**FACC No. 3 of 2021**

**[2021] HKCFA 32**

**IN THE COURT OF FINAL APPEAL OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**FINAL APPEAL NO. 3 OF 2021 (CRIMINAL)**

(ON APPEAL FROM HCMA NO. 520 OF 2018)

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BETWEEN

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|  | **SECRETARY FOR JUSTICE** | **Respondent** |
|  | **and** |  |
|  | **LEUNG KWOK HUNG (梁國雄)** | **Appellant** |

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| Before: | Chief Justice Cheung, Mr Justice Ribeiro PJ,  Mr Justice Fok PJ, Mr Justice Chan NPJ and  Lord Reed of Allermuir NPJ |
| Date of Hearing: | 31 August 2021 |
| Date of Judgment: | 27 September 2021 |

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|  | **JUDGMENT** |  |

Chief Justice Cheung:

1. I agree with the judgment of Mr Justice Fok PJ.

Mr Justice Ribeiro PJ:

1. I agree with the judgment of Mr Justice Fok PJ.

Mr Justice Fok PJ:

***A. Introduction***

1. This appeal arises out of the prosecution of the appellant, then a member of the Legislative Council (“LegCo”), for an alleged offence of contempt during a committee meeting. It raises the question of the extent to which a member of LegCo may be subject to criminal prosecution for disorderly conduct interrupting proceedings. The Court has previously examined the question of the liability of persons acting disruptively in the public gallery[[1]](#footnote-1) and that of persons acting violently against police officers in the precincts of LegCo,[[2]](#footnote-2) but not that raised in this appeal.

***A.1 The alleged facts***

1. The facts alleged to have occurred and on which the prosecution of the appellant was based were simple. On 15 November 2016, LegCo’s Panel on Housing and its Panel on Development held a joint meeting. The meeting was attended by the appellant, then a member of the Panel on Housing, and Mr Ma Siu-cheung, the then Under Secretary for Development, as well as others. Mr Ma had with him a folder containing confidential documents, which he placed on the bench in front of him. In the course of the meeting, after he had asked Mr Ma to produce certain documents relating to an issue under discussion, the appellant rose from his seat, walked over towards Mr Ma, snatched his folder and then passed it to another member of LegCo in attendance, Mr Chu Hoi-dick, for him to read. The Chairperson of the meeting issued repeated verbal demands to the appellant for him to return the folder to Mr Ma and return to his seat. Eventually, the Chairperson ordered the appellant to withdraw from the meeting pursuant to Rule 45(2) of the Rules of Procedure and temporarily suspended the meeting. Mr Chu, having read the contents of Mr Ma’s folder, eventually returned it to a security guard and it was then given back to Mr Ma.

***A.2 The prosecution and proceedings below***

1. Following this incident, with the consent of the Secretary for Justice,[[3]](#footnote-3) the appellant was prosecuted[[4]](#footnote-4) for the offence of contempt under section 17(c) of the Legislative Council (Powers and Privileges) Ordinance (Cap.382) (“LCPPO”), which provides that:

“Any person who –

…

(c) creates or joins in any disturbance which interrupts or is likely to interrupt the proceedings of the Council or a committee while the Council or such committee is sitting,

commits an offence and is liable to a fine of $10,000 and to imprisonment for 12 months, and in the case of a continuing offence to a further fine of $2,000 for each day on which the offence continues.”

1. At the request of the defence, the magistrate gave a ruling on preliminary issues regarding the ambit and constitutionality of section 17(c). In particular, she was asked to rule on whether the section applies to a member of LegCo and to proceedings other than those involving a person called to give evidence under oath.[[5]](#footnote-5) She was also asked to rule on whether the provision is unconstitutional in violating “the freedom of speech and debate of the member and/or LegCo’s exclusive authority over its internal affairs enshrined in the Basic Law”.[[6]](#footnote-6)
2. The magistrate ruled that, on its true interpretation, section 17(c) “is applicable to the proceedings of [LegCo] or a committee in general but it is not applicable to the members of [LegCo].”[[7]](#footnote-7) Having so ruled, she did not deal with the issue of constitutionality.
3. The prosecution appealed by way of Case Stated[[8]](#footnote-8) with questions as to the correctness of the magistrate’s ruling and also raising the constitutional validity of section 17(c). By order of a judge of the Court of First Instance, the Case Stated was reserved for the consideration of the Court of Appeal.[[9]](#footnote-9)
4. In a comprehensive judgment, Poon CJHC (with whom Lam VP[[10]](#footnote-10) and D Pang JA agreed) held that the magistrate was: (1) wrong to rule that conduct caught by section 17(c) is protected by the privilege in section 3 of the LCPPO (see below); (2) wrong to hold that section 17(c) is inapplicable to members of LegCo; and (3) right to find that section 17(c) applies to all proceedings of LegCo and its committees and is not confined to proceedings involving the taking of evidence. He also held against the argument that section 17(c) is unconstitutional.[[11]](#footnote-11)

***B. The issues in this appeal***

1. The Appeal Committee granted leave to appeal to the appellant in respect of the following questions of law, namely:

“(1) Whether what is said and done during proceedings of the Legislative Council (“LegCo”) and its committees falls within the privilege enjoyed by LegCo provided that it does not amount to an ordinary criminal offence. (‘Question 1’)

(2) Upon the true interpretation of the Legislative Council (Powers and Privileges) Ordinance, Cap 382 (“LCPPO”):

(a) Whether section 17(c) applies to a member of LegCo. (‘Question 2(a)’)

(b) Whether ‘proceedings’ in section 17(c) is confined to proceedings involving the taking of evidence under oath. (‘Question 2(b)’)

(3) Whether the Court of Appeal was correct in respect of the following:

(a) That the absolute freedom of speech and debate of LegCo under section 3 of the LCPPO does not extend to conduct caught by section 17(c) of the LCPPO. (‘Question 3(a)’)

(b) That LegCo had, by enacting section 17(c) of the LCPPO, in fact relinquished to and/or conferred upon the courts a penal jurisdiction over the conduct and discipline of members of LegCo during the proceedings of LegCo and its committees. (‘Question 3(b)’)

(c) That section 17(c) of the LCPPO as applicable to a member of LegCo is not unconstitutional. (‘Question 3(c)’).”

1. Despite the breadth of the questions for which leave to appeal was sought and granted, in light of the parties’ submissions in their respective written cases and at the hearing before this Court, the issues on this appeal have been more focused. The appellant contends that, as a matter of law, he is not subject to liability under section 17(c) of the LCPPO because of, first, the constitutional protection of freedom of speech and debate or proceedings in LegCo, and/or, second, the principle of non-intervention by the courts in the conduct of LegCo proceedings. The first contention involves construing section 17(c) of the LCPPO and will require consideration of Article 77 of the Basic Law (“BL77”) and sections 3 and 4 of the LCPPO (set out below). The second contention requires consideration of this Court’s decision in *Leung Kwok Hung v President of the Legislative Council (No.1)* (2014) 17 HKCFAR 689.
2. In advancing the appeal, Lord Pannick QC[[12]](#footnote-12) draws attention to three particular aspects of the appellant’s case, namely that (i) the appellant was a member of the LegCo Panel on Housing, (ii) his impugned conduct was in relation to the business of the joint meeting of the two LegCo Panels, and (iii) the alleged offence is inextricably linked to the proceedings of the LegCo Panels and is not an “ordinary crime”.

***C. Whether appellant immune from prosecution by reason of freedom of speech and debate in LegCo***

***C.1 Appellant’s conduct prima facie caught by section 17(c)***

1. It is to be noted that not every interruption to proceedings constitutes an offence under section 17(c), which only penalises those interruptions which are the result of a disturbance to the relevant proceedings. The dictionary definition of “disturbance” is relevant and includes:

“1. The interruption and breaking up of a … proper functioning; … an instance of … a breach of the public peace …

2. Interference with the continuance of any action or process.

…

4. Interference with rights or property.”[[13]](#footnote-13)

1. Accordingly, the offence is committed when a defendant creates a disturbance which interrupts or breaks up the proper functioning of LegCo or its committees and, in particular, occurs when the resulting interruption involves interference with the rights of others.
2. The wording of section 17(c) refers to “any person” and, in context and having regard to the purpose of the LCPPO (see below), there is no reason to exclude a LegCo member from its ambit. A compelling contextual argument for this is the presence, in section 20 of the LCPPO,[[14]](#footnote-14) of the qualification “other than a member or officer of the Council”. Where the LCPPO is not intended to apply to a member of LegCo, it says so. The expression “any person” is also used in section 19 of the LCPPO (creating offences of interfering with members, officers and witnesses),[[15]](#footnote-15) without the section 20 qualification, and, if that were read as not applying to LegCo members, would, like section 17(c), produce anomalous results. Given the statutory purpose of the LCPPO, there is no good reason to exclude a LegCo member from liability for interfering with other members or officers or witnesses. Similarly, as Lord Pannick QC accepted, there is no good reason to exclude a LegCo member, in circumstances where they are not protected by the freedom of speech and debate conferred on them, from liability for contempt constituted by the creation of a disturbance interrupting proceedings.
3. On the facts set out in Section A.1 above, which have yet to be established, the appellant was *prima facie* caught by section 17(c) of the LCPPO. The joint panel meeting was a proceeding of a committee of LegCo.[[16]](#footnote-16) The appellant was a person who evidently created a disturbance which interrupted the proceedings of that committee while it was sitting. The central question in this appeal, to which I shall now turn, is whether the appellant’s conduct fell within any privilege conferred on members of LegCo.

***C.2 The argument in reliance on the protection of freedom of speech and debate***

1. The first and principal reason advanced by the appellant for not being liable under section 17(c) on the facts as alleged involves reliance on the privileges conferred by law in respect of statements made at meetings of LegCo and its committees. Specifically, the appellant relies on:
   1. BL77, which provides:

“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.”

* 1. LCPPO section 3, which provides:

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

* 1. LCPPO section 4, which provides:

“No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Council or a committee, or by reason of any matter brought by him therein by petition, Bill, resolution, motion or otherwise.”

1. The appellant also contended that, since section 3 of the LCPPO is closely modelled on Article 9 of the Bill of Rights 1689,[[17]](#footnote-17) it is relevant to have regard to English cases concerned with Article 9,[[18]](#footnote-18) including the UK Supreme Court’s interpretation of that provision in *R v Chaytor* [2011] 1 AC 684. That case concerned the prosecution of members of the UK Parliament for submitting false claims for expenses and allowances. The UK Supreme Court held that the members in question were not immune from prosecution by reason of Parliamentary privilege because the submission of claims was not part of the proceedings in Parliament to which the privilege extended.
2. It was submitted on behalf of the appellant that the ambit of protection conferred by section 3 of the LCPPO (as under Article 9 of the Bill of Rights 1689 on which it is modelled) is “the core or essential business of Parliament [here LegCo], which consists of collective deliberation and decision making”[[19]](#footnote-19) and that the prosecution in the present case would involve the criminal court in addressing “the proceedings in Parliament [that is LegCo]”[[20]](#footnote-20) and “the legislative or deliberative processes of”[[21]](#footnote-21) of LegCo. The appellant’s prosecution in this case would require the court to assess the conduct of the LegCo Panel meeting and what a member of LegCo had done during that meeting in the course of the collective deliberations, and whether this conduct was a disturbance which interrupted the business of LegCo, or was likely to do so.
3. Therefore, it was submitted, so long as the appellant’s alleged conduct occurred during the business of the LegCo Panel meeting, section 3 of the LCPPO (and likewise BL77) confers an absolute privilege and grants him immunity from prosecution even if his conduct was such as to fall within the terms of section 17(c).

***C.3 The ambit of a LegCo member’s freedom of speech and debate and the correct interpretation of section 17(c)***

1. The appellant’s argument requires acceptance of the proposition that the conduct of the appellant constituted an exercise of the protected freedom of speech and debate.
2. Whilst it may be correct to say that section 3 of the LCPPO is modelled on Article 9 of the Bill of Rights 1689 and that the former, like the latter, confers an absolute privilege which cannot be waived,[[22]](#footnote-22) it nevertheless remains for the Court to determine, on its true construction, where the boundaries of section 3 lie. This necessarily also entails a consideration of section 17(c) of the LCPPO, which is part of the context of section 3, and the question of how, as a matter of statutory construction, the two sections intersect.
3. The proposition that it is for the courts to determine the scope of the legislature’s privilege is clearly laid down in *Leung Kwok Hung v President of the Legislative Council (No.1)* (2014) 17 HKCFAR 689 at [39]-[43]. In particular, that case establishes that “… in the case of a written constitution, which confers law-making powers and functions on the legislature, the courts will determine whether the legislature has a particular power, privilege or immunity” (*ibid*. at [39]). Similarly, the UK Supreme Court affirmed in *R (Miller) v Prime Minister* [2019] 3 WLR 589 at [66], by reference to *R v Chaytor* [2011] 1 AC 684, that “it is for the court and not for Parliament to determine the scope of Parliamentary privilege, whether under article 9 of the Bill of Rights or matters within the ‘exclusive cognisance of Parliament’; …”.
4. Adopting the well-established principles of statutory construction[[23]](#footnote-23) of examining the language of the relevant provisions by reference to their context and purpose, one notes that section 3 of the LCPPO is not in identical terms to Article 9 of the Bill of Rights 1689.[[24]](#footnote-24) The latter extends its protection to “proceedings in Parliament”, as well as freedom of speech and debates, and the English cases emphasise that it protects what is “said or done within the walls of Parliament”.[[25]](#footnote-25) In the LCPPO, the privilege or immunity applies to “speech and debate” (section 3) and “words spoken … or written” (section 4) in LegCo, and is reflected in the immunity for “statements” in BL77. This Court has, of course, previously acknowledged that freedom of expression embraces, as one of its dimensions, the manner in which an individual wishes to express their views and is therefore not limited to spoken or written words.[[26]](#footnote-26) At the same time, however, section 17(c) provides a criminal offence of contempt for interruptive disturbances (see [13] and [14] above) and so the question of whether any particular conduct falls within the protected freedom of speech and debate or not must depend on a proper construction of the relevant provisions of the LCPPO as a whole.
5. The statutory purpose is the starting point of any such construction. The LCPPO was enacted in 1985 in anticipation of the resumption of the exercise of sovereignty over Hong Kong by the People’s Republic of China. It was recognised that the powers and privileges of the former colonial legislature would cease to have effect after 30 June 1997 and so the then Hong Kong Government proposed the Bill which became the LCPPO in order to provide a statutory footing for LegCo’s management of its own affairs, effective investigatory powers and its powers and privileges. That legislative scheme included the creation of offences and penalties, over which jurisdiction was conferred on the courts. This statutory purpose is reflected in the debates in LegCo second reading and committee stage of the Bill, including in particular the speeches of the Chief Secretary moving its second reading.[[27]](#footnote-27) The enactment of the LCPPO in July 1985, included sections 3, 4 and 17(c), as well as other provisions, and preceded the drafting of the Basic Law. There is no suggestion that the Basic Law was intended either to depart from, or extend, the powers and privileges of LegCo in the LCPPO (as noted above, BL77 only immunises “statements at meetings of the Council”).
6. The statutory purpose of the LCPPO, reflected in its Long Title,[[28]](#footnote-28) has more recently been explained in the judgment of Ribeiro PJ in *HKSAR v Fong Kwok Shan Christine*, as including the provision of:

“… a statutory framework aimed at creating a secure and dignified environment in the LegCo complex conducive to the legislature carrying out its constitutional functions at its sittings without disruption or disturbance, while permitting members of the public to observe the proceedings within the Chamber as an open legislative process”.[[29]](#footnote-29)

1. Construing the statutory privilege of free speech and debate in LegCo contextually and purposively, I would reject the appellant’s argument that his impugned conduct fell within the protection of free speech and debate relied upon. The LCPPO is to be construed as a coherent whole with sections 3 and 4 having to be read in context together with other provisions including section 17(c). As the Court of Appeal observed (at [42]):

“Protection of the core legislative and deliberative business in terms of free speech and debate in the Council and proceedings in a committee is conferred by sections 3 and 4. Together with other privileges and immunities, they aim at enabling LegCo to carry out its functions independently and without outside interference. The provisions regulating admittance, etc and for offences, including section 17(c) aim at maintaining the secure and dignified environment that LegCo needs to carry out its functions.”

1. The protection of freedom of speech and debate in LegCo is self-evidently an important right. It enables members of LegCo to advocate opinions freely and robustly and without inhibition due to the fear of legal proceedings for such speech and debate. It would be a significant inroad into that freedom if a member of LegCo were subject to legal proceedings for things said by him in the course of sometimes heated political debate. Equally, as the passage quoted in the preceding paragraph demonstrates, the provisions regulating admission and creating offences are designed to achieve the statutory purpose of creating a secure and dignified environment conducive to the legislature carrying out its constitutional functions at its sittings without disruption or disturbance.
2. Accepting the appellant’s broad argument in the present case that, merely because he was present at, and had been participating in, a committee meeting of LegCo, he had absolute immunity for his actions however and whenever occurring and even if they amounted to a disruption caught by section 17(c), would be to extend the privilege of free speech and debate beyond the purpose for which it is granted.
3. In the present case, in my view, his conduct did not fall within the speech and debate protected by sections 3 or 4 of the LCPPO or BL77. At the meeting in question, if the prosecution’s case is established, the appellant created a disturbance by the act of crossing the floor of the chamber during a debate and snatching property belonging to someone else which he passed to a third party over the owner’s objections. He thereby interfered with the rights of Mr Ma, to whom as a public officer the privileges and immunities enjoyed by LegCo members are also extended,[[30]](#footnote-30) including his privacy rights in relation to the confidential documents in his file. The appellant acted in breach of the LegCo rules and ignored the Chairperson’s repeated demands that he resume his seat and return the folder to Mr Ma. This led to the suspension of the meeting whilst the disruptive consequences of the appellant’s actions were addressed. By his actions, the appellant created a disturbance which interfered with the ability of other members of LegCo to carry out their proper functions. In doing so, he was not making a speech, nor was he participating in debating any business that was before the meeting.
4. Concluding that the appellant’s conduct, falling as it did within section 17(c), did not come within the protection of sections 3 and 4 or BL77 is not to say that the freedom of speech and debate in LegCo is qualified, in the same way as, for example, the generally applicable rights of free speech and assembly under Articles 16 and 17 of the Hong Kong Bill of Rights. As noted above, the Court has acknowledged that freedom of expression embraces the manner in which an individual expresses their views. In conveying information and ideas an individual member might well conduct themself in a manner which falls within the freedom of speech and debate conferred. On the other hand, whilst the limits of the freedom are widely drawn and properly described as absolute, conduct which does not form part of any speech or debate in LegCo falls outside the section 3 privilege. Such conduct which creates a disturbance constituting an interruption to proceedings interfering with the proper functioning of LegCo or its committees, and in particular where it interferes with the rights of others, may attract liability under section 17(c). There may be cases where it is more difficult to see the division between conduct which falls within the protection of speech and debate and that which does not. This is not such a case. Here, it is plain that the appellant was not engaged in speech and debate in LegCo when he conducted himself in the manner alleged to have created a disturbance. It follows that his conduct, *prima facie* contrary to section 17(c), is not protected by the privilege conferred by sections 3 and 4 or BL77.

***D. Whether appellant immune from prosecution by reason of the non-intervention principle***

1. The appellant’s second ground for contending that he is immune from prosecution for the alleged offence involves the proposition that the Court should refrain from exercising criminal jurisdiction over contempts of LegCo under section 17(c) of the LCPPO on the basis that taking jurisdiction would offend the non-intervention principle which is said to derive from the doctrine of separation of powers as affirmed by this Court in *Leung Kwok Hung v President of the Legislative Council (No.1)*.[[31]](#footnote-31)
2. Whilst recognising that the exclusive competence of Parliament (or, in Hong Kong, LegCo) to manage its own affairs without interference from the courts or others can be waived or relinquished,[[32]](#footnote-32) it was submitted on behalf of the appellant that: (1) given the constitutional significance of the principle, clear words would be required to conclude that exclusive competence had been waived; (2) section 17(c) says nothing express about exclusive competence and cannot be read as displacing that principle in the context of an ordinance which includes section 3; and (3) there is scope for section 17(c) to operate even if it does not extend to the conduct of a member of LegCo.
3. The non-intervention principle was stated in *Leung Kwok Hung v President of the Legislative Council (No.1)* as:

“… the principle that the courts will recognise the exclusive authority of the legislature in managing its own internal processes in the conduct of its business, in particular its legislative processes. The corollary is the proposition that the courts will not intervene to rule on the regularity or irregularity of the internal processes of the legislature but will leave it to determine exclusively for itself matters of this kind (the non-intervention principle).”[[33]](#footnote-33)

1. That case concerned the question of whether the court should exercise its powers of judicial review regarding the regularity or otherwise of the President of LegCo’s decision to curtail the time for debate and to bring a long filibuster to an end. This was clearly a matter involving the internal processes of the legislature. The present case is entirely different. In exercising jurisdiction in respect of the appellant’s prosecution under section 17(c), the court is carrying out its judicial function of applying primary legislation enacted by LegCo itself. There is no issue of separation of powers. LegCo has carried out its constitutionally allotted legislative function of enacting the offence provision conferring jurisdiction on the courts and the courts carry out their constitutionally allotted adjudicative function in trying prosecutions for the offence so enacted. Contrary to the appellant’s arguments, the non-intervention principle has no application.
2. Regardless of whether or not conduct caught by section 17(c) would previously have been or is still susceptible to internal LegCo disciplinary proceedings, by enacting section 17(c) as primary legislation, LegCo has deliberately vested the courts with the criminal jurisdiction thereby created. To the extent that it might have been arguable that the conduct was subject to regulation as part of LegCo’s internal processes, LegCo has waived any exclusivity in its disciplinary jurisdiction and conferred penal powers on the courts. LegCo itself has never claimed criminal jurisdiction (as opposed to disciplinary jurisdiction) in respect of misconduct committed inside LegCo. Insofar as there is now overlapping jurisdiction over misconduct of the type covered by section 17(c), the fact that internal LegCo disciplinary proceedings might have been commenced in respect of a particular incident will be a relevant factor in any decision of the Secretary for Justice to grant consent pursuant to section 26 for the institution of a prosecution under the LCPPO in respect of the same incident.[[34]](#footnote-34)
3. None of the appellant’s arguments in support of the contention that LegCo has not waived its exclusive competence over members of LegCo for disturbances falling within section 17(c) are convincing reasons for holding that the non-intervention principle applies here. The wording of section 17(c) and its application to members of LegCo is clear and unambiguous. Part IV of the LCPPO, including section 17(c), is part of the “statutory framework aimed at creating a secure and dignified environment in the LegCo complex conducive to the legislature carrying out its constitutional functions at its sittings without disruption or disturbance, while permitting members of the public to observe the proceedings with the Chamber as an open legislative process” (see [26] above). Excluding members of LegCo from the operation of section 17(c) would be anomalous in providing them with an immunity from prosecution for behaviour which, on any view, is inimical to the legislative and deliberative business of LegCo.

***E. Conclusions and Disposition***

1. For the reasons set out above:
   1. Where, by conduct not forming part of any speech or debate, a LegCo member has created a disturbance which interrupts proceedings within the meaning of section 17(c), the freedom of speech and debate conferred on him by sections 3 and 4 of the LCPPO or BL77 does not provide the member with an immunity from prosecution for the offence of contempt under section 17(c).
   2. The non-intervention principle does not require that the courts refuse to exercise criminal jurisdiction over a member of LegCo in a prosecution under section 17(c).
   3. It is not necessary to address more specifically the separate questions for which leave to appeal was granted. In particular, it was not argued on behalf of the appellant that the Court of Appeal was wrong to conclude that proceedings in section 17(c) were confined to proceedings involving the taking of evidence under oath (Question 2(b)). Nor did the appellant pursue the argument that the Court of Appeal was wrong in holding that section 17(c) is not unconstitutional (Question 3(c)).
2. Accordingly, I would dismiss the appeal. The appellant is not immune from prosecution for the alleged offence and the courts are not precluded from exercising jurisdiction in respect of the charge.

Mr Justice Chan NPJ:

1. I agree with the judgment of Mr Justice Fok PJ.

Lord Reed of Allermuir NPJ:

1. I agree with the judgment of Mr Justice Fok PJ.

Chief Justice Cheung:

1. Accordingly, the appeal is unanimously dismissed.

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| (Andrew Cheung)  Chief Justice | (R A V Ribeiro)  Permanent Judge | (Joseph Fok)  Permanent Judge |

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| (Patrick Chan)  Non-Permanent Judge | (Lord Reed of Allermuir)  Non-Permanent Judge |

Lord Pannick QC and Ms Margaret Ng, instructed by Ho Tse Wai & Partners, assigned by the Director of Legal Aid, Mr Carter Chim and Mr Jason Lee, instructed by Ho Tse Wai & Partners, on a *pro bono* basis, for the Appellant

Mr Johnny Mok SC, instructed by the Department of Justice, and Ms Vinci Lam SC, DDPP, Mr William Liu, DLO (Civil Law) (Ag.) and Mr Antony Leung, SPP, of the Department of Justice, for the Respondent

1. *HKSAR v Fong Kwok Shan Christine* (2017) 20 HKCFAR 425. [↑](#footnote-ref-1)
2. *HKSAR v Leung Hiu Yeung* (2018) 21 HKCFAR 20. [↑](#footnote-ref-2)
3. Required by section 26 of the LCPPO. [↑](#footnote-ref-3)
4. ESS 16969/2017, before Ms Ada Yim Shun-yee, Ag Principal Magistrate. [↑](#footnote-ref-4)
5. Ruling on Preliminary Issues, 5 March 2018, Amended Question One. [↑](#footnote-ref-5)
6. *Ibid.*, Amended Question Two. [↑](#footnote-ref-6)
7. *Ibid.* at [32]. [↑](#footnote-ref-7)
8. Pursuant to section 105 of the Magistrates Ordinance (Cap.227). [↑](#footnote-ref-8)
9. Pursuant to section 118(1)(d) of (Cap.227). [↑](#footnote-ref-9)
10. Now Lam PJ. [↑](#footnote-ref-10)
11. [2020] HKCA 424, HCMA 520/2018, Judgment dated 2 June 2020 (“CA Judgment”) at [11] and [83]. [↑](#footnote-ref-11)
12. Appearing with Ms Margaret Ng, Mr Carter Chim and Mr Jason Lee. [↑](#footnote-ref-12)
13. *Shorter Oxford English Dictionary* (6th Ed., 2007) Vol.1, p.722. [↑](#footnote-ref-13)
14. Section 20 provides: “Any person, other than a member or officer of the Council, who –

    (a) enters or attempts to enter the Chamber or the precincts of the Chamber in contravention of any of the Rules of Procedure or any resolution under section 8(2); or

    (b) contravenes any administrative instructions issued under section 8(3), or any direction given thereunder, regulating the admittance of persons to or the conduct of persons within the Chamber or the precincts of the Chamber,

    commits an offence and is liable to a fine of $2,000 and to imprisonment for 3 months.” [↑](#footnote-ref-14)
15. Section 19 provides: “Any person who –

    (a) assaults, obstructs or molests any member going to, being within or going from the precincts of the Chamber, or endeavours to compel any member by force or menace to declare himself in favour of or against any motion or matter pending before the Council or a committee; or

    (b) assaults, interferes with, molests, resists or obstructs any officer of the Council while in the execution of his duty; or

    (c) tampers with, deters, threatens, molests or in any way unduly influences any witness in regard to any evidence to be given by him before the Council or a committee; or

    (d) threatens, molests or in any way punishes or injures or attempts to punish or injure any person for having given evidence before the Council or a committee or on account of any evidence which he has given before the Council or a committee,

    commits an offence and is liable to a fine of $10,000 and to imprisonment for 12 months.” [↑](#footnote-ref-15)
16. Section 2 of the LCPPO defines “committee” as “(a) a standing or select committee or any other committee of the Council; (b) a subcommittee of any committee referred to in paragraph (a).” [↑](#footnote-ref-16)
17. This provides: “That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.” [↑](#footnote-ref-17)
18. Reference was made to *Bradlaugh v Gossett* (1884) 12 QBD 271, *Stockdale v Hansard* (1839) 9 Ad & E 1, and *Chenard v Arissol* [1949] AC 127. [↑](#footnote-ref-18)
19. [2011] 1 AC 684 per Lord Phillips of Worth Matravers PSC at [62]. [↑](#footnote-ref-19)
20. *Ibid.* [↑](#footnote-ref-20)
21. [2011] 1 AC 684 per Lord Rodger of Earlsferry JSC at [122]. [↑](#footnote-ref-21)
22. [2011] 1 AC 684 per Lord Phillips of Worth Matravers PSC at [61]. [↑](#footnote-ref-22)
23. See e.g. *Chan Ka Lam v Country and Marine Parks Authority* [2020] HKCFA 33, (2020) 23 HKCFAR 414 at [26]-[27]. [↑](#footnote-ref-23)
24. “That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.” [↑](#footnote-ref-24)
25. *Bradlaugh v Gossett* (1884) 12 QBD 271 at p.275, *R v Chaytor* [2011] 1 AC 684 at [29], [52] and [54]. [↑](#footnote-ref-25)
26. *HKSAR v Fong Kwok Shan Christine* (2017) 20 HKCFAR 425 at [42], citing *Mayor of London v Hall* [2011] 1 WLR 504 per Lord Neuberger of Abbotsbury MR (as he then was) at [37]. [↑](#footnote-ref-26)
27. Such statements being admissible to ascertain statutory purpose: see *HKSAR v Cheung Kwun Yin* (2009) 12 HKCFAR 568 at [13]-[14], *HKSAR v Li Kwok Cheung George* (2014) 17 HKCFAR 319 at [37]. [↑](#footnote-ref-27)
28. “To declare and define certain powers, privileges and immunities of the Legislative Council and of the members and officers thereof and of the Chief Executive and public officers designated by him in relation to attendance at sittings of the Legislative Council and committees thereof; to secure freedom of speech in the Legislative Council; to make provision for regulating admittance to and conduct within the precincts of the Chamber of the Legislative Council; to provide for the giving of evidence in proceedings before the Legislative Council or committees thereof, and for offences in respect of such proceedings and related matters; and for purposes incidental to or connected therewith.” [↑](#footnote-ref-28)
29. (2017) 20 HKCFAR 425 at [82]. [↑](#footnote-ref-29)
30. By section 8A of the LCPPO. [↑](#footnote-ref-30)
31. (2014) 17 HKCFAR 689. [↑](#footnote-ref-31)
32. *R v Chaytor* [2011] 1 AC 684 per Lord Phillips of Worth Matravers PSC at [63]. [↑](#footnote-ref-32)
33. (2014) 17 HKCFAR 689 at [28]. [↑](#footnote-ref-33)
34. CA Judgment at [72], referring to *R v Chaytor* [2011] 1 AC 684 at [81]. [↑](#footnote-ref-34)