

**The Constitutional Authority of the Legislative Council: The LegCo Powers Case  
15 October 2009**

1. On Basic Law interpretation and drafting materials. At para. 174, the judge does not seem to think much of using the drafting materials to interpret the Basic Law. Yet he went on to consider the historical materials (rather than exclude them as inadmissible), found them to be helpful on some points (para 183) and inconclusive on others (paras 182 & 186). **What do you think of the court's treatment of the drafting materials in the interpretation of the Basic Law?**
2. **On the question of the Council delegating authority to its committees, do you subscribe to the "reasonably required" test or the "absolutely required" test?** Note that the "reasonably required" test was taken from a case concerned with implied "judicial power" under the Basic Law, not delegation of power by LegCo. **Or is the issue better understood through the vehicle of authorization by the Council to its own committee?**
3. **On the *ultra vires* issue, has the court taken too restrictive an approach to judicial review of legislative action? Based on your understanding of this approach when would it be legitimate for the court to review the actions and business of the legislature?**
4. This is an important case about LegCo and its public inquiry (rather than law-making) function. As a matter of public policy and good governance, when should LegCo inquire and when should there be a Commission of Inquiry, appointed by the Chief Executive in Council? There have only been two Commissions of Inquiry since 1997. LegCo committees distract legislators from legislative work and do not have the same procedural formalities and protections as commissions. **What are the differences between these two modes of inquiry and what approach should Hong Kong adopt towards public inquiries?**
5. **Assuming China is concerned about a legislature with too much power (being inconsistent with the executive-led ideal), what would the Central Authorities think about this decision?**
6. **Do you think the judgment was influenced at all by the fact that LegCo has only 30 (50%) members elected by universal suffrage? Would you expect to see more or less LegCo inquiries once there is universal suffrage?**