



## Summary of Judicial Decision

**Kwok Cheung Kin v 立法會主席及各立法會建制派議員(39 人)**

**and Secretary for Justice HCAL 1094/2017**

**Leung Kwok Hung v President of Legislative Council for and on behalf of the  
Legislative Council and Secretary for Justice HCAL 1120/2017; [2019] HKCFI 1482**

**Decision** : **Applications for leave for judicial review granted;  
substantive applications for judicial review  
dismissed**

**Date of Hearing** : **8 and 9 May 2019**

**Date of Judgment/Decision** : **12 June 2019**

### Background

1. Article 75(1) of the Basic Law (“**BL 75(1)**”) provides that the “quorum for the meeting of the Legislative Council of the Hong Kong Special Administrative Region shall be not less than one half of all its members”. Article 75(2) of the Basic Law (“**BL 75(2)**”) provides that “[t]he rules of procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene this Law”.
2. The two proceedings concerned the applications for judicial review by KWOK Cheuk Kin (“**Kwok**”) and LEUNG Kwok-Hung (“**Leung**”) both challenging the amendment to Rule 17(1) (“**RoP 17(1)**”) of the Rules of Procedures (“**RoP**”) of the Legislative Council (“**LegCo**”).
3. After the amendments, RoP 17(1) was split into Rules 17(1) and (1A) (“**RoP 17(1A)**”), the latter of which provides that “[t]he quorum of a committee of the whole Council shall be 20 members including the Chairman”. The effect of the amendments is to reduce the quorum for a meeting of a committee of the whole Council (“**CoWC**”) from not less than half of its members including the Chairman to 20 members including the Chairman.
4. The Secretary for Justice (“**SJ**”) was granted leave to intervene in the two proceedings.

### Issue in dispute

5. The main issue in dispute is whether the quorum requirement stipulated in BL 75(1) is applicable to a meeting of a CoWC, which in turn depends on the construction of the meaning of the words “the meeting of the Legislative Council” under BL 75(1).

### Department of Justice’s Summary of the Court’s rulings

(full text of the CFI’s judgment at

[https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2017/HCAL001094\\_2017.doc](https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2017/HCAL001094_2017.doc))



6. The CFI held that the words “the meeting of the Legislative Council” in BL 75(1) refer only to a meeting of the LegCo as a full body sitting in plenary session, but not to a meeting of a CoWC (paragraphs 2, 44):-

(1) The context and purpose of BL 75(1) strongly support the view that the true legislative intent is that the quorum requirement prescribed by that article should apply only to meetings of the body tasked with the important constitutional powers and functions as enumerated in Article 73 of the Basic Law i.e. the Council itself, but not that of a mere committee of the Council (paragraphs 45 – 49)

(2) The draftsman of the Basic Law was plainly aware of the committee system of the Council and the distinction between Council and its committees, as shown by the fact that Article 48(11) of the Basic Law expressly empowers the Chief Executive to decide whether government or public officials should testify or give evidence before “the Legislative Council or its committees” (paragraph 50).

(3) The theme of continuity of the Basic Law supports the view that after 1 July 1997, the same system prior to the handover (the quorum requirement for the Council was set by a constitutional instrument i.e. the Royal Instructions while the quorum requirement for a CoWC was set by the Council’s internal rules i.e. the Standing Orders) is adopted such that the quorum of the Council would be set by the Basic Law while the quorum of a CoWC would be set by the RoP (paragraph 51).

(4) BL 75(2) of the Basic Law enables the Council to set up various committees of the Council and prescribe their procedures including the quorum requirements for such committees. It is difficult to see why a CoWC should be treated differently from other committees of the Council (paragraph 52).

7. The CFI rejected some of the points raised by Kwok and Leung in support of the argument that the quorum requirement in BL 75(1) applies not only to a meeting of the Council as a full body sitting in plenary session but also a meeting of a CoWC:-

(1) The CFI rejected the argument that the Council and a CoWC are the same bodies with two different labels, as the Council has much wider powers and functions, the procedures of the two bodies are not identical, and the Council is a creature of the Basic Law while a CoWC is a creature of the Council (paragraph 55).

(2) Although it is correct that the process of a CoWC is an important and integral part of the legislative process of the Council, there are also other committees which generally perform important and integral steps in the legislative process of the Council. There are no logical or legal reasons why these committees (including a CoWC), or any of them, should have the same



quorum requirement as that for the Council (paragraph 56).

(3) Leung argued that the provisions in Part II of Annex II to the Basic Law clearly apply to a meeting of a CoWC because “amendments to government bills” only occur at the Committee Stage, and thus the reference to “Legislative Council” in that Part must include a reference to a CoWC. The CFI did not consider that the provisions in Part II of Annex II to the Basic Law, which are concerned with the voting procedures on bills and motions, affect the true construction of BL 75(1) which concerns the quorum requirement for meetings of the Council (paragraphs 57 – 58).

(4) The CFI rejected the argument that BL 75(1) does not prescribe a specific quorum for a meeting of the Council but only a minimum requirement such that it is for the Council to prescribe the exact quorum requirement for the Council through the making of Rules of Procedure under Article 75(2) because it does not accord with the natural reading of BL 75(1) (paragraph 59).

(5) The CFI did not consider that Kwok’s reliance on the historical origin of a CoWC (i.e. that a CoWC was modelled on a committee of the whole House in the UK (“CoWH”), and a CoWH is frequently equated with the whole House in the descriptions in some textbooks, so that a CoWC should be regarded as being the same as the Council) added much to the debate. The CFI found that there are significant differences between a CoWC and a CoWH in respect of their compositions and functions. The CFI considered that that the descriptions in the textbooks did not concern the quorum requirements for a meeting of the House or a meeting of a CoWH, or suggested that the House and a CoWH are the same, or treated as being the same, so far as quorum is concerned. Further, there is no legal basis to support any proposition that whatever may be the relation between the House and a CoWH so far as quorum is concerned, the same relation should hold true for the Council and a CoWC (paragraphs 60 – 68).

**Civil Division**  
**Department of Justice**

**June 2019**