

The changing culture in the Legislative Council in Hong Kong

*A speech by Andrew Kwan-yuen Leung
President, Legislative Council, Hong Kong Special Administrative Region
At Hong Kong Public Administration Association*

The following is the English translation of the speech delivered in Chinese by the President of the Legislative Council of the Hong Kong Special Administrative Region, the Honourable Andrew Kwan-yuen Leung, GBS, JP at the Annual General Meeting and Luncheon of the Hong Kong Public Administration Association, held in the Hong Kong Polytechnic University on 28 September 2018.

Professor Fong (President of the Hong Kong Public Administration Association, Professor Peter Fong), ladies and gentlemen,

Introduction

It is my pleasure to share my thoughts and experience with you in this luncheon today at the invitation of the Hong Kong Public Administration Association. In 2004, I was returned by the Industrial Functional Constituency to the Legislative Council for the first time. Over the years, I have served the Council in different capacities, such as the Chairman of the House Committee and various Bills Committees. Two years ago, I was elected the President of the Sixth Legislative Council by and from among Members. To me, this is truly a great honour.

In the current-term Legislative Council, one third of the Members are newcomers; but I myself have spent 14 years with it. I can thus say I am a veteran Member, and as an experienced legislator, I have been able to witness the changes in society and the legislature. Such changes have come to evoke especially great feelings in me ever since I was elected the Legislative Council President. Today, let me share with you my observations and views on the changing culture in the Legislative Council in recent years.

The changing culture in the Council

In recent years, the Legislative Council has time and again attracted the media spotlight. Members' heated debates and eloquence aside, the public will also vividly remember the various acts of filibustering. Certain Members, for example, proposed large numbers of amendments, so that they could speak over and over again, and they also raised points of order at very frequent intervals to prolong the proceedings, with the purpose of voicing their discontent or presenting certain requests to the Government. Such Members also exploited the quorum count mechanism and made incessant quorum calls, as a Council meeting can no longer proceed and must be adjourned accordingly if a quorum is not present 15 minutes after the quorum bell has rung. The public may still remember all the tumultuous scenes in the Chamber where certain Members hurled objects around, dashed to the front of the President Podium, and eventually got expelled. Initially only one or two Members did so, but over time, this has become the collective behaviour of certain Members.

The number of Council meeting hours has been rising through the successive terms of the legislature. Filibustering first emerged in 2012, the final year of the Fourth Legislative Council. The term of the Fourth Legislative Council was then drawing to a close and any bill on the Agenda would lapse and must be set aside if it could not be passed before the recess. Certain Members thus initiated a filibuster to thwart the passage of the bills they opposed. Filibustering has since become the order of the day in the Council. The scrutiny of the annual Appropriation Bills is a case in point. In 2014, the Council's scrutiny lasted nearly 149 hours, as different Members proposed over a

thousand amendments. In contrast, in 2012, when filibustering had not yet emerged, the scrutiny was completed within 26 hours or so. In 2016, the final year of the Fifth Legislative Council, two contentious bills were introduced to the Legislative Council. One of them was the Copyright (Amendment) Bill 2014. The Government introduced various amendments with the intention of regulating copyrights in the cyber world, but some in the community perceived these amendments as a move to suppress free speech on the Internet. The other bill was the Medical Registration (Amendment) Bill 2016, a bill concerning the composition of the Medical Council of Hong Kong. In the end, the scrutiny of both bills could not be completed before the term of the then Legislative Council came to an end, and they had to lapse. If the Government wishes to proceed with these two bills, it will have to submit the bills once again to the Legislative Council for scrutiny.

As radicalism went on inside the legislature, the sentiments outside also ran high. In 2010, as the Finance Committee considered the funding proposal for the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”), opponents of the project besieged the then Legislative Council Building. In 2014, during the Council's deliberation of the funding proposal for the North East New Territories Development Project, protesters stormed the Legislative Council Complex. In 2015, as the constitutional reform proposal was put to vote in the Legislative Council, crowds of people holding different views rallied outside the Legislative Council Complex. Such scenes, as I can remember, were unheard of some 10 years ago when I was a newcomer to the Legislative Council. The climate both inside and outside the Council has already changed drastically.

Meanwhile, in recent years, the Legislative Council has also faced a spate of judicial review cases. In 2012, it faced “*LEUNG Kwok Hung v The President of the Legislative Council*”. Mr LEUNG Kwok-hung, then a Legislative Council Member, applied for judicial review of the then President's decision to close the committee stage debate on the Legislative Council (Amendment) Bill 2012. More recently, the Legislative Council is involved in a case about the constitutionality of the co-location bill, and another case questioning whether it is against the Basic Law to amend the Rules of Procedure (“RoP”) to reduce the quorum for a committee of the whole Council.

In fact, members of the public and non-establishment Members are not the only ones who apply for judicial review. The Government has also done so, as can be shown by the oath-taking incident that occurred when the term of the present Legislative Council commenced. Despite my pro-establishment background, I, as the President of the Legislative Council, must put aside my political views and go by the principle of impartiality and fairness in handling the business of the Council. Therefore, in the oath-taking incident, I sought legal advice from the Counsel to the Legislature and an external Senior Counsel, and I also considered the views of the Clerk to the Council. With reference to these and having considered the past practices, I made a decision in accordance with the Basic Law and RoP, and allowed the re-taking of oaths by the several non-establishment Members-elect, whose previous oaths had been ruled invalid. The Department of Justice, however, initiated proceedings against my decision and sought to forbid two of them to take an oath again. The incident even culminated in a move of the Standing Committee of the National People's Congress (“NPCSC”) to give an interpretation of the Basic Law provisions on the oath-taking of Legislative Council Members. According to NPCSC, 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. And the oath-taker is disqualified forthwith from assuming the public office concerned.

Social conflicts

Perhaps, you may wonder why the legislature has turned so increasingly radical. Actually, the change in our parliamentary culture cannot be understood in isolation from the change in the overall social climate. We may recap the various controversies in the past few years to see why: the protests in

2012 against the Government's implementation of Moral and National Education; public discontent with the Government's decision on the granting of free-to-air TV licences in 2013; the "Occupy Central" movement in 2014; the voting on the constitutional reform proposal in 2015; and the Mong Kok riot in 2016. As a body with Members representing their respective constituents, the Legislative Council is a microcosm of society. So, it is not difficult to see why radical acts of resistance outside the Council have found their ways into the Council.

As the Legislative Council President, I am like being caught in the middle of a political storm, having to face considerable pressure. But as I hold this position, I must discharge the responsibilities that come with it. Under Article 72 of the Basic Law, the President shall preside over Council meetings. And, while doing so, I must ensure the smooth conduct of the meetings, so that Members can effectively perform their duties of monitoring the work of the Government for the public.

I have always performed my duties in accordance with the Basic Law, RoP and the established practices of the Council. In case of any controversy, I will first discuss with the representatives of various political parties and groupings, in the hope of forging consensus. After I have made a decision, I will give explanation to Members. If necessary, I will meet with the media and issue a press release. I will even upload my written ruling onto the Legislative Council Website for public information, so as to maintain transparency.

Even though all my rulings are well-founded, they may still be challenged. Sometimes, both the pro-establishment and non-establishment camps may find my rulings unsatisfactory, and I have to end up pleasing no one. A case in point is the scrutiny arrangement for the co-location bill. Pro-establishment Members might consider the scrutiny progress much too slow, but non-establishment Members on the other hand said that there was insufficient time for scrutiny. At the same time, there were voices in society questioning the constitutionality of the bill. Meanwhile, the commissioning of XRL as scheduled in September must hinge on the timely passage of the bill; in other words, time was of the essence. Under the Basic Law, the executive, the legislature and the judiciary are vested with their respective functions and duties. One power of the Government is to draft and propose bills, and such bills should be in compliance with the Basic Law. The Basic Law does not confer any judicial authority on the Legislative Council, and the powers and functions of the Legislative Council President thus do not include the authority to determine whether a bill is constitutional. It follows that once the Government puts a bill before the Legislative Council, I, as the President, must put it on the Agenda for the Legislative Council's scrutiny. If the Legislative Council thinks that the bill contravenes the Basic Law, it may exercise its legislative power to amend or veto it. Should anyone maintain that the bill passed by the Legislative Council contravenes the Basic Law, it should be for the judiciary to exercise its constitutional power to make a judgment.

Having considered all the relevant factors, I set aside 36 hours to scrutinize the co-location bill. This should be sufficient, and I also briefed Members on the arrangement to facilitate their speaking-time planning. But non-establishment Members still criticized the arrangement. They said that the Second Reading of the bill already resumed in early June and XRL would only be inaugurated in September. Therefore there was no need to rush along because the Legislative Council could actually use all the remaining time of the Legislative Session, which would end in mid-July, for scrutinizing the bill.

Honestly, no matter how much time was scheduled for debate, certain Members would still think that time was insufficient. The Council eventually used 38 hours to complete the scrutiny process and passed the bill in mid-June. However, the time spent on actually debating the bill was merely 26 hours. The remaining 12 hours or so were mainly spent on dealing with quorum counts and points of order. You will probably agree that the time of the legislature is very precious. As a matter of fact, after the scrutiny of the co-location bill, we also dealt with various livelihood-related bills and motions at the Council meetings in the last four weeks of the Legislative Session, including five

government bills, seven proposed resolutions, eight motions on extending the period for scrutinizing or amending subsidiary legislation, three motions under the Legislative Council (Powers and Privileges) Ordinance, six motions with no legislative effect and one adjournment motion. The one question we must consider is whether we should brush aside all these livelihood-related bills in the remaining time of the Legislative Session just for the sake of scrutinizing the co-location bill. Is this a responsible course of action anyway?

Expectedly, non-establishment Members remained dissatisfied with my decision throughout, and they proposed a motion of no confidence in me before the Legislative Session ended. There had been previous instances of Members proposing motions of no confidence in the Legislative Council President of the time. As the motion directly concerned me, I chose not to preside over the meeting and instead stayed in my office to listen attentively to each Member's speech. Frankly speaking, some criticisms against me were very harsh and acrid. But their emotive outbursts were not my concern. Rather, I simply wanted to do a cool-headed analysis of their grounds, so as to remind myself that I must do better. Fortunately, many Members rose to speak in support of my approaches to handling Council business. In the end, the motion of no confidence was negated.

I often describe the President of the Legislative Council as a solitary person who must bear all the consequences of his or her own decisions. As I said just now, I have always discharged my duties based on the Basic Law, RoP and the established practices of the legislature. Some may compare me with my predecessors. But such comparison may not be appropriate, as times and circumstances have changed, and people's ways of doing things do vary. The President of the Legislative Council has no bible to follow. In this volatile political environment, the task of handling the tugs-of-war involving different political factions is by no means easy, and the difficulty is compounded by the fact that the Internet advances these days have made it very easy for criticisms and negative news to keep brewing and escalating.

In spite of all this, I have always remained committed to the principle of ensuring the orderly, efficient and fair transaction of Council business while respecting Members' right to participate in the legislative process. This is my guiding principle and accords with my original intent of serving Hong Kong. In all fairness, Members' intention in most cases is not so much to pick on the Legislative Council President; they only want to present their constituents' demands to the Government.

Improving the relationship between the Executive and the Legislature

At this juncture, you may ask, “Now that we know our changing parliamentary culture is caused by escalating social conflicts, what can we do to resolve such conflicts?” If mutual distrust between the Government and the people is the cause of social conflicts, then it may be a good idea to start easing the tension between the executive and the legislature.

Constitutionally, the executive and the legislature play their separate roles, and they are required to exercise checks and balances on each other. I suppose both sides should really seek to maintain cordial interactions on this very constitutional basis. Effective governance hinges on such interactions. Sadly, over the past few years, checks and balances have degenerated into virtual antagonism. As I once remarked, the executive and the legislature are at swords' points.

In an attempt to restore effectiveness in the interaction of the two sides, I made a proposal last year: the holding of a short, monthly Chief Executive's Question Time in addition to the hour-and-a-half Chief Executive's Question and Answer Sessions held several times a year. This is a session for short questions and short answers, modelled after the Prime Minister's Question Time in the British Parliament. The aim is to let the Chief Executive come to the Legislative Council more often and exchange views with Members. In this way, Members can relay people's concerns to the Chief Executive based on the latest social situation, and the Chief Executive and government officials

can thus have a more practical and realistic understanding of people's concerns. It is hoped that the policies they have drawn up will thus be more appropriate and pertinent. When asked, the Chief Executive readily agreed to the idea. This initiative has borne some fruit by now.

Thanks to the Chief Executive's Question Time, many policies have been put in place very quickly: a vacancy tax on first-hand residential properties, the delinking of Home Ownership Scheme and market prices, EPS cash withdrawal at post offices by the elderly, and so on. With this platform, the Government can actively respond to the demands put forth by Members for the public, and Members can better understand the Government's policy objectives and constraints. The tension has started to show signs of easing. Admittedly, major political disputes cannot possibly be resolved overnight, but both sides can at least resume sensible discussions on livelihood issues. Last year, the Motion of Thanks to the Policy Address was passed for the very first time in nine years, and several non-establishment Members also voted for the motion. This shows that the tense relationship between the executive and the legislature has started to show some signs of easing.

The executive and the legislature should share a reciprocal relationship. I hope the executive can properly perform its duty; it should offer Members more explanation of its policies and bills, and show a willingness to consider and heed Members' views. I believe if the Government and Members can hold more discussions on legislative proposals and other issues with the aim of reaching an agreement as far as possible, disputes and filibustering can be reduced. That way, the legislature can function more smoothly. Actually, for most of the time in the past Legislative Session, the legislature was able to hold sensible discussions and function smoothly without any disputes and delay, except when it handled the co-location bill and the motion on amending RoP. We can thus see that Members are all whole-hearted in serving the people.

The challenges ahead

The present Legislative Council is halfway through its term. I believe the remaining two Legislative Sessions will likewise be packed with various challenges, as controversial bills or issues will just keep coming up. As the Legislative Council President, I will continue to work for disagreement in harmony by enhancing communication, in addition to improving the efficiency of the legislature and its relationship with the executive.

The Legislative Council is composed of Members from a wide political spectrum. This in fact reflects the pluralism of our society. Political parties and groupings do have their own stances, but I am convinced that everybody will always put people's livelihood and well-being and Hong Kong's overall interests first. The President of the Legislative Council must be a good political mediator. He or she must maintain sound communication with different political parties and groupings, so as to seek common ground in the midst of conflicts.

The Legislative Council is one whole team whose smooth functioning never depends solely on any particular individual. Order and decorum in the legislature cannot be maintained without the joint efforts of all Members, so RoP must be observed by all. Last year, a number of Members saw the need to amend RoP, so they put forth various amendment proposals. Eventually, we passed a number of amendments to reduce the quorum for the committee of the whole Council and to plug the RoP loopholes enabling Members to filibuster. I hope Members can spend the precious time of the legislature profitably, and examine different issues with full rationalism and pragmatism.

Heated debates are indeed inevitable in the legislature. But there should be no verbal abuse and even radical acts. These can never be effective in winning popular approval. For this reason, the Committee on Rules of Procedure under the Legislative Council is now conducting consultation to ascertain how best to deal with Members' misconduct.

Besides, as exchanges between Hong Kong and the Mainland become increasingly frequent, many issues which the Legislative Council discusses these days will involve Mainland departments or policies, one example being the co-location bill mentioned earlier. Earlier this year, 32 Members from the pro-establishment and non-establishment camps paid a duty visit to the Guangdong-Hong Kong-Macau Bay Area, so as to see for themselves how Hong Kong can integrate into the country's development. I hope that Members and Mainland government departments can have many more such exchanges in the future. I will be only too happy to serve as a bridge between Legislative Council Members and the Mainland in bringing forth any such exchanges, so that Members can get to know more about the country's development and grasp the whole picture in their policy deliberation.

Concluding remarks

The President of the Legislative Council needs to handle Council business and perform various administrative and management work. Sometimes, he or she even has to cope with unexpected incidents. I always remind myself that I must constantly remain cool-headed and refrain from doing anything for winning applause. Most importantly, I must adhere to the law and always keep in mind my original intent of serving Hong Kong.

I am sure everyone of you must also have encountered various challenges in your daily work. I wish to share a Chinese idiom with you here: “潤物無聲” (literally means moisten all things tenderly, without any sound). The idiom was a gift of calligraphy I received from Mr YEUNG Koon-yat when I was Chairman of the Vocational Training Council. Today, I still display this calligraphy of his in my office as a constant reminder that I must do useful things with all sincerity of purpose — I must moisten all things tenderly without any sound, any traces.

Finally, I wish all of you every success in your work!