proceedings:

(a) the Department of Justice ("DoJ") will be asked to keep the IC informed of the development of the criminal proceedings concerned, if any;

(b) the Chairman would explain to each witness that the function of the IC is not to adjudicate on the legal liability of any party or individual and advise him/her of the Chairman's power to disallow the making of any reference to a case pending in a court of law if such reference might, in the Chairman's opinion, prejudice the proceedings;

(c) where it is considered necessary and justified, either on an application by a witness or on the IC's own motion, the IC may determine to hold closed hearings to obtain evidence from a witness;

(d) where the IC considers necessary, it will provide DoJ with a copy of the draft findings and observations of the IC and request it to comment whether the contents of the draft might prejudice pending criminal proceedings, if any; and

(e) the report of the IC should not contain any material which might prejudice a pending jury trial.

20. In respect of pending civil proceedings, the following principles will, in addition to any applicable measures stated in paragraph 19 above, apply:

(a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;

(b) references referred to in (a) would include comments on, inquiry into and the making of findings on such matters;

(c) matters awaiting adjudication referred to in (a) would include matters in respect of which proceedings have been initiated by the filing of the appropriate documents; and

(d) prejudice referred to in (a) might arise from an element of explicit or implicit prejudgment in the proceedings of the IC in two possible ways:

(i) the references might hinder the court or a judicial tribunal in reaching the right conclusion or lead it to reach other than the right conclusion; and

(ii) whether the court or judicial tribunal is affected in its conclusion or not, the references might amount to an effective usurpation of the judicial functions of the court or judicial tribunal.

Attendance of non-IC Members

21. Members who are not members of the IC ("non-IC Members") are not allowed to be present at the IC's meetings and hearings held in private unless they are summoned or invited to attend as witnesses. Where a hearing is held in public, non-IC Members may attend but they may not speak, either by way of addressing the IC or putting questions to witnesses.

Provision of verbatim transcripts

22. The relevant parts of the draft verbatim transcripts of the proceedings of the hearings containing the evidence of a witness or the Member under investigation are forwarded to that person for sight and correction, before they are incorporated into the minutes of evidence. For hearings held in private, before the verbatim transcripts are passed to such persons, they are required to sign an undertaking that they would not make copies of the drafts, make public use of them (including quoting from the transcripts at hearings held in public) and use the transcripts in a manner prejudicial to the work of the IC, and that they would return the drafts to the IC before a specified date.

23. Any witness and the Member under investigation may also, on request, be provided with the verbatim transcripts of the proceedings of hearings held in public containing the evidence of another witness. He may also be provided, on his request, with the verbatim transcripts of hearings held in private containing the evidence of another witness, subject to his signing of an undertaking that he would not make copies of the transcripts, make public use of them (including quoting from the transcripts at hearings held in public) and use the transcripts in a manner prejudicial to the work of the IC, and that he would return the transcripts to the IC before a specified date. The IC may, on sufficient reason, reject such requests for transcripts of hearings held in private.

24. If a hearing is held in public, members of the public may obtain a copy of the finalized form of the verbatim transcript for that hearing upon the payment of a fee prescribed by the LegCo Secretariat.

Preparation and publication of report

25. Those parts of the IC's report which set out the evidence, on the basis of which the IC has established the facts stated in the censure motion, will be forwarded to the Member under investigation and the witnesses concerned for comment. Such comments will be recorded in the IC's report and will be taken into account by the IC in finalizing its report.

26. Upon completion of its report, the IC will table it in the Council pursuant to RoP 73A(12). Shortly before the report is tabled, the Member under investigation and the witnesses concerned will be provided with an advance copy of the report on the condition that it will not be released to the public until the relevant Council meeting has begun. This arrangement is to enable the Member under investigation and the witnesses concerned to prepare themselves for responding to the public and media enquiries. After the report has been tabled in the Council, it will be made public.

Confidentiality requirement

Classification of confidential information

27. Evidence obtained in hearings held in private, written statements and other documents provided to the IC, information relating to other meetings of the IC and any related correspondence are confidential and remain so unless and until they are published or declassified by the IC.

Use of confidential information

28. The source of information obtained at hearings held in private may be disclosed at a hearing held in public only if it is necessary to do justice to the witness or to enable him to understand a question. Before such disclosure, the IC may consult the relevant persons who may be affected by the disclosure.

29. Information obtained at hearings held in private from a witness who is a party to pending legal proceedings shall be used with care so as to avoid possible prejudice to that person's interest in such proceedings, and where possible, the identity of the witness who has provided the information should not be disclosed if it is so decided by the IC.

Application for exclusion of confidential information from report

30. The minutes of evidence, which form part of the report to be submitted to the Council upon completion of investigation under RoP 73A(12), shall contain all evidence taken by the IC at hearings held in private and public. However, the IC may, upon request made by a witness, decide to exclude confidential information from the report on grounds that such exclusion is necessary to protect privacy without jeopardizing the public interest in knowing the material facts on which the IC has based its views.

Communications between Members and members of the IC

31. Non-IC Members, the Member under investigation and Members who expect to be or have been called to appear before the IC as witnesses should not, outside meetings of the IC, engage in communications by conversations or any other form with members of the IC on any matter relating to the work of the IC.

Communications with the media

32. With the consent of the IC, the Chairman or the Deputy Chairman may respond in general terms to enquiries from the media on the progress of the investigation. No member other than the Chairman or the Deputy Chairman shall be authorized to handle media enquiries on matters relating to the work of the IC.

Confidentiality undertaking

33. All members of the IC, the Member under investigation and witnesses as well as accompanying persons attending meetings or hearings of the IC held in private shall be required to sign a confidentiality undertaking that they will not publish, without the prior written authorization of the IC, any matter relating to the proceedings of meetings or hearings of the IC held in private, including evidence taken before the IC, documents produced to it, its deliberations and decisions, except such matter that has already been published or contained in any report presented by the IC to the Council. They are also required to take the necessary steps to prevent publication of such matter either before or after the IC presents its report to the Council, unless the confidential classification has been removed by the IC.

Premature publication of evidence

34. RoP 81 provides that the evidence taken before the IC under RoP 80 (Attendance of Witness) and documents presented to it shall not, except in the case of its meetings held in public, be published by a member of the IC or by any other person before the IC has presented its report to the Council. Any member of the IC who fails to comply with RoP 81 may be admonished or reprimanded by the Council on a motion to that effect.

Other matters

Term of office

35. The IC shall be dissolved upon the tabling of its report in the Council (RoP 73A(12)) or at the end of a term. If the IC is of the opinion that it will not be able to complete consideration of the matter before the end of a term, it shall so report to the Council.

Chairmanship

36. All meetings of the IC are chaired by the Chairman or, in the Chairman's absence, by the Deputy Chairman. In the event of the temporary absence of the Chairman and Deputy Chairman, the IC may elect a chairman to act during such absence (RoP 73A(6)).

Quorum

37. The quorum of the IC shall be five members including the Chairman (RoP 73A(3)). The Clerk will draw to the attention of the Chairman the absence of a quorum as and when there is such absence .

Voting

38. Decisions of the IC shall be decided by a majority of the members present and voting, which is done by a show of hands. Non-IC Members attending hearings held in public are not allowed to vote.

39. Where a member claims a division, the Clerk shall take divisions by asking each member separately how he wishes to vote and record the votes accordingly (RoP 73A(8)). Abstentions are not counted for the purpose of determining the result of the vote.

40. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he shall have a casting vote (RoP 73A(9)). The casting vote shall not be exercised in such a way as to produce a majority vote in favour of the question put (RoP 79A(1)).

Appointment of experts

41. Where appropriate, the IC may appoint experts to advise on any matter relevant to or arising from its work.

Verbatim transcripts and minutes of proceedings of meetings of the IC

42. Verbatim transcripts of the proceedings will be kept for all hearings and, on the IC's direction, for particular meetings. Minutes will be kept for other meetings, which are normally presented in a condensed form, recording the IC's decisions, follow-up actions required, procedural matters and declarations of interest made by members. Where a meeting or part thereof is for the consideration of the draft report of the IC, the minutes of proceedings of the IC will record all proceedings on the consideration of the report and on every amendment proposed thereto, with a note of divisions, if divisions were taken in the IC, showing the names of members voting in the division or declining to vote (RoP 73A(10)).

Reports of the IC

43. The report to be tabled in the Council pursuant to RoP 73A(12) for the purpose of resumption of the debate on the censure motion shall be so stated when the report is tabled. Apart from that report, the IC may table reports in the Council on any matter relating to or arising from its work as and when it considers necessary.

Disclosure of interests

44. RoP 83A and 84 relating to Members' pecuniary interest shall apply to the proceedings of the IC.

45. In addition, there may be situations in which a member wishes to declare non-pecuniary interests. In such a case, the member should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public hearings of the IC the nature of interests so declared by individual members.

Revival of the IC

46. The IC may be revived to deal with any further matters arising from the censure motion by resolution of the Council (RoP 73A(12)).

20 February 2017

香港特別行政區
東區裁判法院
刑事案件 2017 年第 1139 號

鄭松泰被控侮辱國旗等罪項
鄭念慈裁判官審理

日期： 2017 年 9 月 29 日
時間： 下午 2 時 42 分
出席人士： 律政司副刑事檢控專員 Ms Anna Lai 及高級檢控官 Derek Lau，代表香港特別行政區
Mr Robert Pang 及 Ms Chelsea Ma，instructed by Messrs Cheng, Yeung & Co，代表被告人

裁決及判刑理由書
以下內容乃法庭數碼錄音謄本

官：係，以下係本席就住你呢宗案件嘅裁決，與及裁決嘅一個簡要嘅理由。

2016 年嘅 10 月 19 日，立法會議員劉國勳（即係控方第一證人），喺立法會開會之前將一啲嘅國旗、區旗分發畀部分嘅立法會議員，其中有部分嘅立法會議員呢就將獲分發嘅國旗與及區旗插咗喺議員桌前嘅杯座上面。立法會開會期間，部分嘅立法會議員，包括咗控方第一證人及立法會議員蔣麗芸（即控方第二證人），離開咗立法會嘅會議廳前往休息室。呢個時候，立法會議員鄭松泰（即係被告人），前往其他離席議員嘅座位桌前，將原本豎立喺杯座上面嘅國旗與及區旗倒插。控方第二證人得悉事件返回會議廳將倒插嘅國旗與及區旗還原，控方第二證人其後再次離開會議廳。不久之後，被告人又再一次前往其他離席議員嘅座位桌前，將豎立嘅國旗及區旗再度倒插。控方第二證人又再得悉事件，於是乎又再返回會議廳將倒插嘅國旗與及區旗還原。當日會議結束咗之後，控方第一證人因爲被告人嘅行爲決定報警，以上就係本案基本上嘅背景。

本案嘅爭議

代表被告嘅資深大律師彭先生唔爭議被告喺會議廳入面曾經兩度前往其他離席立法會議員嘅座位桌前倒插咗國旗與及區旗，而控方第一證人同埋第二證人亦都能夠清楚交代事發嘅經過，加上本席有睇過所有嘅相關錄影片段，本席肯定被告當日喺案發日有倒插國旗與及區旗。彭先生就認爲被告嘅行爲並非以玷污嘅方式侮辱國旗與及區旗，因此本案嘅爭議在於第一究竟乜嘢爲之玷污（defiling）呢個字，喺法律上面，喺相關條例上面嘅意思，與及第二，被告人嘅行爲，即係呢個所謂倒插國旗與及區旗係咪就係以玷污嘅方式侮辱有關嘅旗幟。

先處理玷污（defiling）呢個字嘅意思，代表控方嘅資深大律師黎副刑事檢控專員就陳述玷污（defiling）嘅意思，即指與旗幟有實體接觸嘅玷辱性嘅行爲，英文講呢就係 physical dishonour of flags，並不限於物質被弄髒或者損壞，彭先生並唔同意呢個睇法，認爲玷污（defiling）嘅意思係

指作出性質上弄污旗幟或者對旗幟有實質損壞性嘅行爲。相關嘅法例，即係《國旗及國徽條例》與及《區旗及區徽條例》均並沒有對玷污（defiling）呢個字作出法定嘅釋議。彭先生就指出嘞，有關法例第 4 條嘅英文版本呢亦都有使用 defiled，D-E-F-I-L-E-D 呢個字，而中文嘅版本呢就使用「污損」呢個字眼，而呢個字嘅中文意思，即係污損呢個字嘅中文意思明顯就係指實質上有弄污或者係損壞旗幟，令到旗幟嘅實質狀態，即係嗰個 physical state，有改變。彭先生因此又陳述第 7 條入面嘅 defiling，即係玷污呢個字，與第 4 條嘅 defiled，即係污損，都必定係指作出性質上面弄污旗幟或者對旗幟有實質損壞性嘅行爲。此外，有關法例第 7 條嘅中文版本亦都比英文版本呢多出咗「等方式」呢個字眼，彭先生亦都陳述根據同類嘅原則意味著五種嘅侮辱旗幟嘅方式均屬同一種類，所以有關條文必須限制於理解爲焚燒、毀損、塗畫、玷辱、踐踏，屬於同一種種類，亦都即係話只限於以實體接觸方式侮辱有關旗幟嘅本身並且係作出弄污旗幟或者係對旗幟有實質損壞性嘅行爲。本席考慮之後唔接納彭先生嘅陳述，玷污與污損呢兩個用字呢顯然唔同，而唔同嘅字詞理應含有不同嘅意思。事實上，控辯雙方呢亦都係同意現代法定釋義嘅方法應該係採用目的嘅釋義，即係 purposive interpretation。終審法院法官包致金曾經指出有關法例第 4 條嘅目的其實係給予欲對有關旗幟表示敬意嘅人嘅指導，與第 7 條係不同嘅，咁引述終審法院法官包致金嘅說話佢係咁講嘅「第 4 條的指令旨在給予那些欲對國旗、區旗及國徽、區徽表示敬意的人士一些指導，但是與此相比，第 7 條卻截然不同，該禁制條文旨在保護國旗、區旗及國徽、區徽免遭蓄意侮辱公開及故意在遊行時展示一面經刻意選擇的塗污了的旗幟或徽號就是玷污這旗幟或徽號，亦因而侮辱了這旗幟或徽號」呢一個係香港特別行政區訴吳恭劭一案，即係終院刑事上訴 1999 年第 4 號案，頭先我所引述嘅係第七十六段。同案，終審法院首席法官李國能亦都有對有關法例第 7 條嘅立法目的有一個嘅睇法，引述如下：「將侮辱國旗及區旗列爲刑事罪行是對發表自由的權利施加一種有限度的限制，所要達致的目的是保護作爲國家獨有象徵的國旗，以及作爲香港特別行政區獨有象徵的區旗」。另外，本席亦都有參閱過高等法院原訟法庭法官彭偉昌（當時嘅官階喇）亦都喺亦另外一宗案件入面，即係香港特別行政區訴古思堯一案，2014 年 4HKLRD 第 5--565 第 572 頁佢咁講嘅彭法官，「無論是國旗條例或區旗條例的第 7 條，其目的都旨在單純地維護國及區旗的尊嚴，以免它受到廣義的侮辱」。因此本席係接納黎專員嘅陳述，同意有關法例第 7 條下面玷污同埋 defiling 可推定爲同等嘅意思，而第 4 條下面嘅污損和 defiled 亦可推定爲同等意思，既然不同嘅字詞可以有不同嘅意思，再加上有關法例第 7 條的立法目的與第 4 條明顯不同，本席認爲並沒有理由把第 4 條的污損（defiled）嘅意思理解爲等同於第 7 條的玷辱（defiling），彭先生亦進一步指出其他法律條文中有一些 defile 嘅中文版本選擇使用了弄污或弄髒嘅字眼，呢啲嘅法例係包括咗有《道路交通公共服務車輛規例》與及《海岸公園及海岸保護規例》，但本席認爲不同法例理應達致不同嘅目的，不可以單單因爲其他法例中 defile，D-E-F-I-L-E 一字的中文版本用上了弄污或弄髒等字眼，就將國旗條例及區旗條例第 7 條中 defiling，D-E-F-I-L-I-N-G 一字理解爲弄污或弄髒。根據同類的原則，黎專員指出在有關法例第 7 條包含的五種侮辱方式，都涉及與旗幟有實體接觸的行爲，雖然焚燒及損--及毀損必定涉及實質的損毀或弄污，但本席同意踐踏（trampling）一字的日常意思根本不一定涉及實質的損毀或弄污，現代漢語

詞典將踐踏解釋爲比喻摧殘，憑藉勢力踐踏鄉鄰，另外，Shorter's Oxford Dictionary 亦都有解釋 trample 呢個字嘅意思包括咗"treat with contempt", "disregard the rights or feelings of"，本席因此接納根據同類嘅原則，有關法例嘅第 7 條包含嘅五種侮辱方式，雖然均屬與旗幟有實體接觸的同一類行爲，但踐踏與玷污屬於不必定有實質的損毀或弄污類別，與焚燒、損毀--毀損及塗畫不同。

另外，本席亦接納根據字典嘅解釋，玷辱（defile）嘅意思，明顯包括玷辱（dishonour），Shorter's Oxford Dictionary 提及 defile 有--嘅解釋當中，包括咗 dishonour，(indistinct)... Dictionary 亦都說明 defile 嘅解釋包括 dishonour。辭海將玷污嘅意思解釋爲「污損、玷辱，指聲譽名節受損」。現代漢語詞典解釋玷污嘅意思爲「弄髒，比喻辱沒，如玷污名聲」，顯然聲譽、名節及名聲的受損並不屬於物質方面被弄髒或損壞。本席亦考慮過彭先生引述嘅不少案例，但本席認爲均與本案嘅情況不同。例如 Hoffman 訴 United States 案涉及嘅係美國國旗相似嘅襯衫，與本案案情不同，其餘嘅案例有部分都係與美國第一修正案有關，並不適用於本港。

縱使有關法例第 7 條涉及對基本權利或自由造成影響，但本席認爲亦不必定要給--因而給予玷污狹義嘅解釋，因爲一條旨在維護具象徵意義的旗幟的尊嚴而制定的法例，必須全面保護旗幟免受侮辱，才能產生有效嘅效力。剛才所引述嘅就係吳恭劭案第四十四段。事實上，終審法院早已裁定有關法例第 7 條中玷污（defiling）嘅一般含意，顯然包括玷辱（dishonouring）。彭先生認爲終審法院在作出上述意見嘅時候，係源自一個在該案審理時並未有在下屬法院提過的新論點，亦沒有解釋玷辱（dishonouring）的意思，故此只屬於附帶評論，因此認爲本席可就玷污嘅意思作獨立考慮，本席並不同意，因爲終審法院其實早已清楚指出，引述如下：「大律師或法官在下屬法院中沒有提出這個新論點實不足爲奇，這論點完全缺乏理據，國旗條例及區旗條例第 7 條所指的罪行，均爲以玷污方式侮辱有關旗幟。玷污的一般含意顯然包括玷辱在內」。因此本席認爲玷污一詞的一般含意包括玷辱在內實在明顯不過。

本席有考慮過彭先生提出嘅法律確定性 legal certainty 嘅問題，指出--彭先生指出有關法例第 7 條不可能涵蓋任何性質、任何程度的實體接觸，而玷辱的意思實在太廣泛，可以涵蓋沒有實體接觸旗幟的情況，引申出含意沒有確定性的情況。本席不接納彭先生的說法，正如黎專員所陳述，某一個行爲是否構成玷污，必定取決於個別行爲的實際環境和情況，當考慮玷污的日常意思並應用在個別情況之下，自然可以決定某個行爲是否以玷污方式侮辱有關旗幟。有關法例第 7 條的立法目的在於保護國旗及區旗免受侮辱，本席同意黎專員的陳述，賦予玷污包括玷辱的意思，方爲有效實現有關法例第 7 條的立法目的。基於前述，本席裁定有關法例第 7 條中玷污（defiling）的意思包括玷辱（dishonouring）在內，意思是指與旗幟有實體接觸的玷辱性嘅行爲（physical dishonour of flags）並不限於物質被弄髒或損壞。

下一個問題係倒插國旗與及區旗是否以玷污嘅方式侮辱有關嘅旗幟。黎專員陳述被告倒插國旗及區旗，以使旗幟受辱嘅方式嚟展示旗幟構成對旗幟作出實質嘅玷辱，彭先生並不同意呢一個睇法。有關嘅旗幟其實係有一支白色嘅旗桿，當旗桿插在杯座上，旗幟內嘅圖案就能以符合法例嘅規格方式展示，即係國旗入面嘅五星圖案會展示喺旗幟左上方，區旗嘅紫荊花圖案亦都會正面顯示出

嚟，任何正常及合理嘅人都必定明白將一面國旗或區旗倒插必定會破壞有關旗幟嘅尊嚴，當被告人把國旗及區旗倒插在杯座上，使旗幟塞在杯座，旗桿伸出杯座，任何正常及合理的人都會必然認同被告是以受辱嘅方式展示旗幟。因此，本席裁定被告在案發時於會議廳倒插國旗及區旗是以玷污嘅方式侮辱國旗及區旗，被告亦肯定明白呢一點。無論被告當其時是否小心翼翼咁倒插國旗及區旗，又或者佢最終嘅目的只係希望藉此將離席議員吸引返回會議廳，其實與他是否干犯侮辱國旗及區旗嘅罪行並無關係。有關嘅旗幟係咪國旗同埋區旗，涉案嘅國旗及區旗並不完全符合法例嘅規格，但係根據有關嘅法例嘅第 8 條只要其相似程度足以使人相信它是國旗或區旗，有關嘅複製本已可視爲國旗或區旗，由證物 P7--P6 及 P7 可以見到，無論係旗幟嘅顏色，長闊嘅比例，星形嘅圖案，就國旗而言喇，紫荊花形嘅圖案就區旗而言，與及圖案嘅位置，其相似程度肯定足以使人相信佢就係國旗或區旗。

<u>公開及故意嘅元素</u>

顯而易見，公開就是公眾人士可以見到嘅意思，案發日約有三十名公眾人士在立法會的公眾席現場觀看會議過程，此外，公眾人士亦可以進入立法會網站觀看當日會議的錄像的網上直播，被告人兩次前往其他離席議員的座位桌前，將國旗及區旗倒插肯定是故意嘅行爲，本席肯定案發日被告在會議廳內兩次公開及故意地倒插國旗及區旗。

以下係本席嘅裁決，被告人冇前科，喺一般情況下對他作供嘅可信性與及犯罪嘅傾向性都有利，但本案案情簡單直接，被告嘅行爲已被錄影，本案其實只爭議當日被告在會議廳的行爲是否構成公開及故意以玷污嘅方式侮辱有關嘅旗幟，基於前述，本席裁定案發日被告在會議廳兩次倒插國旗及區旗，已經構成公開及故意以玷污嘅方式侮辱國旗及區旗，因此兩項控罪罪名成立。

（輕判請求部分毋須謄寫）

官：以下係本席就住呢宗案件嘅判刑，考慮過所有嘅求情因素，包括咗就係被告人你冇案底喇，咁你已婚，有個女，咁亦都係立法會嘅議員，亦都係一個半職嘅大學嘅講師，熱心喺社會上嘅事務。喺呢件事上面顯然呢係冇一個事先嘅一個計劃嘅，即係唔係話一早計劃好咁做，咁雖然係不認罪，咁但係答辯嘅方向呢其實就係務實嘅，換一句說話講，因爲除咗一啲法律上嘅爭拗呢，其實係冇事實上嘅爭拗，咁而嗰個嘅法律上嘅爭議點呢亦都並唔係完全冇理據嘅，咁而有關於嘅今次事件嗰個嘅侮辱方式並非焚燒嘅方式，咁就相對呢就係喺五種侮辱方式之中呢係即係嗰個嚴重性，我用呢個字眼講，係判刑上面考慮呢就冇咁嚴重。咁但係雖然你嘅代表資深大律師希望本席以有條件釋放嘅方式處理，但係本席始終考慮到第一今次干犯罪行嘅地方係喺立法會入面，另外呢係倒插咗係多面嘅多支嘅國旗區旗，唔係一支兩支，第一次係插十對加一枝，第二次八對，而嗰啲國旗都唔係你添呀仲，係其他嘅立法會議員，咁就而且呢其實都係即係不斷干犯，因爲中間有一次停咗之後，倒插完之後係控方第二證人就返番入去立法會指責過插番好仍然係繼續咁樣干犯，因此本席認爲呢考慮晒之後，認爲--雖然認爲唔應該或者唔需要喇以監禁個方式處理，咁但係本席認爲需要以罰款嘅方式處理。考慮過相對情況之後，每一個控罪罰款 2,500 鈆，總數 5,000 鈆，兩個控罪。係，幾時呀？

MR PANG：詼，畀少少時間，閣下。

官：讞，有擔保錢個喎佢--有 1,000 紋擔保錢，扣唔扣到呀？

MR PANG：係，詼，1,000 紋保釋金係可以係扣除嘅。

官：1,000 紋由擔保金中...

MR PANG：詼，餘款希望可以有七日之內繳付。

官：係呀。罰款總數 5,000 紋，1,000 紋由擔保金當中扣取，餘款七日之內支付。詼，證物方面有冇？

MS LAI：係，證物方面我哋有一個書面嘅申請嘅。

官：哦。

MS LAI：咁我明白係辯方冇反對。

官：好呀，照准吖

MR PANG：確認嘅。

官：有冇其他事項？

MS LAI：唔該法官閣下。

官：感謝兩位嘅協助，退庭。

2017 年 9 月 29 日
下午 3 時 14 分聆訊完畢

我等謹此證明，盡我等所知及所能，
上文是上述法律程序的錄音紀錄的真確謄本。

Tang Hiu-fung　Malcolm B I'Anson
2017 年 10 月 19 日

Appendix 1.5

(28 Annexes to this Appendix in Chinese version only)

Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai

List of potential witnesses' responses

	Potential witness	Agree to be witness and attend hearing	Written statement provided	
Member under investigation				
1.	Dr Hon CHENG Chung-tai	✗	✗	
Members who initiated the censure motion				
1.	Hon Paul TSE Wai-chun, JP	✓	✓	**Annex 1 and Appendix 1.6**
2.	Dr Hon CHIANG Lai-wan, JP	✓	✓	**Appendix 1.7**
3.	Hon Martin LIAO Cheung-kong, SBS, JP	✓	✓	**Annex 1 and Appendices 1.6 and 1.8**
4.	Hon CHUNG Kwok-pan	✗	✗	**Annex 1 and Appendix 1.6**
11 Members who were distributed with and/or placed the mock-ups of the national flag of the People's Republic of China ("PRC") and regional flag of the Hong Kong Special Administrative Region ("HKSAR") of PRC on their desks in the Chamber at the Council meeting of 19 October 2016				
1.	Hon LAU Kwok-fan, MH	✓	✓	**Appendix 1.9**
2.	Hon Jeffrey LAM Kin-fung, GBS, JP	✗	✗	**Annex 2**
3.	Hon WONG Ting-kwong, GBS, JP	✗	✗	**Annex 3**
4.	Hon Starry LEE Wai-king, SBS, JP	✗	✗	**Annex 4**
5.	Hon CHAN Hak-kan, BBS, JP	✗	✗	**Annex 5**
6.	Hon Steven HO Chun-yin, BBS	✗	✗	**Annex 6**
7.	Hon CHAN Han-pan, JP	✗	✗	**Annex 7**
8.	Hon LEUNG Che-cheung, SBS, MH, JP	✗	✗	**Annex 8**

Potential witness		**Agree to be witness and attend hearing**	**Written statement provided**	
9.	Hon Christopher CHEUNG Wah-fung, SBS, JP	✗	✗	**Annex 9**
10.	Hon Holden CHOW Ho-ding	✗	✗	**Annex 10**
11.	Hon Wilson OR Chong-shing, MH	✗	✗	**Annex 11**

Stewards of the Legislative Council ("LegCo") Secretariat

1.	Mr Alfred LEE (STE8)	✓	✓	**Appendix 1.10**
2.	Mr Tommy LEE (STE9)	✓	✓	**Appendix 1.11**

25 Members who did not place the mock-ups of the national flag of PRC and regional flag of HKSAR of PRC on their desks in the Chamber but were present at the relevant part of the Council meeting of 19 October 2016

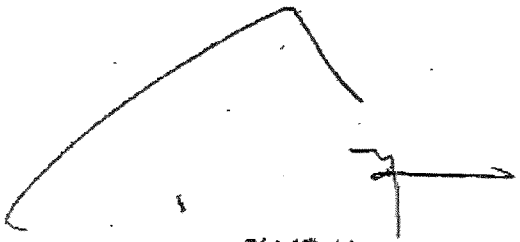
1.	Hon HUI Chi-fung	✓	✗	**Annex 12**
2.	Hon Andrew LEUNG Kwan-yuen, GBS, JP (President)	✗	✗	**Annex 13**
3.	Hon James TO Kun-sun		*No reply received*	
4.	Hon LEUNG Yiu-chung	✗	✗	**Annex 14**
5.	Hon Claudia MO	✗	✗	**Annex 15**
6.	Hon WU Chi-wai, MH	✗	✗	**Annex 16**
7.	Hon Charles Peter MOK, JP	✗	✗	**Annex 17**
8.	Hon CHAN Chi-chuen	✗	✗	**Annex 18**
9.	Hon Kenneth LEUNG	✗	✗	**Annex 19**
10.	Dr Hon KWOK Ka-ki	✗	✗	**Annex 20**
11.	Hon Dennis KWOK Wing-hang		*No reply received*	

Potential witness	**Agree to be witness and attend hearing**	**Written statement provided**	
12. Dr Hon Fernando CHEUNG Chiu-hung	×	×	**Annex 21**
13. Dr Hon Helena WONG Pik-wan	×	×	**Annex 16**
14. Hon IP Kin-yuen		*No reply received*	
15. Hon Alvin YEUNG	×	×	**Annex 22**
16. Hon Andrew WAN Siu-kin	×	×	**Annex 16**
17. Hon CHU Hoi-dick	×	×	**Annex 23**
18. Hon LAM Cheuk-ting	×	×	**Annex 16**
19. Hon SHIU Ka-chun	×	×	**Annex 24**
20. Hon Tanya CHAN		*No reply received*	
21. Hon KWONG Chun-yu	×	×	**Annex 16**
22. Hon Jeremy TAM Man-ho	×	×	**Annex 25**
23. Mr Nathan LAW Kwun-chung*	×	×	**Annex 26**
24. Dr YIU Chung-yim*	×	×	**Annex 27**
25. Dr LAU Siu-lai*	×	×	**Annex 28**

* According to the judgment of the Court of First Instance on 14 July 2017, Mr Nathan LAW, Dr YIU Chung-yim and Dr LAU Siu-lai have been disqualified from assuming the office of a member of LegCo, or have vacated the same since 12 October 2016, and are not entitled to act as a member of LegCo.

莫秘書：

廖長江議員及鍾國斌議員已細閱本陳述書並同意其內容。



謝偉俊議員

2017年3月3日

Remarks of the Clerk to Investigation Committee:
The above "本陳述書" refers to the written statement in **Appendix 1.6** of the Report of the Investigation Committee.

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會LEGISLATIVE COUNCIL
林健鋒 議員
Hon. Jeffrey Kin-fung Lam GBS,JP

致：
香港中區
立法會道1號
立法會綜合大樓
調查委員會秘書
黃少健先生

CONFIDENTIAL

陳述書
根據《議事規則》第49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會（"調查委員會"）

本人不會擔任上述調查委員會的證人，亦不會提交書面陳述。

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林健鋒
2017年4月28日

香港柴灣豉眉街三號誠興大廈四樓 4/F, Eltee Building, 3 Ning Foo Street, Chai Wan, Hong Kong
電話Tel : 2898 8101 傳真Fax : 2897 0254 電子郵件Email : jefflam@fowind.com.hk

Annex 3

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China
立法會 LEGISLATIVE COUNCIL
進出口界功能組別 Functional Constituency - Import & Export

黃定光議員, S B S, JP
Hon. Wong Ting-kwong, SBS, JP

CONFIDENTIAL

（傳真）

立法會根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會秘書
黃少健先生：

本人不同意為根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會作為證人，並不會提交書面陳述書，特此通知。

順頌
鈞安！

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立法會議員

黃定光謹啟
2017 年 4 月 27 日

香港中區立法會道1號立法會綜合大樓604室 Room 604, Legislative Council Complex, 1 Legislative Council Road, Central, H.K.
香港德輔道中287-291號長威大廈7字樓 Champion Building, 7th Floor, 287-291, Des Voeux Road Central, H.K.
香港柴灣漁灣邨漁安樓地下24號 No. 24, G/F, Yue On House, Yue Wan Estate, Chai Wan, H.K.
香港柴灣小西灣邨瑞滿樓地下2號 No. 2, G/F, Sui Moon House, Siu Sai Wan Estate, Chai Wan, H.K.
電話：(852) 2826 9152, 2537 2470 傳真：(852) 2826 9148 電子郵件：tkwong@deb.org.hk

李慧琼 立法會議員辦事處
Office of Hon Starry LEE Wai-king

CONFIDENTIAL

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會
秘書：

李慧琼議員不同意為有關調查擔任證人及不會就此提交書面資料，謹此回覆。

LegCo Secretariat (Council Business Div 2)
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李慧琼議員

2017年5月3日

中區立法會道1號立法會綜合大樓6樓602室
Room 602, 6/F, Legislative Council Complex, 1 Legislative Council Road, Central
電話 Tel: 2537 3507 傳真 Fax:2523 9201 電郵 Email: info@starrylee.com

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會 LEGISLATIVE COUNCILOR
陳克勤議員 Hon Gary CHAN Hak-kan

CONFIDENTIAL

致立法會秘書處,

本人不同意為根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會作為證人，並不會提交書面陳述書，特此通知。

陳克勤

立法會議員

2017 年 4 月 27 日



香港中區立法會道1號立法會綜合大樓6樓609室 ROOM 609, 6/F, LEGISLATIVE COUNCIL COMPLEX, 1 LEGISLATIVE COUNCIL ROAD, CENTRAL, HONG KONG
電話 TEL：(852) 2524 9191 傳真 FAX：(852) 2524 9119 電子郵件 E-MAIL： garychk@dab.org.hk

Annex 6

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會 LEGISLATIVE COUNCIL
漁農界功能組別 Functional Constituency - Agriculture and Fisheries

何俊賢 議員
Hon Steven Ho Chun Yin BBS

CONFIDENTIAL

致 立法會秘書處

本人不同意為根據《議事規則》第49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會作為證人，並不會提交書面陳述書，特此通知。

立法會(漁農界)議員

何俊賢 謹啟

二零一七年五月二日

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香港中區立法會道1號立法會綜合大樓611室 Room 611, Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong.
電話 Tel：(852) 2682 0155 傳真 Fax：2682 0159 電子郵件 E-mail：honstevenho@gmail.com

Annex 7

中華人民共和國香港特別行政區

Hong Kong Spocial Administrative Region of the People's Republic of China

[redacted]

立法會
陳恒鑌 議員

CONFIDENTIAL

"本人不同意為根據《議事規則》第49B(2A)條就鍾貴鄭松泰議員的議案成立的調查委員會作為證人，並不會提交書面陳述書，特此通知。"

陳恒鑌

立法會議員 陳恒鑌謹啟

2017年5月4日



中區辦事處：香港中區立法會道1號立法會綜合大樓6樓609室 電 (852) 2522 2202 傳 (852) 2522 1116

Annex 8

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會 LEGISLATIVE COUNCIL OR

梁志祥議員 **Hon LEUNG Che-cheung BBS MH JP**

CONFIDENTIAL

致： 根據《議事規則》第 49B(2A)條

就譴責鄭松泰議員的議案成立的調查委員會

就調查委員會於 2017 年 4 月 13 日致函本人有關邀請本人作為證人協助調查委員會的工作。本人謹覆如下：

"本人不同意為根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會作為證人，並不會提交書面陳述書。"

如有任何疑問，請電 2668 5251 與本人聯絡，謝謝。

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立法會議員

梁志祥

梁志祥 啟

2017 年 5 月 4 日

香港中區立法會道1號立法會綜合大樓6樓603室 ROOM 603, 6/F., LEGISLATIVE COUNCIL COMPLEX, 1 LEGISLATIVE COUNCIL ROAD, CENTRAL, HONG KONG
電話TEL：(852) 2668 5251 傳真FAX：(852) 2868 1911 電子郵件E-MAIL：lcc.new@cdsl.org.hk

Annex 9

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China
立法會 LEGISLATIVE COUNCIL
金融服務界功能組別 Functional Constituency - Financial Services

張華峰議員，太平紳士
Hon Christopher CHEUNG Wah-fung, JP

CONFIDENTIAL

梁美芬主席：

本人早前收到就譴責鄭松泰議員的議案成立的調查委員會（下簡稱調查委員會）的來函，調查委員會邀請我答允作為證人，以協助調查委員會的工作。

本人閱讀信件後，隨即查看了未來的會務安排，結果發現未來數月本人會務十分繁忙，恐未能抽空協助調查委員會的工作。基於上述原因，本人未能應允成為調查委員會的證人，亦不會提交書面陳述書。不便之處，敬請海涵。專此函送。

敬頌　時祺！

LegCo Secretariat (Council Business Div.3) Received by AA(3)3 on: 9-5-17 at: 15:14 by: email / fax / hand / post Action of/r: CCS(3)1 立法會秘書處(議會事務部3)

張華峰

張華峰議員　謹啟

二零一七年五月九日

香港中區立法會道1號立法會綜合大樓705室 Room 705, Legislative Council Complex, 1 Legislative Council Road, Central, H.K.
電話：(852) 2566 8245 / 2886 8249 傳真：(852) 2866 8730 電子郵件：chrischeungwf@gmail.com Website：cheungwahfung.com

Annex 10

CONFIDENTIAL

致 ： 香港中區
立法會道 1 號
立法會綜合大樓
調查委員會秘書
黃少健先生

回覆就「根據《議事規則》第 49B (2A) 條

就譴責鄭松泰議員的議案成立的調查委員會」事宜

本人不同意為根據《議事規則》第 49B(2A) 條就譴責鄭松泰議員的議案成立的調查委員會作為證人，並不會提交書面陳述書，特此通知。

周浩鼎

立法會議員
周浩鼎

2017 年 5 月 4 日



香港特別行政區立法會
LEGISLATIVE COUNCIL
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

號4
柯創盛 議員, MH
Hon Wilson OR Chong-shing, MH

CONFIDENTIAL

根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會 主席

梁美芬議員, SBS, JP

本人不同意為根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會作為證人，並不會提交書面陳述書，特此通知！



立法會議員

柯創盛

柯創盛 謹啟

二零一七年五月四日

香港中區立法會道1號立法會綜合大樓6樓614室 電話：3543 0373 傳真：3954 5350
Rm.614, Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong Tel：3543 0373 Fax：3954 5350
Email: orchongshinglegco@gmail.com

Annex 12

CONFIDENTIAL

香港特別行政區
根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會
主席梁美芬議員

梁主席：

收到　貴委員會於 5 月 18 日的來函，邀請本人答允作為證人。

謹此通知，本人同意出席　貴委員會安排的研訊，但本人不會提交書面陳述書。

許智峯
2017 年 5 月 25 日



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會主席
PRESIDENT OF THE LEGISLATIVE COUNCIL
梁君彥, GBS, 太平紳士 **Andrew Leung Kwan-yuen**, GBS, JP
來函檔號 YOUR REF :
本函檔號 OUR REF :
電 話 TELEPHONE : 3919 3001
圖文傳真 FACSIMILE : 2180 7578

CONFIDENTIAL

香港 中區
立法會道 1 號
立法會綜合大樓
調查委員會秘書
黃少健先生

LegCo Secretariat (Council Business Div.3)
Received
by AA1313
on: 31.5.17 at 16:42
by: email / fax / hand / post
Action offr: LCS13)1
立法會秘書處(議會事務部3)

黃先生 ：

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

調查委員會於 2017 年 5 月 18 日來函收悉。

我認為立法會會議過程正式紀錄已記錄了 2016 年 10 月 19 日立法會會議的過程。就鄭松泰議員在該次會議上作出的行為，我沒有資料補充。

因此，我不會應調查委員會的邀請擔任證人，亦不會提交書面陳述書。

立法會主席

(梁君彥)

2017 年 5 月 31 日

街坊工友服務處

立法會議員梁耀忠辦事處

Office of Leung Yiu Chung, Legislative Councilor

地址：葵涌葵芳邨葵仁樓地下7號 電郵/Email: nwsclycoffice@gmail.com
Address: Unit 7, G/F, Kwan Yan HSE., Kwai Fong EST., Kwai Chung
電話/Tel.：2410 0360/ 2537 2101 傳真/Fax：2426 4618

檔號：CB(3)/IC/16/5

CONFIDENTIAL

致 ：香港東區
立法會道 1 號
立法會綜合大樓
調查委員會秘書
黃少健先生

根據《議事規則》第 49B(2A)條

就譴責鄭松泰議員的議案成立的調查委員會

本人不擬成為上述調查委員會的證人，亦不會向調查委員會提交書面陳述書。



梁耀忠

立法會議員梁耀忠
2017 年 6 月 1 日

毛孟靜立法會議員辦事處
LegCo Office of Claudia Mo

CONFIDENTIAL

致根據《議事規則》第49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會秘書：

按秘書處要求，現特致函告知本人將不作證人及提交書面陳述書。如有問題，請致電2856 1336與本人聯絡。

毛孟靜

立法會議員

二零一七年五月三十一日



香港中區立法會道1號立法會綜合大樓809室 Room 809, Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong
電話 / Tel：2856 1336 傳真 / Fax：2715 8020 電郵 / Email：contact@msmo.hk

CONFIDENTIAL

香港特別行政區
根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會
主席梁美芬議員

梁主席：

我們收到　貴委員會於 5 月 18 日的來函，邀請我們答允作為證人。

謹此通知，我們不會作為證人，不會出席研訊，亦不會提交書面陳述書。

林卓廷　尹兆堅　黃碧雲　廖俊宇　胡志偉

2017 年 5 月 25 日



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

莫乃光議員 HON CHARLES MOK
立法會議員(資訊科技界) Legislative Councillor (Information Technology)

CONFIDENTIAL

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會
委員會祕書
黃少健先生

黃祕書：

本人決定不答允作為調查委員會證人以及不會提交書面陳述書。

LegCo Secretariat (Council Business Div.3)
Received
by AA(3)3
on: 2.6.17 at 16:54
by email / fax / hand / post
Action offr CCS(3)1
立法會秘書處(議會事務部3)

莫乃光

立法會（資訊科技界）議員
莫乃光

2017 年 6 月 2 日

香港中區立法會道 1 號立法會綜合大樓 917室 Room 917, Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong
電話 Tel: 2352 3129 傳真 Fax: 3020 9867 電郵 Email: charlesmok@charlesmok.hk 網址 Website: www.charlesmok.hk

立法會陳志全議員辦事處

Office Of Chan Chi Chuen, Legislative Councillor

CONFIDENTIAL

立法會
調查委員會秘書
黃少健：

就根據議事規則第49B(2A)條譴責鄭松泰議員而成立調查委員會的邀請，本人不考慮作為證人，並不提交書面陳述書。

THE OFFICE OF HON. CHAN CHI CHUEN 陳志全 立法會議員辦事處 MEMBER OF LEGISLATIVE COUNCIL

立法會議員
陳志全

二零一七年六月七日

LegCo Secretariat (Council Business Div.3) Received by AA(13)3 on: 7-6-17 at: 12:12 by: email / fax / hand / post 立法會秘書處(議會事務部3) Action offr: CCS(13)1

香港中區立法會道1號立法會綜合大樓1002室
Room 1002, Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong

☎ 2543 9500
🖷 2543 9510

CONFIDENTIAL

THE OFFICE
OF HON KENNETH LEUNG
梁繼昌立法會議員辦事處

Room 918
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
香港中區立法會道1號
立法會綜合大樓918室

Tel +852 2352 3209
Fax +852 3020 9849
Email info@kennethleung.hk
FB KennethleungLegco

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會
委員會秘書
黃少健先生

黃秘書：

本人不會擔任調查委員會證人，以及不會提交書面陳述書。

梁繼昌

立法會議員
梁繼昌

二零一七年六月六日

LegCo Secretariat (Council Business Div.3)
Received
by AB(3)3
on: 6.6.17 at: 14:50
by: email / fax / hand / post
Action
off: CC(3)1
立法會秘書處(議會事務部3)

Annex 20

CONFIDENTIAL

傳真文件：28101691

香港中區
立法會道 1 號
立法會綜合大樓
根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會主席
梁美芬議員, SBS, JP

梁主席：

回覆：根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

本人接獲 貴委員會秘書於 2017 年 5 月下旬的來信，邀請本人擔任根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會（ '調查委員會' ）的證人以及提交書面陳述書，現回覆如下：

本人並不會擔任上述調查委員會的證人，以及不會向上述調查委員會提交書面陳述書。

如有任何查詢，請與本人助理陳小姐聯絡（電話：2677-6877）。

立法會議員

郭家麒

2017 年 5 月 31 日



機密
CONFIDENTIAL

附錄 VI

(請於 2017 年 6 月 6 日(星期二)或之前交回)

檔號： CB(3)/IC/16/5

致 ： 香港中區
立法會道 1 號
立法會綜合大樓
調查委員會秘書
黃少健先生
(圖文傳真號碼： 2810 1691)



本人決定不作為調查委員會的證人，亦不會提供書面陳述。

張超雄

張超雄

19/5/2017

保密承諾書

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的譴案成立的調查委員會("調查委員會")

本人同意作為調查委員會的證人，並承諾若未事先取得調查委員會的書面授權，不會發表有關調查委員會閉門會議或研訊過程的任何事宜，包括在調查委員會席前取得的證據、向調查委員會出示的文件，以及調查委員會的決定，但若該等事宜已向外發表或載於調查委員會向立法會提交的任何報告內則除外。本人亦承諾會採取所需步驟，防止這些事情在調查委員會向立法會提交報告之前或之後向外發表，除非調查委員會已撤銷保密限制。

Confidentiality undertaking

Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai ("the IC")

I agree to be a witness of the IC and undertake that I will not publish, without the prior written authorization of the IC, any matter relating to the proceedings of meetings or hearings of the IC held in private, including evidence taken before the IC, documents produced to it and its decisions, except such matter that has already been published or contained in any report presented by the IC to the Legislative Council. I also undertake that I will take the necessary steps to prevent publication of such matter either before or after the IC presents its report to the Legislative Council, unless the confidential classification has been removed by the IC.

簽署Signature： _____

姓名Name： _____

日期Date： _____

Annex 22

立法會議員楊岳橋辦公室

Office of the
Hon. Alvin Yeung
Legislative Councillor

CONFIDENTIAL

傳真文件：28101691

香港中區
立法會道 1 號
立法會綜合大樓
根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會主席
梁美芬議員, SBS, JP

梁主席：

回覆：根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

本人接獲 貴委員會秘書於 2017 年 5 月 19 日的來信（檔號：CB(3)/IC/16/5），邀請本人擔任根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會（'調查委員會'）的證人以及提交書面陳述書，現回覆如下：

本人並不會擔任上述調查委員會的證人，以及不會向上述調查委員會提交書面陳述書。

如有任何查詢，請與本人助理鄧先生聯絡（電話：37098440）。

LegCo Secretariat (Council Business Div.3)
Received
by AA(3)3
on: 26.5.17 at: 17:01
by: email / fax / hand / post
Action of/r: CCS(3)1
立法會秘書處(議會事務部3)

立法會議員

楊岳橋

2017 年 5 月 24 日

t 3907 0449
f 2509 3101
香港中區立法會道1號立法會綜合大樓8樓810室
Room 810, 8/F, Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong



關於：譴責鄭松泰議員的議案成立的調查委員會
Hoi Dick Eddie Chu
to:
wsmok
02/06/2017 16:26
Hide Details
From: Hoi Dick Eddie Chu <info@chuhoidick.hk>

To: wsmok@legco.gov.hk

CONFIDENTIAL

History: This message has been forwarded.

莫小姐：

就上述調查委員會於5月18日之來函，本人現回覆 貴委員會，本人將不會提交書面陳述書及不會擔任證人。特此通知。

立法會議員朱凱廸謹啟
2017年6月2日

--

電話Tel | 2809 2102
傳真Fax | 2811 2210
電郵Email | info@chuhoidick.hk
Facebook | 八鄉朱凱廸
網址Website | chudhoidick.hk



邵家臻立法會議員辦事處
Shiu Ka Chun Legislative Councilor's Office

CONFIDENTIAL

本函檔號：SKC/LC/20170502

香港中區
立法會1號
立法會綜合大樓
秘書處
調查委員會秘書 (CCS(3)(1)
黃少健先生
(圖文傳真號碼: 2810 1691)

黃少健先生：

就譴責鄭松泰議員的議案成立的調查委員會事宜

本人不同意為上述調查委員會作證人，並不會向秘書處遞交有關陳述書。特此致函告知，敬希垂注。

如有任何查詢，歡迎致電本人聯絡（電話：2346 8369），謝謝。

敬祝
台安

Legco Secretariat (Council Business Div.3) Received by AA(3)3 on 24.5.17 at 16:45 by email / fax / hand / post 立法會秘書處(議會事務部3) Action offr: CCS(3)1

立法會議員（社福界）

邵家臻
謹上

二零一七年五月廿三日

電話 Tel 2346 8669 傳真 Fax 2346 8838 電郵 Email info@shiukachun.org.hk
立法會道1號立法會綜合大樓1018室 Room 1018, Legislative Council Complex

31. May. 2017 13:56

CONFIDENTIAL 傳真文件：28101691

香港中區
立法會道 1 號
立法會綜合大樓
根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會主席
梁美芬議員, SBS, JP

梁主席：

回覆：根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

本人接獲 貴委員會秘書於 2017 年 5 月 19 日的來信（檔號：CB(3)/IC/16/5），邀請本人擔任根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會（'調查委員會'）的證人以及提交書面陳述書，現回覆如下：

本人並不會擔任上述調查委員會的證人，以及不會向上述調查委員會提交書面陳述書。

如有任何查詢，請與本人助理鄧先生聯絡（電話：37098440）。

LegCo Secretariat (Council Business Div.3)
Received
by AA(3)3
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by: email / fax / hand / post
Action offr CCS(3)1
立法會秘書處(議會事務部3)

立法會議員

譚文豪

譚文豪

2017 年 5 月 31 日

No. 6971 P. 1

Annex 26

立法會羅冠聰議員辦事處
OFFICE OF NATHAN K.C. LAW,
LEGISLATIVE COUNCILLOR

CONFIDENTIAL

敬啓者：

有關：根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會

本人不會擔任是次調查委員會的證人，亦不會提交陳述書。

此致

立法會秘書處

立法會議員

羅冠聰

二零一七年六月五日

LegCo Secretariat (Council Business Div.3)
Received
by AA(3)3
on: 5.6.17 at: 15:17
by: email / fax / hand / post
Action offr: CCS(3)1
立法會秘書處(議會事務部3)

香港中區
立法會道1號
立法會綜合大樓
901室

Room 901
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

2537 1453
FAX 3956 2240
nathan@demosisto.hk

Annex 27

姚松炎議員辦事處
OFFICE OF DR HON YIU CHUNG YIM

專業精英
PROFESSIONAL ELITE

CONFIDENTIAL

敬啟者：

就「調查鄭松泰議員的個案成立的調查委員會」邀請姚松炎議員作為證人，本人代姚議員回覆，姚議員不會參與成為證人，亦不會提交書面陳述書。

如有任何查詢，請致電36146160予本人，謝謝！

2017年6月2日

李志榮
姚松炎議員助理



劉小麗立法會議員辦事處
Office of Hon Lau Siu Lai Member of Legislative Council

CONFIDENTIAL

立法會
調查委員會秘書
黃少健先生

黃秘書

不同意擔任證人

本人於5月18日接獲委員會之邀請函，就譚賈鄭松泰議員的議案邀請本人作證。是次特意致函告知委員會，本人當時並不在席，並無親眼目睹相關事件，因此亦不認為自己合適擔任證人，亦無法提供任何「證據」。

專此函達，順頌

台安。



劉小麗

二零一七年五月二十三日

地址: 香港金鐘立法會道1號立法會綜合大樓1009室
Address : Rm1009, 1 Legislative Council Road, Legislative Council Complex, Admiralty, Hong Kong
傳真 Fax : 3543 0645 電話 Tel : 3543 0644 電郵 Email : hksliulai@gmail.com

謝偉俊議員根據《議事規則》第49B(1A)條動議針對鄭松泰議員的議案("該議案")

陳述書

本人謝偉俊就該議案現作供如下：

1. 2016年10月19日("當日")立法會會議，梁頌恆及游蕙禎二人因在一周前第一次嘗試進行宣誓，後被立法會主席("主席")裁定無效，二人要求重新宣誓，獲主席接納，當日第一個議程為「宣誓」。

2. 當日我有準時出席會議，在會議廳內，留意到民主建港協進聯盟（"民建聯"）十多位議員在他們的席位桌上擺放了中華人民共和國國旗（"國旗"）及香港特別行政區區旗（"區旗"）展示品。

3. 當日在黃定光議員率先進行及完成「宣誓」程序後，多位議員先後離場，陳克勤議員繼而向主席提出點算法定人數，主席於是邀請秘書響鐘傳召議員返回會議廳。

4. 在點算法定人數期間，我在會議前廳小息，期間有留意電視機上直播會議廳內情況，看到民建聯議員均不在席，而鄭松泰議員(“鄭”)走到他們坐席位置，將他們擺放在桌上的國旗及區旗展示品，從原先擺放在水杯座裏，逐一抽出，然後倒轉擺放(“該行為”)。

5. 當時與我在前廳觀看電視直播有多位議員，包括蔣麗芸議員，當她看到鄭該行為後，她即時返回會議廳內，其後我在電視直播看到她返回民建聯議員席位位置，逐一將國旗及區旗展示品整理，並按原來位置及方式擺放，之後再離開會議廳。

6. 當蔣麗芸議員離開會議廳後，鄭重覆該行為。當時我在電視直播上看到及聽到主席提醒鄭，因會議仍在進行，因此不應擅自離座及走到其他議員席位搗亂，惟鄭似乎充耳不聞，繼續進行該行為。

7. 此時，我在電視直播上看到及聽到主席一再警告鄭如果鄭不返回座位便會裁定鄭行為極不檢點。

8. 其後由於鄭仍然繼續該行為，主席遂要求鄭離開會議廳，並要求保安人員執行命令。

9. 此時，我在電視直播中看到鄭返回自己席位，一直坐著並拒絕離開會議廳，多位議員開始走近並團團包圍著鄭的席位。

10. 基於以上觀察，我相信鄭是故意一再作出該行為，而非一時「興之所至」。

11. 此外，由於當日有需要再次進行「宣誓」議員，除黃定光議員外，其他議員(包括梁、游二人)，皆因主席質疑他們之前進行所謂「宣誓」行為，是否嚴肅看待誓詞及受誓詞約束；而由於誓詞重點，包括擁護「基本法」及效忠香港特別行政區， 因此「宣誓」議程的焦點，與擁護「基本法」及效忠香港特別行政區攸關。

12. 基於上述原因，我相信在不少市民眼中，事實上當日之後亦收到不少市民向我反映，該行為被解讀為拒絕擁護「基本法」及效忠香港特別行政區，甚至故意羞辱國旗及區旗所象徵的中華人民共和國及香港特別行政區。

謝偉俊

2017 年 3 月 1 日

根據《議事規則》第 49B(1A)條動議針對鄭松泰議員的議案(“該議案”)

陳述書

本人蔣麗芸就該議案現作供如下：

1. 我於二零一六年十月十九日(星期三)早上約十時五十五分到達立法會議事廳等候進行會議，當日議程包括:安排候任立法會議員宣誓事宜。

2. 於同日等候會議開始期間，劉國勳議員將自攜的中華人民共和國旗及香港特別行政區區旗派發給我及部份議員。其後，我知道有些議員將國旗及區旗插在自己的議席上展示。

3. 稍後約十一時零二分當第一位議員宣誓完畢後，我及部份議員就離開議事廳，由於議事廳內沒有足夠法定人數，立法會主席指示響起十五分鐘的提示鐘聲，而當時我與其他議員在休息室。

4. 在休息室期間，透過房內的電視見到於議事廳內的鄭松泰議員(第一次)在插有國旗及的區旗議員席位將兩枝旗倒插。於是，我就立刻從休息室走回議事廳內，我當時目睹鄭松泰議員繼續把國旗及區旗倒插，我立即罵鄭松泰議員並叫立法會的管事協助我重新整理被倒插的國旗及區旗區旗。之後，我走向鄭松泰議員座位並用了約 30 秒指罵他不尊重國旗，隨後我就再返休息室等候。

5. 隔了數分鐘後，我就聽到有人講鄭松泰議員(第二次)再次將國旗區旗倒插，我即望向電視見到確有其事，於是，我再次進入議事廳內及再叫立法會的管事協助我再一次整理被倒插的國旗及區旗，同時一邊整理，一邊大聲責罵鄭松泰議員不應將國旗及區旗倒插，而鄭松泰亦有回應我的責罵。隨後我就再返休息室。

6. 擾攘一輪後，由於會議法定人數不足因而流會，所以當日會議休會。

蔣麗芸

2017 年 3 月 1 日

謝偉俊議員根據《議事規則》第 49B(1A) 條動議針對鄭松泰議員的議案

陳述書

本人廖長江就上述議案提供資料如下：

1. 本人參閱了謝偉俊議員今年 3 月 1 日作出的陳述書，其內容對鄭松泰議員在 2016 年 10 月 19 日(”當天”) 行為的描述和本人的經歷和所見非常相似。本人採納謝偉俊議員該陳述書內的事實陳述。

2. 當天本人是在立法會一樓前廳(ante-chamber) 內從電視看到鄭松泰議員走到民建聯議員立法會議事廳(Chamber)內的座席將他們席前的國旗和區旗往下倒插，之後我留意到所有民建聯議員席前的國旗和區旗全被倒插。後來本人亦從電視看見蔣麗芸議員回到議事廳內民建聯議員的座席將席前國旗和區旗回復原狀，及後見到鄭松泰議員重回民建聯議員座席將國旗和區旗再一次倒插。

3. 後來在內會討論此事的時段，本人在席耐心聆聽鄭松泰議員的發言，他並無抵賴他兩次倒插國旗和區旗的事實，亦無為該事件道歉或顯示悔意。

4. 國旗代表國家及其人民，區旗則代表香港特區及其市民。本人認為鄭松泰議員的行為是對國家和國民及特區和市民的侮辱，不能接受，亦不符合鄭松泰議員的就職誓言。

5. 在鄭松泰議員不作道歉及顯示悔意的情況下，本人毫無懸念支持謝偉俊議員的動議。

廖長江

2017年3月2日

中華人民共和國香港特別行政區
劉國勳議員辦事處

立法會
北區區議會
民建聯 DAB
新社聯 新界社團聯會NTAS

Appendix 1.9
(Chinese version only)

敬啟者:

根據<<議事規則>>第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

本人於二零一七年四月十三日茲收到調查委員會的信函，邀請成為調查事件的證人。本人願意協助調查，現特函回覆並就要求提供資料，內容如下:

由於早前梁頌恆先生及游蕙禎小姐於 2016 年 10 月 12 日立法會會議的議員宣誓期間，表現出侮辱及分離國家、破壞「一國兩制」的行爲，故本人於 2016 年 10 月 19 日從家中帶回一批國旗及區旗的展示品，並向部分議員同事派發，以表達對梁游二人行爲的不滿，強調議員宣誓需要尊重基本法。本人派發的國旗和區旗展示品長 20 釐米，寬 14 釐米；旗杆長 32 釐米。

此致
根據<<議事規則>>第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會
調查委員會秘書
黃少健 先生

立法會議員
劉國勳
2017 年 5 月 2 日

立法會議員劉國勳辦事處 Office of Legislative Councillor Hon. LAU Kwok Fan
香港中區立法會道1號立法會綜合大樓六樓612室 Room 612, 6/F., Legislative Council Complex, 1 Legislative Road, Central, Hong Kong
電話 Tel: (852)2628 3337 傳真 Fax: (852)2628 3367 電郵 E-mail: lkf.legco@gmail.com

Appendix 1.10
(Chinese version only)

書面陳述書

我的名字叫李永強，是立法會秘書處的「管事」。

在2016年10月19日，我需要在大樓會議廳當值，大會在十一時開始，當時我坐在主席梁君彥的右手邊，面向議員的坐位。

當會議開始約五、六分鐘，會議的議員已開始點人數，在我正前方稍位置，經往出會議廳，他們的背前大約隔一枝國旗和一枝區旗在於林座內。

過了一會，我見到鄭松泰議員行到那些座位前，將2枝旗倒轉再插返落同一林座，他一行一行的做這個動作。

在這期間，我收到當時坐

在我左手邊的保安員王祥叫我去睇下鄭松泰議員做咩，王祥表示係收到上級指示，但無講是誰。

我去到鄭松泰議員身邊，就同佢講：「鄭生。」跟住鄭松泰議員就大聲向我講：「你睇下佢哋喺唔喺……」之類的說話。我再無說話。

他行落下面的錢仔，我跟住他，之後返回我的座位。

當他倒轉所有旗之後，就返回座位。

之後蔣麗芸議員回來見到倒轉的旗，就大聲話鄭松泰議員不對。

蔣麗芸議員將國旗返轉成正常的插法，之後就開會議應。

又過了一會，鄭松泰議員起身再一次行去把國旗和區旗倒轉插。

同一時間，主席梁君彥警告他。唔好再咁做，命令他返回座位。

鄭松泰議員再一次倒轉之後，返回自己的座位，蔣麗芸議員再次返回會議廳，再話他一次。

梁君彥主席叫鄭松泰議員離開會議廳，之後看到保安員行到鄭松泰議員身邊。

李永佐 STE 8

李永佐

4-5-2017

致：譴責鄭松泰議員的議案成立的調查委員會

(a) 在2016年10月19日的立法會會議上，本人目睹鄭松泰議員走到民建聯議員們的座位前，把他們放在枱上的國旗倒轉放，同時也把他們的區旗倒轉放置。

(b) 當蔣麗芸議員回來發現時就叫本人幫助她把國旗和區旗還原。

(c) NIL

簽署：

姓名：LEE KING SUNG

日期：24-4-2017

機密文件

Appendix 1.12
(Chinese version only)

回　條

(於 2017 年 5 月 24 日(星期三)前交回)

檔　號　：　CB(3)/IC/16/5

傳真號碼　：　2810 1691

致　：　香港中區
立法會道1號
立法會綜合大樓
調查委員會秘書
黃少健先生

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

出席研訊

☐　本人**會**出席研訊。

☑　本人**不會**出席研訊。

簽署：
姓名：鄭松泰議員
日期：24-5-2017

請在適當的方格填上"✓"號。

機密文件

Appendix 1.13
(Chinese version only)

回　條

(於 2017 年 5 月 24 日(星期三)前交回)

檔　號　：　CB(3)/IC/16/5

傳真號碼　：　2810 1691

致　：　香港中區
立法會道1號
立法會綜合大樓
調查委員會秘書
黃少健先生

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

本人建議調查委員會邀請下列人士擔任證人：

姓名	聯絡方法	理由

簽署：

姓名：鄭松泰議員

日期：24-5-2017

機密文件

Appendix 1.14
(Chinese version only)

回　條

(於 2017 年 5 月 24 日(星期三)前交回)

檔　號　：　CB(3)/IC/16/5

傳真號碼　：　2810 1691

致　：　香港中區
立法會道1號
立法會綜合大樓
調查委員會秘書
黃少健先生

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

研訊的進行

☐ 根據《議事規則》第 73A(5)(a)條及《行事方式及程序》第 7 段，本人**選擇**研訊公開舉行。

☑ 本人**不選擇**研訊公開舉行。

簽署：
姓名：鄭松泰議員
日期：24-5-2017

請在適當的方格填上"✓"號。

[redacted]

CONFIDENTIAL

Appendix 1.15
(Chinese version only)

熱血公民

鄭松泰議員
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Email :
enquiry@civicpassion.hk

Ref: CCT1617/0082/lh

致 根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會：

回應調查委員會要求協助相關議案的調查工作

對於委員會的調查工作，以及謝偉俊議員的相關議案，本席不予置評。

鄭松泰

立法會議員
鄭松泰

2017 年 3 月 9 日

成功之前我們絕對不要放棄夢想!
TILL OUR DREAMS COME TRUE, WE'LL FIGHT ON

Appendix 1.16
(Chinese version only)

[redacted]

CONFIDENTIAL

熱血公民

鄭松泰議員
辦事處
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檔案編號：CCT1617/0158

致：根據《議事規則》第49B(2A)條

就譴責鄭松泰議員的議案成立的調查委員會

對於委員會所收到的證人陳述書的內容，本席表示沒有意見。

本席不擬向委員會提交陳述書。

鄭松泰

LegCo Secretariat (Council Business Div.3)
Received
by AA(3)3
on: 29.5.17 at 15:50
by: email / (fax) / hand / post
Action offr: CCS(3)1
立法會秘書處(議會事務部3)

立法會議員
鄭松泰
二零一七年五月廿九日

成功之前我們絕對不要放棄夢想！
TILL OUR DREAMS COME TRUE, WE'LL FIGHT ON

Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai

Schedule of closed hearings

First closed hearing

Date	:	3 July 2017 (Monday)
Time	:	9:00 am
Venue	:	Room 5 of the Legislative Council ("LegCo") Complex
Witnesses	:	Hon Paul TSE, JP
		Hon Martin LIAO, SBS, JP
		Hon HUI Chi-fung
		Mr Alfred LEE (steward of LegCo Secretariat)
		Mr Tommy LEE (steward of LegCo Secretariat)

Second closed hearing

Date	:	27 October 2017 (Friday)
Time	:	10:30 am
Venue	:	Room 5 of LeCo Complex
Witnesses	:	Dr Hon CHIANG Lai-wan
		Hon LAU Kwok-fan

Appendix 1.18
(Chinese version only)

[redacted]

CONFIDENTIAL

熱血公民

本函檔號：CCT1718/0167

鄭松泰議員
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致　　調查委員會秘書黃少健：

鄭松泰議員對於「根據《議事規則》第 49B(2A)條就譴責鄭松泰議員的議案成立的調查委員會」三月廿二日發出的報告擬稿，表示不予回應，沒有意見。

Office of CHENG Chung-Tai 立法會鄭松泰議員辦事處

立法會鄭松泰議員辦事處

二〇一八年三月二十八日

CONFIDENTIAL

立法會
Legislative Council

LC Paper No. CB(3) 494/17-18

Ref: CB(3)/IC/16/7

Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai

Minutes of the sixth closed meeting held on Monday 5 February 2018 at 2:00 pm in Conference Room 4 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Dr Hon Junius HO Kwan-yiu, JP (Deputy Chairman)
Dr Hon Elizabeth QUAT, BBS, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung

Clerk in attendance : Mr Thomas WONG
Chief Council Secretary (3)1

Staff in attendance : Mr Kenneth CHEN, SBS
Secretary General

Ms Connie FUNG
Legal Adviser

Miss Odelia LEUNG
Deputy Secretary General

Ms Dora WAI
Assistant Secretary General 3

Mr Kelvin LEE
Legal Adviser to Investigation Committee/
Senior Assistant Legal Adviser 3

Action

Miss Lilian MOK
Senior Council Secretary (3)2

Miss Fanny LEUNG
Administrative Assistant I (3)3

I. Deliberations on the draft Report of the Investigation Committee

(English version of the draft Report issued vide LC Paper No. CB(3) 310/17-18 on 25 January 2018)
(Chinese version of the draft Report issued vide LC Paper No. CB(3) 337/17-18 on 2 February 2018)

The Chairman said that the Clerk had prepared the draft Report of the Investigation Committee ("IC") ("the draft Report") based on members' views expressed at previous meetings. She invited the Clerk to brief members on the draft Report which comprised five chapters:

Chapter 1 : Introduction

Chapter 2 : Constitutional and statutory requirements relating to the motion to censure Dr Hon CHENG Chung-tai ("Dr CHENG")("censure motion")

Chapter 3 : Information and evidence relevant to the particulars of the misbehaviour set out in the Schedule to the censure motion

Chapter 4 : Establishing the facts and whether the facts as established constitute grounds for the censure of Dr CHENG

Chapter 5 : Observations on the mechanisms in the Rules of Procedure for handling Members' misbehaviour

Deliberations on draft Chapter 4

2. The Chairman advised members that Chapter 4 needed to be beefed up based on members' views to be given at this meeting. She invited members to first give their views on Chapter 4, particularly whether the five "facts" stated in the Schedule to the censure motion could be established; whether Dr CHENG's conduct of inverting the mock-ups of the national flag of the People's Republic of China ("PRC") and regional flag of the Hong Kong Special Administrative Region ("HKSAR") of PRC at the Council

Action

meeting of 19 October 2016 ("the said Council meeting") constituted "breach of oath" and/or "misbehaviour" under Article 79(7) of the Basic Law ("BL"); and whether the facts as established constituted grounds for the censure of Dr CHENG. Based on members' views, the Clerk would assist IC in finalizing Chapter 4 of the draft Report.

3. In response to Mr SHIU Ka-fai's enquiry about BL 79(6) and 79(7), the Chairman explained that BL 79 set out different circumstances in which a Legislative Council ("LegCo") Member would be disqualified from the office. BL 79(6) might be invoked when a LegCo Member was convicted and sentenced to imprisonment for one month or more for a criminal offence, while BL 79(7) did not necessarily cover criminal offences committed by Members. BL 79(7) provided that the President should declare that a Member was no longer qualified for the office when he or she was censured for misbehaviour or breach of oath by a vote of two-thirds of Members present. The Chairman pointed out that in the view of the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai ("the first investigation committee"), it would be more appropriate for the Council of the day to make a decision on what kinds of behaviour would constitute "misbehaviour" or "breach of oath" under BL 79(7).

4. The Chairman remarked that there had been a tide of thought advocating Hong Kong independence in recent years. There were people vilifying the Mainland China, stirring up anti-Chinese sentiments and even conducting deliberate acts to tarnish the dignity of PRC. It was against this background that IC needed to decide whether Dr CHENG's acts of inverting the mock-ups of the national flag and regional flag was a refusal to recognize or respect the legitimacy of PRC as the sovereign state of HKSAR, and whether he genuinely and faithfully accepted and committed himself to the obligations of upholding BL and bearing allegiance to HKSAR as required by the LegCo Oath that Dr CHENG had taken.

5. Members generally shared the view that the national flag and regional flag were respectively the unique symbols of PRC and HKSAR. The way Dr CHENG inverted those flags at the said Council meeting had tarnished the dignity of those flags and the reputation of PRC and HKSAR. The relevant remarks made by Dr CHENG had also indicated that he did not take the oath sincerely and solemnly and refused to uphold BL and bear allegiance to HKSAR. Furthermore, members noted that Dr CHENG had declined to attend IC's hearings, and had neither apologized nor shown any regret for his acts of inverting those flags.

Action

6. After discussion, members unanimously agreed that: (a) the five "facts" stated in the Schedule to the censure motion were established as set out in Chapter 4 of the draft Report; (b) the two allegations against Dr CHENG set out in the censure motion were substantiated based on the established facts; and (c) the facts as established constituted grounds for the censure of Dr CHENG.

Whether to include Chapter 5 in the draft Report

7. The Chairman drew members' attention that under the existing censure mechanism, the Member under investigation would either be censured (thus being disqualified from the office upon passage of the censure motion) or not be censured, resulting in an "all or nothing" outcome. Unlike some overseas legislatures where proportionate sanctions (e.g. withholding salary) were in place to deal with misbehaviour which was not so serious as to warrant disqualification from the office, there was no "midway" approach in LegCo for handling Members' misbehaviour of varying degrees of severity. Nonetheless, IC was not tasked to offer its observations on the existing mechanisms in the Rules of Procedure for handling Members' different types of misbehaviour.

8. Members noted that the first investigation committee had considered that Hon KAM Nai-wai's conduct was improper but not so grave as to warrant disqualification from the office as a LegCo Member. It therefore set out in its report that LegCo should consider the need of putting in place a comprehensive mechanism for handling Members' misbehaviour of varying degrees of severity. However, the subject had yet to be studied by the Committee on Rules of Procedure ("CRoP").

9. Dr Elizabeth QUAT considered the "all or nothing" outcome under the current censure mechanism undesirable. She suggested that IC should include its observations on those mechanisms in its Report to facilitate further refinements of the mechanisms in the future. In her view, such inclusion would not weaken the justification for censuring Dr CHENG. The Deputy Chairman did not object including IC's relevant observations in IC's Report, but he considered it not necessary to set out the observations in a separate chapter.

10. The Chairman considered that as IC had reached a unanimous view that Dr CHENG should be censured, the inclusion of a chapter in IC's Report on its observation and views on refinements of the existing mechanisms for handling Members' misbehaviour might give rise to a perception that, if there were proportionate sanctions, Dr CHENG's alleged misbehaviour might not

Action

be considered so serious by IC as to warrant disqualification from the office.

11. Legal Adviser suggested and members agreed that instead of including a separate chapter on IC's observations on the inadequacies of the existing mechanisms for handling Members' misbehaviour, IC might consider setting out its view, where appropriate in Chapter 4, that the "all or nothing" outcome was not a desirable way of handling Members' misbehaviour of varying degrees of severity, and this was a subject worthy of examination by CRoP. IC might also stress in its Report that it was precisely because of the "all or nothing" outcome that IC had to exercise great prudence in forming its views on whether Dr CHENG's conduct constituted breach of oath and/or misbehaviour under BL 79(7).

Clerk

12. The Chairman concluded that based on members' views, the Clerk would revise Chapter 4 of the draft Report for members' further consideration. After this meeting, the Clerk would consult members on the date of the next meeting.

(*Post-meeting note :* On the Chairman's instruction, the seventh closed meeting of IC was scheduled for 2 March 2018.)

II. Any other business

13. There being no other business, the meeting ended at 4:05 pm.

Council Business Division 3
Legislative Council Secretariat
6 April 2018

CONFIDENTIAL

立法會
Legislative Council

LC Paper No. CB(3) 495/17-18

Ref: CB(3)/IC/16/7

Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai

Minutes of the seventh closed meeting held on Friday 2 March 2018 at 11:10 am in Conference Room 4 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Dr Hon Junius HO Kwan-yiu, JP (Deputy Chairman)
Dr Hon Elizabeth QUAT, BBS, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung

Clerk in attendance : Mr Thomas WONG
Chief Council Secretary (3)1

Staff in attendance : Miss Odelia LEUNG
Secretary General (Atg)/Deputy Secretary General

Ms Connie FUNG
Legal Adviser

Ms Dora WAI
Assistant Secretary General 3

Mr Kelvin LEE
Legal Adviser to Investigation Committee/
Senior Assistant Legal Adviser 3

Miss Lilian MOK
Senior Council Secretary (3)2

Miss Fanny LEUNG
Administrative Assistant I (3)3

Action

I. Deliberations on the revised draft Report of the Investigation Committee

(Chinese and English versions of the revised draft Report issued vide LC Paper No. CB(3) 386/17-18 on 28 February 2018)

The Chairman said that the revised draft Report of the Investigation Committee ("IC") ("the revised draft Report") had incorporated members' views expressed at the meeting on 5 February 2018.

2. Mr CHAN Chun-ying asked whether IC had to establish the five "facts" stated in the motion to censure Dr Hon CHENG Chung-tai ("Dr CHENG") ("the censure motion") as the facts had already been affirmed in the reasons for verdict and sentence in respect of the case of *HKSAR v CHENG Chung-tai* (ESCC 1139/2017) handed down by the Eastern Magistrates' Court on 29 September 2017 ("Reasons for Verdict and Sentence").

3. Members noted that under Rule 73A(2) of the Rules of Procedure, IC was responsible for establishing the "facts" stated in the censure motion and giving its views on whether or not the facts as established constituted grounds for the censure of Dr CHENG. The court was responsible for adjudicating on the criminal liability of Dr CHENG, whereas IC was tasked to investigate and consider the matters stated in the censure motion. The Chairman reminded members that IC might make reference to the Reasons for Verdict and Sentence but it had the duty to establish the relevant facts independently and, based on the established facts, form its own views on whether Dr CHENG should be censured under Article 79(7) of the Basic Law.

Consideration of the revised draft Report

4. Members agreed to first consider the Chinese text of the revised draft Report paragraph by paragraph.

Chapter 1

5. Paragraphs 1.1 to 1.12 read and agreed to.

(*Post-meeting note :* The Chairman suggested and members agreed that amendments to paragraphs 1.11 and 1.12 be made. Please see the post-meeting note in paragraph 2 of the minutes of the eighth closed meeting of IC held on 9 March 2018.)

Action

6. Members agreed that paragraphs 1.13 and 1.14 (renumbered as 1.14 and 1.15 respectively) be amended to highlight the fact that IC was not a court of law and therefore not subject to the standards of proof and rules of evidence applied by the court in criminal and civil proceedings. Nonetheless, IC decided to adopt the stringent standard of proof which had been adopted by the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai, i.e. the more serious the allegation, the more compelling the evidence is required to establish the allegation. Members also agreed that a footnote be added to paragraph 1.13 (renumbered as 1.14) quoting the relevant part of the court judgment on the above standard of proof.

7. Paragraph 1.15 read and agreed to.

8. Paragraph 1.16 read, textually amended and agreed to.

9. Paragraph 1.17 read and agreed to.

10. Members agreed that textual amendments be made to paragraphs 1.18 and 1.19.

11. Members agreed that the first sentence of paragraph 1.20 (renumbered as 1.21) be amended as follows:

> "調查委員會認為必須公平對待鄭議員，亦須遵守正當程序包括自然公義的原則，因此曾3次致函邀請鄭議員出席研訊或協助調查。"

12. Paragraph 1.21 read, textually amended and agreed to.

13. Paragraphs 1.22 to 1.24 read and agreed to.

14. Paragraph 1.25 read, textually amended and agreed to.

15. Paragraphs 1.26 to 1.28 read and agreed to.

Chapter 2

16. Members agreed that the following footnote be added to the term "Democratic Alliance for the Betterment and Progress of Hong Kong" in paragraph 2.1:

Action

"據本報告第3章所述，在該立法會會議上，並非只有民建聯議員擺放的國旗及區旗展示品被鄭議員倒插，其他一些議員的國旗及區旗展示品亦被他倒插。"

17. Paragraph 2.2 read and agreed to.

18. Paragraph 2.3 read, textually amended and agreed to.

19. Paragraphs 2.4 to 2.8 read and agreed to.

20. Paragraph 2.9 read, textually amended and agreed to.

21. Paragraphs 2.10 to 2.32 read and agreed to.

22. Members agreed that the expression "有用參考" be substituted by "重要參考" in paragraph 2.33. The revised paragraph 2.33 then read and agreed to.

Chapter 3

23. Members agreed that the last sentence of paragraph 3.1 be amended as follows:

"調查委員會察悉，鄭議員沒有提交任何書面陳述書或在調查委員會席前作證，並表示他對調查委員會的調查工作、譴責議案及調查委員會所收到的證人書面陳述書的內容均沒有意見。為求全面考慮譴責議案所述的事宜，調查委員會亦搜集了鄭議員對傳媒查詢他倒插國旗及區旗展示品一事的回應，以及在其面書(Facebook)專頁的相關帖文，詳情載於本章。"

(*Post-meeting note :* The Chairman suggested and members agreed that the above sentences be deleted in view of the deletion of paragraphs 3.28, 3.29, 3.30, 3.32 and 3.33.)

24. Paragraphs 3.2 to 3.33 read, textually amended and agreed to.

(*Post-meeting note :* The Chairman suggested and members agreed that paragraphs 3.28, 3.29, 3.30, 3.32 and 3.33, which set out the relevant information on Dr CHENG's responses to

Action

media enquiries about his acts of inverting the mock-ups of the national flag and regional flag and his relevant remarks on his Facebook page after the Council meeting of 19 October 2016, be deleted, as such information was neither evidence provided by Dr CHENG nor official records of the Legislative Council. Please see paragraph 7 of the minutes of the eighth closed meeting held on 9 March 2018).

Clerk

25. The Chairman advised members that taking into account their views and comments above, the revised draft Report would be further amended for their consideration.

(*Post-meeting note :* The Chinese version of the second revised draft Report was issued to members vide LC Paper No. CB(3) 401/17-18 on 7 March 2018.)

II. Any other business

26. The Chairman proposed and members agreed that the next meeting be held on Friday 9 March 2018 at 2:00 pm to consider Chapter 4 of the revised draft Report paragraph by paragraph.

(*Post-meeting note :* The notice of meeting was issued to members after this meeting vide LC Paper No. CB(3) 396/17-18 dated 2 March 2018.)

27. There being no other business, the meeting ended at 1:10 pm.

Council Business Division 3
Legislative Council Secretariat
6 April 2018

CONFIDENTIAL

立法會
Legislative Council

LC Paper No. CB(3) 496/17-18

Ref: CB(3)/IC/16/7

Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai

Minutes of the eighth closed meeting held on Friday 9 March 2018 at 2:00 pm in Conference Room 4 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Dr Hon Junius HO Kwan-yiu, JP (Deputy Chairman)
Dr Hon Elizabeth QUAT, BBS, JP
Hon SHIU Ka-fai
Hon CHAN Chun-ying
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung

Clerk in attendance : Mr Thomas WONG
Chief Council Secretary (3)1

Staff in attendance : Mr Kenneth CHEN, SBS
Secretary General

Ms Dora WAI
Assistant Secretary General 3

Mr Kelvin LEE
Legal Adviser to Investigation Committee/
Senior Assistant Legal Adviser 3

Miss Lilian MOK
Senior Council Secretary (3)2

Miss Fanny LEUNG
Administrative Assistant I (3)3

Action

I. Deliberations on the second revised draft Report of the Investigation Committee (Chinese version)
(issued vide LC Paper No. CB(3) 401/17-18 on 7 March 2018)

The Chairman advised members that their views raised at the meeting on 2 March 2018 had been incorporated into the Chinese version of the second revised draft Report of the Investigation Committee ("IC") ("the second revised draft Report") in which the relevant amendments had been marked up.

Deliberations on the second revised draft Report (Chinese version)

Chapters 1 and 2

2. No further amendments to Chapters 1 and 2 were proposed by members.

(*Post-meeting note :* The Chairman suggested and members agreed that further amendments be made to paragraphs 1.11 and 1.12 as follows:

(a) the sentence "調查委員會認為無須暫停其調查工作，以待針對鄭議員的刑事法律程序完結。" be deleted from paragraph 1.11, and the sentences "調查委員會認為無須因上述法律程序而暫停其閉門取證工作。縱使如此，調查委員會尊重個別證人(即第1.19段所述的蔣麗芸議員和劉國勳議員)要求就上述案件出庭作證後，才到調查委員會席前作證，而調查委員會亦待法庭就上述案件作出判決後，才就譴責議案所述的事宜作出結論。" be added to the end of paragraph 1.11;

(b) the sentences "以免妨害鄭議員在該待決法律程序中的利益。調查委員會並決定：(a)根據

Action

《議事規則》第73A(4)條，以閉門方式舉行研訊，以免妨害有關鄭議員的法律程序(事實上，正如第1.21段所述，鄭議員不選擇研訊公開舉行，並表示不會出席調查委員會的研訊)；(b)等待第1.11段所述的兩位證人，就上述有關鄭議員的案件出庭作證後，才到調查委員會席前作證；及(c)等待法庭就上述案件作出判決後，調查委員會才就譴責議案所述的事宜作出結論。" be added to paragraph 1.12 and corresponding textual amendments be made; and

(c) paragraph 1.12 be separated into two paragraphs with the following sentence added to the end of the new paragraph 1.13:

"調查委員會亦察悉，鄭議員並沒有就定罪及判刑提出上訴，因此調查委員會決定繼續向個別證人取證、就譴責議案進行商議，並向立法會提交報告。".)

Chapter 3

3. Members agreed that textual amendments be made to paragraphs 3.1 to 3.14.

4. Paragraph 3.15 read and agreed to with the following sentence deleted:

"據李先生表示，他步離鄭議員前，鄭議員對他說了一些話：
'……我只說了一句"鄭先生"，接着鄭議員便很大聲說："你看看他們做得對不對這樣子？"。當然，我沒有回答他的問題。其實他這是一個陳述，即是一個陳述……所以他多說了一兩句後我便離開……。'"

Action

5. Members agreed that textual amendments be made to paragraphs 3.16 to 3.20.

6. Members agreed that the following footnote be added to paragraph 3.21:

"根據《行事方式及程序》第33段，調查委員會秘書曾於2018年3月2日致函邀請許智峯議員簽署保密承諾書(**附錄3.13**)，並告知他待調查委員會收到他簽署的承諾書後，便會把本報告載述用以確立譴責議案所述事實的證據的有關部分(即第3.21段)，送交他置評。然而，由於許議員回覆不會簽署承諾書，調查委員會秘書已書面告知他，不會把上述的有關部分送交他置評(**附錄3.14**)。因此，第3.21段的內容未獲許議員置評。"

(*Post-meeting note :* With the Chairman's concurrence, letters were issued to Hon HUI Chi-fung on 15 and 23 March 2018 regarding his responses relating to the verbatim transcript of the proceedings of the hearing containing the evidence given by him on 3 July 2017 (LC Paper Nos. CB(3) 428/17-18 and CB(3) 462/17-18). The Chairman suggested and members agreed that the following footnote be added to paragraph 3.21:

"根據調查委員會《行事方式及程序》第22段，調查委員會秘書曾於2017年8月10日致函許智峯議員，將他於2017年7月3日出席閉門研訊所提證據相關部分的逐字紀錄本擬稿送交他審閱及核正。至2017年10月16日，許議員透過電話向調查委員會助理秘書口頭確認，對該逐字紀錄本擬稿沒有意見，調查委員會助理秘書就此備存書面紀錄。2018年3月15日，調查委員會秘書致函告知許議員，調查委員會已決定將該逐字紀錄本

Action

(附錄3.3)納入調查委員會報告的附錄。許議員翌日來函表示，他從來沒有口頭或書面表示對該逐字紀錄本沒有意見。許議員與調查委員會秘書就有關事宜的函件往來，請參閱**附錄3.12**。")

7. Members noted that paragraphs 3.28, 3.29, 3.30 and 3.32 set out the information collated by IC on Dr Hon CHENG Chung-tai ("Dr CHENG")'s responses to media enquiries about his acts of inverting the mock-ups of the national flag and regional flag and his relevant remarks posted on his Facebook page after the Council meeting of 19 October 2016 ("the said Council meeting"). Members agreed that as such information was neither evidence provided by Dr CHENG nor official records of the Legislative Council ("LegCo"), IC would not take it into account when considering whether the facts stated in the censure motion were established and whether the facts as established constituted grounds for the censure of Dr CHENG. Members agreed that the above-mentioned paragraphs be deleted but such information be set out in appendices to IC's Report, with a view to providing a full picture of Dr CHENG's alleged misbehaviour as particularized in the Schedule to the censure motion.

(*Post-meeting note :* The Chairman suggested and members agreed that the above-mentioned information regarding Dr CHENG's responses to media enquiries about his acts of inverting the mock-ups of the national flag and regional flag and his relevant remarks posted on his Facebook page would not be included in the Report. Accordingly, paragraph 3.33 of the second revised draft Report was also deleted.)

Chapter 4

8. Members agreed that textual amendment be made to paragraph 4.1.

9. When considering paragraph 4.2, some members pointed out that in addition to Members of the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB"), some other Members also placed the mock-ups of the national flag and regional flag on their desks at the said Council meeting and such mock-ups were inverted by Dr CHENG thereat, but only DAB Members were referred to in the censure motion. It was proposed that

Action

the term "民建聯議員" referred to in the facts to be established in Chapter 4 of the second revised draft Report be replaced by "部分議員" so as to accurately reflect what happened at the said Council meeting. As members had diverse views on the proposal, the Chairman put it to vote. Members requested a division. Three members (i.e. Dr Hon Elizabeth QUAT, Mr CHAN Chun-ying and Mr CHEUNG Kwok-kwan) voted in favour of the proposal, while one member (i.e. the Deputy Chairman) voted against. The Chairman declared that the proposal was carried.

10. Paragraphs 4.3 to 4.18 read, textually amended and agreed to. Members also agreed that:

(a) after the first fact stated in the censure motion had been established in Chapter 4, the abbreviation "展示品" be substituted by "國旗及區旗" in the rest of Chapter 4; and

(b) the names of the Members placing the mock-ups of the national flag and regional flag which had been inverted by Dr CHENG be specified in the footnotes to be added to paragraphs 4.15 and 4.16.

11. Paragraph 4.19 read and agreed to.

12. Members agreed that with reference to the Official Record of Proceedings of the said Council meeting, paragraphs 4.20 and 4.21 be amended to state that the requests or order made by the President concerned Dr CHENG's conduct of leaving his seat at will and going to the seats of other Members to cause a disturbance.

13. Paragraphs 4.22 to 4.28 read, textually amended and agreed to.

14. Members agreed that paragraph 4.29 be deleted.

15. Paragraphs 4.30 (renumbered as 4.29) to 4.35 (renumbered as 4.34) read, textually amended and agreed to.

(*Post-meeting note :* Hon CHAN Chun-ying proposed, and the Chairman and other members agreed that the following sentence in paragraph 4.34 be deleted: "調查委員會注意到，近年香港越來越多人對中華人民共和國是香港特區的主權國及香港特區是中華人民共和國不可分離的部分並不尊重，甚或懷有敵意。".)

Action

16. Members agreed that paragraph 4.36 be deleted.

17. Members agreed that paragraph 4.37 (renumbered as 4.35) be amended to specify that despite the court's judgment on the case of *HKSAR v CHENG Chung-tai*, IC would, based on the facts established, make its own judgment on whether Dr CHENG's conduct constituted "breach of oath" and/or "misbehaviour" under Article 79(7) of the Basic Law.

(*Post-meeting note :* Hon CHAN Chun-ying proposed, and the Chairman and other members agreed that the term "考慮" in paragraph 4.35 be substituted by "認定".)

18. Paragraph 4.38 (renumbered as 4.36) read and agreed to. Members also agreed that the following footnote be added to paragraph 4.36 (renumbered as 4.37):

"第1章第1.14段，即被指的作爲或不作爲愈嚴重，它便必須被視為本來就愈不可能發生；在這情況下，如要按可能性衡量證明有關指控屬實，便要提出更令人信服的證據。"

19. Paragraphs 4.39 to 4.49 (renumbered as 4.38 to 4.48) read and agreed to.

(*Post-meeting note :* Members agreed that the sentence "截至本報告發表時，他從未就其行為表示任何悔意或歉疚，這從他在2016年11月25日內會會議上作出的言論、登載於其面書專頁的言論及媒體報道他的言論，可茲證明；" in paragraph 4.47(d) (renumbered as 4.46(d)) be amended as "截至本報告發表時，他並無就有關行為公開道歉；".)

20. Members agreed that in view of the amendments to the various paragraphs in Chapter 4 of the second revised draft Report, the Clerk might make the necessary consequential amendments where appropriate.

Clerk

21. The Chairman advised that IC had completed the deliberations on the Chinese text of the second revised draft Report paragraph by paragraph. Members agreed that subject to the Chairman's concurrence and where necessary, the Clerk might make textual and editorial amendments to the second revised draft Report.

Action

(*Post-meeting note :* With the concurrence of the Chairman, the Chinese version of the third revised draft Report was issued to members for consideration on 23 March 2018.)

Comment by Dr CHENG and witnesses

Clerk

22. Members agreed that in accordance with paragraph 25 of IC's Practice and Procedure, Dr CHENG and the following four witnesses would be provided with the relevant parts of the draft Report, which set out the evidence on the basis of which IC had established the facts stated in the censure motion, for comment and they would be given 10 calendar days to provide their comments:

(a) Dr Hon CHIANG Lai-wan;
(b) Hon LAU Kwok-fan;
(c) Mr Alfred LEE (steward of the LegCo Secretariat); and
(d) Mr Tommy LEE (steward of the LegCo Secretariat).

(*Post-meeting note :* The above four witnesses and Dr CHENG were provided with the Chinese version of the relevant parts of the draft Report on 15 and 22 March 2018 respectively for their comment.)

II. Any other business

23. The Chairman said that subject to the comments of Dr CHENG and the four witnesses on the draft Report, she would decide whether to call a meeting to discuss those comments. If she considered it not necessary to do so, she would instruct the Clerk to finalize both the Chinese and English versions of the draft Report and circulate them to members for final endorsement. Subject to the progress of work, the endorsed Report might be tabled at the Council meeting of 11 April 2018 at the earliest.

(*Post-meeting note :* No comments were received from Dr CHENG and the four witnesses by the relevant deadlines (LC Paper No. CB(3) 474/17-18 issued on 29 Mar 2018).

Hon CHAN Chun-ying proposed and the Chairman and members agreed that the following textual amendments be made to the Executive Summary of the Chinese version of IC's Report:

Action

(a) "第" be added before "3章" in paragraph 2; and

(b) "仍屢次" be substituted by "一而再" in paragraph 9.

Members endorsed the final version of IC's Report (in both Chinese and English) on 9 April 2018 (LC Paper Nos. CB(3) 486/17-18 and CB(3) 491/17-18 issued on 4 and 6 April 2018).)

24. There being no other business, the meeting ended at 4:36 pm.

Council Business Division 3
Legislative Council Secretariat
6 April 2018

CONFIDENTIAL

立法會
Legislative Council

LC Paper No. LS53/16-17

Information paper prepared by Legal Service Division on relevant legal issues relating to the motion to censure Dr Hon CHENG Chung-tai

Purpose

This paper sets out the relevant legal issues to assist members of the Investigation Committee in the consideration of the motion to censure Dr Hon CHENG Chung-tai ("Motion") and the particulars stated in the Schedule to the Motion in the performance of its function under Rule 73A of the Rules of Procedure ("RoP").

Dr CHENG's conduct as stated in the Motion

2. According to the Schedule to the Motion, the conduct under investigation is Dr CHENG's inverting the mock-ups of the national flag of the People's Republic of China ("national flag") and the regional flag of the Hong Kong Special Administrative Region ("regional flag") placed on the desks of Members of the Democratic Alliance for the Betterment and Progress of Hong Kong at the Council meeting of 19 October 2016.

Relevant laws on the regulation of the use and protection of the national and regional flags in Hong Kong

Relevant statutory framework

3. Under section 2 of the National Flag and National Emblem Ordinance (116 of 1997) ("the National Flag Ordinance"), "national flag" is defined as the national flag of the People's Republic of China ("PRC") adopted by resolution of the First Plenary Session of the Chinese People's Political Consultative Conference on 27 September 1949.

4. Section 5(1) and (2) requires the national flag for flying to be manufactured in the Hong Kong Special Administrative Region ("HKSAR") by enterprises designated by the Central People's Government and in accordance with the specifications set out in Schedule 1 to the National Flag Ordinance.

5. Under section 2 of the Regional Flag and Regional Emblem Ordinance (117 of 1997) ("the Regional Flag Ordinance"), "regional flag" is defined as the regional flag of HKSAR endorsed at the Fourth Plenum of the Preparatory Committee of the Hong Kong Special Administrative Region on 10 August 1996.

6. Section 5(1) of the Regional Flag Ordinance provides that the regional flag must be manufactured in accordance with the specifications set out in Schedule 1 to the Regional Flag Ordinance. Among others, Schedule 1 to the Regional Flag Ordinance also specifies the standard size of the regional flag which is used for purposes such as a desk flag.

7. Section 4 of both the National Flag Ordinance and the Regional Flag Ordinance provide that a national flag or a regional flag which is damaged, defiled, faded or substandard must not be displayed or used. It is noted that no sanction is provided under the relevant Ordinances for contravention of this provision.

8. Section 7 of the National Flag Ordinance provides that:

> *"A person who desecrates the national flag or national emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 years."*.[1]

9. Section 7 of the Regional Flag Ordinance offers the same protection to the regional flag by adopting the same wording as that stated in section 7 of the National Flag Ordinance.[2]

10. Section 8 of both Ordinances extend the protection from desecration to a copy of the national flag or the regional flag that so closely resembles the national flag or the regional flag as to lead to the belief that the

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[1] A level 5 fine stands current at HK$50,000 (Schedule 8 to the Criminal Procedure Ordinance (Cap. 221)).

[2] The level of penalty on conviction on indictment is the same as that for section 7 of the National Flag Ordinance. On summary conviction of an offence under section 7 of the Regional Flag Ordinance, the maximum penalty is a fine at level 3 ($10,000) and one year's imprisonment.

copy in question is the national flag or the regional flag. It is noted that no definition of "copy" is provided in the said Ordinances. According to the *Shorter Oxford English Dictionary* (Sixth edition), "copy", among others, means a piece of written or printed matter that reproduces the contents of another; a transcript or anything (regarded as) made to reproduce the appearance of something else (a picture, personality, etc).

Relevant court cases

11. Section 7 of the National Flag Ordinance and the Regional Flag Ordinance were considered by the Court of Final Appeal ("CFA") in *HKSAR v Ng Kung Siu & Anor* (at **Appendix I**).[3] Among the issues considered by CFA were (a) whether section 7 of the National Flag Ordinance and the Regional Flag Ordinance contravened the Basic Law and (b) the meaning of "defiling" in the said section 7. CFA observed that:

> *"The implementation of the principle of "one country, two system" is a matter of fundamental importance, as is the reinforcement of national unity and territorial integrity. Protection of the national flag and the regional flag from desecration, having regard to their unique symbolism, will play an important part in the attainment of these goals.".*[4]

12. As to what amounts to desecration of the flag concerned by defiling it, CFA held that the ordinary meaning of "defiling" includes dishonouring. CFA considered that by carrying and waving the defaced national and regional flags during the public procession and then tying them to some railings at the end of the procession, the Defendants were clearly dishonouring the flags. On this basis, CFA held that these acts amounted to desecration of the flags by defiling them.[5]

13. CFA's decision in *Ng Kung Siu* was followed by the Court of First Instance ("CFI") in *HKSAR v Koo Sze Yiu and Ma Wan Ki*[6] (a case concerning the burning of a regional flag) (at **Appendix II**). CFI held that the word "desecrate" does not bear any specific or one-way meaning. Adopting a literal interpretation, even the act of putting words of praise on the national or the regional flag would be an offence for it would constitute "scrawling on" the flag. Therefore, the purpose of section 7 of the National Flag Ordinance and the Regional Flag Ordinance is simply to preserve the dignity of the

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3 [2000] 1 HKC 117.

4 *HKSAR v Ng Kung Siu* [2000] 1 HKC 117 at 141A to C.

5 Ibid, at 133I–134B.

6 HCMA 482/2013. The issue in this case is whether burning a regional flag can be regarded as defiling the national flag.

national/regional flag against desecration in the broad sense of the word.[7] In respect of this case, the Appeal Committee of CFA refused to grant leave to the Defendants to appeal to CFA in October 2014 (FAMC 40/2014).

14. CFA's decision was also considered in a New Zealand case in *Hopkinson v Police* (at **Appendix III**).[8] In that case, the Defendant who participated in a protest attached a New Zealand flag upside down to a pole, doused it in kerosene and lit it. He was then charged and convicted of destroying the New Zealand flag with the intention of dishonouring it under section 11(1)(b) of the Flags, Emblems, and Names Protection Act 1981. On appeal, the High Court of New Zealand, having considered authorities in other jurisdictions, including CFA's decision in *Ng Kung Siu*, adopted a narrow definition of "dishonour" and held that the word "dishonour" in section 11(1)(b) of the Flags, Emblems, and Names Protection Act should be read as requiring "vilification" of the flag in order for it to be consistent with the Bill of Rights. With this interpretation, the Court held that the Defendant's conduct did not amount to vilifying the flag, and on this basis, the Defendant's conviction was quashed.[9]

15. According to our research, the relevant Hong Kong cases where criminal sanction was imposed pursuant to section 7 of the National Flag Ordinance and the Regional Flag Ordinance involved physical damage to or defacing of the national flag or the regional flag and the act of desecration was committed publicly and wilfully.

Protection of national flag in other jurisdictions

16. In *Ng Kung Siu & Anor*, CFA examined the national flag protection laws of the United States of America, Italy, Germany, Norway, Japan and Portugal. CFA noted that in other overseas nations, some of them criminalised flag desecration while some of them did not.[10]

17. CFA also observed that there were considerable differences between the actual terms of the flag and emblem protection laws of the various nations which have such laws. By way of example, CFA quoted the English translation of art 332(1) of the Portuguese Penal Code: *"Anyone who by words, gesture, in writing or by any other means of public communication, desecrates*

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7 Ibid, paragraph 17.
8 [2004] 3 NZLR 704.
9 Ibid, paragraph 81 at page 717.
10 [2000] 1 HKC 117 at 146B-C.

the Republic, national flag or the national anthem the symbols or emblems of the Portuguese sovereignty, or in any other way fails to pay them their due respect, shall be punished with a prison sentence of up to 2 years or with a pecuniary penalty of up to 240 days.". CFA observed that on its face, that provision of the Portuguese Penal Code appeared to criminalise a considerable number of things which our own flag and emblem protection laws did not criminalise.[11]

18. We have also attempted to study how national flag is protected in other jurisdictions. Our findings are set out in the following paragraphs.

United Kingdom ("UK")

19. There is no legislation in relation to the protection and use of national flag or national emblem in UK.

Australia and Canada

20. The Flags Act 1953 of Australia only prescribes the formats of its national flag. In Canada, all Canadians are encouraged to proudly display the National Flag of Canada.[12] Desecration of national flags is not an offence in Australia and Canada.

New Zealand

21. Section 11 of the Flags, Emblems, and Names Protection Act 1981 ("Act") prescribes that:

> *"(1) Every person commits an offence against this Act who,--:*
>
> *(a) Without lawful authority, alters the New Zealand Flag by the placement thereon of any letter, emblem, or representation;*
> *(b) In or within view of any public place, uses, displays, destroys or damages the New Zealand Flag in any manner with the intention of dishonouring it."*.

22. As to how the New Zealand courts have construed and applied section 11(1)(b) of the Act, members may refer to the case of *Hopkinson v Police* mentioned in paragraph 14 above.

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[11] Ibid, at 146H-I and 147A-B.

[12] Section 2 of Statutes of Canada 2012, Chapter 12 (An Act respecting the National Flag of Canada).

The taking of the Legislative Council Oath

Relevant provisions on oath taking

23. The requirement to take the oath originates from Article 104 of the Basic Law ("BL 104"), which provides that:

> *"when assuming office … members … of the Legislative Council … must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.".*

24. Section 19 of the Oaths and Declarations Ordinance (Cap. 11) requires a Legislative Council ("LegCo") member to take the oath as soon as possible after the commencement of his term of office. The form of oath required to be taken by Members is set out in Schedule 2 to Cap. 11.

25. On 7 November 2016, the Standing Committee of the National People's Congress of PRC in the exercise of its power under Article 158(1) of the Basic Law pronounced an interpretation ("the Interpretation") of the meaning of BL 104. According to the Interpretation, oath taking is the legal prerequisite and required procedure for public officers specified in BL 104 to assume office. The oath taken under BL 104 is a legal pledge made to PRC and HKSAR and is legally binding. The oath taking must comply with the legal requirements in respect of its form and content and that an oath taker must take the oath sincerely and solemnly.[13]

Relevant court decisions

26. In *Leung Kwok Hung v Clerk to the Legislative Council*,[14] the Court held that the LegCo Oath constitutes a solemn declaration, a form of promise, which binds the maker to a particular code of conduct. A failure to adhere to that code of conduct may render the maker liable to expulsion from office.[15] The requirements of oath taking under BL 104 and Cap. 11 were further considered by CFI and the Court of Appeal in the legal proceedings

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[13] L.N. 169 of 2016 (unofficial Instrument no. A115 in Hong Kong e-Legislation (http://www.elegislation.gov.hk)).

[14] HCAL 112/2004.

[15] Ibid, paragraph 5.

concerning the validity of the oaths taken by Sixtus Leung Chung Hang and Yau Wai Ching ("*Leung and Yau*").[16]

Meaning of "misbehaviour" and "breach of oath" under Article 79(7) of the Basic Law ("BL 79(7)")

BL 79(7)

27. BL 79(7) provides that:

> *"The President of the Legislative Council of the Hong Kong Special Administrative Region shall declare that a member of the Council is no longer qualified for the office under any of the following circumstances: ……*
>
> *(7) When he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of members of the Legislative Council present.".*

Principles applicable to interpretation of the Basic Law

28. The principles applicable to interpretation of the Basic Law, as laid down by CFA in *NG Kar Ling v Director of Immigration*[17] and *Director of Immigration v Chong Fung Yuen*,[18] are summarised below:

(a) A purposive approach should be applied and that in interpreting the Basic Law, the courts' role is to construe the language in order to ascertain the legislative intent as expressed in the language which is to be considered in the light of its context and purpose.

(b) To assist in interpretation, the courts consider what is within the Basic Law, including provisions other than the provisions in questions and the Preamble.

(c) Extrinsic materials which throw light on the context or purpose of the Basic Law may generally be used as an aid to the interpretation of the Basic Law. The extrinsic materials relevant to the

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[16] HCAL 185/2016 and HCMP 2819/2016; and CACV 224/2016, CACV 225/2016, CACV 226/2016 and CACV 227/2016 (on appeal from HCAL 185/2016 and HCMP 2819/2016).

[17] (1999) 2 HKCFAR 4.

[18] (2001) 4 HKCFAR 211.

interpretation of the Basic Law are, generally speaking, pre-enactment materials.

(d) However, in the absence of a binding interpretation by the Standing Committee of the National People's Congress, extrinsic materials, whatever their nature, cannot affect interpretation where the courts conclude that the meaning of the language, when construed in the light of its context and purpose ascertained with the benefit of internal aids and appropriate extrinsic materials, is clear.

Meaning of "misbehaviour" under BL 79(7)

29. It is noted that no definition of "misbehaviour" or "misbehave" is provided in BL 79(7) nor in RoP. In the course of our research, we have not identified any judicial authorities on the meaning of "misbehaviour" or "misbehave" in the context of censuring a Member. According to the *Shorter Oxford English Dictionary* (Sixth edition), "misbehave", among others, means behaving badly and conducting oneself improperly.

30. We have also referred to the available records of the Basic Law Drafting Committee and the Basic Law Consultative Committee, but cannot find any record of discussion on the meaning or scope of "misbehaviour" referred to in BL 79(7).

31. It is noted that BL 79(1) to (7) set out the various scenarios for disqualification of Members. Those set out in BL 79(1) to (6) seem to be manifestation of the various circumstances under which a Member is considered to be incapable of carrying out the duties and discharging the functions of the office of a LegCo Member. Applying the principles of interpreting the Basic Law set out in paragraph 28 above, it seems that one possible interpretation of "misbehaviour" in BL 79(7), when read in the context of BL 79, is that it relates to misbehaviour of a nature which affects the Member's ability to carry out his duties as a LegCo Member.

Meaning of "breach of oath" under BL 79(7)

32. The phrase "breach of oath" is not defined in the Basic Law or RoP. We have not identified any judicial decisions on the types of conduct that would amount to breach of oath in the present context. The cases on oath taking mentioned in paragraph 26 above and the Interpretation concern whether the oaths taken by Members are valid under BL 104 and Cap. 11 for the purpose of assuming office of LegCo Members. The issue of breach of oath under BL 79(7) was not considered in these cases.

33. According to the Interpretation, the taking of the oath stipulated by BL 104 is a legal pledge made by the specified public officers to PRC and HKSAR, and is legally binding.[19] As such, in considering whether there is a breach of oath, members may consider whether or not the act of Dr CHENG is consistent with his pledge made under the LegCo Oath to PRC and HKSAR that he would uphold the Basic Law and swear allegiance to HKSAR of PRC.

Previous consideration by the Committee on Rules of Procedure and the Investigation Committee in respect of the motion to censure Hon KAM Nai-wai

34. What behaviour should be regarded as falling within the meaning of "misbehaviour" or "breach of oath" under BL 79(7) was considered by the Committee on Rules of Procedure ("CRoP") in 1999. CRoP studied the practice of overseas legislature and noted that in none of the overseas legislatures had it been possible to draw up an exhaustive list of misconduct, or the types of sanction which might be imposed. Each case was judged by the House according to the degree of seriousness involved. It is also noted that these overseas legislatures upheld the guiding principle that the House should exercise its penal jurisdiction as sparingly as possible and only when satisfied that it was essential to do so in order to provide reasonable protection for the House and its Members.[20] After deliberation, CRoP concluded that it would be more appropriate for the Council of the day to make a decision on the kind of behaviours which would be regarded as "misbehaviour" or "breach of oath" leading to the disqualification of a Member from office under BL 79(7).[21]

35. The meaning of "misbehaviour" was also considered by the Investigation Committee established to consider a motion to censure a Member Hon KAM Nai-wai ("the former IC"). After deliberation, the former IC concluded that it was by no means easy to formulate clear and explicit criteria for defining "misbehaviour". It further observed that while BL 79(7) has not explicitly stipulated that "misbehaviour" should cover only the conduct of Members in the discharge of their duties as Members, the mechanism in question should not be applicable to conduct purely related to a Member's personal or private life, unless such conduct seriously affect the reputation of LegCo as a whole.[22]

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[19] The Interpretation, paragraph 3.

[20] *Progress Report for the period July 1998 to April 1999 of the Committee on Rules of Procedure of the Legislative Council* at page 17, paragraph 2.47.

[21] Ibid, at page 18, paragraph 2.49.

[22] *Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai*, paragraph 5.7.

Members' powers and privileges under Article 77 of the Basic Law and the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)

36. Article 77 of the Basic Law ("BL 77") provides that:

> *"Members of the Legislative Council of the Hong Kong Special Administrative Region shall be immune from legal action in respect of their statements at meetings of the Council."*.

37. BL 77 is reflected in sections 3 and 4 of Cap. 382. Section 3 provides that:

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

38. Section 4 of Cap. 382 further provides that:

> "*No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Court or a committee, or by reason of any matter brought by him therein by petition, Bill, resolution, motion or otherwise.*".

39. In the case of *Leung and Yau*, the following principles relating to LegCo Members' immunities were set out by CFI:[23]

(a) the plain and ordinary meaning of the word "statement" used in BL 77 is to mean statements made by a LegCo member in the course of official debates on the floor of LegCo when exercising his powers and discharging his functions as a LegCo member;[24]

(b) sections 3 and 4 of Cap. 382 do not add anything further and must be read consistently with the constitutional provisions of BL 77;[25] and

(c) the plain words of sections 3 and 4 of Cap. 382 make it even clear that the immunity provided attaches only to words and speeches (spoken or written) in relation to debates in LegCo meetings.[26]

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[23] HCAL 185/2016 and HCMP 2819/2016.
[24] Ibid, at paragraph 86.
[25] Ibid, at paragraph 88.
[26] Ibid.

40. Applying the above principles to the present case, since Dr CHENG's act did not involve making statements, spoken or written, in the course of LegCo debates, we do not consider that the protection provided in BL 77 and Cap. 382 would apply.

Matters that may be taken into consideration by Investigation Committee

41. Rule 73A(2) of RoP states that the Investigation Committee shall be responsible for establishing the facts stated in the motion moved under Rule 49B(1A) of RoP (Disqualification of Member from office), and giving its views on whether or not the facts as established constitute grounds for the censure.

42. In considering the Motion, with reference to the issues set out in the above paragraphs, members may wish to deliberate and make decisions on the following matters:

(a) while the mock-ups of the national flag and regional flag concerned may not conform to the specifications set out in the relevant Ordinances, whether they so closely resemble the national flag or regional flag as to lead to the belief that the copy in question is the national flag or regional flag;

(b) the nature of Dr CHENG's act vis-a-vis the mock-ups of the national flag and regional flag concerned and his intention at the time of the act;

(c) the relationship between Dr CHENG's act and his pledge made under the LegCo Oath to PRC and HKSAR that he would uphold the Basic Law and swear allegiance to HKSAR of PRC;

(d) the types of behaviours which would be considered to be "misbehaviour" or "breach of oath" leading to the disqualification of a Member from office under BL 79(7) – whether different considerations should apply with regard to the level of gravity of a Member's alleged misbehaviour; and

(e) the standard of proof required for determining whether the alleged misbehaviour is substantiated.

Conclusion

43. This paper has identified issues which may assist IC in coming to an independent decision on whether the facts stated in the Motion are established and whether or not the facts as established constitute sufficient grounds for the censure of Dr CHENG under BL 79(7). We are prepared to advise on any other issues that the Investigation Committee considers are also relevant.

Prepared by

Legal Service Division
Legislative Council Secretariat
29 March 2017

A **HKSAR v NG KUNG SIU & ANOR**

COURT OF FINAL APPEAL
FINAL APPEAL (CRIMINAL) NO 4 OF 1999
LI CJ, LITTON, CHING AND BOKHARY PJJ AND SIR ANTHONY MASON
20-22 OCTOBER, 15 DECEMBER 1999

B

Constitutional Law – Guarantee of fundamental rights – Freedom of expression – Criminalising desecration of national flag and regional flag – Restriction on freedom of expression – Whether justified as necessary for protection of public order (ordre public) – Basic Law of the Hong Kong Special Administrative Region (04/04/90) art 39 – International Covenant on
C **Civil and Political Rights 1966 art 19 – National Flag and National Emblem Ordinance (116 of 1997) s 7 – Regional Flag and Regional Emblem Ordinance (117 of 1997) s 7**

Criminal Law and Procedure – Desecration of national flag and regional flag – Desecration by defiling – Whether including wilful and public display of
D **defaced flags – National Flag and National Emblem Ordinance (116 of 1997) s 7 – Regional Flag and Regional Emblem Ordinance (117 of 1997) s 7**

Human Rights – Freedom of expression – Criminalising desecration of national flag and regional flag – Restriction on freedom of expression – Whether justified as necessary for protection of public order (ordre public)
E **– Basic Law of the Hong Kong Special Administrative Region (04/04/90) art 39 – International Covenant on Civil and Political Rights 1966 art 19 – National Flag and National Emblem Ordinance (116 of 1997) s 7 – Regional Flag and Regional Emblem Ordinance (117 of 1997) s 7**

憲法 – 基本權利的保證 – 發表自由 – 把侮辱國旗和區旗行為刑事化
F **– 限制發表自由 – 是否必要以保障公共秩序 – 《香港特別行政區基本法》(04/04/90) 第 39 條 – 《公民權利和政治權利國際公約》1966 第 19 條 – 《國旗及國徽條例》(1997 年第 116 號條例) 第 7 條 – 《區旗及區徽條例》(1997 年第 117 號條例) 第 7 條**

G **刑法與刑事訴訟程序 – 侮辱國旗和區旗 – 以玷污方式的侮辱 – 是否包括故意並公開展示被污損的旗 – 《國旗及國徽條例》(1997 年第 116 號條例) 第 7 條 – 《區旗及區徽條例》(1997 年第 117 號條例) 第 7 條**

H **人權 – 發表自由 – 把侮辱國旗和區旗行為刑事化 – 限制發表自由 – 是否必要以保障公共秩序 – 《香港特別行政區基本法》(04/04/90) 第 39 條 – 《公民權利和政治權利國際公約》1966 第 19 條 – 《國旗及國徽條例》(1997 年第 116 號條例) 第 7 條 – 《區旗及區徽條例》(1997 年第 117 號條例) 第 7 條**

I

On 1 January 1998, the respondents were seen carrying in their hands and waving in the air along the route of a public procession what appeared to be a

defaced national flag and a defaced regional flag. At the end of the procession, the two respondents tied the two flags to some railings outside the Central Government Offices. These two flags were then seized by the police. The flag of the People's Republic of China was found to have been defaced in the following manner: a circular portion was cut out at the centre; the large five-pointed yellow star had been daubed with black ink and punctured; and the Chinese character '恥' (shame) was written on the four smaller yellow stars in black ink and on the reverse side, a black cross had been daubed on the lowest of the four small stars. The flag of the HKSAR was principally defaced by a black cross which had been drawn across the bauhinia on both sides of the flag. One section of the flag had been torn off obliterating a portion of the bauhinia design. Three of the remaining four red five-pointed stars had black crosses daubed over them. The Chinese character '恥' (shame) was written on the flag in black ink; and a further Chinese character appeared on the flag but rendered illegible by the tear in the flag. The procession and the demonstration before it were peaceful. The two respondents were summonsed for the offence of desecrating the national flag by publicly and wilfully defiling it, contrary to s 7 of the National Flag and National Emblem Ordinance (116 of 1997). They were also summonsed for the offence of desecrating the regional flag by publicly and wilfully defiling it, contrary to s 7 of the Regional Flag and Regional Emblem Ordinance (117 of 1997). A magistrate convicted the respondents of the offences after trial and sentenced them to be bound over to keep the peace. Both respondents appealed against conviction and the Court of First Instance ordered that the appeals be reserved for hearing before the Court of Appeal, which allowed the appeals and held that the two provisions criminalising desecration of the flags were not consistent with art 19 of the International Covenant on Civil and Political Rights and therefore contravened art 39 of the Basic Law (see [1999] 2 HKC 10 for a report of the judgments below). The prosecution appealed to the Court of Final Appeal and submitted, together with its case, a 'Brandeis Brief'[1] containing materials such as speeches by leaders of the Central Authorities, civic education kits, articles from academic journals and correspondence with departments of justice of different countries as to the existence and content of flag desecration laws in those countries. Of the two respondents, the first respondent elected to represent himself in person after the leave hearing and the second respondent continued to be represented by counsel on legal aid. The second respondent submitted for the first time in his case that there was no evidence to support the convictions since the carrying or waving of defaced flags could not amount to desecration by defiling the flags. Rather, what the respondents did in public came within s 4 of the National Flag and National Emblem Ordinance and s 4 of the Regional Flag and Regional Emblem Ordinance, which provided that a damaged or defaced flag should not be displayed but did not create an offence.

Held, allowing the appeals, restoring the convictions and the orders for bind-over:

per Li CJ (Litton, Ching and Bokhary PJJ and Sir Anthony Mason agreeing):

1 See *Editorial note* at p 125 for definition of Brandeis Brief

A (1) Section 7 of the National Flag and National Emblem Ordinance (116 of 1997) and s 7 of the Regional Flag and Regional Emblem Ordinance (117 of 1997) were justified restrictions on the right to freedom of expression and therefore, did not contravene the Basic Law. These provisions were necessary for the protection of public order (ordre public). The legitimate societal interests in the protection of the national flag and the legitimate community interests in the B protection of the regional flag were interests which were within the concept of public order (ordre public). The two provisions amounted to a limited restriction of freedom of expression and were proportionate to the aims sought to be achieved and did not go beyond what was proportionate. *Ming Pao Newspapers Ltd v A-G of Hong Kong* [1996] AC 907 applied. *Tam Hing Yee v Wu Tai Wai* C [1992] 1 HKLR 185 and *Wong Yeung Ng v S-J* [1999] 2 HKC 24 considered (at 140B-D, 140G-141A).

(2) The ordinary meaning of 'defiling' plainly included dishonouring. By carrying and waving the defaced flags during the public procession and then tying them to some railings at the end of the procession, the respondents were clearly dishonouring the flags. The act of publicly and wilfully parading a D defaced flag, having chosen the same for its defaced condition, was to defile the flag thus desecrating it (at 133I-134B).

(3) In considering the question of the necessity to criminalise desecration of the national flag and the regional flag, thereby placing a limited restriction on the guaranteed right to freedom of expression, the Court should give due weight to E the view of the HKSAR's legislature that the enactment of the National Flag and National Emblem Ordinance (116 of 1997), in terms that included s 7 thereof, was appropriate for the discharge of the Region's obligation to apply the national law arising from its addition to Annex III by the Standing Committee of the National People's Congress. Similarly, the Court should accord due weight to the F view of the HKSAR's legislature that it was appropriate to enact the Regional Flag and Regional Emblem Ordinance (117 of 1997) (at 140F-G).

per Bokhary PJ:

(4) In determining whether legislation was constitutional, the Court had to consider whether the approach chosen by the legislature was one permitted by the G constitution. This did not involve deference to the legislature. The answer to this question depended on whether the legislation in question was reconcilable with the fundamental rights guaranteed by the constitution (at 147G-H).

(5) Section 7 of the National Flag and National Emblem Ordinance (116 of 1997) and s 7 of the Regional Flag and Regional Emblem Ordinance (117 of H 1997) were not irreconcilable with the freedom of expression guaranteed under the Basic Law. It was possible for a society to protect its flags and emblems while at the same time maintaining the freedom of expression provided that its flag and emblem protection laws were specific, did not affect the substance of expression, and touched upon the mode of expression only to the extent of keeping flags and emblems impartially beyond politics and strife. Our laws protecting the national I and regional flags and emblems from public and wilful desecration met such criteria. However, the restrictions placed on freedom of expression by those two provisions lay just within the outer limits of constitutionality (at 148B-G).

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[*Editorial note*: For a discussion of this judgment, see Margaret Ng, *Dangers of Saluting the Flag*, South China Morning Post, 24 December 1999.

'Brandeis Brief': Form of appellate brief in which economic and social F surveys and studies are included along with legal principles and citations and which takes its name from Louis D Brandeis, former Associate Justice of Supreme Court, who used such brief while practising law. (Black's *Law Dictionary* (6th Ed, 1990))]

Final Appeal

G This was a final appeal by the prosecution from the judgment of the Court of Appeal (Power VP, Mayo and Stuart-Moore JJA) dated 23 March 1999 allowing the appeal of the two respondents, Ng Kung Siu and Lee Kin Yun, against the convictions imposed by Tong Man Esq, a magistrate for one joint offence of desecration of the national flag of the People's Republic of China and for one joint offence of desecration of the regional flag of the HKSAR (see [1999] 2 H HKC 10 for a report of the judgments of the Magistrate and of the Court of Appeal below). The decision of the Court of Appeal is also reported at (1999) 6 BHRC 591. The facts appear sufficiently in the following judgment.

Gerard McCoy SC, Andrew Bruce SC and Kenneth Chow (Director of Public Prosecutions) for the appellant.

I *Ng Kung Siu, the first respondent, in person.*

Audrey Eu SC, PY Lo, Paul Harris and Lawrence Lau (Ho Tse Wai & Partners) for the second respondent.

Li CJ: The Basic Law contains constitutional guarantees for the freedoms that are of the essence of Hong Kong's civil society. We are concerned with the freedom of expression. The question in this appeal is whether the statutory provisions which criminalise desecration of the national flag and the regional flag are inconsistent with the guarantee of the freedom of expression. The statutory provisions in question are s 7 of the National Flag and National Emblem Ordinance (No 116 of 1997) (the National Flag Ordinance) and s 7 of the Regional Flag and Regional Emblem Ordinance (No 117 of 1997) (the Regional Flag Ordinance).

The flags as symbols

A national flag is the symbol of a nation. It is a unique symbol. All nations have flags. National emblems are also common.

The national flag is the symbol of the People's Republic of China. It is the symbol of the State and the sovereignty of the State. It represents the People's Republic of China, with her dignity, unity and territorial integrity.

The regional flag is the unique symbol of the Hong Kong Special Administrative Region as an inalienable part of the People's Republic of China under the principle of 'one country, two systems'. In this judgment, I shall refer to the People's Republic of China in full or as 'PRC', and the Hong Kong Special Administrative Region in full or as 'HKSAR' or as 'the Region'.

The intrinsic importance of the national flag and the regional flag to the HKSAR as such unique symbols is demonstrated by the fact that at the historic moment on the stroke of midnight on 1 July 1997, the handover ceremony in Hong Kong to mark the People's Republic of China's resumption of the exercise of sovereignty over Hong Kong began by the raising of the national flag and the regional flag. And the speech, which the President of the People's Republic of China then delivered, began with the words:

> The national flag of the People's Republic of China and the regional flag of the Hong Kong Special Administrative Region of the People's Republic of China have now solemnly risen over this land.

The question

The society in the People's Republic of China, the country as a whole, including the Hong Kong Special Administrative Region, has a legitimate interest in protecting their national flag, the unique symbol of the Nation. Similarly, the community in the Hong Kong Special Administrative Region has a legitimate interest in protecting the regional flag, the unique symbol of the Region as an inalienable part of the People's Republic of

A China under the principle of 'one country, two systems'. The existence of these legitimate interests has not been challenged in argument before us.

The question before us is whether these legitimate interests justify the restriction on the freedom of expression by the criminalisation of desecration of the national and regional flags. As is accepted by
B Mr McCoy SC, for the HKSAR Government, in the absence of such justification, the statutory provisions would be unconstitutional as contravening the Basic Law and the courts have the power and duty so to declare.

C *THE NATIONAL FLAG*

The PRC Law on the National Flag

The national flag was originally adopted by resolution of the First Plenary Session of the Chinese People's Political Consultative Conference on
D 27 September 1949, shortly before 1 October 1949, the founding date of the People's Republic of China. Paragraph 4 of that resolution read:

> It is unanimously adopted that the national flag of the People's Republic of China shall be a flag with five stars on a field of red, symbolizing the great unity of the revolutionary Chinese people.

E The national flag is now prescribed in art 136 of the present Chinese Constitution.

The PRC Law on the National Flag was adopted by the Standing Committee of the National People's Congress and promulgated by the President of the People's Republic of China on 28 June 1990 and became
F effective as of 1 October 1990. Article 1 states that this Law is enacted in accordance with the Constitution 'with a view to defending the dignity of the National Flag, enhancing citizens' consciousness of the State and promoting the spirit of patriotism'. Article 2 prescribes that the national flag shall be a flag with five stars and that it shall be made according to the
G specified Directions. Article 3 provides:

> The National Flag of the People's Republic of China is the symbol and hallmark of the People's Republic of China.
>
> All citizens and organizations shall respect and care for the National Flag.

H Matters relating to the display of the national flag, such as the places, time and manner of display are dealt with.

Article 17 provides that no damaged, defiled, faded or substandard national flag shall be displayed. Article 18 prohibits the use of the national flag and the design thereof as a trade mark for advertising purposes and in
I private funeral activities. Article 19 provides:

> Whoever desecrates the National Flag of the People's Republic of China by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling

> upon it shall be investigated for criminal responsibilities according to law; where the offence is relatively minor, he shall be detained for not more than 15 days by the public security organ in reference to the provisions of the Regulations on Administrative Penalties for Public Security.

On 28 June 1990, the same day as the adoption and promulgation of the PRC Law on the National Flag, the Decision of the Standing Committee of the National People's Congress regarding the punishment of crimes of desecrating the national flag and the national emblem of the People's Republic of China was adopted and promulgated to make supplementary provision to the Criminal Law as follows:

> Whoever desecrates the National Flag or the National Emblem of the People's Republic of China by publicly and wilfully burning, mutilating, scrawling on, defiling, or trampling upon it shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

It was considered that the best method of providing for the criminal offence was to make such a supplemental provision to the Criminal Law. See the report dated 30 May 1990 of the Law Commission examining the draft law at the 14th meeting of the Standing Committee of the 7th National People's Congress held on 20 June 1990. That provision has now been replaced by a similar provision in art 299 of the Criminal Law of the People's Republic of China.

The Basic Law

The application of national laws in the Hong Kong Special Administrative Region is governed by art 18(2), which provides:

> National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.

Article 18(3) provides that the Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. It further provides that:

> Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.

On 1 July 1997, pursuant to art 18(2), the Standing Committee of the National People's Congress added to the list of laws in Annex III, among others, the PRC Law on the National Flag.

The National Flag Ordinance

With this addition to Annex III of the Basic Law, the HKSAR was obliged by virtue of art 18(2) of the Basic Law to apply the PRC Law on the National Flag locally by way of promulgation or legislation. Accordingly, the legislature (then the Provisional Legislative Council) applied it in the HKSAR by legislation by the enactment of the National Flag Ordinance. Legislation as opposed to promulgation was appropriate since the national law had to be adapted for application in the HKSAR. The Ordinance provides for the use and protection of the national flag in the Region. The national flag must be displayed at main Government buildings. Section 3(1). The Chief Executive may stipulate the organisations which must display or use the national flag and the other places at which, the occasions on which, the manner in which and the conditions under which, the national flag must be displayed or used. Section 3(2). Section 4 provides that a national flag which is damaged, defiled, faded or substandard must not be displayed or used. The national flag for flying may be manufactured in the Hong Kong Special Administrative Region only by enterprises designated by the Central People's Government and must be manufactured in accordance with the prescribed specifications. Sections 5(1) and 5(2). The national flag or its design must not be displayed or used in trademarks or advertisements, private funeral activities or other occasions or places stipulated by the Chief Executive. Contravention is a criminal offence. Sections 6(1) and 6(3). The provision in issue in this appeal, s 7, provides:

> A person who desecrates the national flag ... by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it commits an offence and is liable on conviction to a fine at level 5 [i.e. $50,000] and to imprisonment for 3 years.

A copy of the national flag that is not an exact copy but so closely resembles the national flag as to lead to the belief that the copy in question is the national flag is taken to be the national flag for the purposes of the Ordinance.

Section 9 provides:

> (1) Offences in relation to the national flag and the national emblem in the Hong Kong Special Administrative Region are investigated and persons are prosecuted according to the laws in force in the Hong Kong Special Administrative Region.
>
> (2) If there are inconsistencies between this Ordinance and a national law promulgated under Annex III of the Basic Law, this Ordinance is to be interpreted and applied as a special application or adaptation of the national law.

THE REGIONAL FLAG

The Basic Law

Articles 10(1) and 10(2) of the Basic Law provide:

> Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may also use a regional flag and regional emblem.
>
> The regional flag of the Hong Kong Special Administrative Region is a red flag with a bauhinia highlighted by five star-tipped stamens.

The regional flag had been endorsed at the Fourth Plenum of the Preparatory Committee of the Hong Kong Special Administrative Region on 10 August 1996. The Decision of the National People's Congress on the Basic Law on 4 April 1990 adopted the Basic Law and the designs of the regional flag and regional emblem of the Hong Kong Special Administrative Region. Before that Decision was made, the Chairman of the Drafting Committee of the Basic Law, in his address of explanation to the National People's Congress, referred to the selection process for the regional flag and emblem and explained the design of the regional flag and emblem. As regards the regional flag, he said:

> The regional flag carries a design of five bauhinia petals, each with a star in the middle, on a red background. The red flag represents the motherland and the bauhinia represents Hong Kong. The design implies that Hong Kong is an inalienable part of China and prospers in the embrace of the motherland. The five stars on the flower symbolize the fact that all Hong Kong compatriots love their motherland, while the red and white colours embody the principle of 'one country, two systems'.

The Regional Flag Ordinance

This was enacted to provide for the use and protection of the regional flag. The Ordinance gives the Chief Executive a power, similar to that in the National Flag Ordinance, to stipulate for the display and use of the regional flag. Section 3(1). Section 3(2) and Sch 3 set out the arrangements for the use and display of the regional flag. These provisions had originally been passed by the Preparatory Committee as provisional arrangements. They were made 'to safeguard the dignity' of the regional flag and to ensure its correct use. They state that the regional flag and emblem:

> are the symbol and ensign of the Hong Kong Special Administrative Region. Each and every Hong Kong resident and organization should respect and cherish the regional flag and the regional emblem.

The arrangements for use and display of the regional flag when flown together with the national flag are provided for, with prominence given to

A the latter. Section 3(2) and Sch 3. A regional flag which is damaged, defiled, faded or substandard must not be displayed or used. Section 4. It must be manufactured in accordance with the prescribed specifications. Section 5(1). It or its design must not be displayed or used in trademarks or advertisements or other occasions or places stipulated by the Chief B Executive. Contravention is a criminal offence. Section 6(1) and 6(2).

Section 7, the provision in issue in this appeal, provides:

> A person who desecrates the regional flag or regional emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it commits an offence and is liable —
>
> C
>
> (a) on conviction on indictment to a fine at level 5 [i.e. $50,000] and to imprisonment for 3 years; and
>
> (b) on summary conviction to a fine at level 3 [i.e. $10,000] and to imprisonment for 1 year.

D There is a provision similar to that in the National Flag Ordinance that a copy of the regional flag is taken to be a regional flag for the purposes of the Ordinance.

The charges

E The respondents faced two charges of desecration of the national flag and the regional flag contrary to s 7 of the National Flag Ordinance, and s 7 of the Regional Flag Ordinance respectively. The particulars of each offence were that the respondents on 1 January 1998 in Hong Kong desecrated the national flag and the regional flag respectively by publicly and wilfully F defiling the same.

The convictions

On 18 May 1998, both respondents were convicted of the two offences. Each respondent was bound over to keep the peace on his own G recognisance of $2,000 for 12 months for each offence [1999] 2 HKC 10 at 13-16.

The facts

H The facts which formed the basis of the convictions were not disputed before the magistrate and can be briefly stated for the purposes of this appeal. As was stated in the case for the second respondent (paras 2 and 3):

> This case arises from a public demonstration in Hong Kong on 1st January I 1998, organised by the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China. The demonstration consisted of a public meeting and a public procession from Victoria Park to the Central Government

> Offices of the Hong Kong Government at Lower Albert Road. The public meeting and the public procession were both lawful and orderly.
>
> During the public procession, the Respondents were seen carrying in their hands and waving in the air along the route what appeared to be a defaced national flag and a defaced regional flag. At the end of the procession, they tied those two objects to the railings of the Central Government Offices. The Police seized the two objects ...

Both flags had been extensively defaced. As to the national flag, a circular portion of the centre had been cut out. Black ink had been daubed over the large yellow five-pointed star and the star itself had been punctured. Similar damage appeared on the reverse side. Further, the Chinese character 'shame' had been written in black ink on the four small stars and on the reverse side, a black cross had been daubed on the lowest of the four small stars.

As to the regional flag, one section had been torn off obliterating a portion of the bauhinia design. A black cross had been drawn across that design. Three of the remaining four red stars had black crosses daubed over them. The Chinese character 'shame' was written on the flag in black ink. As was part of a Chinese character which had been rendered illegible by the tear in the flag. Similar damage appeared on the reverse side.

During the procession, the respondents chanted 'build up a democratic China'. The second respondent was reported to have stated to the press that 'the damaging and defiling of the national and regional flags was a way to express the dissatisfaction and resistance to the ruler who was not elected by the people.'

Court of Appeal

The respondents appealed against conviction to Beeson J in the Court of First Instance. On 8 December 1998 on the parties' joint application, she reserved the appeals to the Court of Appeal. On 23 March 1999, that Court (Power VP, Mayo and Stuart-Moore JJA) allowed the appeals and quashed the respondents' convictions [1999] 1 HKLRD 783, (also reported at [1999] 2 HKC 10).

Both before the magistrate and the Court of Appeal, the only issues were whether s 7 of the National Flag Ordinance and s 7 of the Regional Flag Ordinance contravened the Basic Law. It was contended by the defence both before the magistrate and the Court of Appeal that these provisions were inconsistent with art 19 of the International Covenant on Civil and Political Rights (ICCPR) and accordingly contravened art 39 of the Basic Law.

Leave to appeal

On 20 May 1999, the Appeal Committee (the Chief Justice, Litton and Ching PJJ) granted leave to appeal to the Court of Final Appeal, certifying two points of law of great and general importance, namely: (1) Does s 7 of the National Flag Ordinance contravene the Basic Law? (2) Does s 7 of the Regional Flag Ordinance contravene the Basic Law? These were the same issues as those before the magistrate and the Court of Appeal and in essence were the only questions raised on the application for leave.

The new point

In his written case, the second respondent raised for the first time the new argument that there is no evidence to support the convictions. It ran as follows:

> There is no evidence of either Respondent desecrating the flags by publicly defiling them. The agreed facts record that the two Defendants were carrying or waving defaced national and regional flags (paragraph 8); that they continued to do so during the procession from Causeway Bay to Central (paragraph 10); and that at the end of the procession the two Defendants tied the defaced flags they had brandished to some railings outside Government Headquarters.
>
> It is not an offence to publicly and wilfully display a damaged or defiled flag. Section 4 of the National Flag Ordinance provides that a damaged or defiled flag must not be displayed or used but it creates no offence. Section 4 of the Regional Flag Ordinance is in similar terms. What the 2nd Respondent did in public falls exactly within the terms of section 4. Since section 4 does not criminalize such action, it follows that what he did in public cannot amount to an offence.

The circumstances must be very exceptional before the Court of Final Appeal entertains a new point which had not been raised below. See *Wong Tak Yue v Kung Kwok Wai David & Anor* [1998] 1 HKC 1.

Both respondents were represented by counsel before the magistrate. Before the Court of Appeal, the first respondent was represented by counsel instructed by the Director of Legal Aid; the second respondent did not appear. At the hearing of the application for leave to appeal, both respondents were represented by counsel instructed by the Director of Legal Aid and opposed the application. Immediately after the leave application, the first respondent declined the further assistance of the Legal Aid Department and has since been unrepresented and has appeared before us in person.

At no stage was this new point raised by counsel for the respondents. And this point was not raised by the magistrate or the Court of Appeal.

It is not surprising that this new point was not raised below by counsel or the Court. It is devoid of any merit. The offence under s 7 of each Ordinance was the desecration of the flag in question by defiling it. The

ordinary meaning of 'defiling' plainly includes dishonouring. By carrying and waving the defaced flags during the public procession and then tying them to some railings at the end of the procession, the respondents were clearly dishonouring the flags. These acts clearly amount to desecration by defiling.

Freedom of speech and freedom of expression

The freedom of speech is guaranteed by art 27 of the Basic Law. This provides:

> Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.

The freedom of expression is enshrined in art 19 of the ICCPR. This article is in these terms:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

As is accepted by Mr McCoy SC, for the Government, art 19 of the ICCPR is incorporated into the Basic Law by its art 39 which provides:

> The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.
>
> The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

The Hong Kong Bill of Rights Ordinance (Cap 383) in fact provides for the incorporation of the provisions of the ICCPR into the laws of Hong Kong. Article 16 in Pt II of that Ordinance is in identical terms to art 19 of the ICCPR.

A Flag desecration is a form of non-verbal speech or expression. Mr McCoy SC, for the Government, accepts that the freedom of speech or the freedom of expression are engaged in this case. He accepts that s 7 criminalising flag desecration in both Ordinances constitutes a restriction of such freedoms. For the purposes of this appeal, it makes no difference B whether the restriction is considered as a restriction of the freedom of speech or the freedom of expression. This is because, as is accepted by Mr McCoy, by virtue of art 39(2) of the Basic Law, a restriction on either freedom cannot contravene the provisions of the ICCPR. Both the magistrate and the Court of Appeal have referred to the freedom of C expression rather than the freedom of speech. I shall do likewise. But my judgment would apply equally if the restriction is considered in relation to the freedom of speech.

Freedom of expression is a fundamental freedom in a democratic society. It lies at the heart of civil society and of Hong Kong's system and way of life. The courts must give a generous interpretation to its D constitutional guarantee. This freedom includes the freedom to express ideas which the majority may find disagreeable or offensive and the freedom to criticise governmental institutions and the conduct of public officials.

E *The extent of restriction*

It is common ground that the statutory provisions criminalising desecration of the national and regional flags restrict the freedom of expression. Before considering whether the restriction is justified, it is F important to examine first the extent of the restriction. This is because when one comes to consider the issue of justification, one must have in mind what it is that has to be justified, in particular, whether it is a wide or limited restriction that has to be justified. The wider the restriction, the more difficult it would be to justify. The appellant submits that the freedom of expression is implicated only in a minor way as only one G mode of expression is prohibited. The respondent argues that the restriction is wide. The argument is that it prohibits not merely one mode of expression but by rendering unlawful one form of political protest also the substance of what may be expressed.

As has been observed, flag desecration is symbolic expression or non- H verbal expression. A person desecrating a national flag as a means of expression would usually be expressing a message of protest. But the message he seeks to convey may not be clear. The message may be one of hatred or opposition directed to the nation. Or it may be one of protest against the ruling government. Or the person concerned may be protesting I against a current policy of the government. Or some other message may be intended. One has to consider the surrounding circumstances of the flag desecration in question to ascertain the message which is sought to be

communicated. In the present case, the respondents were protesting against the system of government on the Mainland. This appears from the fact that the Chinese character 'shame' had been written on the flags taken together with the chanting of 'build up a democratic China' during the procession and what the second respondent was reported to have stated to the press at the time.

The prohibition of desecration of the national and regional flags by the statutory provisions in question is not a wide restriction of the freedom of expression. It is a limited one. It bans one mode of expressing whatever the message the person concerned may wish to express, that is the mode of desecrating the flags. It does not interfere with the person's freedom to express the same message by other modes. Further, it may well be that scrawling words of praise on the flags (as opposed to words of protest which is usually the message sought to be conveyed) would constitute offences within s 7 of both Ordinances, namely, that of desecrating the flag by scrawling on the same. If this be right, then it would mean that the prohibition not only bans expression by this mode of a message of protest, but also other messages including a message of praise. But a law seeking to protect the dignity of the flag in question as a symbol, in order to be effective, must protect it against desecration generally.

Is the restriction justified?

Freedom of expression is not an absolute. The Preamble to the ICCPR recognises that the individual has duties to other individuals and to the community to which he belongs. Article 19(3) itself recognises that the exercise of the right to freedom of expression carries with it special duties and responsibilities and it may therefore be subject to certain restrictions. But these restrictions shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputation of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

The requirement that the restriction be provided by law is satisfied by the two statutory provisions which are in question in this case. In considering the extent of a restriction, it is well settled that any restriction on the right to freedom of expression must be narrowly interpreted. See *Ming Pao Newspapers Ltd v Attorney General of Hong Kong* [1996] AC 907 (PC) at 917B-C. It is common ground that the burden rests on the Government to justify any restriction.

Here, the Government principally relies on the restriction as necessary for the protection of public order (ordre public). Two questions arise. First, are the legitimate societal and community interests in the protection of the flags in question, which I have held to exist, within the concept of

A public order (ordre public)? Secondly, if the answer is in the affirmative, is the restriction to the right to freedom of expression necessary for their protection?

Within public order (ordre public)?

B Mr McCoy SC, for the Government, submits that whatever its boundaries, the concept of public order (ordre public), includes these legitimate interests in the protection of the flags in question. Ms Eu SC for the second respondent asserts the contrary, that whatever its boundaries, those interests are incapable of coming within the concept.

C It is important to recognise that the concept of public order (ordre public) is not limited to public order in terms of law and order. This is well recognised by textwriters and has been accepted in decisions in Hong Kong. See *Tam Hing Yee v Wu Tai Wai* [1992] 1 HKLR 185 at 190 and *Secretary for Justice v Oriental Press Group Ltd & Ors* [1998] 2 HKLRD D 123 at 161 (Chan CJHC and Keith J at first instance) (also reported at [1998] 2 HKC 627) and on appeal to the Court of Appeal *Wong Yeung Ng v Secretary for Justice* [1999] 2 HKLRD 293 at 307I (also reported at [1999] 2 HKC 24). The expression used is not merely 'public order' but 'public order (ordre public)'. The inclusion of the words 'ordre public' E makes it clear that the relevant concept is wider than the common law notion of law and order. In this case, both the magistrate and the Court of Appeal appear to have dealt with the concept of public order (ordre public) as limited to public order in terms of law and order. That approach is not correct.

F One of the few judicial discussions counsel has been able to locate in Hong Kong or elsewhere on public order (ordre public) was contained in the first instance judgment in *Secretary for Justice v Oriental Press Group Ltd* (at 669C-H):

> G ... the objective in art 16(3)(b) [of the Hong Kong Bill of Rights Ordinance which is equivalent to Article 19 of the ICCPR] which is said to justify the restriction is 'the protection of ... public order (ordre public)'. The inclusion of the words in brackets shows that the phrase 'public order' should be given a wider meaning than the words normally have in common law jurisdictions. The meaning which should be given to the words 'public order' is one which includes the concept familiar to European lawyers of '*ordre public*'. Defining H '*ordre public*' has been elusive, especially as the phrase has different meanings in private and public law, and its meaning differs depending on the context in which it is being used. For example, in art 10 of the Hong Kong Bill of Rights Ordinance (Cap 383), its meaning is more akin to the prevention of disorder. However, in the context of public law:
>
> I *... ordre public includes the existence and the functioning of the state organization, which not only allows it to maintain peace and order in the country but ensures the common welfare by satisfying collective needs*

and protecting human rights (Kiss, 'Permissible Limitations on Rights', in Henkin (ed.), 'The International Bill of Rights', 1981, p.301).

The courts represent a vitally important institution in the 'state organization'. They are the embodiment of the rule of law, which plays a pivotal role in the satisfaction of the 'collective needs' of the community and the protection of 'human rights'. Once public order has been defined in this way (and is not limited to the prevention of disorder), the phrase 'the protection ... of public order' in art 16(3)(b) in our view plainly includes the protection of the rule of law — at least to the extent that the rule of law is eroded if public confidence in the due administration of justice is undermined. ...

In that case, the Court held that the contempt of court offences under the common law of scandalising the court and of interference with the administration of justice as a continuing process constituted permissible restrictions on the freedom of expression. This decision was upheld by the Court of Appeal. The Court at first instance held that the due administration of justice is within public order (ordre public). This was conceded before the Court of Appeal (at 39E).

In the work quoted in the passage in the judgment set out above, the author said that the concept of public order (ordre public) 'is not absolute or precise, and cannot be reduced to a rigid formula but must remain a function of time, place and circumstances' and concluded his discussion in these terms:

In sum: 'public order' may be understood as a basis for restricting some specified rights and freedoms in the interest of the adequate functioning of the public institutions necessary to the collectivity when other conditions, discussed below, are met. Examples of what a society may deem appropriate for the *ordre public* have been indicated: prescription for peace and good order; safety; public health; esthetic and moral considerations; and economic order (consumer protection, etc.). It must be remembered, however, that in both civil law and common law systems, the use of this concept implies that courts are available and function correctly to monitor and resolve its tensions with a clear knowledge of the basic needs of the social organization and a sense of its civilized values. (Kiss at 302).

The Siracusa Principles on the limitation and derogation provisions in the ICCPR, agreed to in 1984 by a group of experts, contained the following statement on 'public order (ordre public)':

22. The expression 'public order (ordre public)' as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (ordre public).

23. Public order (ordre public) shall be interpreted in the context of the purpose of the particular human right which is limited on this ground.

A 24. State organs or agents responsible for the maintenance of public order (ordre public) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.

See (1985) 7 Human Rights Quarterly 3-14.

In 1986, in Advisory Opinion No OC-6/86, on the word 'laws' in art 30 B of the American Convention on Human Rights, the Inter-American Court of Human Rights expressed the view:

> The requirement that the laws be enacted for reasons of general interest means they must have been adopted for the 'general welfare' (Art. 32(2)), a concept that must be interpreted as an integral element of public order (*ordre public*) in C democratic States, the main purpose of which is 'the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness' (American Declaration of the Rights and Duties of Man, ... First Introductory Clause). (para 29).

D Reported at (1986) 7 Human Rights Law Journal 231. Article 30 of that Convention provides that the restriction on rights or freedoms may not be applied 'except in accordance with laws enacted for reasons of general interest and for the purpose of which the restrictions have been established'. Article 32(2) provides: 'The rights of each person are limited E by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society'.

The following points can be drawn from the materials referred to above. First, the concept is an imprecise and elusive one. Its boundaries cannot be precisely defined. Secondly, the concept includes what is F necessary for the protection of the general welfare or for the interests of the collectivity as a whole. Examples include: prescription for peace and good order; safety; public health; aesthetic and moral considerations and economic order (consumer protection, etc). Thirdly, the concept must remain a function of time, place and circumstances.

As to the time, place and circumstances with which we are concerned, G Hong Kong has a new constitutional order. On 1 July 1997, the People's Republic of China resumed the exercise of sovereignty over Hong Kong being an inalienable part of the People's Republic of China and established the Hong Kong Special Administrative Region under the principle of 'one country, two systems'. The resumption of the exercise of H sovereignty is recited in the Preamble of the Basic Law, as 'fulfilling the long-cherished common aspiration of the Chinese people for the recovery of Hong Kong'. In these circumstances, the legitimate societal interests in protecting the national flag and the legitimate community interests in the protection of the regional flag are interests which are within the concept I of public order (ordre public). As I have pointed out, the national flag is the unique symbol of the one country, the People's Republic of China, and the regional flag is the unique symbol of the Hong Kong Special

Administrative Region as an inalienable part of the People's Republic of China under the principle of 'one country, two systems'. These legitimate interests form part of the general welfare and the interests of the collectivity as a whole.

Whether necessary

That these legitimate interests are within public order (ordre public) does not conclude the question. One must examine whether the restriction on the guaranteed right to freedom of expression is necessary for the protection of such legitimate interests within public order (ordre public).

The Privy Council and the Hong Kong courts have held that the word 'necessary' in this test should be given its ordinary meaning and that no assistance is to be gained by substituting for 'necessary' a phrase such as 'pressing social need', see *Tam Hing Yee v Wu Tai Wai* at 191, *Ming Pao Newspapers Ltd v Attorney General of Hong Kong* at 919G-H, *Wong Yeung Ng v Secretary for Justice* at 40E-F, 53C-D, 59B. This approach is sound.

On 1 July 1997, the Standing Committee added the PRC Law on the National Flag to Annex III so that the Hong Kong Special Administrative Region has to apply it by legislation or promulgation in the Region. And the HKSAR's legislature discharged that obligation by enacting the National Flag Ordinance. At the same time, the HKSAR's legislature considered it appropriate to enact the Regional Flag Ordinance.

In considering the question of necessity, the Court should give due weight to the view of the HKSAR's legislature that the enactment of the National Flag Ordinance in these terms including s 7 is appropriate for the discharge of the Region's obligation to apply the national law arising from its addition to Annex III by the Standing Committee. Similarly, the Court should accord due weight to the view of the HKSAR's legislature that it is appropriate to enact the Regional Flag Ordinance.

In applying the test of necessity, the Court must consider whether the restriction on the guaranteed right to freedom of expression is proportionate to the aims sought to be achieved thereby. See *Ming Pao Newspapers Ltd v Attorney General of Hong Kong* at 917D-E. As concluded above, by criminalising desecration of the national and regional flags, the statutory provisions in question constitute a limited restriction on the right to freedom of expression. The aims sought to be achieved are the protection of the national flag as a unique symbol of the Nation and the regional flag as a unique symbol of the Hong Kong Special Administrative Region in accordance with what are unquestionably legitimate societal and community interests in their protection. Having regard to what is only a limited restriction on the right to the freedom of expression, the test of necessity is satisfied. The limited restriction is

A proportionate to the aims sought to be achieved and does not go beyond what is proportionate.

Hong Kong is at the early stage of the new order following resumption of the exercise of sovereignty by the People's Republic of China. The implementation of the principle of 'one country, two systems' is a matter
B of fundamental importance, as is the reinforcement of national unity and territorial integrity. Protection of the national flag and the regional flag from desecration, having regard to their unique symbolism, will play an important part in the attainment of these goals. In these circumstances, there are strong grounds for concluding that the criminalisation of flag
C desecration is a justifiable restriction on the guaranteed right to the freedom of expression.

Further, whilst the Court is concerned with the circumstances in the Hong Kong Special Administrative Region as an inalienable part of the People's Republic of China, the Court notes that a number of democratic nations which have ratified the ICCPR have enacted legislation which
D protects the national flag by criminalising desecration or similar acts punishable by imprisonment. These instances of flag protection indicate that criminalisation of flag desecration is capable of being regarded as necessary for the protection of public order (ordre public) in other democratic societies.

E Accordingly, s 7 of the National Flag Ordinance and s 7 of the Regional Flag Ordinance are necessary for the protection of public order (ordre public). They are justified restrictions on the right to the freedom of expression and are constitutional.

Having regard to this conclusion, it is unnecessary to deal with other
F arguments that were canvassed.

Order

The answers to the certified questions of law are therefore as follows:

G (1) Does s 7 of the National Flag Ordinance contravene the Basic Law? The answer is no.

(2) Does s 7 of the Regional Flag Ordinance contravene the Basic Law? The answer is no.

I would allow the appeal and would restore the convictions and the
H binding over ordered by the magistrate.

Finally, I must record the Court's indebtedness for the invaluable assistance given to the Court by the arguments both written and oral presented and the materials produced by the respective teams of counsel led by Mr Gerard McCoy SC, for the Government, and Ms Audrey Eu SC
I for the second respondent. We also thank the first respondent who appeared in person and made a submission. Neither leading counsel appeared in the Court of Appeal. As I understand the position, the range

and depth of the arguments and materials before us extended far beyond those before the Court of Appeal. Unfortunately, that Court did not have the benefit of these much fuller arguments and materials.

Litton PJ: I agree with the judgment of the Chief Justice.

Ching PJ: I also agree with the judgment of the Chief Justice.

Bokhary PJ: My thinking in this case is in harmony with that of the Chief Justice.

The constitutional issue

The issue before the Court is whether our laws which protect the national and regional flags and emblems from desecration are constitutional. Those laws are contained in two statutory provisions. The first is s 7 of the National Flag and National Emblem Ordinance (No 116 of 1997). It prohibits desecration of the national flag or emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on the same. The second is s 7 of the Regional Flag and Regional Emblem Ordinance (No 117 of 1997). It lays down a similar prohibition in respect of the regional flag and emblem. The maximum penalty for contravention is the same under each section: a fine of up to $50,000 and imprisonment for up to three years.

The charges

On 1 January 1998 the respondents took part in a street procession. During the procession they carried defaced national and regional flags. At the end of the procession they tied the defaced flags to some railings.

Two charges were brought against them. Each charge was against both of them jointly. The first charge was of desecration of the national flag, contrary to s 7 of the National Flag and National Emblem Ordinance. The particulars were that they desecrated the national flag by publicly and wilfully defiling it. The second charge was of desecration of the regional flag, contrary to s 7 of the Regional Flag and Regional Emblem Ordinance. The particulars were that they desecrated the regional flag by publicly and wilfully defiling it.

In the courts below

They challenged the constitutionality of the statutory provisions under which they were charged, basing their challenge on the right to freedom of expression. Their challenge failed at their trial in the Magistrate's Court. They were each convicted and bound over in a personal recognisance of $2,000 to keep the peace for a period of 12 months. They

A appealed against conviction to the High Court which referred the appeal to the Court of Appeal. Their constitutional challenge succeeded before the Court of Appeal which quashed their convictions. The prosecution appealed to this Court. So this constitutional issue is now before us.

B *Mere disobedience of s 4 directions?*

Apart from her points on this constitutional issue, counsel for the second respondent has taken a point on a lower plane by arguing along the following lines. All that the respondents did was to disobey the directions contained in s 4 of each of the two ordinances mentioned above (for the C disobedience of which directions no criminal sanctions are provided) that a national or regional flag or emblem which is damaged, defiled, faded or substandard must not be displayed or used.

I am unable to accept this argument. The purpose of the s 4 directions is to guide people who mean to do reverence to the flags and emblems. By D complete contrast, the purpose of the s 7 prohibitions is to protect the flags and emblems from people who mean to desecrate them. And publicly and wilfully parading a defaced flag or emblem, having chosen the same for its defaced condition, is to defile the flag or emblem thus desecrating it. This appeal turns, therefore, on the constitutional issue. And I now deal with this issue. E

Freedom of expression: substance and mode

Given the breadth to be ascribed to the word 'speech' in the constitutional context, the freedom of speech and the freedom of expression amount to F the same thing. I will use the word 'expression'. Articles 27 and 39 of our constitution the Basic Law guarantee the freedom of expression in Hong Kong. Article 27 of the Basic Law provides that:

> Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of G demonstration; and the right and freedom to form and join trade unions, and to strike.

Article 39 of the Basic Law provides that the provisions of the International Covenant on Civil and Political Rights (the ICCPR) as applied to Hong Kong shall remain in force and shall be implemented H through our laws. The Hong Kong Bill of Rights (the Bill) is the embodiment of the ICCPR as applied to Hong Kong. And art 16 of the Bill, which is identical to art 19 of the ICCPR, provides that:

> (1) Everyone shall have the right to hold opinions without interference.
> (2) Everyone shall have the right to freedom of expression; this right shall I include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary —

(a) for respect of the rights or reputations of others; or
(b) for the protection of national security or of public order (ordre public), or of public health or morals.

It is to be noted that art 16 of the Bill makes express provision for restrictions on the rights which it confers. But art 27 of the Basic Law makes no express provision for any restriction on any of the rights which it confers. So if there is any difference between the guarantee of freedom of speech contained in art 27 of the Basic Law and the guarantee of freedom of expression contained in art 16 of the Bill (as backed by art 39 of the Basic Law), I would treat the art 27 guarantee as even more powerful than the art 16 guarantee.

Testing the matter by reference to *ordre public*, the first thing to face is this. As Professor Yash Ghai has pointed out (in *Human Rights in Hong Kong* (Ed) Raymond Wacks (1992) Ch 11, *Freedom of Expression* at p 391 and again in *The Hong Kong Bill of Rights: A Comparative Approach* (Eds) Johannes Chan and Yash Ghai (1993) Ch 8, *Derogations and Limitations in the Hong Kong Bill of Rights* at p 192) the ambit of the French expression *ordre public* is unclear. I accept that *ordre public*, as a public welfare concept, is something more than the mere converse of public disorder. But how much more? Where a concept is unclear the courts must clarify it before using it as a test by which to judge what, if any, restriction may constitutionally be placed on a fundamental right or freedom. To this end, I treat *ordre public* as being no wider a basis for justifying a restriction on such a right or freedom than the basis to which I now turn.

If any restriction on an art 27 right or freedom is to be justified, it must, I think, be on the basis that it is reconcilable with that right or freedom. And no restriction on such a right or freedom can possibly begin to be regarded as reconcilable with that right or freedom unless the restriction is narrow and specific. That springs very clearly from the very nature of exceptions to rules when the rule guarantees a right or freedom and the exception places a restriction on that right or freedom. I will in due course expand upon all of this in the particular context of the actual issue in the present case.

Freedom of expression covers both substance (*what* is expressed) and mode (*how* it is expressed). Our national and regional flag and emblem protection laws, as I read them, affect only the latter. The significance of the absence of any restriction on the substance of expression is well illustrated — albeit in a context different from the present one — by the Australian case of *Levy v Victoria* (1997) 189 CLR 579. That case

A concerned the validity of regulations which, for the purpose of promoting personal safety, imposed a licensing regime regulating entry into duck shooting areas.

Mr Levy had attempted to enter such an area to make a televised protest there against laws which permitted the shooting of game birds and
B against the illegal shooting of protected species. He, having no licence to enter the area, was physically prevented from entering it when he attempted to do so. Following this, he took out proceedings challenging the validity of the regulations. It was argued on his behalf that by preventing him from entering the area in question to make his protest
C there, the regulations prevented conduct protected by the implied freedom of communication flowing from the Constitution of the Commonwealth. The High Court of Australia rejected that argument and upheld the validity of the regulations. Brennan CJ said (at p 595) that:

> A law which prohibits non-verbal conduct for a legitimate purpose *other than*
> D *the suppressing of its political message* is unaffected by the implied freedom if the prohibition is appropriate and adapted to the fulfilment of that purpose. (Italics supplied.)

We have been addressed on the relevant position in a number of overseas jurisdictions.

E

The American flag desecration cases

On the strength of the prohibition in the First Amendment to the Constitution of the United States of America against the making of laws abridging the freedom of speech, the United States Supreme Court has
F struck down both state and federal statutes criminalising desecration of the American flag and rendering such desecration punishable by a fine or imprisonment. Neither the decision in the state statute case of *Texas v Johnson* 491 US 397 (1988) nor the decision in the federal statute case of *United States v Eichman* 496 US 310 (1989) was unanimous. Each was
G by a bare majority of five to four. Moreover Kennedy J, when concurring in the state statute case, made it a point to say this (at pp 420-421):

> The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result. And so great is our
> H commitment to the process that, except in the rare case, we do not pause to express distaste for the result, perhaps for fear of undermining a valued principle that dictates the decision. This is one of those rare cases.

This revelation of his distaste for the result does not weaken — rather does it strengthen — Kennedy J's concurrence. For it demonstrates how
I convinced he must have been that such result was unavoidable if freedom of speech was to be maintained. But what emerges from this revelation by a member of the majority of his distaste for the result as well as from the

minority judgments is that cases of this kind are what lawyers call 'hard cases'.

Other overseas nations

Turning to other overseas nations, it is to be observed that some of them criminalise flag desecration while some of them do not. And it is further to be observed that those of them which do have statute laws criminalising desecration of the national flag and rendering such desecration punishable by a fine or imprisonment include a number of signatories to the ICCPR, art 19(2) of which provides that everyone shall have the right to freedom of expression.

Of course merely having such a law on the statute book is not the same as having such a law which has had its constitutionality upheld by judicial decision following a constitutional challenge in the courts. Particularly to be contrasted with the two American decisions referred to earlier are, therefore, two European decisions upholding the constitutionality of laws which protect the national flag and render breaches punishable by a fine or imprisonment. These two European decisions are of the courts of Italy and Germany, both being signatories to the ICCPR. The Italian decision is the one given on 14 July 1988 by the Corte Suprema di Cassazione, Italy's Supreme Court of Cassation, in *Re Paris Renato*, judgment No 1218, General Registry No 3355 of 1988. The German decision is the one given on 7 March 1990 by the Bundesverfassungsgericht, Germany's Federal Constitutional Court, in the *German Flag Desecration Case*, 81 Entscheidungen des Bundesverfassungsgerichts 278 (FRG).

As a further illustration of the diversity to be found around the world in these matters, I would refer to the relevant position in another of the nations about which we have been supplied information. Norway has no law criminalising the desecration of its own flag. But it has a law punishing (by a fine or up to one year's imprisonment) public insult in Norway to the flag or national coat of arms of a foreign nation. I might just mention that Japan is like Norway in that Japan, too, protects foreign flags and emblems within its jurisdiction without similarly protecting its own flag or emblems.

Finally in this connection, I would observe that there appears to exist considerable differences between the actual terms of the flag and emblem protection laws of the various nations which have such laws. I will illustrate this by one comparison. We have been shown a letter dated 25 June 1999 which the Procurator-General of Portugal was so helpful as to write to the Department of Justice here. The letter cites art 332(1) of the Portuguese Penal Code, giving this English translation of it: 'Anyone who by words, gesture, in writing or by any other means of public communication, desecrates the Republic, national flag or the national anthem the symbols or emblems of the Portuguese sovereignty, or in any

other way fails to pay them their due respect, shall be punished with a prison sentence of up to 2 years or with a pecuniary penalty of up to 240 days.'

It is of course no part of my function to engage in anything which even remotely resembles pronouncing upon the laws of other nations. But purely for the purposes of respectful comparison, I would merely observe that, on its face, that provision of the Portuguese Penal Code appears to criminalise a considerable number of things which our own flag and emblem protection laws do not criminalise.

Two coherent approaches

There are, as it seems to me, essentially two coherent approaches in this area of constitutional law. One approach would be to say that even though there are always far more effective ways of making a point than by desecrating the national or regional flag or emblem, such desecration, however boorish and offensive, should nevertheless be tolerated as a form of expression. The other approach would be to say that by reason of the reverence due to them for what they represent and because so protecting them would never prevent anyone from getting his or her point across in any one or more of a wide variety of ways, those flags and emblems should be protected from desecration.

While these two approaches lead to opposite results, they share certain similarities. Both accord respect to the national and regional flags and emblems. And both recognise that freedom of expression is not confined only to what is expressed but extends also to how it is expressed.

The test: reconcilability

When a matter of the present kind comes before the courts, the question is not which approach the judges personally prefer. It is whether the approach chosen by the legislature is one permitted by the constitution. This does not involve deference to the legislature. It is simply a matter of maintaining the separation of powers.

The legislature having chosen the approach which protects the national and regional flags and emblems from desecration — having so chosen by enacting laws which provide such protection — the question in the present case is whether those laws are constitutional. And the answer, as I see it, depends on whether such laws are reconcilable with the freedom of expression guaranteed by the constitution. The test is one of reconcilability.

Conclusion

I wholeheartedly share the determination of the learned judges of the Court of Appeal to uphold the freedom of expression. But I would allow

this appeal because I feel unable to say that the laws under challenge are irreconcilable with that freedom. Two things may overlap at the edges but by their nature remain at core essentially different. Thus a symbol such as a flag, emblem or totem impartially representing the whole of a group, be it a small band or a large nation, is inherently and essentially different, both in substance and form, from a statement conveying a specific message whether bland or controversial. It is natural for a society to wish to protect its symbols. And given the difference between symbols and statements to which difference I have referred, I am of the view that it is possible — even if by no means easy — for a society to protect its flags and emblems while at the same time maintaining its freedom of expression.

This is possible if its flag and emblem protection laws are specific, do not affect the substance of expression, and touch upon the mode of expression only to the extent of keeping flags and emblems impartially beyond politics and strife. In my view, our laws protecting the national and regional flags and emblems from public and wilful desecration meet such criteria. They place no restriction at all on what people may express. Even in regard to how people may express themselves, the only restriction placed is against the desecration of objects which hardly anyone would dream of desecrating even if there was no law against it. No idea would be suppressed by the restriction. Neither political outspokenness nor any other form of outspokenness would be inhibited.

In the course of her powerful address, counsel for the second respondent posed a rhetorical question. If these restrictions are permissible, where does it stop? It is a perfectly legitimate question. And the answer, as I see it, is that it stops where these restrictions are located. For they lie just within the outer limits of constitutionality. Beneath the national and regional flags and emblems, all persons in Hong Kong are — and can be confident that they will remain — equally free under our law to express their views on all matters whether political or non-political: saying what they like, how they like.

Sir Anthony Mason: I agree with the judgment of the Chief Justice.

Li CJ: The Court unanimously allows the appeal. The convictions and the binding over ordered by the magistrate are restored.

Reported by PY Lo

Appendix II

[English Translation - 英譯本]

HCMA 482/2013

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

MAGISTRACY APPEAL NO. 482 OF 2013

(ON APPEAL FROM ESCC NO. 918 OF 2013)

BETWEEN

HKSAR

and

KOO SZE YIU（古思堯） 1st Appellant

MA WAN KI（馬雲祺） 2nd Appellant

Before: Hon Derek Pang J in Court

Date of Hearing: 6 March 2014

Date of Judgment: 27 March 2014

JUDGMENT

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1. The two appellants ("D1" and "D2") were jointly charged with the offence of "attempting to desecrate the regional flag", contrary to section 7 of the Regional Flag and Regional Emblem Ordinance (No. 117 of 1997) ("Regional Flag Ordinance") and section 159G of the Crimes Ordinance, Cap 200 of the Laws of Hong Kong. They were convicted as charged after trial before Magistrate Mr Joseph To and were sentenced respectively to 4 months' imprisonment suspended for 2 years and 230 hours' community service. D1 and D2 now appeal the convictions and sentences.

Facts

2. On 1 April 2012, a demonstration and procession with the theme of "protesting against the Central Government for interfering with the election of the Chief Executive, and fighting for the early implementation of democratic universal suffrage" took place outside the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region in the Western District. It can be seen from the video clips from the police, the mass media and the internet, all of which had been produced by way of admitted facts, that D1 and D2, who were in a crowd of people, individually or jointly set fire to a flag of the Hong Kong Special Administrative Region with a lighter or burning newspaper. Police officers at the scene attempted to approach D1 and D2 to stop their act but were obstructed by other demonstrators. Eventually, the police managed to put out the fire by using fire extinguishing sprays. During the incident, part of the burning newspaper landed on the hand/arm of the flag bearer.

The trial

3. D1 and D2 did not dispute the facts of the case. They neither testified nor called any witness. They asked the Magistrate to declare that section 7 of the Regional Flag Ordinance was inconsistent with articles 27[1] and 39[2] of the Basic Law and article 16[3] of the Hong Kong Bill of Rights. Some of the arguments advanced by D1 and D2 at trial overlap some of the grounds of the present appeal, and later in this judgment I shall deal with them as necessary. Referring to the Court of Final Appeal judgment in *HKSAR v Ng Kung Siu & Another* (1999) 2 HKCFAR 442, the Magistrate ruled against D1 and D2 on all of their arguments and convicted them of the offence as charged.

The appeal against convictions

4. Two grounds of appeal have been advanced on behalf of the appellants. To facilitate discussion, I will first deal with ground (2), which contends that the Magistrate erred in holding that section 7 of the Regional Flag Ordinance was not unconstitutional.

Ground of appeal (2) — Part one

5. The above complaint in fact comprises two aspects. The first aspect, which was not put forward at trial and was relied on for the first time on appeal, relates to the entire article 16 of the Hong Kong Bill of Rights ("Bill of Rights"):

> "Article 16
>
> Freedom of opinion and expression
>
> (1) Everyone shall have the right to hold opinions without interference.
>
> (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive andimpart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art,or through any other media of his choice.
>
> (3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties andresponsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by lawand are necessary -
>
> (a) for respect of the rights or reputations of others; or
>
> (b) for the protection of national security or of public order (ordre public), or of public health or morals.
>
> [cf. ICCPR Art. 19]"

6. It is submitted on behalf of the appellants that in *Ng Kung Siu* the Court of Final Appeal focused only on article 16(2) and the restrictions imposed by article 16(3) on article 16(2) and overlooked what article 16(1) seeks to protect, namely, the right to hold opinions without interference. In other words, whatever view a person may hold towards the Regional flag, it is an absolute right conferred on that person by article 16(1) and not to be restricted by article 16(3). The criminalization of the desecrationof the regional flag under section 7 of the Regional Flag Ordinance is (it is submitted) tantamount to undermining or depriving a person of this absolute right by means of regulating with public powers the orthodox symbolic meaning of the regional flag and compelling members of the public to observe that symbolic meaning in what they say and do. Therefore, section 7 of the Regional Flag Ordinance has (it is submitted) contravened both the Bill of Rights and the Basic Law.

7. The grounds relied on to support this argument are as follows.

8. In respect of article 19 of ICCPR (the blueprint for article 16 of the Hong Kong Bill of Rights), the Human Rights Committee of the United Nations provided the following explanatory statementin General Comment No 34[4] which was published on 12 September 2011 ("General Comment 34"). It establishes the absolute nature of the right to hold opinions:

> "9. Paragraph 1 of Article 19 requires protection of the right to hold opinions without interference. This is a right to which the Covenant permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of Article 19, paragraph 1.
>
> 10. Any form of effort to coerce the holding or not holding of any opinion is prohibited. Freedom to express one's opinion necessarily includes freedom not to express one's opinion."

9. The appellants also rely on the decision of the Supreme Court of the USA in *Texas v Johnson* 491 US 397 (1989). J, the defendant in that case was a member of a group of demonstrators who assembled outside the venue of a Republican National Convention to protest against the policies of the US President. During that time, someone removed the USA flag from the flag pole; J took it, poured kerosene on it and set it on fire. The demonstrators then shouted "America, the red, white, and blue, we spit on you". As a result, J was charged with and convicted of desecrating the national flag. After a number of cross-appeals, the matter finally reached the Supreme Court of the United States. The Court held that the law of the state in question was inconsistent with what I refer to as the right to freedom of speech for short, as guaranteed by the First Amendment to the US Constitution[5], the reason being that this law was directed at the content of the message behind the burning of the flag and not merely at the mode by which the message was expressed, and furthermore, the nation was not entitled to foist its view of the flag on its subjects through the penal code:

> "[T]he state's asserted interest in preserving the flag as a symbol of nationhood and national unity does not justify the conviction since (a) the attempted restriction on expression is content-based ... and (b) although the state has a legitimate interest in encouraging proper treatment of the flag, it may not foster its own view of the flag by prohibiting expressive conduct relating to it and by criminally punishing a person for burning the flag as a means of political protest."[6]

10. The nation was not so entitled because the crux of the First Amendment was the protection of diversity:

> "Recognizing that the right to differ is the centerpiece of our First Amendment freedoms ... a government cannot mandate by fiat a feeling of unity in its citizens. Therefore, that very same government cannot carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol when it cannot mandate the status or feeling the symbol purports to represent."[7]

11. Dissatisfied with the judgment in *Texas v Johnson*,the Congress passed a Federal law protecting the national flag, but in a subsequent case Supreme Court of the United States held, for the same reasons, that the Federal law was unconstitutional: *United States v Eichman* 496 US 310 (1990).

12. The appellants further point out that, ten years ago, having considered the above two US cases and the judgment in *Ng Kung Siu*,the High Court of New Zealand ruled that the Flags Act of New Zealand was inconsistent with the freedom of speech: *Hopkinson v Police* [2004] 3 NZLR 704.

Discussion

13. As far as the interpretation of the Hong Kong Bill of Rights is concerned, there is no doubt that the General Comments issued by the UN Human Rights Committee provide assistance which is most direct and which carries considerable weight. This has been confirmed by decided cases[8]. Nevertheless, the passage in General Comment 34 quoted above is obviously directed at the criminalization of the holding of an opinion. For example, it would certainly be contrary to article 19.1 of ICCPR to provide that it was unlawful for a person to hold/not to hold a religious belief. On the other hand, the Comment does not point out what necessary relationship there is between article 19.1 (the right to hold opinions without interference) and article 19.2 (the right to freedom of expression) of ICCPR. Nor does it state that a restriction on the latter would jeopardize the former. Therefore, this Comment does not assist the appellants.

14. As far as American jurisprudence is concerned, I notice that, unlike ICCPR, the First Amendment draws no distinction between the right to hold opinions and the right to freedom of expression[9]. However, it appears that the Supreme Court of the United States did not equate the two. The fact that the act of burning the flag and the position expressed through the burning of the flag have been viewed in the same light in the case law does not mean that the freedom of expression and the right to hold opinions are to be regarded as one and the same. The relevant law was considered unconstitutional because it authorized the State to provide for its own definition of the so-called orthodox concept and to punish those of its subjects who by conduct expressed different views on the national flag. The relevant law was considered unconstitutional not because it required its subjects to feel deep veneration for the flag in all circumstances. The former touched only on the freedom of expression, while it is the latter that touched on the right to hold opinions.

15. I also notice some issues regarding statutory interpretation. In *Texas v Johnson*,the relevant state law defined "desecration" as any physical mistreatment which the actor knew would seriously offend those who observed or discovered the act:

> "[The] state statute ... defined desecration as the physical mistreatment of such objects in a way which the actor knows will seriously offend one or more persons likely to observe or discover the act."[10]

In other words, this law did not seek to protect the physical integrity of the national flag in all circumstances; what the law did was protect the national flag from impairments which would cause serious offence to others. This was also the reason why the law in question was regarded as content-based (what was the proper attitude that people should have towards the national flag?):

> "[T]he state's asserted interest in preserving the flag ... does not justify the conviction since (a) the attempted restriction on expression is content-based, and thus subject to the most exacting scrutiny, given that the flag-desecration statute is aimed not at protecting the physical integrity of the flag in all circumstances, but only against impairments that would cause serious offense to others, and is aimed at protecting onlookers from being offended by the ideas expressed by the prohibited activity ..."[11]

16. This is distinguishable from section 7 of the Regional Flag Ordinance, which provides as follows:

> "A person who desecrates the regional flag or regional emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it commits an offence and is liable -
>
> (a) on conviction on indictment to a fine at level 5 and to imprisonment for 3 years; and
>
> (b) on summary conviction to a fine at level 3 and to imprisonment for 1 year."

17. According to the analysis made by Li CJ in *Ng Kung Siu*,the word "desecrate" does not bear any specific or one-way meaning. On a literal interpretation, even the act of putting words of praise on the national/Regional flag would be an offence for it would constitute "scrawling on" the flag. Therefore, be it section 7 of the National Flag Ordinance (for short) or section 7 of the Regional Flag Ordinance, its purpose is simply to preserve the dignity of the national/regional flag against desecration in the broad sense of the word:

> "... it may well be that scrawling words of praise on the flags (as opposed to words of protest which is usually the message sought to be conveyed) would constitute offences within s.7 of both Ordinances, namely that of desecrating the flag by scrawling on the same. If this be right, then it would mean that the prohibition not only bans expression by this mode of a message of protest, but also other messages including a message of praise. But a lawseeking to protect the dignity of the flag in question as a symbol, in order to be effective, must protect it against desecration generally."[12]

18. Consistent with this, Bokhary PJ expressed the following views in his judgment:

> "... I am of the view that it is possible – even if by no means easy – for a society to protect its flags and emblems while at the same time maintaining its freedom of expression.
>
> This is possible if its flag and emblem protection laws are specific, do not affect the substance of expression, and touch upon the mode of expression only to the extent of keeping flags and emblems impartially beyond politics and strife. In my view, our laws protecting the national and regional flags and emblems from public and willful desecration meet such criteria."[13]

19. As to the origin of the dignity of the national/regional flag, Li CJ explained that the flag commands respect as it is the symbol of the Nation or the Special Administrative Region, and it is beyond dispute that both the Nation and the Special Administrative Region have a legitimate interest in protecting these symbols:

> "The society in the People's Republic of China, the country as a whole, including the Hong Kong Special Administrative Region, has a legitimate interest in protecting their national flag, the unique symbol of the Nation. Similarly, the community in the Hong Kong Special Administrative Region has a legitimate interest in protecting the regional flag, the unique symbol of the Region as an inalienable part of the People's Republic of China under the principle of 'one country, two systems'. The existence of these legitimate interests has not been challenged in argument before us."[14]

As a matter of fact, even the Supreme Court of the United States recognized such legitimate interests; it was only that a certain legal provision which purported to defend these interests had, in the Supreme Court's view, overstepped the line and was therefore unconstitutional.

20. I have thus far outlined the reasons for distinguishing between *Texas v Johnson*and *Ng Kung Siu*. I have not overlooked the problem that *US v Eichman* may give rise to. As pointed out above, the relevant Federal Act was designed to circumvent *Texas v Johnson* and therefore, taking an approach similar to that of section 7 of the National Flag Ordinance and the Regional Flag Ordinance, did not expressly provide that the prohibited act had to offend anyone. Still, the Act was held by the Supreme Court of the United States to be unconstitutional.

21. However, the summary of the judgment of that case[15] indicates that the above decision on unconstitutionality was based on the interpretation of the relevant Act by the Supreme Court. The Supreme Court was of the view that, even with the removal of the requirement that the conduct in question would cause offence to anyone, the Act was in substance still directed at the content of the message rather than the mode of expressing it. Simply put, the Act sought to prohibit any act done to the national flag which might express unpatriotic sentiments:

> "the Act, like the state statute in *Texas v Johnson*, improperly suppressed expression out of concern for its likely communicative impact, even though the Act contained no explicit content-based limitation on the scope of prohibited conduct, since (a) the Federal Government's stated desire to preserve the flag as a symbol of national ideals is implicated only when a person's treatment of the flag communicates a message that is inconsistent with those ideals, and (b) the statutory term describing the proscribed conduct ... connoted disrespectful treatment of the flag and suggested a focus on acts likely to endanger the flag's symbolic value, whereas the disposal exemption *[pertaining to worn or soiled flags]* protected acts traditionally associated with patriotic respect ..."

22. For this reason, the decision in *US v Eichman*does not have much referential value in Hong Kong. On the other hand, I am bound by the view expressed by the Court of Final Appeal that section 7 of the National Flag Ordinance and section 7 of the Regional Flag Ordinance do not bear any specific or one-way meaning but only seek to prohibit a certain mode of expression:

> "The prohibition of desecration of the national and regional flags by the statutory provisions in question is not a wide restriction of the freedom of expression. It is a limited one. It bans one mode of expressing whatever the message the person concerned may wish to express, that is the mode of desecrating the flags. It does not interfere with the person's freedom to express the same message by other modes."[16]

23. Finally, in *Hopkinson v Police*,a New Zealand case which should be described as neutral, the presiding High Court Judge France J considered the Hong Kong case of *Ng Kung Siu* and the aforementioned two US cases and concluded by pointing out that on this subject-matter there obviously was room for divergent views and that even the judgment in *Texas v Johnson*was only a majority judgment[17]:

> "... it is obvious that there is room for differing views. The United States Supreme Court, for example, was divided on the issue and the dissenting judgments in *Texas v Johnson* and the Hong Kong decision show the arguments for the view that prohibition of such conduct is a justified limit."[18]

No doubt, as far as the issue of flag desecration is concerned, subject to the principle that human rights shall be protected, individual jurisdictions can only be left to make their own judgments. [19]

24. In summary, I do not think the appellants' complaint is made out. General Comment 34 deals only with the criminalization of the holding of opinions, and the US Supreme Court cases have nothing to do with the right to hold opinions without interference. As they involve a different interpretation of the legal provisions, the US cases are of limited assistance in the analysis of the issue before me.

Ground of appeal (2) — Part two

25. I now turn to the defence which D1 and D2 raised at trial. It was not accepted by the Magistrate and is now raised again. The defence is that that there is sufficient room in the judgment of *Ng Kung Siu* to allow the lower courts of today(that is, 15 years later) not to follow the decision of that case. It is further argued that that decision is open to question as there have been more thorough discussions on the laws relating to legitimate restrictions on human rights since the time of that decision.

26. The specific submissions made on behalf of the appellants are set out below.

27. Li CJ pointed out in the aforesaid judgment that with the reunification of Hong Kong with the PRC, and under the principle of "one country, two systems", Hong Kong had become a Special Administrative Region and an inalienable part of the PRC, and accordingly, the legitimate interests in protecting the national and regional flags were within the concept of public order (*ordre public*):

> "As to the time, place and circumstances with which we are concerned, Hong Kong has a new constitutional order. On 1 July 1997, the People's Republic of China resumed the exercise of sovereignty over Hong Kong being an inalienable part of the People's Republic of China and established the Hong Kong Special Administrative Region under the principle of 'one country, two systems'. The resumption of the exercise of sovereignty is recited in the Preamble of the Basic Law, as 'fulfilling the long-cherished common aspiration of the Chinese people for the recovery of Hong Kong'. In these circumstances, the legitimate societal interests in protecting the national flag and the legitimate community interests in the protection of the regional flag are interests which are within the concept of public order (*ordre public*)."[20]

28. As to why Li CJ had to mention time, place and circumstances, one has to read the passage immediately preceding the above extract. There, having referred to the relevant authorities, including "Permissible Limitations on Rights"[21]by Professor Kiss, Li CJ accepted that public order was an imprecise concept which varied with time, place and circumstances:

> "The following points can be drawn from the materials referred to above. First, the concept is an imprecise and elusive one. Its boundaries cannot be precisely defined. Secondly, the concept includes what is necessary for the protection of the general welfare or for the interests of the collectivity as a whole. Examples include: prescription for peace and good order; safety; public health; aesthetic and moral considerations and economic order (consumer protection, etc). Thirdly, the concept must remain a function of time, place and circumstances." [22]

29. Therefore, in his article "Basic Law and Constitutional Review: The First Decade", Professor Johannes Chan Man-mun, SC (Hons) pointed outthat the above view might suggest that the offence of desecrating the national/regional flag was only justified in the early stage of the establishment of the Special Administrative Region and might not be justifiable long after its establishment:

> "This is a rather odd formulation, as it suggests that while the offence of desecration of national *[and regional]* flag*[s]* may be justified at the early days of the establishment of the HKSAR, it may not be justifiable long after the HKSAR has been established."[23]

30. On that basis, the appellants further submit that since *Ng Kung Siu*, Hong Kong has undergone significant changes in various aspects — the rule of law is under threat, senior government officials are corrupt, public confidence in such matters as the implementation of "one country, two systems", high autonomy, democratization of the political system and protection of human rights has suffered a considerable setback. As a result of these regressions, the regional flag has lost much of its symbolic meaning in the eyes of Hong Kong people, and the importance of the government's legitimate interests in protecting the regional flag has gradually diminished (if not completely gone). Such public order, which has changed with time and circumstances, should no longer be regarded as capable of supporting the argument that section 7 of the Regional Flag Ordinance is not unconstitutional.

31. The appellants also submit that in a subsequent case *Leung Kwok Hung & Others v HKSAR* (2005) 8 HKCFAR 229, the Court of Final Appeal clearly set out the essential conditions to be satisfied before a right could be lawfully restricted[24]. Subsequent thereto, the UK House of Lords made some additional observations in this respect: *Huang v Secretary of State for the Home Department* [2007] 2 AC 167[25]. The appellants submit that Professor Kiss[26] and Professor Nowak[27] have expressed mutually consistent views, namely that public order must operate in a legal framework which has incorporated fundamental human rights; further, the concept of public order *per se* requires respect for human rights in the exercise of public powers.

32. The appellants further submit that General Comment 34 referred to above has laid down stringent requirements on the restrictions permitted by article 19.3 of ICCPR, i.e. article 16(3) of the Bill of Rights. The same document also points out that it was the court's duty to evaluate public order and that the court should not attach any weight to the views of the legislature. It is submitted that the above matters cast doubt on the correctness of the decision in *Ng Kung Siu*,and that the court should give a remedial interpretation to section 7 of the Flag Ordinance by reading into it a lawful excuse for desecrating the regional flag, namely "promotion of multi-party democracy and human rights", so that the section does not contravene the Basic Law and the Bill of Rights.

Discussion

33. The decision in *Ng Kung Siu* is directly relevant to articles 16(2) and 16(3) of the Bill of Rights. I accept with respect and am bound by the reasons for judgment of the Court of Final Appeal in that case. Therefore, I find neither necessity nor room for a detailed consideration of this part of the appellants' submissions.

34. It only remains for me to mention that, in the context of the relevant issue, the so-called time, place and circumstances in relation to public order should refer to the new constitutional order that governs Hong Kong and not anything else. This can clearly be seen from the passage, quoted in paragraph 27 above, from the judgment given by Li CJ. In that part of the judgment, Li CJ made no reference to non-constitutional matters such as the prevalent feelings and patriotic sentiments of the Hong Kong residents. He only mentioned that the PRC resumed the exercise of sovereignty over Hong Kong and established the Hong Kong Special Administrative Region under the principle of "one country, two systems", and that Hong Kong was an inalienable part of the PRC. Of course, he also pointed out that according to the Preamble of the Basic Law, the resumption of the exercise of sovereignty was the common historical aspiration of the Chinese people, not just Hong Kong residents. As long as the Basic Law continues to take effect, I cannot see how public order, so defined, can be affected by possible changes in social circumstances.

35. This position can be said to have been affirmed in a more recent Court of Final Appeal case of *Democratic Republic of the Congo & Others v FG Hemisphere Associates LLC* (2011) 14 HKCFAR 95:

> "319. The desire for national reunification and territorial integrity is an important theme underlying China's recovery of Hong Kong. This was recognized by this Court in the case concerning desecration of the national flag."

Ground of appeal (1)

36. This ground complains that the Magistrate erred in adding his personal views to his decision. In other words, he foisted his own views of the orthodox symbolic meaning of the regional flag on members of the public.

Discussion

37. The Magistrate's remarks which form the subject of the appellants' criticism are set out in paragraphs 50 to 59 of his Statement of Findings:

> "50. It is the view of the court that, apart from domestic law and order, *ordre publica*lso covers considerations of satisfying collective needs, foreign or external conduct and public well-being. Therefore, the court must further consider the internal and external meaning of the regional flag following the handover of Hong Kong.
>
> 51. Over the past 16 years, under the regional flag, athletes of the Special Administrative Region have participated in international sporting events and achieved remarkable successes. Also under the regional flag, political and economic officials of the Special Administrative Region have attended international conferences, striving to promote the well-being of the people of the Region.
>
> 52. Furthermore, the efforts made jointly and collectively by people of the Special Administrative Region during the past 16 years for the sake of public well-being are recognized and endorsed by the international community. There is no denying that the Special Administrative Region is a major international financial hub. The Financial Development Report of the World Economic Forum in both 2011 and 2012 ranked the Special Administrative Region the world's first. The Region was rankedthird in the global competitiveness index in 2013. More importantly, the Region was ranked No.13 among the 186 countries/territories around the world in theHuman Development Index published by the United Nations in 2013, with Singapore ranked No.18 and the UK No.26. The Region was ranked No.24 in the same Index in 2007.
>
> 53. The court is of the view that, over the past 16 years, the regional flag has acquired obvious significance externally. It symbolizes the efforts and contributions that countless Hong Kong people have made towards the well-being of the public.
>
> 54. Internally, over the past 16 years the number of processions and assemblies had risen exponentially from 1,190 in 1997 to 7,529 last year, many of which involved political issues.
>
> 55. One cannot ignore the presence of different or even rival camps in processions and assemblies. Desecrating the regional flag is not necessarily agreeable to all those who take part in processions and assemblies.
>
> 56. The court is of the view that, in the absence of legislation to protect the regional flag, the act of desecrating the flag may result in conflicts in breach of peace. The criminalization of the desecration of the flag, so that such cases will be dealt with by the police and the court, can effectively reduce the risk of such conflicts.
>
> 57. The defence recognizes that when public officers of the Special Administrative Region died in the course of performing their duties, their coffins would be draped with the regional flag. Recently, a senior fireman and a young team member sacrificed their lives to save others. The regional flags were draped over their coffins, symbolizing the respect all Hong Kong people had for them and conveying the message that there were brave souls under the flags.
>
> 58. The court is of the view that the regional flag has over the past 16 years acquired a strong symbolic meaning representing the spirit of the people.
>
> 59. The court finds that the abovementioned changes in time and internal and external circumstances lend further support to the constitutionality of the legislation which protects the regional flag."

38. In this judgment, I do not propose to comment on the validity or otherwise of the Magistrate's observations, just as I will not comment on the appellants' views of the current social or political situation. There is indeed no need to do so, being an exercise in which different people will come up with different conclusions. As I have pointed out in paragraph 34 above, as far as public order is concerned, the only consideration relevant to the protection of the regional flag is the fact that, in contrast to the past, Hong Kong is now governed by a new constitutional order which will be sustained by virtue of the Basic Law. Therefore, although the Magistrate had indeed taken too much into consideration, it was not such as to affect the decision in the present case.

The appeal against sentences

Reasons for sentence

39. Based on the analyses given by Li CJ and Bokhary PJ of the National Flag Ordinance and the Regional Flag Ordinance (see the passages quoted in paragraphs 17 and 18 above), the Magistrate was of the view that the legislative intent of the Ordinances was to protect the neutrality of the flags so that they would not be embroiled in politics, so as to fully and effectively protect the dignity of the national/regional flag.[28] For this reason, he rejected the plea for mitigation put forward by the two appellants on the ground of civil disobedience (a political means).

40. The Magistrate considered that there were three aggravating factors in the present case: (1) at the time of the incident, D1 and D2 were surrounded by a number of demonstrators, thereby obstructing the police in the execution of their duties; (2) as a result of the aforesaid conduct, there was at one stage pushing and shoving between the parties, and fortunately no one was injured as a result; (3) sparks had actually landed on the hand/arm of a third party in the course of the incident, and the risk of someone getting burnt was no longer theoretical.

41. In the result, the Magistrate delivered the following judgment on sentence:

> "The first defendant
>
> 81. The first defendant is now 67 years of age. His wife and 14-year-old son are residing on the Mainland.

82. The defendant has been residing in a unit in a commercial building for the last 10 years. The unit is mainly used for storing items to be used in demonstrations. The defendant is only required to pay electricity charges of approximately $200 each month and is not required to pay any rent.

83. The defendant gave up his job of a vessel technician in 1989 and since then has actively taken part in social movements. He says he works as a decoration worker intermittently, earning $5,000 to $10,000 per month.

84. At the time of the offence, the first defendant had 7 conviction records (the 8th conviction against him does not fall to be considered for present purposes) in respect of a total of 13 offences, including offences similar to the present one.

85. The courts had previously given the defendant chances by imposing a fine for his act of desecrating the flag. However, he has records of breaching orders for binding over to be of good behaviour and orders for suspended sentences.

86. In light of the facts of the case, in particular the aggravating factors and the background of the first defendant, the court is of the view that the appropriate sentence should be imprisonment for approximately 6 months.

87. Having committed the offence being subject of the present case, the first defendant committed similar offences on 10 June 2012 and 1 January 2013 (See *HKSAR v Koo Sze Yiu* HCMA 185/2013). In that case, the first defendant was sentenced on 7 February 2013 to imprisonment pending appeal, and the appeal procedure came to a conclusion on 13 May 2013.

88. The present offence was committed on 1 April 2012. The prosecution preferred the charge against him in March of this year (i.e. after the first defendant had been sentenced to imprisonment). It can be deduced from the defendant's criminal record that when he attended court in respect of the present case on 3 June, it was shortly after he completed serving his prison sentence.

89. In view of the above, the court cannot rule out the possibility that, had the offences on 1 April 2012, 10 June 2012 and 1 January 2013 been dealt with together, part of the sentence for the present offence might, having regard to the totality principle, have been ordered to run concurrently with those for the 10 June 2012 and 1 January 2013 offences.

90. The court appreciates that in the present case the prosecution had met with considerable difficulty dealing with the video clips obtained from the internet. That said, the fact that the three cases against the first defendant were not dealt with together was in no way caused by any fault on his part.

91. This being the case, the court can consider disposing of the case by way of suspended sentence (see *HKSAR v Chiu Peng, Richard* [2002] 1 HKC 401).

92. On the above analysis, and in view of the fact that the first defendant has already been detained for two weeks, the court is of the view that the appropriate sentence is 4 months' imprisonment, suspended for two years.

The second defendant

93. The second defendant is now 19 years old. He worked at a convenience store for six months in 2011 after completing Form 5 education. From April 2012 on, he worked as an assistant in a political organization, earning a monthly salary of $9,500.

94. As at the time of the offence, the second defendant had no criminal record, although he was fined $2,000 in September 2012 for one count of unlawful assembly.

95. All aggravating factors referred to above also apply to the second defendant.

96. The court takes the view that the age of 19 is not so young as to justify treating the second defendant as a person of a tender age of 15 or below.

97. Unlike the first defendant, no special circumstances exist in relation to the second defendant.

98. On the basis of the information before me, this court will dispose of the case against the second defendant by way of a community service order.

Conclusion

99. The first defendant is sentenced to 4 months' imprisonment, to be suspended for two years.

100. Taking into account the time already spent by the second defendant in custody, the second defendant is ordered to complete 230 hours of community service."

Discussion

42. With respect, the Magistrate had in my view misunderstood the Court of Final Appeal judgment. By their remarks, Li CJ and Bokhary PJ intended to point out that the provisions of the National Flag Ordinance and the Regional Flag Ordinance were neutral and imposed a narrow restriction which affected only the mode of expressing a message and not the content of the message and were therefore not unconstitutional. This decision has nothing to do with sentencing considerations. Nor does it provide a reason for rejecting civil disobedience as a mitigating factor.

43. The UK House of Lords case of *R v Jones (Margaret) & Others* [2007] 1 AC 136, which is cited by the appellants, sets out the history and value of civil disobedience in the UK. Lord Hoffmann had this to say:

"89. My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind."

Nonetheless, the above passage is only a small part of Lord Hoffmann's judgment. In the rest of the judgment, he rather severely criticized the defendants for turning a court of law into their political platform by breaking the law. In fact, Lord Hoffmann pointed out that the so-called "civil disobedience" possesses certain characteristics, for example, the actions are restrained without causing excessive damage or inconvenience, and the protesters demonstrate the sincerity of their beliefs by not putting up a defence in court:

> "But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account."

44. This shows that those who have broken the law in pursuit of their beliefs are not necessarily to be given lenient sentences. It all depends on the circumstances of each case. If the facts of the case and the consequences of the offence are not serious, the defendant should naturally be given clemency; otherwise no leniency should be given. However, this is in fact no different from the ordinary sentencing principles — the defendant's motive, *modus operandi*, consequences, and impact on the society are all factors to be considered. Therefore, in my view, little purpose will be served by treating civil disobedience as a distinct mitigating factor. This is my conclusion on this subject.

45. As to the gravity of the circumstances of the present case, I make the following observations: (1) The video clips show that no accelerant such as kerosene had been poured on either the newspaper that was used as fire starter or the regional flag that was burnt; otherwise, the fire would have flared up at once. (2) There is no evidence that anyone had actually been injured. (3) There is no evidence that the demonstrators who obstructed the police were not acting spontaneously but in concert with D1 and D2. Of course, it is absolutely dangerous to (try to) set fire to something in a crowded place; worse still if this causes the crowds to kick up a commotion, thereby bringing about other dangers. The point is, for the purpose of accurately determining the gravity of the present case, the abovementioned three features cannot be overlooked.

46. The final matter for discussion is the sentence for each of the two appellants. As the Magistrate pointed out, prior to the present case D1 had a previous record of 7 convictions in respect of 13 offences, all of which, in my understanding, arose from protests, demonstrations and processions. One of these convictions was for the same offence as that in the present case. It took place in 2002 and the case was disposed of simply by way of a fine. In other words, it was after 10 years that D1 again committed the present offence of desecrating the regional flag, and his previous breaches of bind-over orders and suspended sentences had nothing to do with flag desecration. This being the case, coupled with my view that the facts of the case are not as serious as the Magistrate described it, the sentence of 4 months' imprisonment (the Magistrate even adopted 6 months as the starting point) is manifestly excessive and should be varied to 2 months. Furthermore, but for the time needed to collect evidence, the present case could have been heard together with the subsequent flag-burning case (see paragraphs 87 to 91 of the Magistrate's Statement of Findings). Therefore, the sentence should not be suspended for as long as 2 years; the period of suspension can be halved, i.e. reduced to one year.

47. D2 was aged only 19 at the time of the offence and had a clear record. Before passing sentence, the Magistrate remanded him in custody pending a series of suitability reports including training centre, detention centre, rehabilitation centre, community service and probation reports. He was only released on the following day upon being granted bail by the High Court on an urgent basis. Furthermore, the 230-hour community service is only 10 hours short of the statutory maximum and almost triple the low number of hours (80 hours at most) originally recommended by the probation officer. This is absolutely excessive and wholly disproportionate to the appellant's background, the nature of the offence and the facts of the case. To bring the matter to an end, the best approach now is to vary the length of community service order to 110 hours, which is the number of hours D2 has already served.

Decision

48. The appellants' appeals against convictions are dismissed. Their appeals against sentences are allowed. The sentence for D1 is varied to 2 months' imprisonment, suspended for one year. The sentence for D2 is varied to 110 hours of community service.

(Derek Pang)
Judge of the Court of First Instance

Mr. David Leung, Deputy Director of Public Prosecutions and Mr Andrew Li, Senior Public Prosecutor of the Department of Justice, for the Respondent/HKSAR.

Mr. Martin Lee, SC and Mr Carter Chim, instructed by Messrs. Cheung & Co., JCC Solicitors, for the 1st and 2nd Appellants.

Translated by the Judgment Translation Unit of the Judiciary and vetted by Mr. Edmund Cham, Solicitor

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[1] Freedom of speech.

[2] The provisions of The International Covenant on Civil and Political Rights ("ICCPR") as applied to Hong Kong shall remain in force.

[3] The right to hold opinions without interference and the right to freedom of expression.

[4] UN Human Rights Committee, "General Comment No 34, Article 19, Freedoms of Opinion and Expression", 12 September 2011, CCPR/C/GC/34.

[5] The original text of The First Amendment is: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[6] 491 US 397, end of the Summary.

[7] 491 US 401, the Supreme Court confirmed the observation of the state appellate court.

[8] *The Queen v Sin Yau Ming* [1992] 1 HKCLR 127; *Fok Lai Ying v Governor in Council & Others* [1997] HKLRD 810.

[9] See footnote 5.

[10] 491 US 397, Summary.

[11] See footnote 6. This is a complete version of the first half of the same passage.

[12] (1999) 2 HKCFAR 442 at 456G-H.

[13] *Ibid*, at 468A-C.

[14] *Ibid*, at 447E-G.

[15] Summary, 496 US 310.

[16] *Ibid*, at 456F-G. It should be noted that the Court of Final Appeal was not unaware of the two US cases mentioned above. They were mentioned by Bokhary PJ in his judgment.

[17] A 5:4 majority. The four US Supreme Court Judges (including the Chief Justice) who did not consider the relevant law unconstitutional pointed out that the law only restricted J's mode of expression, which was one of many modes of expression. The reasoning is extremely similar to that given by the Court of Final Appeal in *Ng Kung Siu.* Furthermore, as a matter of fact, the judgment in *US v Eichman* was also only a 5:4 majority judgment.

[18] [2004] 3 NZLR 704 at 716, paragraph 73 of the judgment.

[19] The New Zealand High Court pointed out, as did the Court of Final Appeal in *Ng Kung Siu*, that quite a number of democratic countries have laws in place to protect the national flag from being desecrated.

[20] *Ibid*, at 460B-D.

[21] See Henkin (ed), *The International Bill of Rights 1981*, p.301.

[22] *Ibid*, at 459I to 460A.

[23] (2007) 37 HKLJ 407, bottom of page 429.

[24] Paragraph 36 of the judgment.

[25] Paragraph 19 of the judgment.

[26] See paragraph 27 above.

[27] Author of the *UN Covenant on Civil and Political Rights: CCPR Commentary.*

[28] This is my understanding of paragraphs 74 to 76 of the Magistrate's Statement of Findings.

Hopkinson v Police

High Court Wellington CRI 2004-485-23
18 May; 23 July 2004
France J

Crimes – Offences – Flag burning – Whether flag burning protest dishonoured the flag – Flags, Emblems, and Names Protection Act 1981, s 11(1)(b).

Constitutional law – New Zealand Bill of Rights Act 1990 – Relationship between freedom of expression and flag protection legislation – Meaning of "dishonour" – New Zealand Bill of Rights Act 1990, s 6.

The accused was protesting in Parliament grounds against Australian support of United States action in Iraq. At the time of the protest the Australian Prime Minister was visiting. As part of the protest the accused attached a New Zealand flag upside down to a pole, doused it in kerosene and lit it. The flag was consumed in a fireball. The singed pole was extinguished. No member of the public was harmed.

The accused was convicted of destroying the New Zealand flag with the intention of dishonouring it under s 11(1)(b) of the Flags, Emblems, and Names Protection Act 1981.

Held: 1 The conduct of the appellant fell within the natural meaning of "dishonour" under the Flags, Emblems, and Names Protection Act 1981. The prohibition of this conduct amounted to a prima facie breach of the right to freedom of expression. While the objective of preserving the flag as a symbol of national unity and preventing breaches of the peace were legitimate, s 11 of the Flags, Emblems, and Names Protection Act 1981 was not a proportional and rational way to protect that interest (see paras [39], [41], [50], [77]).

Texas v Johnson 491 US 397; 105 L Ed 2d 342 (1989) referred to.

HKSAR v Ng Kung-Siu (1999) 8 BHRC 244; 3 HKLRD 907 referred to.

Board of Education v Barnette 319 US 624; 87 L Ed 1628 (1943) referred to.

2 Given the fact that on its natural and ordinary meaning s 11 of the Flags, Emblems, and Names Protection Act 1981 was not a justified limit on freedom of speech, s 6 of the New Zealand Bill of Rights Act required the Court to determine whether s 11 could be read consistently with the rights protected. This was possible as "dishonour" in s 11(1)(b) could be read as requiring "vilification" of the flag. This interpretation was adopted. The conduct of the appellant did not amount to vilifying the flag (see para [81]).

Result: Appeal allowed.

Observation: The five-step approach outlined by the Court of Appeal in *Moonen* was not a prescriptive one and other approaches were available in Bill of Rights cases. In the present case it was appropriate to consider whether the

conduct of the appellant fell within the natural meaning of the statute, then to ask whether there is prima facie inconsistency with the New Zealand Bill of Rights Act and if so to determine whether the limit imposed is a justifiable one. If it is not then it must be determined whether the statute can be read consistently with the New Zealand Bill of Rights Act and if it cannot then the natural meaning must prevail on the basis that s 4 of the New Zealand Bill of Rights Act applies (see paras [27], [28]).

Moonen v Film and Literature Board of Review [2002] 2 NZLR 754 (CA) referred to.

Other cases mentioned in judgment

Lange v Atkinson and Australian Consolidated Press New Zealand Ltd [1997] 2 NZLR 22.

Moonen v Film and Literature Board of Review [2000] 2 NZLR 9 (CA).

US v Eichman 496 US 310; 110 L Ed 2d 287 (1990).

Application from conviction

This was an appeal by Paul Barry Hopkinson from conviction in the District Court for destroying the New Zealand flag with the intention of dishonouring it under s 11(1)(b) of the Flags, Emblems, and Names Protection Act 1981.

A Shaw for Hopkinson.

C Mander for the Crown.

Cur adv vult

FRANCE J.

Table of contents

	Para no
Introduction	[1]
Facts	[4]
Statutory scheme	[9]
Grounds of appeal	[18]
Approach to Bill of Rights	[19]
Does conduct fall within natural meaning?	[29]
Prima facie inconsistent?	[41]
A justified limit?	[43]
Ability to read consistently?	[78]
Declaration of inconsistency	[83]
Appeal against sentence	[84]
Result	[85]

Introduction

[1] After a defended hearing, Paul Hopkinson was convicted on 6 November 2003 of an offence against s 11(1)(b) of the Flags, Emblems, and Names Protection Act 1981 of destroying the New Zealand flag with the intention of dishonouring it. On 12 February 2004, Mr Hopkinson was convicted and fined $600 and ordered to pay Court costs of $130.

[2] The charge followed a protest in Parliament grounds at the New Zealand Government's hosting of the Australian Prime Minister against the background of Australia's support of the United States in its war against Iraq.

[3] The appellant appeals against conviction and sentence. The appeal raises questions about the effect of the New Zealand Bill of Rights Act 1990 and, in particular, the appellant's right to freedom of expression and of peaceful assembly under ss 14 and 16 of that Act, on the offence provision in s 11(1)(b) of the Flags, Emblems, and Names Protection Act.

Facts

[4] The facts are set out in the decision of the District Court delivered on 6 November 2003. The District Court Judge notes that on 10 March 2003 a crowd, estimated on various accounts at between 500 and 1000 people, marched through downtown Wellington and assembled in Parliament grounds to protest at the New Zealand Government hosting the Australian Prime Minister, Mr Howard, to lunch given Australia's support of America in the war against Iraq.

[5] Observing that there was general agreement on the facts, the Judge noted that the appellant was one of the organisers of the protest. His evidence was that he had several political points to make on the occasion of Mr Howard's visit including the New Zealand Government's involvement in pre-war sanctions against Iraq, and the government welcome to Mr Howard when he supported the American invasion of Iraq.

[6] The Judge notes that flag burning as a form of protest was discussed by the appellant with others. By arrangement he bought a New Zealand flag and took that with him. The flag was attached to a pole upside down as a sign of distress. The Judge noted that this is a legitimate distress signal in nautical circles but the appellant said he hung the flag in this way to demonstrate the flag was in distress because of what the Government was doing. Another protester, Mr McNeill, arrived by arrangement with a similar-sized Australian flag and another protester had a smaller New Zealand flag. The arrangements were made to burn the flags. Essentially, kerosene was poured on the flags to soak them and then the flags were lit. The appellant said the small flag was lit first. The appellant and Mr McNeill, side by side, held the poles out in front of them horizontally and with the tips together. Another protester, Mr Phillips, with a cigarette lighter supplied by Mr Hopkinson lit the flags. Immediately following ignition, Messrs Hopkinson and McNeill raised the flags vertically with their hands at the bottom of the poles at about chin height.

[7] The Judge notes that the result was "quite spectacular" with a brief fireball about 1 – 2m across followed by a brief column of flame about 2m high, with a tower of black smoke above. The flags were consumed almost immediately and the singed ends of the poles were extinguished on the grass.

[8] No member of the public was harmed.

Statutory scheme

(i) The New Zealand Bill of Rights Act 1990

[9] For present purposes, the relevant provisions are ss 4, 5, 6, 14 and 16 of the Bill of Rights. Sections 14 and 16 protect the substantive rights involved, that is, the right to freedom of expression (s 14) and the right to freedom of peaceful assembly (s 16).

[10] Section 4 of the Bill of Rights provides that the Court cannot hold any provision of an enactment to be impliedly repealed or revoked or to be in any way invalid or ineffective, or to decline to apply any provision of an enactment, "by reason only that the provision is inconsistent with any provision" of the Bill of Rights.

[11] Section 5 sets out the extent to which rights in the Bill of Rights may be limited, that is, only by such "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

[12] Section 6 directs an interpretation consistent with the Bill of Rights to be preferred and applies "wherever an enactment can be given a meaning that is consistent with the rights and freedoms" in the Bill of Rights.

(ii) The Flags, Emblems, and Names Protection Act 1981

[13] Section 11, the offence provision, provides first, in subs (1), that it is an offence to:

> (a) without lawful authority, alter[s] the New Zealand flag by the placement thereon of any letter, emblem, or representation.

[14] Secondly, in terms of s 11(1)(b), every person commits an offence who:

> in or within view of any public place, uses, displays, destroys, or damages the New Zealand flag in any manner with the intention of dishonouring it.

[15] For the purposes of s 11, the New Zealand flag means any flag of the design depicted in the Schedule to the Act or any other design that so closely resembles it as to be likely to cause any person to believe that it is the design depicted in the Schedule.

[16] Section 11(3) provides in any prosecution for an offence against this section the onus of proving that any alteration of the New Zealand flag was lawfully authorised shall be on the defendant.

[17] Prosecutions under s 11 require the consent of the Attorney-General (s 25).

Grounds of appeal

[18] The points on appeal state the following grounds:

(a) The entire structure of the District Court's analysis is wrong and led to major misdirections of law.

(b) The Judge misinterpreted the mental element of the offence, namely, the words "with the intention of dishonouring it".

(c) The findings of fact cannot justify the inference that "one of [the appellant's] intentions was to disrespect the New Zealand flag".

(d) The finding that the mental element of the offence was proved is unreasonable or cannot be supported having regard to the evidence.

(e) The Judge erred in ruling that "the prohibition on flag burning with the intention of dishonouring it is justifiable in a free and democratic society". In relation to this, the appellant via the points of appeal seeks a declaration or indication that s 11(1)(b) of the 1981 Act is inconsistent with the appellant's rights under ss 14 and 16 of the Bill of Rights, and does not constitute a justified limitation in terms of s 5 of that Act. A declaration or indication is also sought that the section breaches the appellant's rights under arts 19(2) and 21 of the International Covenant on Civil and Political Rights and is not justified under art 19(3) or art 21.

(f) As a tentative point, the appellant contends that the decision of the Attorney-General to consent to the laying of the information was unlawful and/or unreasonable. This matter was not pressed at the hearing of the appeal.

(g) The sentence is manifestly excessive.

Approach to Bill of Rights

(i) The appellant's submissions

[19] The appellant submits that the District Court Judge wrongly approached *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 and misinterpreted the mental element. The appellant argues that while the District Court Judge purported to apply *Moonen*, he did not do so essentially because he started with a consideration of s 11(1)(b) and not with a consideration of the rights involved. The overall submission is that the Judge has not adopted a rights-centred approach.

[20] In this context, the appellant emphasises the importance of freedom of expression and particularly that of political expression with reference, for example, to the following observation of Elias J (as she then was) in *Lange v Atkinson and Australian Consolidated Press New Zealand Ltd* [1997] 2 NZLR 22 at p 46:

> "In a system of representative democracy, the transcendent public interest in the development and encouragement of political discussion extends to every member of the community."

[21] The appellant submits that however offensive, shocking, obnoxious, upsetting and challenging the appellant's actions may appear in the eyes of some or even the majority of New Zealanders, his act of burning the flag was symbolic political speech in a free and democratic society fully protected by ss 14 and 16 of the Bill of Rights.

[22] The error in approach to s 6 of the Bill of Rights, the appellant says, is that the Judge has treated s 11(1)(b) as only having one meaning when, in fact, it is susceptible of a broad range of tenable meanings. Although not explicit, the appellant says that the District Court Judge appears to have adopted the meaning of "disrespecting" as equating with "dishonouring".

[23] The appellant submits that the Court should interpret "dishonouring" in its sense of "defiling" and imputing an active and lively sense of shaming and/or a deliberate act of callousness. Examples of such conduct might include intentionally urinating on the ashes of the flag or knowingly blowing one's nose on it.

(ii) Submissions for the respondent

[24] The submission for the respondent is that an analysis of the statutory scheme leads to the conclusion that there is only one tenable meaning of "dishonour", that is, being to deliberately treat it with "disrespect" or "to treat without honour or respect". Accordingly, it is submitted that the District Court Judge has correctly approached the Bill of Rights.

[25] By passing the Flags, Emblems, and Names Protection Act, it is submitted that Parliament expressly recognised the flag to be the symbol of the New Zealand Government and people. The respondent argues that the statute is legislative acknowledgment of the esteem and respect with which the flag is to be held. Its significance is as a symbol of statehood and the allegiance of New Zealand citizens to their country.

[26] The submission is that in passing s 11, the intention was to give a wide protection to the flag from persons who might otherwise abuse or vandalise it. Section 11(1)(b) created a new offence. Paragraph (a) of that subsection made it an offence to alter the flag by various ways. The precursor to para (a) was s 5(4) of the Shipping and Seamen Act 1952. It is submitted that it is apparent that in enacting s 11(1)(a) Parliament sought to widen that offence provision by replacing the term "defaces" with the word "alters".

(iii) Discussion

[27] To the extent to which there is criticism of the use of s 11(1)(b) as the starting point, I do not accept the appellant's submission. The Court of Appeal in *Moonen* made it clear that its five-step approach to interpretation in terms of s 6 of the Bill of Rights was not a prescriptive one. That was clear enough in *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 but was further emphasised in *Moonen v Film and Literature Board of Review* [2002] 2 NZLR 754. The Court of Appeal in the later *Moonen* case resisted the invitation to revisit the five-step approach but emphasised the approach was not prescriptive: " 'May' means may. . . Other approaches are open" (para [15]). The issue is whether, whatever process was used, the Court interpreted the offence provision consistently with the Bill of Rights so as to give effect to the rights in question.

[28] The approach I take is to consider, first, whether the conduct of the appellant falls within the natural or applied meaning of s 11(1)(b), and in particular that of "dishonour". Then, to ask whether the prohibition of that conduct is prima facie inconsistent with the Bill of Rights. If it is, is it a justified limit? If not, the next step is to ask whether the section can be read consistently. If it can, it should be read in that way. If it cannot, then the natural or applied meaning has to be given effect to but on the basis that s 4 of the New Zealand Bill of Rights applies.

Does conduct fall within natural meaning?

[29] Under this head, it is appropriate to consider the appellant's arguments that the factual findings do not justify the inference that one of the appellant's intentions was to disrespect the flag, and the reasonableness of the finding as to the mental element (grounds (c) and (d) in the points on appeal, para [18] above). The appellant says that the Court below does not explicitly state from which findings of fact the Judge drew the inference that "one of [the appellant's] intentions was to disrespect the New Zealand flag" (para [24] of the District Court judgment).

[30] The appellant submits that none of the findings of fact whether taken singly or in combination entitled the Court to draw this inference. Or, it is said, the Court's conclusion was not a reasonable one.

[31] The appellant also observed that there are many ways of destroying the flag. Burning a flag is in fact the only honourable way of destroying it according to flag etiquette. In that regard, the appellant refers to the provisions of the US Flag Code (4 USCS § 8; August 12 1998, PL 105-225, § 2(a) 112 Stat 1497) as illustrative of internationally accepted practice in the destruction of flags.

[32] It is further submitted that to hold that the mere act of burning the flag can give rise to an intention of dishonouring it is to engage in a form of res ipsa loquitur reasoning that is inappropriate in the context of a criminal statute.

[33] The Crown submission is that the learned District Court Judge was entitled to make the finding that at least one of the appellant's intentions was to disrespect the flag. Alternatively, it is submitted that whether the wider concept of "disrespect" or concepts of "shaming", "impugning", or "vilifying" are applicable to the term as used in the section, the act of intentionally burning the flag provides a sufficient basis from which the requisite intention can be drawn.

[34] The submission is that it is beyond dispute that the appellant and his fellow protesters did not agree with the foreign policies of the respective countries. Both flags were soaked in kerosene, held aloft and incinerated. This took place in the grounds of Parliament. This was a deliberate act intended to be seen in direct opposition or contrast to the respect, esteem, and pride ordinarily to be shown towards a nation's flag.

[35] The District Court Judge used the *Concise Oxford Dictionary* (7th ed) definition of "dishonour" meaning "a state of shame or disgrace; discredit"; "something that causes dishonour"; and "to treat without honour or respect". Consideration of the meaning of the word "dishonour" arose in the context of determining whether or not the prosecution had established the requisite intention for the offence. In deciding that, the Court took into account the following uncontested circumstances:

> "• This was a political protest to coincide with the Australian Prime Minister's visit.
> • [The appellant] was one of the organisers.
> • The protest was a lengthy process. The protesters had assembled earlier and marched through downtown Wellington arriving at Parliament grounds about midday. The process actively proceeded until and after the departure of Mr Howard, about 2.40 pm. The [flag] burning occurred at about 1.13 pm.
> • Preparations by [the appellant] and others were made the day before to burn the New Zealand flag. The protest involved a large crowd; incessant chanting; the use of loudhailers; the banging of pots and the ringing of bells; speeches; pantomimes; a strong TV media presence; and a strong police presence" (para [21]).

[36] The Judge also took into account the appellant's evidence, namely:

> "• He is an active member of a number of political protest groups.
> • His political objective regarding this protest is already noted.
> • His attaching of the New Zealand flag upside down as a sign of distress, the distress here intended to be a political statement, that is, the flag was in distress because of what the New Zealand Government was doing. Under cross-examination he said it was not his intention to dishonour the flag. He burned it to show the Government was disrespecting it. It was a political action to make people think.
> • He accepted that the intensity of the fire was intended to, and did, catch people's attention and that the action drew attention to him. He also accepted that others, apart from the flag burning party would not have known what he intended." (para [22]).

[37] In general terms, the Judge found the appellant to be an honest and reliable witness but said he was left with "considerable disquiet" over the issue of what was really in his mind at the relevant time. In that regard the Judge found the appellant to be less than convincing. The Judge continued at para [23]:

> "I accept that his intentions may well have been as he claimed but find that they were not all of them. He knew that he should not burn the flag although unaware of the specific provisions of s 11. I record that I cannot escape the sense that he is now attempting to rationalise his way in a circuitous manner around what he now understands to be the mental element."

[38] The Judge's conclusion was as follows at para [24]:

> "[24] For those reasons, and against the background of the factual circumstances as I have found them to be, I reject his evidence that he did not intend to dishonour or disrespect the flag. I draw the inference that one of his intentions was to disrespect the New Zealand flag. That is to say, that by demonstrating such disrespect for the flag, he sought to add weight to the effects of the protest by deliberately undertaking an action which he knew would create attention."

[39] On this first step, I agree with the District Court Judge. The findings of fact were plainly open to the Judge. Viewing the circumstances in their totality there was more than just burning the flag. The appellant may well have had a higher purpose as he saw it but his means of achieving that purpose – his intention – was to dishonour the flag giving "dishonour" its natural meaning.

[40] I also agree with the Judge's approach to the transcript of conversation between a talkback radio host and the appellant on 11 March 2003 (the day after the protest). The appellant submits the Judge should have given the transcript more weight. As the respondent says, the Judge was correct in limiting the weight to be given to the transcript. It was not sworn evidence and contained editorial comment from the talkback host. Further, there are passages in the transcript which support the Judge's conclusion on intention. For example, when asked why he burnt the New Zealand flag, the appellant said "because I believe . . . it stands for imperialism". Further, that the flag does not "represent us".

Prima facie inconsistent?

[41] There cannot be any doubt that prohibition of the appellant's conduct is prima facie a breach of his right to freedom of expression. The scope of the right is broad and it is well established that it includes non-verbal conduct such as flag burning (see, for example, Rishworth et al, *The New Zealand Bill of Rights* (Oxford, 2003) pp 313 – 314).

[42] The next question is, therefore, whether prohibition of this conduct is a justified limit on the freedom of expression.

A justified limit?

[43] This question involves a consideration of the objective of s 11(1)(b) and whether or not the use of a criminal sanction is a rational means of achieving the objective bearing in mind the need to infringe on rights in as minimal a way as possible. The Court of Appeal in *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 put the test as follows at para [18]:

> ". . . it is desirable first to identify the objective which the legislature was endeavouring to achieve by the provision in question. The importance and significance of that objective must then be assessed. The way in which the objective is statutorily achieved must be in reasonable proportion to the importance of the objective. A sledgehammer should not be used to crack

a nut. The means used must also have a rational relationship with the objective, and in achieving the objective there must be as little interference as possible with the right or freedom affected. Furthermore, the limitation involved must be justifiable in the light of the objective. Of necessity value judgments will be involved. . . ."

[44] The appellant is critical of the District Court Judge's failure to embark on this sort of balancing exercise even though the Judge said s 11(1)(b) was a justified limit (ground (e) in the points on appeal). On the Judge's analysis, however, it was not necessary to bring s 5 to bear on the matter because he considered "dishonour" had just the one meaning and the appellant's conduct came within it. The Judge's comment about s 5 was just that, a comment.

(i) Legitimacy of objective

[45] As to the objective of s 11(1)(b), the 1981 Act has its genesis in regulations made under the Colonial Defence Act 1865. These regulations made provision for the recognised ensign of the colony. (See discussion in Carr (ed) *Flags of the World* (1956) at 103.) Since 1901, it has been an offence to deface the flag. The New Zealand Ensign Act 1901 established the blue ensign of the Royal Naval Reserve having on its fly the Southern Cross as the recognised flag of New Zealand for the specified purposes. In terms of s 4, it was an offence to deface the ensign "by placing any sign, representation, or letter thereon". The Shipping and Seamen Act 1908 repeated that offence provision and it was again continued in the Shipping and Seamen Act 1952. (W A Glue, *The New Zealand Ensign* (1965) at 10 discusses the early history of a national flag in New Zealand. Glue refers to the addition to the New Zealand Ensign Bill of a preamble in the course of the Bill's passage through the House. The Prime Minister, Glue notes, said the preamble was intended to make it "understandable for future generations" why it was deemed desirable to pass the legislation "at this stage of our history".)

[46] The 1981 Act states in its long title that it is an Act;

> **. . . to declare the New Zealand ensign to be the New Zealand flag and to make provision relating to its use and to the use of certain other flags, and to make better provision for the protection of certain names and emblems of Royal, national, international, commercial, or other significance.**

[47] To achieve that purpose, s 5 of the 1981 Act declares the New Zealand ensign as the New Zealand flag. Section 5(2) provides that the New Zealand flag shall be the symbol of the realm, government, and people of New Zealand. In terms of s 5(3) the New Zealand flag:

> (a) Shall be the national flag of New Zealand for general use on land within New Zealand and, where appropriate for international purposes, overseas.

[48] Then, as noted above, there are the offence provisions in s 11. Of those provisions, in the second reading debate on the Bill the responsible Minister stated:

> "Because of the flag's intrinsic importance to almost every New Zealander, the Government has included the offence provisions in clause 11. However no information on those offences can be laid without the consent of the Attorney-General" (441 *New Zealand Parliamentary Debates*, 1981 at p 3990).

[49] Against this legislative background, the objective of s 11(1)(b) must be to protect and preserve the flag as an emblem of national significance. The respondent submits that s 11 also seeks to protect those members of the public who may be offended by the physical use or actions towards the flag resulting from a person's intention to dishonour it. The legislative scheme suggests to me a focus more on preservation of the flag per se and, of course, in the present case there is no evidence of others being offended by what occurred. Both objectives, on the respondent's analysis, would meet the s 5 test.

[50] The appellant contends that the stated objective has little weight and is of relatively little importance in New Zealand's contemporary, multicultural and pluralistic society. I do not accept that submission. I believe the objective remains an important one. In *Texas v Johnson* 491 US 397 (1989) at p 414 the United States Supreme Court ruled that the Texas flag-burning legislation was unconstitutional, but did consider that the state's aims of preserving the flag as a symbol of national unity and preventing breaches of the peace were legitimate ones.

[51] There is also support for this conclusion in the fact that other democratic countries have found it necessary to legislate in this area. Attached as appendix A is material from the Australian parliamentary website on the legislative position in other jurisdictions.

(ii) Proportionality/rationality

[52] Noting that the onus of showing s 5 is met is on the respondent, the appellant submits there is no rational connection between s 11(1)(b) and the objective. Banning expressions against an institution in order to protect the institution (or symbol) is described by the appellant as an outdated and logically invalid concept. Even if there is a rational connection, a blanket ban is disproportionate.

[53] The respondent on the other hand, makes the following points in support of the submission the prohibition is a justified limit:

(a) Section 11 restricts only physical action in relation to the flag.
(b) A person can say what he or she likes about the flag as indeed the appellant here did.
(c) Successive Parliaments have not sought to amend the prohibition.
(d) The values of representative democracy and tolerance may apply equally to those who when using a symbol like the flag go too far and risk inciting violence and disorder in response.

[54] In terms of the proportionality/rationality aspects of s 5, the two conflicting approaches are reflected in the majority and minority approaches in the American jurisprudence and, as well, in the jurisprudence from Hong Kong. (See also the discussion of the German experience in P E Quint, "The Comparative Law of Flag Desecration: The United States and the Federal Republic of Germany" (1992) 15 Hastings Int'l & Comp L Rev 613. Counsel advised me there was no equivalent Canadian case and my own researches have not found one. That is consistent with the material in appendix A which says there is no Canadian legislation on the topic.)

[55] The United States Supreme Court by a majority (5:4) in *Texas v Johnson* concluded that the conviction of a protester for burning the American flag as part of a political demonstration violated the First Amendment protection of free speech.

[56] *Texas v Johnson* dealt with a provision in the Texas Penal Code which makes it an offence to "intentionally or knowingly desecrate" a state or national flag. "Desecrate" means:

> "s 42.09 . . (b) . . . deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his actions."

[57] In this particular case, Mr Johnson at the end of a demonstration unfurled the American flag, doused it with kerosene, and set it on fire. While the flag burned, the protesters chanted "America, the red, white, and blue, we spit on you". After the demonstrators dispersed, a witness to the flag burning collected the flag remains and buried them. No one was physically injured or threatened with injury although several witnesses testified that they had been seriously offended by the flag burning.

[58] Brennan J delivered the opinion of the Court. The test Brennan J applied was whether the State of Texas had asserted an interest in support of Mr Johnson's conviction that was unrelated to the suppression of expression. The conclusion was that in that case Mr Johnson's political expression was restricted because of the content of the message that he conveyed and so the state's asserted interest in preserving the special symbolic character of the flag was to be subjected to the "most exacting scrutiny".

[59] Brennan J restated the "bedrock" principle underlying the First Amendment's protection of free speech, namely, that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. As noted above, the majority did not doubt the legitimate interests of the government in making efforts to preserve the flag. However, that was not to say that it may criminally punish a person for burning a flag as a means of political protest. Brennan J said that the way to preserve the flag's special role is not to punish those who feel differently about these matters but to persuade them that they are wrong.

[60] In a concurring decision, Kennedy J noted that the hard fact was that sometimes Courts must make decisions that Judges do not like but make them because they are right in a sense that the law and the constitution as the Judge sees them, compel the result.

[61] Chief Justice Rehnquist, with whom White and O'Connor JJ joined, dissented. The Chief Justice emphasised the unique position of the American flag as a symbol of the American nation. He saw that uniqueness as justifying a governmental prohibition against flag burning in the way that Mr Johnson had done.

[62] The Chief Justice then reviewed the history of the flag and its symbolism. He concluded that the American flag throughout more than 200 years of history has come to be the "visible symbol" embodying the American nation. The flag was not simply another idea or point of view competing for recognition in the marketplace of ideas. The Chief Justice also placed some emphasis on the fact that to deny Mr Johnson this form of speech was to deny him one of many means of "symbolic speech". Flag burning, he said is "the equivalent of an inarticulate grunt or roar that, it seems fair to say, is most likely to be indulged in not to express any particular idea, but to antagonize others".

[63] Accordingly, in enacting this statute, the government was seen as simply recognising as a fact the profound regard for the American flag created by its history.

[64] Stevens J in dissent also referred to the flag as a symbol of more than nationhood and national unity but also signifying the "ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas".

[65] The trivial burden the statute imposed on free speech by requiring that an available, alternative mode of expression including uttering words critical of the flag was available was relevant. (For an illustration of the numerous articles on *Texas v Johnson* see D R Fine, "Symbolic expression and the Rehnquist Court: The Lessons of the Peculiar Passions of Flag Burning" (1991) 22 U Tol L Rev 777; G R Schermerhorn, "When the Smoke clears: Government Regulation of the Expressive Use of National Symbols as addressed in *Texas v Johnson*: An Alternative Method of Analysis would be nice" (1990) 67 University of Detroit Law Review 581; and Tribe, *American Constitutional Law* (2nd ed) ch 12.)

[66] The United States Supreme Court took the same approach in *US v Eichman* 496 US 310 (1990). There, by a majority, the Court ruled unconstitutional the Flag Protection Act 1989 enacted after *Texas v Johnson* which imposes criminal penalties against anyone who knowingly "mutilates, defaces, physically defiles, burns, maintains upon the floor or ground, or tramples" upon a flag of the United States.

[67] In *HKSAR v Ng Kung-Siu* (1999) 8 BHRC 244, the Court of Final Appeal in Hong Kong upheld an equivalent provision in the National Flag and National Emblem Ordinance and in the Regional Flag Ordinance.

[68] The provision in issue in the National Flag Ordinance made it an offence to desecrate the national flag by "publicly and wilfully burning, mutilating, scrawling on, defiling or trampling upon it". The Regional Flag Ordinance is in similar terms.

[69] In that case there was a public demonstration. The national and regional flags had been extensively defaced. As to the national flag, a circular portion of the centre had been cut out. Black ink had been daubed over the large yellow five-pointed star and the star itself had been punctured. Similar damage appeared on the reverse side. Further, the Chinese character "shame" had been written in black ink on the four small stars and on the reverse side a black cross had been daubed on the lowest of the four small stars.

[70] On the regional flag, one section had been torn off obliterating a portion of part of the design. A black cross had been drawn across that design. Three of the remaining four red stars had black crosses daubed over them. The Chinese character "shame" was written on the flag in black ink as was part of a Chinese character which had been rendered illegible by the tear in the flag. Similar damage appeared on the reverse side.

[71] It was accepted in that case that flag desecration is a form of non-verbal speech or expression. The restriction on flag desecration was therefore a breach of expression although the Chief Justice observed it was a limited restriction on that right. The Court, like the United States Supreme Court, accepted that there were legitimate societal and community interests in protecting the flags. In the circumstances, where Hong Kong has a new constitutional order, the Court considered it was necessary to protect the societal interests by means of a criminal sanction. In reaching that conclusion, the Court analysed the concept of public order which is an exception to free speech in the International Covenant on Civil and Political Rights. The Chief Justice continued:

"It is important to recognise that the concept of public order (ordre public) is not limited to public order in terms of law and order. . . . The relevant concept is wider than the common law notion of law and order."

[72] Further, the Chief Justice at p 257 considered:

"First, the concept [of public order] is an imprecise and elusive one. Its boundaries cannot be precisely defined. Secondly, the concept includes what is necessary for the protection of the general welfare or for the interests of the collectivity as a whole. Examples include: prescription for peace and good order; safety; public health; aesthetic and moral considerations and economic order (consumer protection etc). Thirdly, the concept must remain the function of time, place and circumstances. . . .

In these circumstances, the legitimate societal interests in protecting the national flag and the legitimate community interests in the protection of the regional flag are interests which are within the concept of public order (ordre public). As I have pointed out, the national flag is the unique symbol of the one country, the People's Republic of China, and the regional flag is the unique symbol of the HKSAR as an inalienable part of the People's Republic of China under the principle of 'one country, two systems'. These legitimate interests form part of the general welfare and the interests of collectivity as a whole."

[73] On this part of the s 5 test it is obvious that there is room for differing views. The United States Supreme Court, for example, was divided on the issue and the dissenting judgments in *Texas v Johnson* and the Hong Kong decision show the arguments for the view that prohibition of such conduct is a justified limit. As the Court of Appeal observed in *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para [18]:

". . . Ultimately, whether the limitation in issue can or cannot be demonstrably justified in a free and democratic society is a matter of judgment which the Court is obliged to make on behalf of the society which it serves and after considering all the issues which may have a bearing on the individual case, whether they be social, legal, moral, economic, administrative, ethical or otherwise."

[74] In exercising that judgment, it is pertinent that the limitation is a confined one. As the respondent put it, other forms of speech relating to the flag are not affected. As illustrated by the other parts of the protest of which the appellant was a participant, political views were expressed.

[75] On the other hand, the ban in relation to destruction is a blanket one. The matter also needs to be considered against my perception that New Zealand has reached a level of maturity in which staunch criticism is regarded as acceptable. There may well be strong reactions to such criticism but there is an acceptance of the ability to make it.

[76] Obviously, the flag is important. However, even in the United States where the flag is such a dominant symbol, the majority concluded its protection did not warrant the interference of the criminal law. Freedom of expression comes at a cost in the sense that one must accept the ability to say and act in a way that annoys or upsets. Further, as Jackson J stated in *Board of Education v Barnette* 319 US 624 (1943) at p 642:

". . . freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

[77] Freedom of expression is not without some limits. But in the end I have concluded that the rational connection part of the s 5 test is not met here so that the prohibition on this appellant's conduct was not a justified limit on his free speech.

Ability to read consistently?

[78] The District Court concluded that s 6 did not assist the appellant who was aggrieved at the government and "deliberately sought to startle in order to draw attention to his cause." (para [28]). The Judge saw the matter as one of striking the balance and concluded as follows at para [30]:

> "[30] Adopting the approach suggested in *Moonen* (before) at p 16 paras 17 and 18, I hold that the mental element in s 11(1)(b) requiring proof is susceptible of only one interpretation, and is unaffected, here, by the (commonplace) fact that the [appellant] also had other intentions. Given the New Zealand flag is New Zealand's national symbol, and it is flown and used by all manner of New Zealanders and others in all kinds of circumstances, if the legislature had intended there should be deemed to be no intention to dishonour or to disrespect where the act of flag burning constituted symbolic political speech, then it would have said so in plain terms. If the Act creates a limit on the right to free expression at all, then it must be of minimal effect given that this is, apparently, the first prosecution of its kind in over twenty years since the Act came into effect. In my assessment the prohibition on flag burning with the intention of dishonouring it is justifiable in a free and democratic society."

[79] As noted above, the appellant submits that the application of s 6 of the Bill of Rights necessitated the Court adopting a definition of "dishonour" as equating with "defiling". The appellant as an example, refers to *Black's Law Dictionary* (5th ed, 1979) p 421 which defines "dishonour" as follows:

> "Dishonour . . . as respects the flag, to deface or defile, imputing a lively sense of shaming or an equivalent acquiescent callousness. *State v Schleuter*, 127 NJL 496, 23 A 2d 249, 251."

[80] The respondent's submission is that the Judge was correct that "dishonour" in the 1981 Act had the one meaning, that is, to treat without honour or disrespect. The appellant's suggested meanings are, the respondent says, examples or instances of a form of dishonour or disrespect and not a true alternative to or substitute for "dishonour".

[81] Looking at the statutory scheme as a whole, there is some support for the respondent's view that there is just the one tenable meaning, namely, that adopted by the District Court Judge. However, the better view is that the statute does allow of the narrower meaning of "vilify". If that meaning is adopted, as s 6 of the Bill of Rights demands that it must, I consider s 11(1)(b) can be read consistently with the Bill of Rights. However, I do not accept the respondent's submission that the appellant's conduct would fall foul of this narrower definition of "dishonour", that is, one limited to dishonour in the sense of vilifying. That would have required some additional action on the appellant's part beyond a symbolic burning of the flag. My decision is of course confined to this particular appellant's conduct. What other conduct may come within this narrower interpretation of "dishonour" is a matter for a different case.

[82] On this basis, that is, that the prohibition on the appellant's conduct is not a justified limit on the right to freedom of expression and does not come within the proper Bill of Rights consistent interpretation of s 11(1)(b), the appellant's conviction cannot stand.

Declaration of inconsistency

[83] It is not necessary therefore to consider the appellant's argument for a declaration of inconsistency. I note this issue was not raised in the notice of appeal. If it was to be seriously considered, it should have been expressly addressed in the notice and the notice of appeal should have been served on the Solicitor-General.

Appeal against sentence

[84] In the circumstances, I do not need to consider the appeal against sentence.

Result

[85] The appellant's appeal against conviction is accordingly allowed. The conviction is quashed.

Appendix A

Overseas flag desecration laws

(Taken from http://www.aph.gov.au/library/pubs/bd/2003-04/04bd042.htm#Appendix)

Austria

Penal code prohibits those who in a malicious manner and at a public occasion or a function open to the public, insults, brings into contempt or belittles the flag displayed for official purposes or the national or state anthems of the Austrian Republic or its sStates. The penalty is imprisonment of up to six months or a fine of up to 360 times the fixed daily rate.

Canada

Canada currently has no legislation but there have been attempts (in 2001 and 2002) by private members to introduce flag burning legislation.

China

Under the criminal code the penalty for insulting the national flag is up to three years' imprisonment. An extract from an unofficial translation of the code reads:

> Chinese Criminal Code. Article 299. Whoever purposely insults the national flag, national emblem of the PRC in a public place with such methods as burning, destroying, scribbling, soiling, and trampling is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, control or deprived of political rights.

Hong Kong

Hong Kong's National Flag and National Emblem Ordinance, ch 2401, s 7 states:

> Protection of national flag and emblem
>
> A person who desecrates the national flag or national emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 years.

France
The website includes an excerpt from the *London Times*, which states that France passed a law in 2003 which makes it an offence to insult the national flag or anthem. The penalty is a fine or up to six months' imprisonment.

Germany
Section 90(a) of the Criminal Code (Strafgesetzbuch, StGB) states as follows:

> **90. Disparagement of the State and its Symbol** – (1) Whoever publicly, in a meeting or through the dissemination of writings (Section 11, subsection (3)):
>
> 1. insults or maliciously maligns the Federal Republic of Germany or one of its Lands or its constitutional order; or
> 2. disparages the colors, flag, coat of arms or the anthem of the Federal Republic of Germany or one of its Lands,
>
> shall be punished with imprisonment for not more than three years or a fine.
>
> (2) Whoever removes, destroys, damages, renders unusable or unrecognizable, or commits insulting mischief upon a publicly displayed flag of the Federal Republic of Germany or one of its Lands or a national emblem installed by a public authority of the Federal Republic of Germany or one of its Lands shall be similarly punished. An attempt shall be punishable.
>
> (3) The punishment shall be imprisonment for not more than five years or a fine if the perpetrator by the act intentionally gives support to efforts against the continued existence of the Federal Republic of Germany or against its constitutional principles.

India
Section 2 of the Prevention of Insults to National Honour Act of 1971 provides for a maximum jail term of three years and a fine:

> **2 Insults to Indian National Flag and Constitution of India.** – Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend, to three years, or with fine, or with both.

Italy
The Italian penal code makes it an offence for anyone to publicly insult or vilify the national flag or other emblem of the state. This is punishable by imprisonment from one to three years.

Japan
There is no law against damaging the Japanese flag, however there are laws that prevent the burning of foreign flags as this may be offensive to the foreign country.

Portugal
The Portuguese penal code makes it an offence for:

> Anyone who by words, gesture, in writing or by any other means of public communication, desecrates the Republic, national flag or the national anthem the symbols or emblems of the Portuguese sovereignty, or in any

other way fails to pay them their due respect, shall be punished with a prison sentence of up to 2 years or with a pecuniary penalty of up to 240 days.

Norway

There is no law relating to the desecration of Norway's own flag but there is a law protecting the flag or national coat of arms of a foreign country.

Turkey

The website states that information from guides, written for travellers to Turkey, state that it is against the law to insult the Turkish nation in any way. This includes defacing or destroying Turkish currency or the national flag and insulting the founder, Atatürk, or the president of the Republic of Turkey.

Appeal allowed.

Solicitors for Hopkinson: *Sladden Cochrane & Co* (Wellington).
Solicitors for the Crown: *Crown Solicitor* (Wellington).

Reported by: Duncan Webb, *Barrister*

立法會
Legislative Council

Summary of facts and sentences of certain judicial decisions concerning desecrating the national flag and regional flag

Case name	*HKSAR v NG Kung Siu and LEE Kin Yun* (FACC 4/1999, on appeal from HCMA 563/1998)	*HKSAR v KOO Sze Yiu and MA Wan Ki* (HCMA 482/2013, on appeal from ESCC 918/2013)	*HKSAR v KOO Sze Yiu* (HCMA 185/2013, on appeal from ESCC 368/2013)	*HKSAR v CHENG Chung-tai* (ESCC 1139/2017)
Date of offence	1 January 1998	1 April 2012	<u>Charges 1 and 2</u> 10 June 2012 <u>Charges 3 and 4</u> 1 January 2013	19 October 2016
Charge	(1) Desecrating the national flag by publicly and wilfully defiling it, contrary to section 7 of the National Flag and National Emblem Ordinance ("defiling the national flag"). (2) Desecrating the regional flag by publicly and wilfully defiling it, contrary to section 7 of the Regional Flag and Regional Emblem Ordinance ("defiling the regional flag"). (Page 13 of the judgment)	Attempting to desecrate the regional flag by burning it, contrary to section 7 of the Regional Flag and Regional Emblem Ordinance and Section 159G of the Crimes Ordinance (Cap. 200). (Paragraph 1 of the judgment)	(1) Defiling the national flag. (2) Desecrating the national flag by publicly and wilfully burning it, contrary to section 7 of the National Flag and National Emblem Ordinance. (3) Defiling the national flag. (4) Defiling the regional flag. (Paragraph 1 of the judgment)	(1) Defiling the national flag. (2) Defiling the regional flag.

Appendix 2.2

Damage to the flags	Charge 1 At a public procession, the Defendants were waving a defaced national flag and a defaced regional flag. Regarding the national flag, a circular portion of the centre had been cut out. Black ink had been daubed over the large yellow five-pointed star and the star itself had been punctured. Similar damage appeared on the reverse side. The Chinese character "shame" had been written in black ink on the four small stars and on the reverse side, a black cross had been daubed on the lowest of the four small stars. Charge 2 Regarding the regional flag, one section had been torn off with a portion of the bauhinia design obliterated. A black cross had been drawn across that design. Three of the remaining four red stars had black crosses daubed over them. The Chinese character "shame" was written on the flag in black ink, as was part of a Chinese character which had been rendered illegible by the tear in the flag. Similar damage appeared on the reverse side. (Page 14 of the judgment)	At a demonstration and procession, D1 and D2, who were in a crowd of people, individually or jointly set fire to the regional flag with a lighter or burning newspaper. Part of the burning newspaper landed on the hand/arm of the flag bearer. The fire was eventually put off by the police. (Paragraph 2 of the judgment)	Charges 1 and 2 The Defendant was seen displaying a defaced national flag at a public meeting. The central part of the national flag was smeared with dirty marks by the Defendant, who later set fire to the flag by using burning papers and a lighter in the presence of a crowd of protestors. A major part of the flag was destroyed by fire. (Paragraph 8 of the judgment) Charges 3 and 4 At another public procession, the Defendant was seen displaying a national flag and a regional flag. Both flags were smeared with black marks by the Defendant. Part of the regional flag was cut off with the result that part of the bauhinia petals was removed. (Paragraph 9 of the judgment)	Charges 1 and 2 The Defendant inverted twice the national flags and regional flags erected on the desks of some Members at the Legislative Council meeting of 19 October 2016, which was an open meeting observed by members of the public and broadcast live on television and online.

Sentence imposed by the trial magistrate :	The Defendants were convicted after trial by the trial magistrate, who ordered that each of the Defendants was to be bound over to keep the peace on his own recognizance of $2,000 for each offence for a period of 12 months. (Page 13 of the judgment)	D1 and D2 were convicted after trial by the trial magistrate, and were sentenced to: D1: four months' imprisonment, suspended for two years; D2: 230 hours' community service. (Paragraph 1 of the judgment)	The Defendant was convicted after trial by the trial magistrate and was sentenced to: Charge 1: three months' imprisonment Charge 2: four months' imprisonment (Of the three months' imprisonment in charge 1, one month was to be served concurrently with that of charge 2, making a total sentence of six months' imprisonment for these two charges.) Charges 3 and 4: three months' imprisonment each (Both sentences were to be served concurrently, making a total sentence of three months' imprisonment for these two charges.) (Paragraph 2 of the judgment) The trial magistrate ordered that the whole of the six months' imprisonment for charges 1 and 2 were to be served consecutively to the three months' imprisonment for charges 3 and 4, making a total sentence of 9 months' imprisonment for the four charges. (Paragraph 3 of the judgment)	The Defendant was found guilty of the two charges after trial by the trial magistrate and fined $2,500 on each of the two charges, making a total of $5,000.

Sentence after appeal	The Court of Final Appeal allowed the Prosecution's appeal and ordered the restoration of the conviction and the orders of the trial magistrate to bind over each of the two respondents to keep the peace on his own recognizance of $2,000 for each offence for a period of 12 months. (Page 50 of the judgment)	The Court of First Instance ("CFI") dismissed the appeals against conviction by D1 and D2 but allowed their appeals against sentences. The sentences were varied as follow: D1: two months' imprisonment, suspended for one year; D2: 110 hours' community service. (Paragraph 48 of the judgment)	CFI allowed the appeal against sentence by the Defendant and varied the sentences as follow: Charge 1: one month's imprisonment Charge 2: four months' imprisonment (The two sentences were to be served concurrently, making a total sentence of four months' imprisonment for these two charges.) Charges 3 and 4: one and a half months' imprisonment each (The two sentences were to be served concurrently, making a total sentence of one and a half months' imprisonment for these two charges.) CFI ordered that the half month's imprisonment for charges 3 and 4 was to be served consecutively to the four months' imprisonment for charges 1 and 2, making a total sentence of four and a half months' imprisonment for these four charges. (Paragraph 5 of the judgment)	No appeal was filed.

機密

立法會

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

第一次閉門研訊第一節的逐字紀錄本

日　期：　2017 年 7 月 3 日(星期一)
時　間：　上午 9 時至 9 時 28 分
地　點：　立法會綜合大樓會議室 5

出席委員

梁美芬議員, SBS, JP (主席)
何君堯議員, JP (副主席)
葛珮帆議員, BBS, JP
邵家輝議員
陳振英議員
張國鈞議員, JP
陸頌雄議員

應邀出席人士

謝偉俊議員

列席秘書

黃少健先生

列席職員

秘書長
陳維安先生, SBS

法律顧問
馮秀娟女士

副秘書長
梁慶儀女士

助理秘書長 3
衛碧瑤女士

調查委員會法律顧問/高級助理法律顧問 3
李家潤先生

高級議會秘書(3)2
莫穎琛小姐

一級行政事務助理(3)3
梁少芬小姐

主席：

早晨，早晨，多謝謝偉俊議員.....

謝偉俊議員：

多謝，多謝。

主席：

.....多謝 Paul，多謝你出席我們今次委員會的閉門研訊。調查委員會的職責是負責確立你——謝偉俊議員——根據《基本法》第七十九條第(七)項及《議事規則》第 49(B)(1A)條，動議"譴責鄭松泰議員"的議案所屬的事實，並就所確立的事實是否構成譴責的理據，提出意見。

今天的研訊是根據調查委員會的《行事方式及程序》進行，當中第 27 段訂明，在閉門研訊中取得的證據、向調查委員會提交的陳述書，以及任何相關的往來文件，均屬機密資料，直至調查委員會將其銷密或公開為止。

謝偉俊議員及各位委員已經簽署保密承諾書，因此，若未事先取得調查委員會的書面授權——各位委員會都是包括的——各位都不得在研訊過程以外的場合發表任何機密資料，或發表與研訊有關的任何事宜。秘書處會為整個研訊過程擬備逐字記錄本。

接下來我都是要讀出來的。請謝偉俊議員及各位委員留意，在研訊中，委員只應為確立譴責議案所述的事實而提問，不應發表意見或作出陳述，亦不應邀請證人發表意見。我會決定某條問題或某項證據是否與調查委員會的職權範圍有關，以及是否屬於研訊範圍，我亦有酌情權，決定某條問題是否屬於跟進問題，以及應否容許提出該問題。

我現在宣布研訊開始。謝偉俊議員已經選擇在宣誓後接受研訊，我現在以調查委員會主席的身份，根據《立法會(權力及特權)條例》第 11 條，為你監誓，請你站立並依照放在你面前的誓詞宣誓。若你選擇宗教式宣誓，請你用手按着聖經宣誓。

謝偉俊議員：

本人謝偉俊，謹對全能天主宣誓，本人所作之證供均屬真實及事實之全部，並無虛言。

主席：

謝偉俊議員，你曾向調查委員會提交書面陳述書，即調查委員會文件編號 PT1(C)，現在請你正式向調查委員會出示該文件作為證據。

謝偉俊議員：

是，沒錯.....

主席：

是。

謝偉俊議員：

.....2017 年 3 月 1 日的陳述書。

主席：

好。謝偉俊議員，你就陳述書有沒有補充？

謝偉俊議員：

現階段沒有。

主席：

為了善用研訊的時間，請委員提問時盡量精簡具體，而證人亦須明確及切實回答問題，請證人及委員在我示意之後才發言。委員如果想就某份調查委員會文件的內容向證人提問，應指明該文件的編號及段落，以方便參考。

根據《行事方式及程序》，作為主席，我會先提出第一條開場問題，證人回應之後，我會請其他委員提問。OK？我開始問第一個問題。

謝偉俊議員，根據你的書面陳述書 PT1(C)第 4 段至第 9 段，你可否確認你是透過電視直播，看到鄭松泰議員在 2016 年 10 月 19 日立法會會議上，作出倒轉擺放國旗、區旗的行為，而非在會議廳內親眼目睹有關行為？請.....

謝偉俊議員：

沒錯。

主席：

是。

好，哪位委員還想發問？有沒有追問？是，陳振英議員。

陳振英議員：

謝議員，我想問一下，你在書面陳述書裏，把民建聯 10 多位議員擺放的物件稱為國旗及區旗的展示品，請你可否解釋一下為何你叫它們"展示品"這個名稱，謝謝。

謝偉俊議員：

有關的物件，由於尺寸未符合法例所規定的國旗及區旗的尺寸，所以，雖然它們表面上展示了香港的港徽，另外就是有類似中國國旗的設計，但嚴格來說，應該說是一個展示品，並非實品，並非那兩種國旗及徽旗的實品。

主席：

嗯。

何君堯議員：

主席。

主席：

是。好，何君堯議員，是。

何君堯議員：

謝偉俊議員，其實除了尺寸之外，展示品的形貌、顏色及標誌等，與一般國旗有沒有.....你自己看起來，一般來說是相同呢？

主席：

謝偉俊議員。

謝偉俊議員：

我並沒有足夠機會細緻研究展示品上所展示的每一個細節，但我想一般常人，包括我本人，在一個觀察過程中的感覺，的確這應該是代表了國旗、港旗的設計的一些展示品。

何君堯議員：

嗯。就.....

主席：

好，何君堯議員。

何君堯議員：

就國旗的展示品，你看到當時它.....首先，展示品的顏色是甚麼呢？

謝偉俊議員：

就是我們所認知的港旗及國旗的.....

何君堯議員：

先說國旗的.....

謝偉俊議員：

紅色.....

何君堯議員：

.....紅色底，是嗎？

謝偉俊議員：

紅色底、白色的一個圖案。

何君堯議員：

好的。如果是國旗.....我先說國旗，它以紅色為底色，你有沒有看到其他標誌或設計有甚麼特徵？

謝偉俊議員：

你是指國旗還是指當時展示的.....

何君堯議員：

國旗，以國旗來說。展示.....你說的展示品。

謝偉俊議員：

展示品本身的設計，基本上，我認為跟國旗的類似，非常相似。

主席：

是。何君堯議員，剛才謝偉俊議員已經說過，一個常人看到都會認為它是一個國旗的標誌。

何君堯議員：

國旗標誌，即是有甚麼呢？

謝偉俊議員：

五星。

何君堯議員：

五星，正確，OK。那麼，以區旗來說，底色是甚麼顏色呢？

謝偉俊議員：

紅色的底色，白色的徽號，洋紫荊花。

何君堯議員：

洋紫荊，多謝，我就是問這個。

主席：

好，多謝。接着，還有沒有其他委員想發問？是，葛珮帆議員。

葛珮帆議員：

謝偉俊議員，在譴責議案附表第 1 段你指出，民建聯議員擺放的國旗、區旗展示品的目的及方式，是突顯宣誓對擁護《基本法》及效忠中華人民共和國香港特別行政區的莊嚴意義及承諾，為甚麼你有這個看法呢？

主席：

謝偉俊議員。

謝偉俊議員：

對不起，第幾段？

葛珮帆議員：

第 1 段，譴責議案附表第 1 段。

謝偉俊議員：

我以為你說陳述書。

葛珮帆議員：

第 1 段。

謝偉俊議員：

好的，不要緊。主要是基於當天的議題是跟宣誓有關，亦基於事件的背景，10 月 19 日的宣誓，或者重複宣誓當天，之前一個星期曾經發生過議會由於宣誓，有部分議員未符合法律要求依足有關字眼，以及表示對於誓詞、對於現在"一國兩制"、對於國家主權等多種問題的質疑，導致當天 10 月 19 日的宣誓，焦點在於對《基本法》的效忠，對香港特別行政區的效忠。所以，這個議題其實是非常關鍵。

而當天所展示.....民建聯所展示的國旗和徽旗，當中的意義亦特別重要，因為平時以我理解，民建聯絕少在議會裏面展示國旗、徽旗.....國旗、港旗。但是，當天由於這議題的重要性，由於這個背景，導致當天的行為是有特別意義。

所以，我認為如果對於當天所展示的國旗和港旗作出任何不恰當行為，這是有意義的。

葛珮帆議員：

我可不可以繼續發問？

主席：

嗯，好的，葛珮帆議員。

葛珮帆議員：

謝偉俊議員，你亦在書面陳述書第 10 段表示，相信鄭松泰議員是故意一再作出，將國旗、區旗展示品倒轉擺放，而非一時興之所至，可否確認你這個看法呢？

主席：

謝偉俊議員。

謝偉俊議員：

如果是就一支、兩支，甚至 3 支國旗、徽旗作出行為的話，仍然可以勉強接受是一種一時興之所至，佻皮的行為。但是，

當如果經過.....特別是蔣麗芸議員曾經嘗試將有關國旗、徽旗重調位置，將它插正後，特別當有主席提示警告之後，而再繼續這個行為的話，我相信絕對不是一個一時興之所至的行為。

葛珮帆議員：

謝偉俊議員.....

主席：

嗯，好，葛珮帆議員。

葛珮帆議員：

那麼，你所指的並非一時興之所至，跟你在譴責附表第 1 段，我剛才問的就是，你是否覺得他這個非一時興之所至的倒轉國旗、區旗的行為，正正突顯了他對擁護《基本法》和效忠中華人民共和國香港特別行政區這個莊嚴意義及承諾的違反呢？

主席：

謝偉俊議員。

謝偉俊議員：

當然，我剛才已經說過有關當天插放國旗和港旗的重要性，亦講過當天的程序進行中，亦講過之前的背景，亦講過有蔣麗芸議員的行為。在這種情況下，如果還要堅持這樣做的話，當然，除了我剛才所說，絕非玩之外，亦顯示一種對於國旗和港旗的不尊重和侮辱。

主席：

好的，謝偉俊議員。還有沒有追問？

葛珮帆議員：

這個不尊重和侮辱，正正你是否覺得他違反了《基本法》和效忠中華人民共和國香港特別行政區？

謝偉俊議員：

我想這是想當然，因為字眼上，誓詞本身已經很清楚說明。而這個行為本身，正正突顯了對於《基本法》和對於香港特別行政區不尊重、不效忠。

葛珮帆議員：

多謝主席。

主席：

好的。還有哪位想發問？

我補充問題吧。謝偉俊議員，你是否知道這些國旗，或者區旗展示品的來源？是否知道？

謝偉俊議員：

不知道。

主席：

還有沒有其他委員想發問？你們可以示意的，好嗎？示意，可以跟進。

你認為有.....

陸頌雄議員：

主席、主席。

主席：

嗯，陸頌雄議員。

陸頌雄議員：

謝偉俊議員，想問一下你，你在譴責議案中表示，鄭議員的有關行為違反立法會誓詞，並故意羞辱國旗及區旗，屬行為不檢。然而，你在書面陳述書的第 12 段中只提到，我相信在不少市民眼中，事實上，當日之後亦收到不少市民向我反映，該行

為被解讀為拒絕擁護《基本法》及效忠香港特別行政區，甚至故意羞辱國旗及區旗所象徵的中華人民共和國及香港特別行政區，為何你的書面陳述書只描述一些市民向你反映的意見，而沒有一如你在譴責議案中明確指出，鄭松泰議員的有關行為違反立法會誓言及故意羞辱國旗呢？

我想了解一下你所提及的市民意見，跟你的個人意見是否完全吻合呢？

主席：

謝偉俊議員。

謝偉俊議員：

首先，第 12 段在講法上，我當然是說我收到市民的回應。但是，這跟譴責或者議員議案的措詞上，並無抵觸。一個是基於事實，是陳述書所說。另一個是基於結論，是我自己本人的結論，在法理上，事實加法理推斷。所以，由於陳述書一般來說，我們並不需要，或者過分說自己的意見，只是說事實而已。所以，我的行文方式有少許分別。

陸頌雄議員：

好的，謝謝，謝謝主席。

主席：

好的。是的。陳振英議員。

陳振英議員：

謝議員，我想問，你是在會議廳前廳看到這個行為，你當時有否留意到，其他留在會議廳的議員，對鄭議員這個行為有否作出甚麼反應呢？謝謝。

謝偉俊議員：

相隔一段時間，我現在不能夠充分記憶當時各個議員在場是如何反應，不過，整體的印象來說，當然由於前廳有不少議員

在場，而當然有不少屬於建制派的議員，對於這個行為的反應是相當之大的。

主席：

好的。還有否其他的問題？

邵家輝議員：

主席。

主席：

是的。邵家輝議員。

邵家輝議員：

謝謝，主席。在外間的社會上，有些評論認為.....因為其實看到政治爭拗的情況下，大家的壁壘分明，有些人認為今次的事件是，其實鄭松泰議員衝着國旗來侮辱國家。亦有些意見認為，由於他與該政黨的立場不同，其實他是想去侮辱該政黨，以你的看法，你認為哪一方面較多？還是兩者皆有？

主席：

是的。謝偉俊議員。

謝偉俊議員：

我想，一般的市民並不會好像剛才邵家臻議員.....對不起，是邵家輝議員所說般那麼清楚，哪一個是國家，哪一個是黨，反正就是國家是代表現今的中華人民共和國，香港就是香港特別行政區，而國旗代表國家，徽旗代表香港。所以，任何侮辱行為，特別是由於鄭松泰議員本身是一位議員，他不是一般的市民，也不是一個街頭示威者，這個行為在議會內，他以立法會議員的身份在議會內所做的行為，是一個公職的行為，是違反了他的宣誓的行為，所以這是相當嚴重的。

邵家輝議員：

Sorry。

主席：

是的。邵家輝議員。

邵家輝議員：

主席，我的意思是，侮辱那支.....因為他侮辱國旗的話，其實就是侮辱國家，對嗎？因為擺放這些國旗的其實是一個政黨的朋友。我剛才所說的意思是，你認為鄭松泰議員對國旗不滿意，sorry，即他對國旗的侮辱，其實即是不滿意國家，對嗎？而會否有機會是因為其實他是不滿意那個政黨而去愚弄那個政黨呢？

主席：

謝偉俊議員。

謝偉俊議員：

我明白了，你的意思是指民建聯，即他不滿意民建聯擺旗這個行為，所以作出這個行為。

邵家輝議員：

是的，他是侮辱民建聯。他是侮辱民建聯。

謝偉俊議員：

我相信，即使你對任何政黨、任何人士不滿意，你也不會做出一些違反自己誓言的行為、違反你要效忠香港特別行政區的行為。即如果以這種方式來表達對任何人、任何政黨、任何事情的不滿，我都覺得是不適當的。

主席：

邵家輝議員，其實謝偉俊議員一開始是說了他一個常人看見這個行為時，他的看法。其實他一開始已經說得很清楚，他為甚麼會有這種看法。我想問，謝偉俊議員，在你的議案中.....你決定提出議案.....在《基本法》裏有違反誓言，有行為不檢。就這兩個部分，你認為這個行為，你剛才說過任何人看到鄭松

泰議員這樣倒轉國旗的展示品或區旗展示品，都會覺得是侮辱國家或特別行政區。你認為這是屬於行為不檢的部分，還是違反誓言的部分？

謝偉俊議員：

我認為兩者皆有。因為如果是行為不檢本身，這定義是非常廣闊的，任何與議員的身份不恰當、不合適的行為，均有可能被視為行為不檢。但是，碰巧今次牽涉的行為不檢的內容、性質，是同時違反了我認為在宣誓下要擁護《基本法》和效忠中華人民共和國香港特別行政區這個誓言有衝突。所以，我認為這個行為本身是兩者皆有。

主席：

大家有否追問？是的，陸頌雄議員。

陸頌雄議員：

再想確認一下，謝偉俊議員，你對"展示品"這個用詞的看法。因為根據《國旗法》第八段，國旗國徽的複製本，如有國旗或國徽的複製本，並與本國旗與國徽完全相同，但其相似..... 並非完全相同，但其相似程度足以使人相信它就是國旗或國徽，就本條例而言，該複製本被視為國旗及國徽。我想確認一下，謝偉俊議員你所理解的.....即所指的展示品，在你理解下，是否等同於複製本呢？等同於國旗和區旗呢？

主席：

謝偉俊議員。

謝偉俊議員：

我理解這項條例的意義，正正由於並不需要.....任何人想做一些侮辱國旗區旗的行為，並不需要做一張完全真實，符合所有尺寸，所有設計，所有規劃的國旗或區旗，才能夠構成這個罪行，而是只要任何一個物件本身，予人的感覺，或合理常人的感覺，這物件代表國旗、代表徽旗的話，而對有關物件作出侮辱行為的話，理論上都可構成類似侮辱國旗、徽旗的行為。

所以，如果問我，雖然未有案例就這些定義作判斷，但我認為，這項條文適合用於這宗案件，即不一定要符合所有尺寸、設計，只要有一個合理常人覺得有關物件就是代表國旗、徽旗的話，如果你對這些物件作出肆意、刻意的侮辱的話，這已構成有關的罪行。

陸頌雄議員：

好的，謝謝謝議員。謝謝主席。

主席：

好的。還有哪一位想追問？

邵家輝議員：

我想追問。

主席：

是的，邵家輝議員。

邵家輝議員：

是，主席。我想問謝偉俊議員，其實你認為他在今次的事件中，你認為他除了刻意地侮辱徽旗、國旗，即是侮辱國家，其實，你覺得他會否有一定程度是想侮辱該政黨呢？你覺得。

主席：

謝偉俊議員。

謝偉俊議員：

你說的政黨是中華人民共和國的共產黨還是說民建聯？

邵家輝議員：

民建聯，民建聯，民建聯.....

謝偉俊議員：

我重複我剛才的說法，即使你不滿意任何一個人、一個政黨、一個國家，你都不能肆意侮辱該國或代表該國的任何法定展品，包括國旗、國徽，甚至有時候在一些國家，國歌也是不能肆意侮辱的。

邵家輝議員：

我明白這一點，我明白以你的角度，你認為他是在侮辱國旗、國徽。我想問一問，你覺得他在過程中有沒有一點點動機是想連民建聯也一起侮辱呢？

主席：

這樣子吧，我剛才一直讓你發問，是因為我不想 stop 你。其實，首先，在我們所有文件中，應該沒有人提過這件事。第二，就是他的動機，究竟他想侮辱誰，到時候我們還是要看看，要作出判斷。即使謝偉俊議員估計他的動機是甚麼，其實我們也很難在這裏作出猜測，除非他本人來講他的動機。但是，其實謝偉俊議員一開始說了作為一個常人.....違反.....即他認為是侮辱國家。他說了兩次，所以，他從來在書面文件及一直以來回應相關問題時，他都沒有提到侮辱擺放國旗的政黨，即擺放國旗展示品的政黨。

所以，我覺得，若再追問下去，可能不能純粹讓他回應究竟他認為鄭松泰議員的動機是甚麼，因為其實他已經回答了。

謝偉俊議員：

主席，或者我嘗試補充多一點點，如果你容許我的話。

主席：

謝偉俊議員。

謝偉俊議員：

我不排除一個人做事是有多種動機的，也可能有一兩個主要動機，或者有其他根本連他自己都不自覺的潛意識動機。或者

他當天早上可能不舒服，或是當天早上與黃毓民吵過架，可能有很多原因也說不定，我們不需要理會，但最重要的是他的行為本身展示出.....對於常人來說，有一個最起碼的重要動機，就是侮辱國家，侮辱香港。至於有沒有其他次動機，這對我而言並不重要，對市民而言可能也不是最重要。

邵家輝議員：

主席，不好意思.....

主席：

是的，邵家輝議員。

邵家輝議員：

主席，因為我第一次參與這類會議.....

主席：

不要緊，不要緊。

邵家輝議員：

其實我想了解一下我們的職權範圍，除了要確認已發生的事實外，我們有沒有權限或者我們應不應該問證人的看法，或他看到那事時，他的想法、他的動機為何。為甚麼呢？因為其實這一塊是很闊的，你明白嗎？即是他想的事情，他所想的，他發生的，他在做甚麼，其實是很闊的.....

主席：

好的，不如這樣吧.....等一等，等一等，我叫喚你們，你們才回應。

第一，我希望你們知道為甚麼一定要等主席叫喚你們的名字，因為這是逐字記錄的，所以一定要清楚究竟是張國鈞議員還是邵家輝議員在發言，是這個問題而已，而謝偉俊議員究竟在回應哪位議員的問題。所以我這裏要講一講。

我想，在我們或秘書處解答邵家輝議員的問題之前，我先讓張國鈞議員問他的問題，他剛才講出來，似乎是同樣的問題。

張國鈞議員。

張國鈞議員：

多謝主席。其實我是承接邵議員的問題，我想用的提問方式是這樣的：謝偉俊議員，在這次事件中，鄭松泰先生或任何第三者，有沒有向你講過任何說話，讓你知道鄭松泰在這件事中的動機？

主席：

謝偉俊議員。

張國鈞議員：

因為我們要找出事實，請問有沒有向你提及過？

謝偉俊議員：

沒有。

主席：

好的。邵家輝議員，還可以問的.....或者秘書處會否回應一下？我稍後再作補充，好嗎？

調查委員會法律顧問：

多謝主席。對於邵議員的問題，當然是要看看調查委員會的職權範圍。職權範圍的其中一部分是就該議案向大會作出建議，就是究竟相關行為是否足以構成譴責議案.....是否足以構成譴責，所以是需要考慮意見的。但這個意見一般來說，都應該是調查委員會成員之間的判斷。但是，當然，若調查委員會認為需要參考其他意見，而調查委員會認為是相關的，這也可以做。但需要避免予人一種感覺，就是調查委員會不是自己作出一個意見，即是可能會令人覺得你是聽了其他意見之後你自己有一個意見，而不是自己的意見。所以，這部分需要小心處理。

主席：

好的，邵家輝議員。

邵家輝議員：

主席，這其實正正是我想釐清自己能夠做甚麼，以及我可以理解甚麼。如果我理解證人是告訴我事實，那麼他說事實便OK。但是，如果他是說他的想法，或他的推測，那我便會想，假如舉個例子，我找來 10 名建制派議員，又找來 10 名泛民議員，他們講出來的說法和想法是不同的.....

主席：

邵家輝議員，不如這樣吧，我們要珍惜證人在場的時間，這些問題我們在內部會議再跟你講 briefing 吧。因為在這裏，我作為主席，我一定要裁決究竟你們的問題是否偏離太遠？我們可以在內部會議再作講解。

首先，基本上，如果你們問到一些意見，我認為是相關的、可以容許的，我都會批准。但如果偏離得太遠，我便會作出裁決。

好，陳振英議員。我想我們要問最後一條問題了。

陳振英議員：

好的，最後一條問題。我只想問一問謝偉俊議員，在你作出書面陳述書之前或之後，你有沒有與鄭松泰議員有任何接觸或討論？就是這麼簡單。

謝偉俊議員：

沒有。

主席：

沒有，好的。那麼，謝偉俊議員，我想問問你，你有沒有其他任何補充資料？

謝偉俊議員：

沒有了。

主席：

那麼我們基本上應該可以了，差不多了。多謝謝偉俊議員，多謝。

謝偉俊議員：

多謝。

主席：

好的，多謝，多謝。

機密

立法會

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

第一次閉門研訊第二節的逐字紀錄本

日 期： 2017 年 7 月 3 日(星期一)
時 間： 上午 9 時 30 分至 9 時 46 分
地 點： 立法會綜合大樓會議室 5

出席委員

梁美芬議員, SBS, JP (主席)
何君堯議員, JP (副主席)
葛珮帆議員, BBS, JP
邵家輝議員
陳振英議員
張國鈞議員, JP
陸頌雄議員

應邀出席人士

廖長江議員

列席秘書

黃少健先生

列席職員

秘書長
陳維安先生, SBS

法律顧問
馮秀娟女士

副秘書長
梁慶儀女士

助理秘書長 3
衛碧瑤女士

調查委員會法律顧問/高級助理法律顧問 3
李家潤先生

高級議會秘書(3)2
莫穎琛小姐

一級行政事務助理(3)3
梁少芬小姐

主席：

多謝 Martin，多謝廖長江議員。你知道我是要先讀出一段開場白，然後才會正式研訊，我要用一些時間。

廖長江議員：

好的，請。

主席：

首先，我歡迎廖長江議員來到我們的調查委員會，出席這次閉門研訊。調查委員會的職責是負責確立謝偉俊議員根據《基本法》第七十九條第(七)項及《議事規則》第 49B(1A)條，動議譴責鄭松泰議員的議案所述的事實，並就所確立的事實是否構成譴責理據提出意見。

今天的研訊是根據調查委員會的《行事方式及程序》進行，當中第 27 段訂明在閉門研訊中取得的證據、向調查委員會提交的陳述書，以及任何相關的往來文件，均屬機密資料，直至調查委員會將其銷密或公開為止。

廖長江議員及各位委員已簽署保密承諾書，因此，若未事先取得調查委員會的書面授權，各位不得在研訊過程以外的場合發表任何機密資料，或發表與研訊有關的任何事宜。秘書處會為整個研訊過程擬備逐字紀錄本。

請廖長江議員及各位委員留意，在研訊中，委員只應為確立譴責議案所述的事實而提問，不應發表個人意見或作出個人陳述，亦不應邀請證人發表個人意見。我會決定某條問題或某項證據是否與調查委員會的職權範圍有關，以及是否屬於研訊範圍。我亦有酌情權決定某條問題是否屬於跟進問題，以及應否容許提出該問題。我現在宣布研訊開始。

廖長江議員已選擇在宣誓後接受訊問。我現在以調查委員會主席的身份，根據《立法會(權力及特權)條例》第 11 條為你監誓。請你站立，並依照放在面前的誓詞宣誓，若你選擇宗教式宣誓，請用手按聖經宣誓。

廖長江議員：

I swear by almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

主席：

多謝。廖長江議員，你曾經向調查委員會提交書面陳述書ML1(C)號文件，以上是調查委員會的文件編號。你現在是否正式向調查委員會出示該文件作為證據？

廖長江議員：

是的，我出示該文件作為我的證據。

主席：

好。廖長江議員，你就陳述書還有否補充？

廖長江議員：

我沒有補充。

主席：

為了善用研訊時間，請委員提問時盡量精簡，亦需明確，希望證人亦明確及切實回答問題，亦希望證人和委員待我示意後才發言。委員如想就某份調查委員會文件的內容向證人提問，應指明該份文件的編號和段落，以方便參考。

根據《行事方式及程序》，我作為主席會提出第一條問題，證人回應後，我會請其他委員提問。

廖長江議員，根據你的書面陳述書 ML1(C)，你可否確認你是透過電視直播，看到鄭松泰議員在 2016 年 10 月 19 日立法會會議上作出倒轉擺放國旗、區旗的行為？你可否確認你是透過電視直播看到鄭議員的有關行為的整個過程，而非在會議廳內親眼目睹？

廖長江議員：

是的，我確認，但我有補充，我是在電視直播看到的，但我並非全程看完，我並非在他一邊做的時候全程留意着，但我間歇性看過去時他是做着這樣的動作。

主席：

OK，好的。請問其他委員有否問題？陳振英議員。

陳振英議員：

謝謝主席。Martin，我看到在你的陳述書中，你是描述"國旗及區旗"，但謝偉俊議員則把它描述為"展示品"。那麼，在你的角度，你覺得那些被鄭松泰議員倒插的，在你的角度是覺得它是國旗或區旗.....

廖長江議員：

我覺得.....

陳振英議員：

.....的代表呢？謝謝。

廖長江議員：

我看到那是國旗和區旗，我是頗肯定那是國旗和區旗。

主席：

好。還有否其他委員？何君堯議員。

何君堯議員：

你可以形容該國旗的形態和設計是怎樣嗎？說明確一點。

廖長江議員：

國旗的形態？我應該認識吧，就是五星旗了。

何君堯議員：

五星旗。

廖長江議員：

是。

何君堯議員：

顏色呢？

廖長江議員：

紅色。

何君堯議員：

紅色的？

廖長江議員：

是。

何君堯議員：

跟現時我們的國旗的形態一模一樣？

廖長江議員：

是的，是的，沒錯。

何君堯議員：

區旗呢？

廖長江議員：

也是一樣，形態也是一樣。

何君堯議員：

紅色？

廖長江議員：

但你說是否有些攤開了，有些摺起了.....

何君堯議員：

不是的，我不是說摺起、攤開或飄揚的形態，我說的是設計，該展品的設計內容、顏色和標誌.....

廖長江議員：

顏色是一致的，跟國旗和區旗。

何君堯議員：

是的。區旗是甚麼顏色？

廖長江議員：

紅白。

何君堯議員：

紅白。白色是甚麼？

廖長江議員：

白色是紫荊花。

何君堯議員：

洋紫荊花。多謝你。

主席：

好。還有否其他委員？是，葛珮帆議員。

葛珮帆議員：

廖長江議員，謝偉俊議員在譴責議案中認為鄭松泰議員這種故意反轉國旗和區旗的行為屬於行為不檢，以及違反了立法會

的誓言。我想看看你是否也認同這說法？為何你也會認為他是行為不檢呢？

廖長江議員：

行為不檢就是說，你把國旗和區旗倒插的話，這個行為已經不檢點，你走到別人的席間，把別人——即其他議員——的物品移動或作一些與別人原意相違背的事情，我認為已經是行為不檢。

關於是否違反誓言，對吧？即謝偉俊議員所說。我覺得鄭松泰議員，我亦親耳聽到他是宣誓過的，他是宣誓擁護《中華人民共和國香港特別行政區基本法》，他亦宣誓過會效忠中華人民共和國香港特別行政區，他亦宣誓過說會遵守法律。我認為這三方面都是不符合.....即這個行為不符合他誓言所提述、提示的這三樣事情.....這三個方面。

主席：

好。陸頌雄議員。

陸頌雄議員：

主席。廖議員，想請問你剛才提到，你當天在 Ante Chamber 間歇性看到電視，繼而看到鄭松泰議員倒轉民建聯同事議員席上的國旗的行為。你當時是說間歇看到的，想問你除了在 Ante Chamber 外，有否在其他媒體或平台的轉播或者錄播中，從頭到尾也看到整個過程，你有否在其他地方.....

主席：

廖長江議員。

陸頌雄議員：

.....看到"原汁原味"的版本呢？

主席：

是。

廖長江議員：

是。你說整個過程呢，他倒插也是有一段時間的，因為有近 10 多位民建聯議員在那裏，你說倒插的整個過程，我並沒有全程看到，但我會看到他，首先，他先是倒插，接着是.....我亦在電視看到 Ann CHIANG——蔣麗芸議員——她回去把它們放回正確位置，即再回復原狀；之後他再一次這樣做。但是，你說在那一次來說，我在 Ante Chamber 停留的時間都是頗長的，但 Ante Chamber 有很多人，我可能與人傾談，沒有留意到他正在做甚麼，所以我說"間歇性"是這個意思，但我一直都在那個可以看到電視機的位置，在 Ante Chamber 那裏。而你說其他那些新聞轉播的，我相信我亦看過，但我真的記不起是甚麼時候看過、大約有多少次。

主席：

好。還有沒有其他？是，張國鈞議員。

張國鈞議員：

是。廖議員，在你的書面陳述書第 3 及 5 段.....

廖長江議員：

是。

張國鈞議員：

.....你說你認為鄭議員沒有為他倒插國旗及區旗的行為顯示悔意，在鄭議員不作道歉及顯示悔意的情況下——你的說法是——你毫無懸念地支持謝偉俊議員的動議。你可否說一說，為何你有這一種說法？

主席：

廖長江議員。

廖長江議員：

是。

主席：

是。

廖長江議員：

我的說法是，如果他有道歉及顯示歉意的話，如果他真是可以 convince 到我，他是真的有悔意的話，我可以考慮，即是說不簽署這個——我是其中一個簽署人——謝偉俊議員那項動議，我可以不考慮，即是說會不會需要褫奪他那個.....即最終褫奪他的議員資格，但他沒有這樣做，如果他有這樣做的話，有悔意及道歉的話，我可以有另外一種考慮，但現在來說，是毫無懸念的，因為根本就沒有，即歉意及道歉是不存在的。

主席：

好。還有哪位議員想提問？或者我可以追問一下，廖長江議員，你認為.....謝偉俊議員用了"展示品".....

廖長江議員：

Sorry，我可否.....不好意思，主席，我可否補充？即他有沒有違.....

主席：

未答完是嗎？你等一等。

廖長江議員：

.....要等.....

主席：

你要補充.....

廖長江議員：

張國鈞議員的.....

主席：

.....張國鈞議員的問題？OK。

廖長江議員：

但是，他最終來說，他有沒有犯法呢，這並不是我要考慮處理的問題，這個事情是另外會有 authority 處理。

主席：

好，我接着問吧。謝偉俊議員是用"國旗、區旗的展示品"，你會不會知道這些展示品的來源呢？

廖長江議員：

我不清楚它的來源，你說誰製造這些展示品，這個不知道，不清楚。

主席：

但是，你同意他用"國旗、區旗展示品".....

廖長江議員：

是。

主席：

.....來形容那天插在那裏的物品？

廖長江議員：

是，是，沒錯。

主席：

OK。大家還有沒有追問？我再想問一個吧，如果是.....

廖長江議員：

因為當時的鏡頭，它不是一個很大的、拍到整個廳這樣子，有時會拉近，有時會離遠少許。

主席：

是，所以就.....即你同意便行了。

廖長江議員：

沒錯。

主席：

我們其實是想.....也想知道，你是否知道那展示品.....

廖長江議員：

是。

主席：

.....那些國旗、區旗展示品的來源而已。

廖長江議員：

我也頗肯定它是國旗和區旗。

主席：

OK。謝偉俊議員在其動議——剛才其實你也有提及的——有兩個部分，一個是行為不檢，一個是違反誓言。

廖長江議員：

是。

主席：

即這兩方面，你也認為不恰當，亦不應該、不可以接受。那你認為在他整個行為裏面，哪一部分你看他是屬於行為不檢，哪一部分他是違反誓言？

廖長江議員：

他.....

主席：

你看同一個行為的時候，哪一.....

廖長江議員：

.....我相信同一個行為有兩個.....都可以有兩個 interpretation 的，你打人一巴，我們可以說是一個 assault，可以是一個侮辱，對嗎？這變成說，我相信兩者都是存在的，最大的問題是，行為不檢方面，我剛才已說了，你走到人家那裏.....即 re-arrange 人家的東西，這已是不對了.....

主席：

我可否這樣理解.....

廖長江議員：

.....Sorry，我可否.....

主席：

是，OK。

廖長江議員：

.....我再加多一句。

主席：

是。

廖長江議員：

我認為他這樣倒插國旗是行為不檢，最大的問題就是，我在那份 statement 已說了，因為一個國旗是代表着國家和人民，一個區旗就代表香港特區和其市民，你這樣倒轉它，對國家、國民、香港特區和市民是一種侮辱，這亦是行為不檢的一個最大的元素。

主席：

嗯。我再追問少許。

廖長江議員：

是。

主席：

你剛才一開始時說，即純粹他這樣走過去另外一些議員的座位，把他們的物品倒插，你認為這個行為本身都是屬於行為不檢的一種，即不要說它是否國旗展示品？

廖長江議員：

是，除非你得到那位議員的同意，否則我覺得是不能夠接受的，但最大的問題都是侮辱的問題。

主席：

是。大家還有沒有問題要追問？OK。如果沒有，我們想問一下，廖長江議員自己會不會有其他的補充資料？

廖長江議員：

我沒有補充資料。如果你們需要我補充的話，我願意作答。

主席：

好，可以。應該沒有其他問題了，很清楚，對嗎？OK？在行為不檢及違反誓言這兩個部分。我再確定一下，即確認一下，

你剛才提出違反誓言那部分就完全同.....因為那些展示品其實是.....都是代表着國旗和區旗？

廖長江議員：

其實，兩者都有，但你說行為不檢方面，侮辱性是最大的問題。

主席：

侮辱性是.....

廖長江議員：

是。

主席：

.....你指侮辱性？

廖長江議員：

侮辱國家、國民、香港特區及香港特區的市民，這個侮辱性是最大的問題。如果你是說違反誓言的話，那你看回誓言，他說過些甚麼，有沒有違反了？我覺得這些行為.....剛才我舉了三個方面，一個是擁護香港特別行政區《基本法》；效忠香港特別行政.....中華人民共和國香港特別行政區；第三就是說，他的誓言是遵守法律。這三樣東西，我覺得他都是違反了。

主席：

嗯。

廖長江議員：

即在這.....即你要斟酌.....即你說違反誓言方面，我會比較針對性地以那三樣東西來說，我覺得他的所作所為對那三方面都是不符合的。

主席：

好。我想如果大家沒有其他問題，我們應該可以讓廖長江議員離席。

廖長江議員：

好。

主席：

多謝你。

廖長江議員：

謝謝，thank you。

主席：

謝謝你，多謝你的時間。

廖長江議員：

不用再回來吧？

主席：

應該很清楚，很清楚。

廖長江議員：

Thank you。

主席：

很清楚。

機密

立法會

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

第一次閉門研訊第三節的逐字紀錄本

日 期： 2017 年 7 月 3 日(星期一)
時 間： 上午 10 時至 10 時 31 分
地 點： 立法會綜合大樓會議室 5

出席委員

梁美芬議員, SBS, JP (主席)
何君堯議員, JP (副主席)
葛珮帆議員, BBS, JP
邵家輝議員
陳振英議員
張國鈞議員, JP
陸頌雄議員

應邀出席人士

許智峯議員

列席秘書

黃少健先生

列席職員

秘書長
陳維安先生, SBS

法律顧問
馮秀娟女士

副秘書長
梁慶儀女士

助理秘書長 3
衛碧瑤女士

調查委員會法律顧問/高級助理法律顧問 3
李家潤先生

高級議會秘書(3)2
莫穎琛小姐

一級行政事務助理(3)3
梁少芬小姐

主席：

許智峯議員，歡迎你來調查委員會，參與今日的閉門研訊。我們調查委員會的職責，就是負責確立謝偉俊議員根據《基本法》第七十九條第(七)項及《議事規則》第 49B(1A)條動議譴責鄭松泰議員的議案所述的事實，並就所確立的事實是否構成譴責的理據提出意見。

我一定要讀完這段簡介。

今日的研訊是根據調查委員會的《行事方式及程序》進行。當中第 27 段訂明，在閉門研訊中取得的證據、向調查委員會提交的陳述書，以及任何相關的往來文件，均屬機密資料，直至調查委員會將其銷密或公開為止。

許智峯議員及各位委員已簽署保密承諾書，因此，若未事先取得調查委員會的書面授權，各位不得在研訊過程以外的場合，發表任何機密資料或發表與研訊有關的任何事宜。秘書處會為整個研訊過程擬備逐字紀錄本。

許智峯議員及各位委員請留意，在研訊中，委員只應為確立譴責議案所述的事實而提問，不應發表個人意見或作出個人的陳述，亦不應邀請證人發表個人意見。

我會決定某條問題或某項證據是否與調查委員會的職權範圍有關，以及是否屬於研訊範圍，我亦有酌情權決定某條問題是否屬於跟進問題，以及應否容許提出該問題。

我現在宣布研訊開始。許智峯議員已選擇在宣誓後接受訊問，我現在以調查委員會主席的身份，根據《立法會(權力及特權)條例》第 11 條為你監誓。請你站立並依照放在你面前的誓詞宣誓。若你選擇宗教式宣誓，請你用手按聖經宣誓。

許智峯議員：

本人許智峯謹對全能上帝宣誓，本人所作之證供，均屬真實及為事實之全部，並無虛言。

主席：

由於許智峯議員，你沒有交書面陳述書，所以你會否向調查委員會提交任何書面的陳述書？

許智峯議員：

不會。

主席：

OK。接下來，許議員，由於你沒有提供書面陳述書，我們所有的證據都會在今日的研訊中進行。為了善用研訊的時間，請委員提問盡量精簡具體，而證人亦須明確及切實回答問題。請證人及委員在我示意之後才發言，委員如想就某份調查委員會的文件向證人提問，就應該要明確指示文件的編號及段落，以方便參考。

根據《行事方式及程序》，作為主席，我會先提出一條開場的問題，證人回應之後，我才會請其他委員發問問題。

許智峯議員，在 2016 年 10 月 19 日立法會會議席上，你當時是否在會議廳親眼目睹鄭松泰議員作出一些被指稱與國旗及區旗有關的行為。如果是，你當時看到甚麼？

許智峯議員：

我當時是在席的，在建制派製造流會的時候，我都沒有離開會議廳。而當時我有看到鄭松泰離開自己座位，去到建制派議員的座位上。當時，我並無見到他的動作是甚麼，即他在做甚麼，但在建制派的座位上是有些動作，是後來透過傳媒、新聞，我才知道原來他是在倒插國旗。因為我和他的位置的距離，都有一段距離，所以仔細的動作是甚麼，我當時是看不到的。

主席：

OK。是，請其他委員。是，陳振英議員。

陳振英議員：

許議員，我想問一下，除了你之外，應該在會議廳內亦都有其他議員坐在席上。當鄭松泰議員做那些你所謂"見到的動作"時，其他議員很冷靜地坐着，還是都有一些不同的反應呢？

許智峯議員：

我憶述，即是我記得，是沒有特別議員有甚麼特別反應，即是沒甚麼人理會他。

陳振英議員：

是。

主席：

是。是否還有其他？是，葛珮帆議員。

葛珮帆議員：

許智峯議員，我想問一問，當時.....後來你知道，鄭松泰議員反轉國旗及區旗，當時蔣麗芸議員亦都過去跟鄭松泰議員說了一些話，鄭議員亦有回應，亦有跟那些管事說過話。在你的距離，你是否聽到他們的對話、蔣議員說甚麼及鄭議員說甚麼？

主席：

許智峯議員。

許智峯議員：

我聽不清楚內容，但是蔣麗芸議員是很大聲的，所以我聽到她在呼叫，似乎是在罵鄭松泰，但具體是罵甚麼字眼，我就不記得了。我印象中，鄭松泰都有回應她幾句，但是比蔣麗芸議員更小聲，我更加聽不到。

葛珮帆議員：

許智峯議員，在蔣麗芸議員.....即是你覺得她在罵鄭松泰議員，罵完鄭松泰議員之後，我們回看片段見到，其實鄭松泰議

員又再一次反轉國旗及區旗。當時，其實你是否看到他.....即是蔣議員罵完鄭松泰之後，他又再去做的行為呢？

主席：

是，許智峯議員。

許智峯議員：

我不記得很清楚先後次序，總之我記得鄭松泰議員有走到那些座位，去建制派議員的座位那裏做些動作，然後蔣麗芸議員有罵他，但是罵完之後有否再繼續做，還是罵完便停，我便不太記得了。

主席：

好。是，張國鈞議員。

張國鈞議員：

是，許智峯議員，剛才你提及過，沒有很清楚看到鄭松泰議員當時做甚麼，但你所形容的是"有些動作"。那麼，在你當時看到，即你所謂的"有些動作"，其實你是看到甚麼？你看到他有做些甚麼，還是你完全看不到他做些甚麼？

許智峯議員：

其實是很遠的。

主席：

許智峯議員。

許智峯議員：

Sorry。

主席：

不好意思，由於我們現在是逐字記錄.....

許智峯議員：

好。

主席：

.....還有幾位是男委員，我們一定要清楚是哪位議員發問，證人回應哪位議員的問題，所以，你們待我叫喚你們的名字，包括委員也是，好嗎？現在是許智峯議員回應。

許智峯議員：

好。實際的距離是看不到那個動作是甚麼的，我會看到.....我會這樣形容，他是在動他桌子上的東西，但是，後來看到新聞片段我才知道是在動國旗。

主席：

是，張國鈞議員。

張國鈞議員：

沒有了，你先繼續，你先繼續。

主席：

還有沒有.....還有沒有其他？我想問許智峯議員一個問題，就是你是否知道當天民建聯的議員其實在會議上擺放了一些國旗和區旗的展示品在會議廳？

許智峯議員：

我看到的。

主席：

看到？即是在那一堆.....即是你剛才說是建制派那邊，你是看到有擺放了區旗、國旗的展示品在那裏出現的？

許智峯議員：

正確。

主席：

是。那麼如果是知道的話，你是否覺得他們是為了突顯對擁護《基本法》、效忠中華人民共和國的莊嚴的意義及承諾而擺放這些展示品，或者你如何看待他們擺放這些展示品？

許智峯議員：

這個會是我個人的感受了。我會覺得建制派議員很虛偽地為了表示自己擁護國家而擺放那些國旗在那裏。

主席：

OK。是，張國鈞議員。

張國鈞議員：

是。主席，我也是跟進剛才許議員提及過看見鄭松泰議員走到建制派議員的座位。我想你可否具體指出，你看不到他做甚麼動作，你看到的就是說，他應該是去搞建制派議員的座位上的一些東西。你看到鄭松泰議員走到哪個建制派議員的座位，還是他走到不止 1 個建制派議員的座位？

許智峯議員：

他走到不止.....

主席：

等一等，是，許智峯議員。

許智峯議員：

他走到不止 1 個建制派議員的座位，但是哪個跟哪個，我則不記得了。

張國鈞議員：

大約的時間是多長，你有沒有一個印象？

許智峯議員：

由建制派製造流會，那段時間都很長，正在響鐘聲，起碼在我看到的、記憶裏面，應該也有 30 秒至 1 分鐘左右。

主席：

好，張國鈞議員。

張國鈞議員：

你是看到他走去多少個座位呢？多過 1 個座位，逐個建制派座位還是怎樣？你是否看到？

主席：

許智峯議員。

許智峯議員：

我沒有很仔細、每一刻的眼神也留在他身上。但是，我起碼見到他在三四個建制派議員的座位都有走過去做一些動作。

主席：

張國鈞議員。

張國鈞議員：

剛才亦提及過，蔣麗芸議員在過程中曾經走進去，剛才亦說過，她很大聲地對鄭松泰議員講了一些說話。好了，那一刻，你說你聽不清楚蔣麗芸議員對鄭松泰議員說了甚麼，對嗎？

主席：

是，許智峯議員。

許智峯議員：

正確。

張國鈞議員：

好的。但是，那一刻引起了你的注意，因為她大聲說話，對嗎？

主席：

許智峯議員。

許智峯議員：

正確。

張國鈞議員：

好的，那一刻之後，你有否留意究竟他們兩個發生了甚麼事呢？有否看過去那邊，究竟他們是因為甚麼而爭執，還是你只是聽到有人大聲說話，而你沒有理會他們發生甚麼事？

主席：

許智峯議員。

許智峯議員：

我有轉頭看，她吸引了我的注意。但是那一刻，我的理解是因為鄭松泰議員正在動建制派議員桌上的東西，所以蔣麗芸議員便罵他，我的理解便是這樣。

張國鈞議員：

即是即使蔣麗芸議員她很大聲對鄭松泰議員說話，那一刻或者之後，你也不知道她究竟是否說建制派議員席上的國旗、區旗，是否這個意思？

主席：

許智峯議員。

許智峯議員：

在蔣麗芸議員罵完他之後，我應該也猜到事情是因為這樣。我自己記得，如果我看到國旗倒轉的時候，那不是整個會議完結後看新聞片段的，我在現場也有看到的。

主席：

接着先是陸頌雄議員。

陸頌雄議員：

好，謝謝主席。許智峯議員，剛才你說看不清楚，鄭松泰議員走到民建聯議員的席前搞一些東西，但卻看不清楚是搞甚麼東西。但是，你一開始說也看得清楚那些是國旗和區旗。我又想問，你是否看得清楚，搞完之後，那支國旗——你說不知搞了甚麼——那支國旗和區旗是倒插了的？倒插了的這個畫面你是否也是清晰看見？

主席：

許智峯議員。

許智峯議員：

倒插了的畫面我是在現場有看見的。

主席：

陸頌雄議員。

陸頌雄議員：

第二個提問是，蔣麗芸議員在中間進來了，對鄭松泰議員訓斥了幾句，之後蔣麗芸議員將那些國旗放回正確位置，這個動作許智峯議員是否看見呢？

主席：

許智峯議員。

許智峯議員：

蔣麗芸議員將國旗放回正確位置，我都看見的。

陸頌雄議員：

都看見的。那麼，再過一段時間之後，鄭松泰議員又再次走到民建聯議員同事的桌子，又將那些國旗倒插，這個動作你又看不看到呢？

主席：

許智峯議員。

許智峯議員：

這部分我便沒有甚麼印象了，很難記得清楚。

陸頌雄議員：

如果你記不清楚便.....你是否記得蔣麗芸議員訓斥完而且擺正位置後，你是否記得鄭松泰議員有否走過去民建聯議員的桌子上面搞過一些東西呢？即使不是很清晰的動作，搞過一些東西，你是否記得他有第二次搞過呢？

主席：

許智峯議員。

許智峯議員：

我不記得他有搞過很多次，不太肯定，即是他肯定有搞過1次，但他之後被人罵完還有沒有再搞，我便不記得了。

陸頌雄議員：

OK。

主席：

陸頌雄議員。

陸頌雄議員：

那麼你是否記得之後的.....你有沒有印象，之後的國旗和區旗又倒插一次呢？

主席：

許智峯議員。

陸頌雄議員：

你看不看到那個畫面呢？

許智峯議員：

我不是太有印象那些國旗和區旗倒插完，然後又插回正確位置、又倒插，很多重複的，我便不記得了。但是，我在現場有印象記得它是倒插過，以及有議員應該將它放回正確位置。但是，反複多少次或有否反複過，我便不太肯定。

主席：

陸頌雄議員。

陸頌雄議員：

那麼你在其他新聞的轉播、網上的轉載等，你有否看過其他涉及這件事的報道或者錄像的畫面呢？

許智峯議員：

我有看過。

陸頌雄議員：

而那些畫面，你有否看到是我剛才所說的，一種反複兩次的倒插的現象或者情況呢？

主席：

許智峯議員。

許智峯議員：

在畫面、新聞片段、相片，我又不太記得他有否反複地去。

陸頌雄議員：

好的，謝謝主席，我沒有問題了。

主席：

好，接着是.....等一等，邵家輝議員先。

邵家輝議員：

謝謝。許智峯議員，我想問當天你看到鄭松泰議員，他去倒轉那些.....叫作"國旗"吧，但有些人覺得國旗的 size 有規則，但那其實不一定是它的規則，即沒有依足它的規則，但以你的判斷，你覺得那支是不是國旗呢？

主席

許智峯議員。

許智峯議員：

我的判斷，那支肯定是國旗。

邵家輝議員：

你覺得那支是國旗。

許智峯議員：

是。

邵家輝議員：

OK。那麼，以你的判斷，你覺得鄭松泰議員把那支國旗倒轉，這是正面的行為還是負面的行為呢？對於國旗。

主席：

許智峯議員。

許智峯議員：

這個是個人的意見嗎？

邵家輝議員：

是，個人意見，是。

許智峯議員：

是不是……你的問題是……覺得這個行為……

邵家輝議員：

你覺得他……鄭松泰議員把國旗倒轉插在那裏，對於國旗是一種正面的行為，還是負面的行為？

許智峯議員：

首先，因為……我在現場看不到，我後來從新聞片段才知悉，所以，在現場我是沒有任何評價的，後來從新聞片段和相片中看到，對於整個行為，我有我的想法。

邵家輝議員：

嗯。

許智峯議員：

或許我想香港市民都有不同的看法，我不會在這裏特別評論。

主席：

他不作評論。

邵家輝議員：

他.....他不作評論，OK，他不作評論。即是覺得他倒轉，這樣是正面還是負面，你不作評論，是嗎？

許智峯議員：

OK，我補充吧。

主席：

好。

邵家輝議員：

是。

許智峯議員：

有市民會覺得是正面，有市民會覺得是負面。

邵家輝議員：

OK，但你自己個人是沒有意見的。

許智峯議員：

我自己有我自己的想法，但我不會在這裏評論。

邵家輝議員：

OK，行。我沒有問題，謝謝。

主席：

還有沒有其他問題。陳振英議員。

陳振英議員：

許議員，後來第二次鄭松泰議員有一些動作之後，立法會主席應該對他的行為作出了一些裁決，就這一方面，你有沒有聽

到主席的裁決，或者及後的畫面是怎樣呢？你可否跟我們分享一下。

主席：

許智峯議員。

許智峯議員：

我印象有點模糊，不過，我記得主席說過了一些話，大概是叫他不要這樣做，是這樣子，我依稀的印象就是這樣，但準確的字眼是甚麼，我便不記得了。

主席：

陳振英議員。

陳振英議員：

謝謝主席。後來，主席其實裁決了他違反《議事規則》，希望他離開會議廳，接着，應該有很多人圍着，我想問一下，當時很多人圍着的時候，你是否其中一員離開你的座位，圍在鄭松泰議員附近的？

主席：

許智峯議員。

許智峯議員：

我不太記得，不太記得了。

陳振英議員：

我想問另一個問題。當天這件事發生之後，你有沒有跟鄭松泰議員做過任何交流，當天，我是說當天。

主席：

許智峯議員。

許智峯議員：

無論是當天或之後，我都沒有跟他交流這件事。

主席：

我想跟大家講，包括我們的證人，我們說不會說個人的意見，但如果牽涉到今天的主題，那是要有相關性的，你知道那項動議是有關行為不檢和違反誓言，所以，在這方面，相關的要確認的某一些元素，我們可能會問到相關的問題，當然，你可以選擇回應、不回應，或是你覺得沒有意見也是可以的。

我仍然想問，這是有關觀感、一個常人的角度，你也在場，或者你之後看到，你剛才亦已確認，這應該是一面國旗，把國旗倒插，在你自己看來，這是否一個侮辱的行為呢？

許智峯議員：

我認為不是侮辱的行為。

主席：

你剛才說在市民當中，有正面、有負面，你可否提供少許資料……

許智峯議員：

好。

主席：

……你說的正面和負面，讓我們委員會參考呢？

許智峯議員：

像一匹布那麼長。市民會覺得正面，因為市民對特區政府、對國家有很多不滿，對於這些不滿，市民會期望一位代議士用不同的方法來宣示，我相信這是其中一種方法。我覺得這個行為可以舒了很多香港市民的怨氣，即替他們出了一口氣。市民當然有負面的，即是覺得不應該用這種方法來宣示，覺得不好，所以都會有負面。

主席：

那就是說，他倒轉國旗，即插在那裏的國旗或區旗，你剛才形容為正面，即是市民認為可以宣示他們對國家的不滿，這個動作本身是表達他們對國家的不滿.....

許智峯議員：

我.....

主席：

.....剛才的，是否可以這樣理解？

許智峯議員：

或者準確一點說，這個行為是一種政治表態，是一種意見的宣示，我會覺得是這樣。

主席：

好，陸頌雄議員。

陸頌雄議員：

許智峯議員認為倒插國旗並非一個侮辱的行為，那麼，退一步說，觸碰或搞亂其他議員席上所展示的物品，不論是國旗、區旗或者他們一些有象徵性意義的物品，是否一種行為不檢呢？謝謝。你怎樣看？

主席：

許智峯議員。

許智峯議員：

我想聽清楚一點，觸碰和甚麼？

陸頌雄議員：

擾亂，即譬如原來是這樣擺放的，卻變成為那樣擺放，我的意思是說不論是國旗、區旗，或有時有一些其他的.....議會都會

有一些展示品的，即是搞別人的東西，簡單來說就是這樣，這算不算是一種行為不檢呢？

主席：

許智峯議員。

陸頌雄議員：

按你理解《議事規則》來說。

許智峯議員：

我覺得搞其他議員的私人物品，本身是不對的，我自己都不會做，但當然，你說的是國旗和區旗，是否碰一碰就是行為不檢呢？我認為不是。我舉一個例子吧，我以前在加拿大留學的時候，我的房間都有一張國旗，我也不是正面擺放的，我是把它垂直擺放的，這難道又是不檢嗎？

主席：

是。還有沒有追問？

陸頌雄議員：

有的，有的。

主席：

讓他先問完，好嗎？陸頌雄議員。

陸頌雄議員：

想問，這個標準是你個人的一個統一的標準，還是可能會多重的標準呢？因為將來可能會涉及其他議員可能會觸碰其他議員的展示品，或閣下或貴黨的展示品，包括可能是貴黨的黨旗，或貴黨或閣下的一些政治訴求的標語、展示，如果有其他同事有不同的意見而去倒轉這些物品，你個人覺得這也是不屬於行為不檢的？

主席：

許智峯議員。

許智峯議員：

民主黨的黨旗也被人踩過、燒過的，當然，有些人十分不滿我所屬的團體，當然都會有，我不認為這些人應該為這種行為負上甚麼責任，這都是一種政治表態，都是一種意見的宣示而已。

陸頌雄議員：

是否屬於行為不檢或侮辱呢？這種行為。

許智峯議員：

我不會覺得區區對我團體的旗幟做這些行為，就是行為不檢或侮辱，我不會這樣認為。

主席：

OK。何君堯議員，是嗎？

何君堯議員：

是。剛才許智峯議員說你自己在加拿大讀書時，把你自己當時的房間內的加拿大國旗如何擺放，這是你的問題，但剛才陸頌雄問的問題是，走到別人的位置，把別人的物品這樣處理，而這是未經同意的，這是否行為不檢。他是問這個問題，而並非說純粹是政治宣泄，你走到別人的位置，未經別人同意搞別人的東西，這是否行為不檢，是這個意思。你如何回答這個問題？

主席：

許智峯議員。

許智峯議員：

我澄清一下吧，我在加拿大讀書時，我在房間掛的是五星旗，並非加拿大國旗。

何君堯議員：

不要緊。

許智峯議員：

不過是垂直地掛而已。那麼，我剛才.....

何君堯議員：

不過那支是你的旗。

許智峯議員：

那支是我的旗。

何君堯議員：

沒錯，是你的物品。

許智峯議員：

是的。我重申我的說法，就是任何議員的私人物品，都不應該被其他議員移動或觸碰，就是這樣。

何君堯議員：

是。所以，你認為走到別人的位置搞別人的東西而未經別人同意，這是行為不檢，這是你贊同的嗎？

許智峯議員：

我覺得又言重了，我先不說那支是否國旗或區旗，如果我去搞你那杯水，這也是不對的，但我不會覺得這種行為叫做行為不檢那麼嚴重。

何君堯議員：

是的，是不恰當的，OK。

許智峯議員：

是不對的。

何君堯議員：

另一個問題，你剛才說你沒有與鄭松泰議員討論過這件事情，即倒插國旗這個事態，那麼你們其後有否在自己開會時，鄭松泰是有出現或參與過你們就此事情的討論，你可否說一說？

許智峯議員：

我知道在民主派的會議中，鄭松泰從來都不是成員。以我所親自去過的會議，也沒有見過他，以我所理解，他亦沒有出席過。

何君堯議員：

OK，OK。好的，我沒有其他問題了，主席。

主席：

好。許智峯議員，我想問一下，除了蔣麗芸議員外，你有否看到在議事廳裏面，當鄭松泰議員進行.....你說在那裏好像是有些行為，走到建制派議員的方向，有否其他人士——除了蔣麗芸議員曾經試過喝止外——是勸諭鄭松泰議員，走近他身邊叫他.....跟他談論一些事情，或叫他不要這樣做呢？即有否看到一些其他人士，包括在場的保安或管事等，有否看到呢？

許智峯議員：

我不太記得了。

主席：

不記得，OK。陸頌雄議員剛才用的是"觸碰"，我直接一些說，應該是倒插，而不是像你剛才所說，可能你自己在外國讀書，你也有擺放五星旗。如果他不是觸碰，或不是純粹移開了，而是有意識地倒轉你自己擺放的五星旗，你會否覺得這也是一種侮辱呢？

許智峯議員：

我跟剛才的說法一樣，我覺得先不論是否國旗、區旗，動別人的東西是不對的，但如果你說把國旗和區旗倒轉插，這是一種政治的表態，一種意見的宣示，我不會覺得是一種侮辱。

主席：

在我們今天的動議，之所以會有我們這個調查，它是有兩部分的，一個部分是行為不檢，剛才我們說過了，另一部分就是違反誓言。行為不檢那部分，我們剛才已經問過了。那麼，如果你們宣誓時，然後便要效忠宣誓內容，而他進行了這種侮辱國旗，你自己認為這樣對於宣誓是否也有違反呢？或是並非完全符合宣誓內容呢？

許智峯議員：

我認為沒有違反。因為，既然是一種政治表態、意見的宣示，當你效忠一個國家時，你也可以批評這個國家。當你在議會內對任何政治人物、機構也好，你可以有自己的意見，這些意見是可以用不同的方式宣示出來，我覺得這些行為與他的誓言是無關的。

主席：

在行為不檢那部分，其實我們現在說的是在議事廳裏面，並非在外面，即你的物品，或者有人宣泄等，我們在議事廳裏面，主要是說家規的問題。

所以，在這一部分，你是否認為在我們的規則中，也應該是清晰的，主席當天可能勸諭了一位議員不要走到其他議員的席

位上，當時他去騷擾或搞別人擺放在那裏的物品——這是雙方也有機會發生的——是否不應該這樣做呢？我們自己訂下的家規，是否應該不容許議員走到別人的位置，騷擾別人擺放的東西，或是在未經同意下製造這些衝突、不滿呢？

許智峯議員：

我所理解的立法會《議事規則》是沒有說得那麼仔細的，而且我亦認為無須說得那麼仔細。這些是一些常識，即是不要搞別人的東西，我覺得是常識，沒有理由要寫進會議規則吧。我覺得任何政治人物做的任何行為，市民都是監察着的，市民覺得他做得是否正確，自己會有評價，日後也會決定是否投票給他。

主席：

大家還有否追問？還有否追問？OK。那麼，我想我也是.....是的，那麼，不如看看許智峯議員對你自己剛才的意見，還會否有任何補充？讓你說一說。

許智峯議員：

補充的話，只可以說基於事實的事情，或者關於我個人判斷的事情，或者我認為的我個人的意見，我剛才已經說過了。我最後的個人意見就是覺得立法會成立這個委員會是極之無聊，而且大家也是在浪費你們自己的時間，我最後想說的便是這麼多。

主席：

好。那麼，我們多謝許智峯議員出席。我們會請下一位證人。

機密

立法會

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

第一次閉門研訊第四節的逐字紀錄本

日 期： 2017 年 7 月 3 日(星期一)
時 間： 上午 10 時 31 分至 10 時 49 分
地 點： 立法會綜合大樓會議室 5

出席委員

梁美芬議員, SBS, JP (主席)
何君堯議員, JP (副主席)
葛珮帆議員, BBS, JP
邵家輝議員
陳振英議員
張國鈞議員, JP
陸頌雄議員

應邀出席人士

李永強先生

列席秘書

黃少健先生

列席職員

秘書長
陳維安先生, SBS

法律顧問
馮秀娟女士

副秘書長
梁慶儀女士

助理秘書長 3
衛碧瑤女士

調查委員會法律顧問/高級助理法律顧問 3
李家潤先生

高級議會秘書(3)2
莫穎琛小姐

一級行政事務助理(3)3
梁少芬小姐

主席：

多謝李永強先生出席我們今天調查委員會的閉門研訊。調查委員會的職責是負責確立謝偉俊議員根據《基本法》第七十九條第(七)項及《議事規則》第 49B(1A)條動議譴責鄭松泰議員的議案所述的事實，並就所確立的事實是否構成譴責理據提出意見。

今天的研訊是根據調查委員會的《行事方式及程序》進行，當中第 27 段訂明，在閉門研訊中取得的證據、向調查委員會提交的陳述書，以及任何相關的往來文件，均屬機密資料，直至調查委員會將其銷密或公開為止。

李永強先生和各位委員已簽署保密承諾書，因此，若未事先取得調查委員會的書面授權，各位不得在研訊過程以外的場合發表任何機密資料，或發表與研訊有關的任何事宜。秘書處為整個研訊過程擬備逐字紀錄本。

李永強先生和各位委員請留意，委員只應為確立譴責議案所述的事實而提問，不應發表個人意見或作出個人陳述，我們亦不應邀請證人發表個人意見。我會決定某條問題及某項證據是否與調查委員會的職權範圍有關，以及是否屬於研訊範圍，我亦有酌情權決定某條問題是否屬於跟進問題，以及應否容許提出該問題。

我現在宣布研訊開始。

由於李永強先生選擇在不宣誓的情況下作證，我們現在請李永強先生。你曾經向調查委員會提交書面陳述書，即調查委員會文件編號 AL1(C)，你現在是否正式向調查委員會出示該文件作為證據？

李永強先生：

是。

主席：

李永強先生，你就陳述書有沒有任何補充？

李永強先生：

沒有。

主席：

為了善用研訊時間，請委員提問時盡量精簡具體，證人亦需明確及切實回答問題。請證人和委員在我示意之後才發言。委員如想就某份調查委員會文件的內容向證人提問，必須指明該份文件的編號和段落，以方便參考。

根據《行事方式及程序》，作為主席，我會先作第一條提問，證人回應後，我會請其他委員再提問。

李永強先生，你的書面陳述書 AL1(C)記述了鄭松泰議員在 2016 年 10 月 19 日立法會會議上，兩次倒轉插國旗及區旗的過程，你當時是否在會議廳親眼目睹有關行為的全部過程？若是，請你詳細形容你親眼目睹的情況。

請李永強先生。

李永強先生：

在 2016 年 10 月 19 日，當天我在大樓會議廳當值，我看到鄭議員先後兩次做一個類似倒插國旗的動作。

主席：

是。

李永強先生：

第一次大約是開會後 10 多分鐘左右，當時剛開始響鐘傳召議員回來，過了一會兒，鄭議員走到建制派那邊的 area，將放在那裏的國旗倒插一次。接着就是.....情況就是，他倒插了大約.....應該有十多二十個議員左右，把有國旗的杯放在桌面前方，他做了 10 個、8 個左右。我身旁的保安同事對我說："上頭叫你去看看情況"，我便走出去。在我走出去的時候，我只說了一句"鄭先生"，因為上頭沒有甚麼指示要我做，只不過是叫我了解情況，所以我只說了一句"鄭先生"，接着鄭議員便很大聲

說："你看看他們做得對不對這樣子？"。當然，我沒有回答他的問題。其實他這是一個陳述，即是一個陳述.....所以他多說了一兩句後我便離開，我笑笑口離開了。

主席：

有沒有其他議員？是，張國鈞議員。

張國鈞議員：

謝謝李先生。因為你剛才說過，你到最後時，你走過去說"鄭先生"，接着他講了一句說"你看看他們對不對？"，你說之後他再多說了兩句，是不是這樣？你的意思是否這樣？

李永強先生：

是。

張國鈞議員：

他再多說的兩句是甚麼？

主席：

李永強先生。

李永強先生：

是。因為我並非記得十分太清楚，我只是依稀記得，大約聽到他說"這樣對不對？他們這樣做是否尊重國旗？"，大約是這個意思，exactly 的字眼，我就不清楚。

主席：

是。張國鈞議員。

張國鈞議員：

好的。在你剛才提及跟他的簡短對話當中，那時他在做甚麼呢？他是在做一些動作還是怎樣？

主席：

是。李永強先生。

李永強先生：

他都是一邊將國旗倒轉插入杯座中，就是這樣子。

張國鈞議員：

他是逐個座位走過去.....應該這樣說，你跟他說話時，大約在甚麼位置？

主席：

李永強先生。

李永強先生：

正確的位置我不記得了，大約是.....那個 area 應該是民建聯的 area。

張國鈞議員：

接着，在你跟他對話時，他一直在.....即是做完一個座位，再去另一個座位做倒轉國旗這個動作，對嗎？

李永強先生：

對，沒錯。

張國鈞議員：

整個過程，你們對話的過程，大約有多長時間？

主席：

李永強先生。

李永強先生：

其實只是 10 秒、8 秒鐘，因為我只是說了兩個字。

張國鈞議員：

接着你.....好了，10 秒、8 秒鐘後，你便離開那裏。

李永強先生：

是。

張國鈞議員：

你去了哪裏？

李永強先生：

因為其實我的位置剛好阻礙了他前進的位置，他一直想前進，我唯有退後兩步，他一直大聲說話，然後走到第二行，這樣我又唯有退後，返回我自己原本工作的位置那裏。

張國鈞議員：

你說他在前進，是指他繼續去每個座位做倒轉國旗的動作，對嗎？

主席：

李永強先生。

李永強先生：

是。

張國鈞議員：

你返回你的座位時，你還有否留意他是否仍在做一些動作呢？

主席：

李永強先生。

李永強先生：

還有的。

張國鈞議員：

仍是繼續在做倒轉國旗的動作。

李永強先生：

是，沒錯。

張國鈞議員：

對嗎？謝謝。

主席：

還有否其他問題？是，陳振英議員。

陳振英議員：

李先生，我看到你的書面陳述中提及，鄭松泰議員大聲告訴你："你看看他們對不對"等，你覺得那種"大聲"的程度是怎樣？其實會否不只你聽到，在很大範圍的面積都應該合理地聽到你與他的對話呢？還是說，所謂大聲，其實可能只有你聽到而已，再遠一些，譬如你剛才提到的保安同事王祥，或者譬如坐在台上的主席，會否有機會也聽到你們的對話呢？

主席：

是。李永強先生。

李永強先生：

我覺得他不是直接跟我講這番說話的。我不可以代表其他人，但他們有機會，即主席，甚至我的同事也有機會聽到。

陳振英議員：

那麼……主席。

主席：

是，陳振英議員。

陳振英議員：

他說覺得你阻礙了他，然後你退後返回自己的座位。你旁邊的保安同事王祥先生原先是說收到上級指示，後來你有否再收到指示要再出去阻止他的行為？還有，你後來有否弄清楚，王祥先生所說的上級其實是誰呢？謝謝。

主席：

李永強先生。

李永強先生：

你的第一條問題是.....sorry，你的第一條問題是說.....

陳振英議員：

你回去後有沒有人再叫你走出去，再阻止他的這個行為？

李永強先生：

是沒有的。

陳振英議員：

沒有的？

李永強先生：

沒有。沒有。我沒有聽到任何人再指示我再 approach 鄭議員。

主席：

是。

陳振英議員：

後來王祥先生有否向你澄清，第一次叫你走出去的上級，他有否說是哪位上級指示你走出去？

李永強先生：

沒有。沒有說。沒有說清楚。

主席：

好的，還有哪位？是的，葛珮帆議員。

葛珮帆議員：

你好。我想了解一下，當你走過去時，後來蔣麗芸議員看見那些區旗、國旗倒轉了，她便大聲說鄭松泰議員不對。你的書面陳述中亦表示你聽到。其實你是否聽到蔣議員如何罵，內容是甚麼？

主席：

李永強先生。

李永強先生：

當然，exactly 的對話，我已經不太記得了。"有沒有搞錯啊"，或者我大約知道的意思是，"有沒有搞錯啊"，"你這樣倒轉那些國旗"，是這樣子。

葛珮帆議員：

是，接着，鄭議員是如何回應呢？

主席：

李永強先生。

李永強先生：

好像沒有甚麼特別回應。

葛珮帆議員：

沒有回應？

李永強先生：

因為我不太記得。

葛珮帆議員：

接着，蔣議員.....你是否看到蔣麗芸議員逐一把國旗倒轉回來呢？

主席：

李永強先生。

李永強先生：

有的。

葛珮帆議員：

你看到她把國旗逐一倒轉回來？

李永強先生：

是的。

葛珮帆議員：

然後，你是否看到鄭議員跟着怎樣做？

主席：

李永強先生。

李永強先生：

是。蔣議員把國旗倒轉回來，另外還叫我們的同事幫忙。接着蔣議員再離開會議廳。隔了一會，鄭議員再離開座位，再去把國旗倒轉一次。

220 ***葛珮帆議員：***

221 是，你們有否再上前跟他對話呢？

222 ***主席：***

223 是，李永強先生。

224 ***李永強先生：***

225 我沒有再上前了。

226 ***葛珮帆議員：***

227 有否看見其他同事再上前呢？

228 ***李永強先生：***

229 應該沒有。

230 ***葛珮帆議員：***

231 你剛才提到，你們有幫蔣麗芸議員一起把國旗倒轉回來，對
232 嗎？是有這樣做的？

233 ***李永強先生：***

234 是，沒錯。

235 ***葛珮帆議員：***

236 但是，接着鄭議員又把那些國旗再次倒轉？

237 ***李永強先生：***

238 是的。

239 ***葛珮帆議員：***

240 是的。好的，謝謝。

主席：

好的，還有哪位？我想問一下，李永強先生，你有否.....即你看到有一名議員走去另一些議員那裏，移動另一些議員的物品，甚至他本來——先不管是甚麼物品——將議員擺放在那裏的物品倒轉，在你的判斷中，通常你們的工作，會不會上前叫他不要這樣做的？一名議員走到另一名議員那裏，拿他的東西或移動他的東西，或觸碰他擺放在那裏的物品，在你們的 duty 裏面，會否有任何這方面的工作？

李永強先生：

基本上我們是不會理會的。當然，要視乎誰人、何事，或者他們是認識的、或者他們是不認識的，或者他不知是誰，都要看看是甚麼事。

主席：

在過程中，你有沒有勸諭過鄭松泰議員不要搞那裏的東西？你作為一個管事。沒有的？

李永強先生：

沒有的。

主席：

那麼，你在陳述書倒數第 3 段提到："在同一時間，主席梁君彥已經警告他不要再這樣做，我已叫他返回座位。然後，鄭松泰議員再倒轉一次後，便返回自己的座位"。根據你的理解，如果主席作出了警告，保安是否已經要開始執行，即他繼續那個行為，是否已不需要指示，可能你們已理解、知道是不對，他不可以再做那個行為？即在議事廳內，當立法會主席叫一名議員停止某種行為時，其實該議員是不應再繼續進行該行為的。

李永強先生：

以我理解，議員作不作出一個行為是由他自己負責的，只不過，主席叫同事幫忙做一些事情，同事便會去進行工作。

主席：

當天，主席警告他不要再這樣做，你的同事或你自己會否在主席的警告後更清晰地勸諭他不要繼續碰其他議員的東西？

李永強先生：

基本上我們是不會勸諭的，因為他已在跟主席對話，我們是不會再介入的。只不過是當主席發出一個清晰的指示，要求我們做某些事情，我們便會執行這項工作。

主席：

當時，你或你的同事，還有沒有人之後跟你說過聽到些甚麼，或你們的同事之間在事件發生後大家還有沒有對話是關於他們有沒有聽過鄭松泰議員有沒有說過甚麼這樣子？有沒有？

李永強先生：

沒甚麼。

主席：

這件事之後，有沒有進行交流？在會議廳裏面的同事聽到，又或者你們有交流，進一步知道鄭松泰議員當天有沒有說過甚麼。

李永強先生：

我沒有特別跟同事談這些。

主席：

好的。還有沒有其他？是的，陸頌雄議員。

陸頌雄議員：

有一點想李永強先生澄清。我看到你在陳述書以書面形容倒插是"倒轉再插回在同一杯座"。你書面是這樣寫的。我剛才看到你口頭向我們憶述這件事時，你是用"疑似"或"類似"倒插，在前

面是有一個形容詞的，似乎有少許不確定性。我想你確定一下，你是否親眼看見鄭松泰議員把國旗和區旗倒插在杯架上呢？

主席：

李永強先生。

李永強先生：

如果你這樣形容，我不會反對。

陸頌雄議員：

OK。

主席：

好。還有沒有其他問題？沒有，對嗎？還有沒有？是的，陳振英議員。

陳振英議員：

不好意思，李先生。你剛才提到蔣麗芸議員不是叫你，而是叫立法會同事幫她把倒插了的旗移回原位。

李永強先生：

是的。

陳振英議員：

其實，第一，你有沒有看見同事幫蔣麗芸議員這樣做？第二，如果你看見的話，該位同事其實是哪位，你認得出來嗎？謝謝。

主席：

李永強先生。

李永強先生：

是。她說的時候是看着我同事說的，我的同事是 Tommy，Tommy 有按她的指示幫她做的。

主席：

Tommy 的中文名字是甚麼？

李永強先生：

李景晟先生。

主席：

OK，是。陳振英議員。

陳振英議員：

請問你有沒有看見你那位同事幫蔣麗芸議員將倒插的國旗放回正式的位置？一共處理了多少支？

主席：

李永強先生。

李永強先生：

多少支我倒沒有數過，但是，之前鄭議員已反轉的國旗，他們兩位把全部都倒轉回來。

陳振英議員：

即整個倒轉的動作，除蔣麗芸議員外，加上你的同事，合共二人進行將倒轉的國旗、區旗再倒轉回來這個動作？

李永強先生：

是的，沒錯。

陳振英議員：

好的，我沒有其他問題了，謝謝。

主席：

好。我想問問李永強先生還是否有補充？

李永強先生：

沒有特別事情。

主席：

OK。如果大家沒有的話，那麼，我們很多謝李永強先生來協助我們委員會的調查工作，多謝你。多謝，多謝。

李永強先生：

不用客氣。謝謝。

機密

立法會

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

第一次閉門研訊第五節的逐字紀錄本

日 期： 2017 年 7 月 3 日(星期一)
時 間： 上午 11 時至 11 時 12 分
地 點： 立法會綜合大樓會議室 5

出席委員

梁美芬議員, SBS, JP (主席)
何君堯議員, JP (副主席)
葛珮帆議員, BBS, JP
邵家輝議員
陳振英議員
張國鈞議員, JP
陸頌雄議員

應邀出席人士

李景晟先生

列席秘書

黃少健先生

列席職員

秘書長
陳維安先生, SBS

法律顧問
馮秀娟女士

副秘書長
梁慶儀女士

助理秘書長 3
衛碧瑤女士

調查委員會法律顧問/高級助理法律顧問 3
李家潤先生

高級議會秘書(3)2
莫穎琛小姐

一級行政事務助理(3)3
梁少芬小姐

主席：

多謝李景晟先生出席我們委員會的閉門聆訊。調查委員會的職責是負責確立謝偉俊議員根據《基本法》第七十九條第(七)項及《議事規則》第 49B(1A)條動議譴責鄭松泰議員的議案所述的事實，並就所確立的事實是否構成譴責的理據提出意見。

今天的研訊是根據調查委員會的《行事方式及程序》進行，當中第 27 段訂明，在閉門研訊中取得的證據、向調查委員會提交的陳述書及任何相關的往來文件均屬機密資料，直至調查委員會將其銷密或公開為止。

李景晟先生及各位委員已簽署了保密承諾書，因此，在未事先取得調查委員會的書面授權下，各位不能夠在研訊過程以外的場合發表任何機密資料，發表與研訊有關的任何事宜。秘書處亦會將整個研訊過程擬備逐字紀錄本。

現在我們想請李景晟先生及各位委員留意，我們發問的時候需要就着所述的事實提問，不應該發表個人的意見或個人的陳述。委員亦不應邀請證人發表個人的意見。我會決定某條問題或某項證據是否與調查委員會的職權範圍有關，以及是否屬於研訊範圍。我亦有酌情權決定某條問題是否屬於跟進問題，以及應否容許提出該問題。

我現在宣布研訊開始。

李景晟先生選擇在宣誓後接受訊問，我現在以調查委員會主席的身份，根據《立法會(權力及特權)條例》第 11 條為你監誓，請你站立，並依照放在你面前的誓詞宣誓。若你選擇宗教式宣誓，請你手按聖經宣誓。

李景晟先生：

本人李景晟謹以至誠，據實聲明及確認，本人所作之證供均屬真實及為事實之全部，並無虛言。

主席：

請坐。李景晟先生，你曾經向調查委員會提交書面陳述書TL1(C)，你現在是否正式向調查委員會提交，出示該文件作為證據？

李景晟先生：

是。

主席：

李景晟先生，你就書面陳述書有否任何補充？

李景晟先生：

沒有。

主席：

為了善用研訊的時間，請委員提問時盡量精簡具體，證人亦須明確及切實回答問題，並請在本人示意之後才發言。委員如想就某個調查委員會文件提問，應指出文件的編號及段落，以方便參考。

根據《行事方式及程序》，作為主席，我會先作出第一條問題，然後請其他委員發問。

李景晟先生，你在書面陳述書TL1(C)提及你在2016年10月19日立法會會議席上，目睹鄭松泰議員倒轉放置國旗和區旗，你可否確認你當時是否在會議廳親眼目睹有關行為的整個過程，抑或只是部分情況？請詳細講述你當時所見的情況。

李景晟先生：

是。當時大會正在響鐘點人數，建制派和民建聯的議員全部都去了外面的"咪兜"那裏發表意見，會見記者。鄭松泰議員過去把他們桌子上的區旗，把旗幟反轉了。

當時主席叫他返回座位，時間很短而已，他沒有把全部旗幟倒轉，蔣麗芸議員便進來了，跟他說，問他為甚麼倒轉那些旗

幟，叫他停止。蔣麗芸議員叫我幫忙，與她一起把旗幟反過來，即擺回正確位置。

之後，蔣麗芸議員把全部倒轉回來後，便走出去會見記者。鄭松泰議員便第二次再過去，把他們的旗幟倒轉。剛好蔣麗芸議員又再進來，我亦第二次出去幫忙，與她一起把旗幟擺回正確位置。這便是事件的全部.....

主席：

好。

李景晟先生：

.....我所見的。

主席：

有沒有委員要提問？陸頌雄議員。

陸頌雄議員：

我本來想提問的是，他的書面陳述書有否說兩次的問題，我看到他現在已經說了.....

主席：

是。

陸頌雄議員：

.....那麼我沒有進一步的提問了。謝謝主席。

主席：

或者我來問一下，李景晟先生，你有否聽到鄭松泰議員在過程中說過甚麼？或者他與蔣麗芸議員的對話中，有否聽到些甚麼？

李景晟先生：

我沒有聽到些甚麼，因為其實我們的距離是有點遠的。我聽到蔣麗芸議員說甚麼，因為她進來已經很大聲呼喝鄭松泰議員，問他"為何反轉我們的旗！"，叫他停止。但是，我聽不到鄭松泰議員回應些甚麼。

主席：

是，好。有沒有任何其他問題？Yes，陳振英議員。

陳振英議員：

想問一下，李先生，在你的角度，除了看到建制派同事的國旗，因為有其他議員留在會議廳，你有否看到其他議員有任何動作或聽到他們有甚麼喧嘩，或者是有甚麼反應呢？謝謝。

主席：

李景晟先生。

李景晟先生：

因為當時我們最主要是留意主席，因為我們都是聽 order 做事，主席只是叫鄭松泰議員返回座位，他亦沒有叫我們做任何動作。而其他議員，我們亦不覺得有任何指令，要我們做甚麼，除了蔣麗芸議員叫我幫忙，我們就做事，即是出去幫忙。

主席：

是，陳振英議員。

陳振英議員：

主席，我想問一下，你是否有印象，你自己幫蔣麗芸議員把國旗和區旗倒轉回來，一共做了多少支，第一次及第二次，即是兩次幫她忙，你幫忙做了多少下這個動作，請問？

主席：

李景晟先生。

李景晟先生：

第一次大概是 5 至 6 支左右，第二次都是差不多。

主席：

好。還有沒有其他問題？是，好。

陳振英議員：

一開始，即是我們開會時，其實民建聯的議員之外，亦有把那些旗派給其他建制派議員。我留意到，好像他們前面的一些議員都有那些國旗及區旗的展示品。這一點與你.....即我自己的印象是這樣，我不知道與你所觀察到的，除了民建聯議員之外，其實是否有其他議員都有擺放這些國旗或區旗的展示品呢？

李景晟先生：

是，是有的。

主席：

李景晟先生。

李景晟先生：

沒錯，是有的。

主席：

還有沒有其他問題？

李景晟先生，我想問一下，你和你的同事，當日蔣麗芸議員只是叫你，還是都有叫你的其他同事一起將那些國旗插正的？

李景晟先生：

當日她只是叫我，因為在那個位置上，附近沒有其他同事，只得我而已。

主席：

李景晟先生，你在這件事完結之後，有否跟你的同事討論過當日發生的事？那些同事亦有否在會議廳內，亦聽過鄭松泰議員或其他議員在發生這件事的時候說過甚麼？

李景晟先生：

嗯，我有跟.....即是跟剛才那位同事傾談過，其他都沒有怎麼提過。

主席：

是。

李景晟先生：

因為當日李先生，即我的同事，他當日都在場，他跟鄭松泰議員說了幾句.....

主席：

是。

李景晟先生：

.....我們講過當日的情況，但都是大約講一講，沒有詳細。

主席：

是。李景晟先生，我想問一問，你再插正國旗時，是否只有你，沒有其他同事和你一起幫蔣麗芸議員？

李景晟先生：

是。

主席：

只有你？

李景晟先生：

那個動作只有我。

主席：

在場還有沒有其他同事？

李景晟先生：

有，不過他們可能正在做其他事，還有他們的距離是很的遠.....

主席：

是。

李景晟先生：

.....所以蔣議員沒有叫他們。

主席：

OK。還有沒有其他問題？是，陳振英議員。

陳振英議員：

後來主席說請鄭松泰議員離開會議廳，他應該叫了一些立法會同事去執行他的命令，當中是否不包括你和另外一位李永強先生，以及你們看到的情況是如何呢？謝謝。

主席：

是。

李景晟先生：

請議員離開會議廳是保安的工作，所以我們管事不會接觸到。

主席：

是。

陳振英議員：

但你是目睹整個過程，即是看到他譬如坐着不走，然後有否.....即是應該還有其他議員圍着他，這一個事件，後面的事件，你都有目睹，不過沒有其他事發生，對嗎？

主席：

李景晟先生。

李景晟先生：

是，我目睹，但沒有參與。

主席：

整個過程維持了多久，李景晟先生，你覺得？整個過程。

李景晟先生：

如果只是說我幫蔣麗芸議員把旗倒轉回來那兩次，只是很短時間，大概是.....可能是 10 分鐘左右，大約是這個時間。

主席：

我想問一下，你有否勸諭過鄭松泰議員不要這樣做？

李景晟先生：

當日過程中，我沒有跟他對過話。

主席：

OK。大家還有沒有其他問題？如果沒有，想問問你有否其他資料要補充？

李景晟先生：

沒有。

主席：

沒有其他資料補充了。是否還有任何其他？如果沒有，我們多謝你出席我們調查委員會協助調查，多謝你。

李景晟先生：

謝謝。

機密

立法會

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

第二次閉門研訊第一節的逐字紀錄本

日　期：　2017 年 10 月 27 日(星期五)
時　間：　上午 10 時 28 分至 10 時 46 分
地　點：　立法會綜合大樓會議室 5

出席委員

梁美芬議員, SBS, JP (主席)
葛珮帆議員, BBS, JP
邵家輝議員
張國鈞議員, JP
陸頌雄議員

缺席委員

何君堯議員, JP (副主席)
陳振英議員

應邀出席人士

蔣麗芸議員, JP

列席秘書

黃少健先生

列席職員

秘書長
陳維安先生, SBS

法律顧問
馮秀娟女士

副秘書長
梁慶儀女士

助理秘書長 3
衛碧瑤女士

調查委員會法律顧問/高級助理法律顧問 3
李家潤先生

高級議會秘書(3)2
莫穎琛小姐

一級行政事務助理(3)3
梁少芬小姐

主席：

早晨，早晨。首先，多謝蔣麗芸議員出席我們調查委員會的閉門研訊。調查委員會的職責是負責確立謝偉俊議員根據《基本法》第七十九條第七項，以及《議事規則》第 49B(1A)條動議譴責鄭松泰議員的議案所述的事實，並就所確立的事實是否構成譴責的理據提出意見。今天的研訊是根據調查委員會的《行事方式及程序》進行，當中第 27 段訂明，在閉門研訊中取得的證據、向調查委員會提交的陳述書，以及任何相關的往來文件均屬機密資料，直至調查委員會將其銷密或公開為止。

蔣麗芸議員及各位委員已簽署了保密承諾書，因此如果未事先取得調查委員會的書面授權，各位不可以在研訊過程以外的場合發表任何機密資料，或發表與研訊有關的任何事宜。秘書處會為整個研訊過程擬備逐字紀錄本。

現在我們請蔣麗芸議員及各位委員留意，在研訊中，委員只應該為確立譴責議案所述的事實而提問，不應發表意見或作出陳述，亦不應邀請證人發表意見。我會決定某條問題或某項證據是否與調查委員會的職權範圍有關，以及是否屬於研訊範圍。我亦有酌情權決定某條問題是否屬於跟進問題，以及應否容許提出該問題。

我現在宣布研訊開始。

蔣麗芸議員選擇在宣誓後接受訊問。我現在以調查委員會主席的身份，根據《立法會(權力及特權)條例》第 11 條為你監誓。請你站立，並依照放在你面前的誓詞宣誓。由於你選擇宗教式宣誓，請你手按聖經宣誓。

蔣麗芸議員：

本人蔣麗芸，謹對全能上帝宣誓，本人所作之證供，均屬真實及為事實之全部，並無虛言。

主席：

蔣麗芸議員，請就座。你曾向調查委員會提交書面陳述書，即調查調查委員會文件 AC1(C)，你現在是否正式向調查委員會出示該文件作為證據？

蔣麗芸議員：

是。

主席：

蔣麗芸議員，你就陳述書有沒有任何補充？

蔣麗芸議員：

沒有。

主席：

為了善用研訊時間，請委員提問時盡量精簡具體，證人亦須明確及切實回答問題。請證人及委員在我示意後才發言。委員如果想就某份調查委員會文件的內容向證人提問，應指出該文件的編號和段落，以方便參考。根據《行事方式及程序》，作為主席，我會先提出第一條開場問題，證人回應後，我請其他委員繼續跟進。

蔣麗芸議員，根據你的書面陳述書，即 AC1(C)第 2 段，在 2016 年 10 月 19 日，立法會會議開始前，劉國勳議員向你和部分立法會議員派發國旗、區旗，你事前是否知悉劉國勳議員會這樣做，以及這樣做的原因？

蔣麗芸議員：

不知道。

主席：

那麼，你是否知悉劉國勳議員從哪裏取這些國旗和區旗？

蔣麗芸議員：

不知道。

主席：

OK。其他委員會否跟進問題？張國鈞議員？

張國鈞議員：

蔣議員，劉國勳議員向你及部分議員.....是.....不好意思。

蔣麗芸議員：

對不起。是。

張國鈞議員：

我繼續提問下去。劉國勳議員向你及部分議員派發國旗、區旗時，有沒有提到擺放這些國旗、區旗的原因或方式是怎樣？

蔣麗芸議員：

沒有。具體好像.....我沒有留意，總言之就是看到他把區旗、國旗派給我，我便拿了、接過來了。

張國鈞議員：

他派發了國旗、區旗給你後，那你是如何擺放它們的？

蔣麗芸議員：

我就嘗試插在我前面，但我找不到適合的位置插上，因此我就這樣擺在自己的前面。

主席：

是，陸頌雄議員。

蔣麗芸議員：

我補充一句吧，劉國勳議員派給我們時，他口中好像說了些話，但因為當時場面比較嘈，所以聽不清楚。

主席：

好。陸頌雄議員。

陸頌雄議員：

是，蔣議員，你好。我想請問一下，你擺放這些國旗、區旗的原因是甚麼？以及民建聯 10 多位議員，包括閣下，有否就擺放這些國旗、區旗而作出一些討論？如果有，內容如何？可否分享？謝謝。

蔣麗芸議員：

當日是沒有具體.....即當日是沒有作出甚麼討論的。

陸頌雄議員：

那麼，你自己當時擺放這支國旗，你自己心裏面的目的是甚麼呢？

蔣麗芸議員：

我是中國人。

陸頌雄議員：

好。就這麼簡單而已？

蔣麗芸議員：

就這麼簡單，因為當日有兩位不尊重《基本法》，亦不尊重宣誓，並在宣誓過程中作出一些不尊重國家及中國人民的說話，因此我相信那天大家收到國旗和區旗而決定插在座位前面，我相信是一種強烈的表達"我是中國人"的意思。

陸頌雄議員：

是，主席……

主席：

好。

陸頌雄議員：

我想問，除了擬議問題外，可否問其他問題？

主席：

可以問其他。

陸頌雄議員：

可以的吧？

主席：

這些擬議問題只是供你們作為藍本而已。

陸頌雄議員：

OK，OK。還有一個問題是，我知道你看到鄭松泰議員倒插國旗後，你先後兩次走近他身邊警告他，還有一些對話，你是否記得清楚當時他有沒有甚麼回應給你？還是他也不作聲呢？他在現場時有沒有為自己的行為作甚麼解釋呢？

蔣麗芸議員：

當時第一次我進去，我一邊在罵他，說他不應這樣做，然後我便一邊把那些國旗和區旗倒正回來插上。在我罵他期間，因為我們中間隔了兩三行，我知道他也有"吟吟沉沉"回應，但具體他全部說了甚麼，我就沒有留意，即……對，我沒有留意。

主席：

好。還有哪位想發問？葛珮帆議員，是。

葛珮帆議員：

好的，蔣麗芸議員，謝偉俊議員在譴責議案.....*(收音不清)*鄭松泰議員的有關行為違反了.....我需否重新開始？可以.....是否要收音？不用，是嗎？

主席：

要錄音，我們會逐字紀錄。

葛珮帆議員：

要錄音，是嗎？我再來過。

主席：

最好清楚些少，供逐字紀錄。

葛珮帆議員：

好，蔣麗芸議員，謝偉俊議員在譴責議案中表示，鄭松泰議員的有關行為違反了立法會的誓言，故意羞辱國旗和區旗，屬於行為不檢。你作為聯名簽署議案的議員，你是否同意這個說法呢？你同意這個說法，為甚麼？

主席：

蔣麗芸議員。

蔣麗芸議員：

因為我第一次進去警告他時，我自己很清晰地告訴他，他這樣做是不尊重國旗。當我說話的時候，他亦未有停止他的行動、行為，他應該十分清晰地聽到我的說話，因為我說得十分大聲，他只是一直在"吟吟沉沉"說話。所以我相信他是聽得到的，他亦沒有停止他的行為。然後，事實上，當我離開會議廳之後，他又再次同樣地把國旗和區旗倒轉。所以，我覺得他是故意違反的。

葛珮帆議員：

蔣麗芸議員，當時你跟他說話時是怎樣說的？你罵他？

主席：

蔣麗芸議員。

蔣麗芸議員：

我當時說過很多話，一邊插旗，一邊罵人。我很清晰地罵他不尊重國旗、區旗，有說這一類說話，接着大致上好像是說要控告他，也有說過假如同事檯面的東西不見了，又可以視他偷東西，接着又說如果他再嘗試倒轉——這是走到他面前說的，是走到他面前——我說你試試再這樣，你信不信我會控告你啊，還是拘捕你之類的，類似這樣。我現在不肯定每一隻字是用哪個措辭等，這個現在我不肯定。

葛珮帆議員：

所以你當時十分清晰地告訴他，即是罵他故意羞辱國旗和區旗，但他沒有停止他的行為，也沒有回應你，只是繼續倒轉國旗和區旗，是否這個情況？

主席：

蔣麗芸議員。

蔣麗芸議員：

是，大致意思是正確的。

葛珮帆議員：

所以你也認同謝偉俊議員所說的，你覺得這樣子羞辱國旗和區旗的行為，是違反了立法會議員的誓言，是不是呢？

蔣麗芸議員：

是，是，我覺得他不尊重國旗和區旗。

葛珮帆議員：

好，謝謝。

主席：

好，如果葛珮帆議員沒有跟進，接着是否有其他委員想繼續？或者我繼續追問蔣麗芸議員，根據你的書面陳述書 AC1(C) 文件的第 4 段，你可否確認，你當時是在會議廳前廳透過電視直播看到鄭松泰議員在上述會議作出第一次倒轉擺放國旗、區旗的行為？

蔣麗芸議員：

是。是在會議廳前廳看到的，通過電視。

主席：

你通過電視？

蔣麗芸議員：

是。

主席：

可否詳述你在會議廳前廳返回會議廳時，看到些甚麼？根據立法會的網上廣播，你當時分別跟鄭松泰議員和秘書處的管事——那位管事名為李景晟先生——對話，你有沒有聽到或者對詳情會否還有些記憶呢？

蔣麗芸議員：

跟鄭松泰說的話，剛剛我已說過了，大概是說了這些話罵他。跟管事的對話，我主要是叫他幫忙快些倒轉回來。

主席：

你有要求管事幫忙倒轉回來？

蔣麗芸議員：

有，有，有。

主席：

管事接着怎樣做？

蔣麗芸議員：

他有幫忙的，他有幫我去倒轉回來。

主席：

在你還沒有叫管事幫忙之前，管事有否協助把國旗擺正？

蔣麗芸議員：

我未叫他之前，他沒有，但我看到他在鄭松泰附近。

主席：

OK。

蔣麗芸議員：

他和鄭松泰說甚麼，我不知道，但他當時的姿勢和身體語言讓我感覺到他是在勸諭鄭松泰的。

主席：

OK。是否還有其他跟進問題？張國鈞議員。

張國鈞議員：

蔣議員，其實我想再確認一下，因為其實你的陳述書第 5 段提及有關鄭松泰議員第二次再將國旗、區旗倒插的過程。你在這一段中提到，你第二次透過電視熒光幕看到他，然後你再次從會議廳前廳返回會議廳，你當時看到的情況是怎樣的呢？是否還有甚麼要補充的？你在第 5 段說，你再次進入議事廳內，再次叫管事協助你再一次整理被倒插的國旗、區旗。還有沒有其他事情你需要補充的？就着這個情況。

蔣麗芸議員：

沒有甚麼了，因為第二次當時正在響鐘的，而且已經十分接近.....好像鐘聲已經響了一大半時間，所以我要趕快倒正回來，一邊倒正一邊罵他，然後很快便離開了。

張國鈞議員：

當時那一刻，你跟管事或鄭松泰議員之間的談話，是否正如你剛才回答陸頌雄議員的答案，之後應該再也沒有其他說話要補充？即是你跟管事或跟鄭松泰議員的對話？

蔣麗芸議員：

沒甚麼了，沒甚麼了，大致上也是同樣的情況而已。

張國鈞議員：

好的，謝謝。

主席：

我只是想多問一句，你說之後很快趕着離開，那些國旗是否已經全部擺正，你離開會議廳的時候，而且你很快趕着離開會議廳，是為了做甚麼？

蔣麗芸議員：

我要趕回去前廳會合其他議員。

主席：

是，那麼，你離開的時候，是否所有國旗已經由你或管事擺正？

蔣麗芸議員：

我大致看過應該是的。我臨離開的時候，看一看是否已經擺正，大致是這樣，我便離開了。

主席：

好，行。還有，蔣麗芸議員，你是否還有其他資料補充，協助我們可以確立或調查這個譴責議案，任何其他事實，你認為是有相關性的？

蔣麗芸議員：

嗯……

主席：

譬如關於鄭松泰議員……

蔣麗芸議員：

其實大會主席也有出聲的，大會主席也有出聲。

主席：

即是在剛才你說的那些過程中，你在會議廳內跟管事對話或擺正國旗期間，大主席有出聲？

蔣麗芸議員：

不是，好像是我……我當時不在會議廳，大主席出聲的時候，好像應該是在第一次我離開會議廳之後，鄭松泰再回去倒轉別人的國旗時，大主席都有出聲的，我知道。

主席：

OK。

蔣麗芸議員：

都有警告說……

主席：

是否從電視上看到大主席出聲呢？因為你不在會議廳，你是否從電視上看到大主席出聲呢？

蔣麗芸議員：

是，應該是。

主席：

好，還有沒有其他？陸頌雄議員？是，知道。如果蔣麗芸議員沒有其他補充，我們多謝你今天前來確立了你的陳述書，以及協助我們委員會的調查，多謝你，多謝。

蔣麗芸議員：

好，我最後還要補充的是，我大致上的作供，除了今天在這裏，我亦曾經在法庭作供。

主席：

是，我們是有參考判決的。

蔣麗芸議員：

好，謝謝。

主席：

好，謝謝。

機密

立法會

根據《議事規則》第 49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

第二次閉門研訊第二節的逐字紀錄本

日　期：　2017 年 10 月 27 日(星期五)
時　間：　上午 11 時 05 分至 11 時 22 分
地　點：　立法會綜合大樓會議室 5

出席委員

梁美芬議員, SBS, JP (主席)
葛珮帆議員, BBS, JP
邵家輝議員
陳振英議員
張國鈞議員, JP
陸頌雄議員

缺席委員

何君堯議員, JP (副主席)

應邀出席人士

劉國勳議員, MH

列席秘書

黃少健先生

列席職員

秘書長
陳維安先生, SBS

法律顧問
馮秀娟女士

副秘書長
梁慶儀女士

助理秘書長 3
衛碧瑤女士

調查委員會法律顧問/高級助理法律顧問 3
李家潤先生

高級議會秘書(3)2
莫穎琛小姐

一級行政事務助理(3)3
梁少芬小姐

主席：

多謝劉國勳議員。劉國勳議員已經選擇宣誓之後才接受訊問，所以，我現在以調查委員會主席的身份，根據《立法會(權力及特權)條例》第 11 條為你監誓，請你站立並依照放在你面前的誓詞宣誓。

劉國勳議員：

本人劉國勳，謹以至誠，據實聲明及確認，本人所作之證供均屬真實及為事實之全部，並無虛言。

主席：

多謝劉國勳議員出席本調查委員會的閉門研訊並作出宣誓。調查委員會的職責，是負責確立謝偉俊議員根據《基本法》第七十九條第七項及《議事規則》第 49B(1A)條動議"譴責鄭松泰議員"的議案所述的事實，並就所確立的事實是否構成譴責的理據提出意見。

今天的研訊是根據調查委員會的《行事方式及程序》進行，當中第 27 段訂明，在閉門研訊中取得的證據、向調查委員會提交的陳述書，以及任何相關的往來文件，均屬機密資料，直至調查委員會將其銷密或公開為止。

劉國勳議員及各位委員已經簽署保密承諾書，因此，若未事先得到調查委員會的書面授權，各位不得在研訊過程以外的場合，發表任何機密資料或發表與研訊有關的任何事宜。

秘書處為整個研訊過程擬備逐字紀錄本，請劉國勳議員及各位委員留意，在研訊中，委員只應為確立譴責議案及所述的事實作出提問，不應發表意見或陳述，亦不應該邀請證人發表意見。我會決定某條問題及某項證據是否與調查委員會的職權範圍有關，以及是否屬於研訊範圍，我亦有酌情權決定某條問題是否屬於跟進問題，以及應否容許提出該問題。

我現在宣布研訊正式開始。

劉國勳議員，你曾經向調查委員會提交書面陳述書，即調查委員會文件編號 LKF1(C)，你現在是否正式向調查委員會出示該文件作為證據？

劉國勳議員：

是。

主席：

劉國勳議員，你就陳述書還有否任何補充？

劉國勳議員：

沒有了。

主席：

劉國勳議員，你亦曾經向調查委員會提交兩套你在 2016 年 10 月 19 日的立法會會議席上，向部分議員派發的區旗及國旗的展示品。你現在是否正式向調查委員會出示該等展示品作為證物？

劉國勳議員：

是。

主席：

為了善用研訊時間，請各位委員提問時盡量精簡，而證人亦須明確及切實回答問題。請證人及委員在我示意後才發言。委員如想就某份調查委員會文件的內容向證人提問，必須指出文件的編號及段落，以方便參考。

根據《行事方式及程序》，作為主席，我會先提出 1 條開場問題，證人回應後，我便會請其他委員提問。

劉國勳議員，根據你的書面陳述書 LKF1(C)第 2 段，你在 2016 年 10 月 19 日的立法會會議開始前，向部分議員派發國旗及區旗的展示品，旨在表達對梁頌恆及游蕙禎二人行為的不

滿，並強調立法會議員宣誓需要遵守《基本法》。你為何有此說法？

劉國勳議員：

這個說法是由於在 10 月 12 日，我們立法會議員要進行宣誓，在那期間，游蕙禎及梁頌恆作出了一些侮辱及分離國家的行為。例如他們展示"Hong Kong is not China"，我認為這是對國家侮辱及分離國家，亦是破壞"一國兩制"的行為，亦與《基本法》相違。所以，我在 19 日把一些國旗及區旗帶到立法會，派給議員展示。

主席：

好。其他委員有否追問？好，陳振英議員。

陳振英議員：

請問你是否記得那天你帶了多少支國旗或區旗的展示品回到會議廳，以及你派發這些展示品給議員的目的是甚麼？你是否記得派了給哪幾位議員？謝謝。

劉國勳議員：

我想實際上的數量是不大記得了，我是派給一些附近座位的議員。你問.....是否還有一個問題，是作用是甚麼嗎？是嗎？

陳振英議員：

是的。

劉國勳議員：

OK。目的是要強調"一國兩制"、《基本法》，因為香港是中華人民共和國的一部分，這都是我的目的。所以，我們要遵守香港的.....尊重香港特別行政區，亦要尊重我們中華人民共和國，這些都是我的目的。

至於給了誰，其實已不大記得全部給了誰，都是給我附近座位的議員。

主席：

還有否追問？我想提提大家，在委員發問及證人作供的時候，請你們等待我叫出你們的名字，因為我們現在是逐字記錄，要清楚究竟錄音裏是哪一位委員或是我們的證人正在作答。

我想先追問一個小問題。

劉國勳議員：

好的。

主席：

劉國勳議員，你派發的國旗及區旗的展示品的來源是哪裏呢？

劉國勳議員：

這是我在家裏取來立法會的，這些是過去可能出席一些回歸或國慶活動，完結後我拿回家中的。

主席：

OK。是，還有哪位.....好，張國鈞議員。

張國鈞議員：

是，劉議員，在剛才所說的 10 月 19 日立法會會議之前，又或是在會議期間，即任何時間，你有否對其他議員說，你派發這些國旗、區旗展示品的目的是甚麼，或應該怎樣擺放？你曾否向他們講過？在會議前或會議期間。

主席：

劉國勳議員。

劉國勳議員：

我在會議前是沒有的，不過我拿回到會議之後.....即我在會議廳派發的時候有對大家說，今天又要再宣誓，我們應該要展

示出來，告訴他們，其實香港是中國的一部分，我們需要尊重國家，尊重"一國兩制"，希望大家也一起展示出來，就是這樣。

張國鈞議員：

即是你在派發時，你有向議員提及?

劉國勳議員：

是的。

主席：

好的，還有否追問？還有否追問？是，邵家輝議員。

邵家輝議員：

我想問一問，那些國旗，你提過你忘記了派發給多少位議員.....

劉國勳議員：

是的。

邵家輝議員：

忘記了派發給多少位議員，對嗎？泛民議員，你有否派給他們？

劉國勳議員：

我.....這個，我記得是沒有給泛民議員的。

邵家輝議員：

即非建制派的是沒有的？

劉國勳議員：

非建制派的是沒有的。

主席：

好。

邵家輝議員：

在你自己所屬的政黨民建聯，會不會是全部人——你印象中——其實都已經有了？

主席：

劉國勳議員。

劉國勳議員：

我相信.....我記得是給了大部分。

邵家輝議員：

大部分。

劉國勳議員：

是的，因為.....數量.....我都不大記得，因為我家裏有多少便拿了多少過去，我沒有很清楚記得，究竟是否全部都有。

邵家輝議員：

其實你帶一些國旗和區旗來，主要是要表示當天的主題，即可能希望我們建制派的朋友都要愛國愛港，把這個基本的認知、態度表達出來，對嗎？

剛才我所問的是，除了.....其實你不肯定民建聯是否全部黨友也有，但是，你其實是很集中派發給附近一些.....向一些你認為是建制派的議員分發這些旗幟，對嗎？

劉國勳議員：

沒錯。

主席：

劉國勳議員。

邵家輝議員：

但是，為甚麼對於一些非建制派的議員，你不把這些旗幟給他們呢？

主席：

劉國勳議員。

劉國勳議員：

由於我帶回去議會的旗幟數量有限，我在事前亦沒有跟大家"夾"過，所以，我回到會議室時，都是向我位置附近的議員派發。我亦覺得在附近位置的議員一起展示，可能會比較清楚一些看得到。

邵家輝議員：

嗯，OK，謝謝主席。

主席：

OK。首先，我們讓陸頌雄議員先提問，好嗎？陸頌雄議員。

陸頌雄議員：

多謝主席。想問劉國勳議員，在鄭松泰議員倒插國旗後，第一，你如何理解他的行為呢？第二，你之後有否跟他就着這件事有過任何討論或交流，他的反應又是如何？

主席：

劉國勳議員。

劉國勳議員：

我認為他倒插國旗和區旗之後，是一而再，連續倒插了國旗和區旗，這個行為是屬於玷污了我們的國旗和區旗，是侮辱了

我們的國家和香港。所以，我之後去了報警。在報警前和報警後，我都沒有跟他討論過這件事。

主席：

好，還有沒有哪位？是，陳振英議員。

陳振英議員：

我想確認一個事實，因為我們經常提到派發國旗和區旗，我想問劉國勳議員，你記不記得你帶回來的國旗和區旗的數目是否相等的？例如.....雖然你不記得準確數目，會不會是有 18 支國旗，便有 18 支區旗，即是否相等的數目？會否有機會派了一些旗幟，是有一些議員只有國旗，沒有區旗，或者有一些議員只有區旗，沒有國旗呢？謝謝。

主席：

是，劉國勳議員。

劉國勳議員：

這個我是很清晰地記得，數量是相等的，即是 1 支國旗配 1 支區旗，而派發的時候亦是 1 支國旗配 1 支區旗。因為我是要強調"一國兩制"，香港是中國的一部分，所以我們要尊重我們的香港特別行政區，同時亦要尊重國家，愛國愛港。

主席：

OK，還有沒有哪位？是，葛珮帆議員。

葛珮帆議員：

劉國勳議員，謝偉俊議員在譴責議案中表示鄭松泰議員的行為，即倒轉國旗、區旗，是違反了立法會的誓言，是故意羞辱國旗、區旗，屬於行為不檢，你是提供國旗、區旗的人，你對謝偉俊議員的這個說法有何看法？

主席：

劉國勳議員。

劉國勳議員：

我是認同這個說法的，所以，我亦是贊成要成立這個調查委員會的。

主席：

好，還有沒有跟進？是。

葛珮帆議員：

即是你也認為鄭松泰議員的行為是屬於違反立法會的誓言，跟你擺放國旗、區旗出來，是否恰恰表達了相反的意思？因為你擺放國旗、區旗出來，你是想要特別表示尊重國家？

主席：

劉國勳議員。

劉國勳議員：

事實上，他的做法是.....我認同謝偉俊議員所指，是違反了立法會的宣誓，因為他的做法玷污了香港特別行政區和玷污了國家，對香港和國家有侮辱，其實已經違反了《基本法》，亦違反了要擁護中華人民共和國和香港特別行政區等等，所以，我亦是第一時間去報警。而在報警後，對謝偉俊議員在立法會的提倡，我亦是支持的。

主席：

好，還有沒有.....是，接着是張國鈞議員。張國鈞議員。

張國鈞議員：

劉議員，你是否在會議廳內親眼看到鄭松泰議員作出一些被指稱與國旗、區旗展示品有關的行為呢？

劉國勳議員：

我是在前廳的電視機上的直播看見他將國旗和區旗倒插的。

張國鈞議員：

好，謝謝。

主席：

是，還有沒有其他？是，邵家輝議員。

邵家輝議員：

謝謝主席。我想跟進剛才的問題，因為你剛才說，因為你不是帶了很多國旗，所以不是所有人都派。如果假設你帶了足夠數量給 70 個立法會議員，其實你會將所有國旗和區旗都會一併派發給非建制派議員嗎？

劉國勳議員：

我會的。

邵家輝議員：

你也會的？

劉國勳議員：

嗯。

邵家輝議員：

OK，謝謝。

主席：

還有沒有其他有問題？或者我幫助跟進。

劉國勳議員，你在會議廳親眼看見鄭松泰議員在上述的會議上作出一些被指稱與國旗、區旗.....

劉國勳議員：

我在前廳那裏。

主席：

你是在前廳的？

劉國勳議員：

前廳的電視直播上看到的。

主席：

也是前廳。OK，那麼，現時我們的調查，你知道是要確立謝偉俊議員提出的譴責議案的事實，你還有否其他資料要補充？

劉國勳議員：

沒有了。

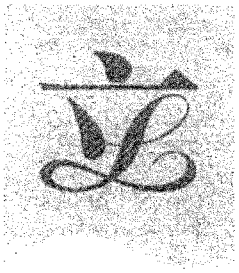
主席：

大家還有否事情要跟進？可以超越我們自己準備了的問題。

如果沒有，我們要多謝劉國勳議員今天協助我們本會的調查，多謝你。

劉國勳議員：

好。



立法會誓詞

本人，**鄭松泰**，謹以至誠，據實聲明及確認，本人就任中華人民共和國香港特別行政區立法會議員，定當擁護《中華人民共和國香港特別行政區基本法》，效忠中華人民共和國香港特別行政區、盡忠職守、遵守法律，廉潔奉公，為香港特別行政區服務。

The Legislative Council Affirmation

I, **CHENG Chung-tai**, solemnly, sincerely, and truly declare and affirm that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.

日期 *Date* 12 October 2016

簽署 *Signature* 鄭松泰

Photo of the mock-ups of the national flag of the People's Republic of China and regional flag of the Hong Kong Special Administrative Region of the People's Republic of China displayed by some Members at the Council meeting of 19 October 2016.



Source: BBC China on 19 October 2016

Photo of Dr Hon CHENG Chung-tai inverting the mock-ups of the national flag of the People's Republic of China and regional flag of the Hong Kong Special Administrative Region of the People's Republic of China placed on some Members' desks at the Council meeting of 19 October 2016.



Source: Inmediahk Flickr photo album (uploaded on 19 October 2016)

Photo of the mock-ups of the national flag of the People's Republic of China and regional flag of the Hong Kong Special Administrative Region of the People's Republic of China stuffed inside the glass holders with their poles stretching out of the glass holders at the Council meeting of 19 October 2016.



Source: Apple Daily on 19 October 2016

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會
LEGISLATIVE COUNCIL

來函檔號 YOUR REF :
本函檔號 OUR REF : CB(3)/IC/16/9
電　　話 TELEPHONE : 3919 3302
圖文傳真 FACSIMILE : 2810 1691

機密

許智峯議員
香港中區
立法會道1號
立法會綜合大樓913室

許議員：

根據《議事規則》第49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

本人現根據調查委員會《行事方式及程序》第22段，把載有閣下於2017年7月3日出席研訊所提證據相關部分的逐字紀錄本擬稿送交閣下，以供審閱及核正。請閣下於**2017年8月31日(星期四)前**，把該逐字紀錄本擬稿，連同建議的更正(如有的話)，交回本人。

謹提醒閣下，閣下已於2017年7月28日簽署承諾書，承諾不會把該擬稿複印、把擬稿作公開用途，或以妨害調查委員會工作的方式使用該等紀錄本，並會在指定日期前把擬稿交回調查委員會。

如你有任何疑問或意見，歡迎致電本人(電話：3919 3302)或莫頴琛小姐(電話：3919 3308)。

調查委員會秘書

黃少健

(黃少健)

2017 年 8 月 10 日

連附件

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會
LEGISLATIVE COUNCIL

來函檔號 YOUR REF :
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圖文傳真 FACSIMILE : 2810 1691

機密

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根據《議事規則》第49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

根據調查委員會《行事方式及程序》第25段，調查委員會會把調查委員會報告中載述用以確立譴責議案所述的事實的證據有關部分，送交受調查的議員及有關證人置評。調查委員會為報告定稿時將考慮該等人士的意見，而該等意見將記錄於報告內。

調查委員會正擬備其報告。在本人把報告擬稿有關事實的證據的部分發送給你置評前，請你於**2018年3月6日或之前，填妥並交回隨附的承諾書**，承諾不會把該擬稿複印、作公開用途，或以妨害調查委員會工作的方式使用該擬稿，並會在指定日期前把該擬稿連同閣下的意見(如有的話)交回調查委員會。本人收到閣下簽署的承諾書後，會盡快把報告擬稿有關事實的證據的部分發送給你置評。

如你有任何疑問或意見，歡迎致電本人(電話：3919 3302)或莫穎琛小姐(電話：3919 3308)。

調查委員會秘書

黃少健

(黃少健)

2018 年 3 月 2 日

連附件

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會
LEGISLATIVE COUNCIL

來函檔號 YOUR REF :
本函檔號 OUR REF : CB(3)/IC/16/10
電 話 TELEPHONE : 3919 3302
圖文傳真 FACSIMILE : 2810 1691

機密

許智峯議員
香港中區
立法會道1號
立法會綜合大樓913室

許議員：

根據《議事規則》第49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

經調查委員會同意，本人曾於2018年3月2日致函邀請你簽署保密承諾書，待收到你簽署的承諾書後，本人便會把調查委員會報告載述用以確立譴責議案所述的事實的證據的有關部分送交你置評。本人並曾提醒你的助理黃小姐，若你不簽署承諾書，報告有關部分便不會送交你置評。就此，本人於2018年3月9日從你的助理黃小姐得悉，你不會簽署承諾書。故此，**調查委員會不會把該報告的有關部分送交你置評**。

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調查委員會秘書

黃少健

(黃少健)

2018年3月15日

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立 法 會 LEGISLATIVE COUNCIL

CB(3)/IC/16/10

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黃少健先生:
(傳真：2810-1691)

黃先生：

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順祝 生活愉快！

立法會議員

(許智峯議員 謹啓)

2018年3月16日

香港中區立法會道1號立法會綜合大樓 Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

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黃少健先生:
(傳真：2810-1691)

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順祝　生活愉快！

立法會議員

(許智峯議員　謹啓)

2018年3月16日

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中華人民共和國香港特別行政區
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根據《議事規則》第49B(2A)條
就譴責鄭松泰議員的議案成立的調查委員會

經調查委員會同意，本人曾於2018年3月15日致函閣下**(附件1)**，表示你曾於2017年10月16日，透過電話向秘書處口頭確認，你對你於2017年7月3日出席調查委員會研訊所提證據相關部分的逐字紀錄本擬稿內容沒有意見。調查委員會已決定，把該逐字紀錄本納入調查委員會報告的附錄。

你於2018年3月16日回函**(附件2)**表示，你從來沒有口頭或書面表示對該逐字紀錄本擬稿"沒有意見"，並指本人引述你沒有意見屬失實陳述。調查委員會助理秘書莫穎琛小姐於3月16日致電給你，表示你本人確曾於2017年10月16日向她表示，你對該逐字紀錄本擬稿沒有意見，而就你的口頭回應，她於10月16日當天已備存書面紀錄。其後你同意撤回附件2的函件，並於3月16日再次來函**(附件3)**澄清，根據你的記憶，就該逐字紀錄本擬稿內容，你並無表示"沒有意見"。

請你注意，按照立法會轄下委員會進行研訊的一貫做法，所有證人(包括你本人)出席研訊接受訊問的整個過程均會錄音，以便秘書處擬備逐字紀錄本。

經調查委員會主席梁美芬議員同意，調查委員會報告將紀錄你與秘書處就逐字紀錄本擬稿溝通的情況，並把本函及上述所有函件納入報告的附錄。

調查委員會秘書
黃少健
(黃少健)

2018年3月23日

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會
LEGISLATIVE COUNCIL

附件 1

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調查委員會秘書

黃少健

(黃少健)

2018 年 3 月 15 日

中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立 法 會 LEGISLATIVE COUNCIL

附件 2

CB(3)/IC/16/10

信件

調查委員會秘書
黃少健先生:
(傳真：2810-1691)

黃先生：

有關2018年3月15日來函

你 2018 年 3 月 15 日的文件已收悉。作為涉及此宗個案的議員，本人現向你作出下述回覆。

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順祝 生活愉快！

立法會議員

(許智峯議員 謹啓)

2018 年 3 月 16 日

香港中區立法會道 1 號立法會綜合大樓 Legislative Council Complex, 1 Legislative Council Road, Central, Hong Kong

中華人民共和國香港特別行政區
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立 法 會 LEGISLATIVE COUNCIL

附件 3

CB(3)/IC/16/10

傳真信件

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(傳真：2810-1691)

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就譴責鄭松泰議員的議案成立的調查委員會

根據調查委員會《行事方式及程序》第25段，調查委員會會把調查委員會報告中載述用以確立譴責議案所述的事實的證據有關部分，送交受調查的議員及有關證人置評。調查委員會為報告定稿時將考慮該等人士的意見，而該等意見將記錄於報告內。

調查委員會正擬備其報告。在本人把報告擬稿有關事實的證據的部分發送給你置評前，請你於**2018年3月6日或之前，填妥並交回隨附的承諾書**，承諾不會把該擬稿複印、作公開用途，或以妨害調查委員會工作的方式使用該擬稿，並會在指定日期前把該擬稿連同閣下的意見(如有的話)交回調查委員會。本人收到閣下簽署的承諾書後，會盡快把報告擬稿有關事實的證據的部分發送給你置評。

如你有任何疑問或意見，歡迎致電本人(電話：3919 3302)或莫穎琛小姐(電話：3919 3308)。

調查委員會秘書

黃少健

(黃少健)

2018 年 3 月 2 日

連附件

中華人民共和國香港特別行政區
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調查委員會秘書

黃少健

(黃少健)

2018年3月15日

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 19 October 2016

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE ABRAHAM SHEK LAI-HIM, G.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, G.B.S., J.P.

PROF THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, G.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, S.B.S., J.P.

THE HONOURABLE STARRY LEE WAI-KING, S.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN, B.B.S., J.P.

THE HONOURABLE CHAN KIN-POR, B.B.S., J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, S.B.S., J.P.

THE HONOURABLE WONG KWOK-KIN, S.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

THE HONOURABLE LEUNG KWOK-HUNG#

THE HONOURABLE CLAUDIA MO

THE HONOURABLE MICHAEL TIEN PUK-SUN, B.B.S., J.P.

THE HONOURABLE STEVEN HO CHUN-YIN, B.B.S.

THE HONOURABLE FRANKIE YICK CHI-MING, J.P.

THE HONOURABLE WU CHI-WAI, M.H.

THE HONOURABLE YIU SI-WING, B.B.S.

THE HONOURABLE MA FUNG-KWOK, S.B.S., J.P.

THE HONOURABLE CHARLES PETER MOK, J.P.

THE HONOURABLE CHAN CHI-CHUEN

THE HONOURABLE CHAN HAN-PAN, J.P.

THE HONOURABLE LEUNG CHE-CHEUNG, B.B.S., M.H., J.P.

THE HONOURABLE KENNETH LEUNG

THE HONOURABLE ALICE MAK MEI-KUEN, B.B.S., J.P.

DR THE HONOURABLE KWOK KA-KI

THE HONOURABLE KWOK WAI-KEUNG

THE HONOURABLE DENNIS KWOK WING-HANG

THE HONOURABLE CHRISTOPHER CHEUNG WAH-FUNG, S.B.S., J.P.

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.

DR THE HONOURABLE HELENA WONG PIK-WAN

THE HONOURABLE IP KIN-YUEN

DR THE HONOURABLE ELIZABETH QUAT, J.P.

THE HONOURABLE MARTIN LIAO CHEUNG-KONG, S.B.S., J.P.

THE HONOURABLE POON SIU-PING, B.B.S., M.H.

DR THE HONOURABLE CHIANG LAI-WAN, J.P.

IR DR THE HONOURABLE LO WAI-KWOK, S.B.S., M.H., J.P.

THE HONOURABLE CHUNG KWOK-PAN

THE HONOURABLE ALVIN YEUNG

THE HONOURABLE ANDREW WAN SIU-KIN

THE HONOURABLE CHU HOI-DICK

THE HONOURABLE JIMMY NG WING-KA, J.P.

DR THE HONOURABLE JUNIUS HO KWAN-YIU, J.P.

THE HONOURABLE HO KAI-MING

THE HONOURABLE LAM CHEUK-TING

THE HONOURABLE HOLDEN CHOW HO-DING

THE HONOURABLE SHIU KA-FAI

THE HONOURABLE SHIU KA-CHUN

THE HONOURABLE WILSON OR CHONG-SHING, M.H.

THE HONOURABLE YUNG HOI-YAN

DR THE HONOURABLE PIERRE CHAN

THE HONOURABLE CHAN CHUN-YING

THE HONOURABLE TANYA CHAN

THE HONOURABLE CHEUNG KWOK-KWAN, J.P.

THE HONOURABLE HUI CHI-FUNG

THE HONOURABLE LUK CHUNG-HUNG

THE HONOURABLE LAU KWOK-FAN, M.H.

THE HONOURABLE KENNETH LAU IP-KEUNG, M.H., J.P.

DR THE HONOURABLE CHENG CHUNG-TAI

THE HONOURABLE KWONG CHUN-YU

THE HONOURABLE JEREMY TAM MAN-HO

THE HONOURABLE NATHAN LAW KWUN-CHUNG#

DR THE HONOURABLE YIU CHUNG-YIM#

THE HONOURABLE SIXTUS LEUNG CHUNG-HANG*

THE HONOURABLE YAU WAI-CHING*

DR THE HONOURABLE LAU SIU-LAI#

CLERK IN ATTENDANCE:

MR KENNETH CHEN WEI-ON, S.B.S., SECRETARY GENERAL

\# According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.

* According to the Judgement of the Court of First Instance of the High Court on 15 November 2016, Sixtus LEUNG Chung-hang and YAU Wai-ching have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.

TAKING OF LEGISLATIVE COUNCIL OATH

PRESIDENT (in Cantonese): Good morning. Will Members please be seated. Council now proceed to the taking of Legislative Council Oath.

PRESIDENT (in Cantonese): Relevant Members will take the Oath in accordance with the order set out on the Agenda. When I call the name of a Member, will the Member please come to the table to take the Oath.

The Honourable WONG Ting-kwong took the Legislative Council Affirmation

Dr The Honourable YIU Chung-yim took the Legislative Council Affirmation

(Mr CHAN Hak-kan stood up)

PRESIDENT (in Cantonese): Mr CHAN Hak-kan, what is your point?

MR CHAN HAK-KAN (in Cantonese): Point of order, President. I think a quorum is not present in the Chamber. Will you please do a headcount?

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(While the summoning bell was ringing, Dr CHENG Chung-tai went to the vacant seats of other Members and inverted the national flags of the People's Republic of China and regional flags of the Hong Kong Special Administrative Region displayed on their desks)

PRESIDENT (in Cantonese): Dr CHENG Chung-tai, the meeting is still in progress and we are just doing a headcount. Please return to your seat.

Dr CHENG, you should not leave your seat at will and go to the seats of other Members to cause a disturbance.

(Dr CHENG Chung-tai proceeded to the front of the vacant seat of another Member and inverted the national flag and regional flag displayed on the desk)

PRESIDENT (in Cantonese): Dr CHENG, if you do not return to your seat, I will rule that your conduct is grossly disorderly.

(Dr CHENG Chung-tai continued to walk to the front of the vacant seat of another Member and inverted the national flag and regional flag displayed on the desk)

PRESIDENT (in Cantonese): Dr CHENG, this is my final warning to you.

(Dr CHENG Chung-tai again walked to the front of the vacant seat of another Member and inverted the national flag and regional flag displayed on the desk)

PRESIDENT (in Cantonese): Dr CHENG Chung-tai, please leave the Chamber.

(Dr CHENG Chung-tai returned to his own seat. Security personnel tried to assist Dr CHENG to leave the Chamber, but Dr CHENG refused to leave)

PRESIDENT (in Cantonese): Will staff of the Secretariat please enforce my order.

(The Clerk and security personnel continued to try to assist Dr CHENG Chung-tai in leaving the Chamber but Dr CHENG remained in his seat and spoke, still refusing to leave. A number of Members went up to Dr CHENG and gathered around him, speaking loudly)

(The summoning bell stopped after ringing for 15 minutes)

TABLING OF PAPERS

The following papers were laid on the table under Rule 21(2) of the Rules of Procedure:

Subsidiary Legislation/Instruments	*L.N. No.*
Human Reproductive Technology (Amendment) Ordinance 2016 (Commencement) Notice.....	155/2016
Mandatory Provident Fund Schemes (Amendment) Ordinance 2016 (Commencement) Notice.....	156/2016

ADJOURNMENT OF MEETING

PRESIDENT (in Cantonese): As the summoning bell has rung for 15 minutes but a quorum is still not present, I now adjourn the meeting according to Rule 17(2) of the Rules of Procedure.

Adjourned accordingly at 11:18 am.

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

(Issued by the Committee on Members' Interests under Rule 73(1)(d) of the Rules of Procedure of the Legislative Council)

1. A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council ("the Council").

2. A Member 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. When deciding whether to engage in activities of a commercial nature such as advertisement activities, Members should accord due consideration as to whether the nature and contents of such activities might be regarded as not in keeping with the position or prestige of a Member of the Council and thereby bringing discredit upon the Council.

3. A Member should adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or subcommittees, or the President for the regulation of the practice and procedure of the Council, its committees and subcommittees, or Members' behaviour in their conduct of the business of the Council.

4. A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest.

5. A Member should not take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public.

6. A Member should ask for information only about matters of public interest and should not seek information for private or personal interest.

7. A Member should ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true.

June 2009