

LCQ15: Terms used in Chinese and English texts of legislation

Following is a question by the Hon Kingsley Wong and a written reply by the Secretary for Justice, Mr Paul Lam, SC, in the Legislative Council today (November 1):

Question:

Last year, a drunken foreign man was charged with desecrating the national flag and the regional flag for hurling 12 bamboo poles with national flags attached to them and 12 bamboo poles with regional flags attached to them onto the street after pulling them down in North Point. It has been reported that the Acting Principal Magistrate has pointed out that while the Chinese texts of both the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance use the term "蓄意" for the mens rea, the corresponding terms used in their English texts differ, i.e. "intentionally" is used in the former ordinance and "wilfully" is used in the latter ordinance. Based on the legislative intent of the two ordinances, conviction under the former ordinance requires proof of "specific mens rea" on the part of the defendant, whereas mens rea under the latter ordinance covers the element of "recklessness" (i.e. "general mens rea"). As such, he found the defendant not guilty of the offence of desecrating the national flag but guilty of the offence of desecrating the regional flag. In this connection, will the Government inform this Council:

(1) whether it has reviewed if there is a situation in which the court attaches more importance to the English text than the Chinese text when interpreting the provisions of legislation at present;

(2) how it will avoid the situation of the use of different terms in the English texts of different pieces of legislation for the same Chinese term when drafting legislation in the future to avoid ambiguity; and

(3) whether it has assessed if the Government currently affords greater protection to the regional flag than the national flag, and whether the Government will take actions to better protect the national flag?

Reply:

President,

After consulting the Constitutional and Mainland Affairs Bureau (CMAB), our reply to the Hon Kingsley Wong's question is as follows:

(1) The status of the Chinese and English languages is laid down by the Basic Law. Article 9 of the Basic Law provides that "[i]n addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special

Administrative Region". Furthermore, section 4 of the Official Languages Ordinance (Cap. 5) provides that all ordinances must be enacted and published in both official languages, being Chinese and English; and section 10B of the Interpretation and General Clauses Ordinance (Cap. 1) provides that the English language text and the Chinese language text of an ordinance are equally authentic. Therefore, neither the Chinese nor the English version is a translation of the other.

The Hong Kong Special Administrative Region (HKSAR) Government strictly observes the Basic Law and the laws of the HKSAR. The courts also deal with court cases on this basis. There is no question of one text of the laws overriding the other. Where a comparison of the Chinese language text and the English language text of an ordinance discloses a difference of meaning which the rules of statutory interpretation ordinarily applicable do not resolve, the Court will adopt the meaning which best reconciles the texts, having regard to the objectives and purposes of the ordinance. The law does not stipulate that where a comparison of the Chinese language text and the English language text of an ordinance discloses a difference of meaning, the Chinese language text or the English language text must take precedence over the other language text.

(2) When it comes to law drafting, the Law Drafting Division of the Department of Justice adopts the same drafting policy for drafting both the Chinese and English texts, that is, laws drafted must accurately reflect the legislative intent. Subject to this overriding principle, provisions must be easy to read and understand, and there must not be any discrepancies in meaning between the two texts. Messages conveyed to readers through the Chinese text must be identical to those conveyed through the English text.

The Law Drafting Division's prime objectives are to ensure that the laws can accurately reflect the policy intention, that their legal meaning is accurate and that the two texts of laws carry the same meaning. Maintaining uniformity and consistency of the use of expressions in the laws is also a fundamental principle for law drafting. There is an established standard procedure in the law drafting process, under which before a law drafter adopts a particular expression as a corresponding expression for its equivalent in the other text, the drafter must meticulously search through the existing laws and consider how the expressions are used in their respective contexts. This is to ensure that in addition to observing the basic principle of maintaining accuracy of legal meaning, the use of expressions in the texts of laws is consistent. For this purpose, other than the simplest items, all drafts prepared by law drafters must be vetted by two tiers of directorate officers for quality assurance.

(3) As regards the penalty provision against acts of desecrating the national flag and national emblem in the National Flag and National Emblem Ordinance (NFNEO), CMAB's policy intent is to prohibit any public and intentional desecrating act in relation to the national flag and national emblem. In the course of amending the NFNEO in 2021, we revised the English text of "æ•...æ,Ø" from "wilfully" to "intentionally" in order to better reflect the abovementioned policy intent. With reference to the corresponding amendment in the NFNEO, the Regional Flag and Regional Emblem (Amendment) Bill 2023

submitted to the Legislative Council in July this year has also proposed that the word "intentionally" be adopted as the English text of "蓄意" in section 7 of the Regional Flag and Regional Emblem Ordinance (RFREO) on desecration of the regional flag and regional emblem. This proposed amendment seeks to better reflect our policy intent and make the provision consistent with that in the NFNEO. Upon amendment to the RFREO, the English text of "蓄意" in the two ordinances will be aligned.

[CHP investigates two suspected food poisoning clusters](#)

The Centre for Health Protection (CHP) of the Department of Health is today (November 1) investigating two suspected food poisoning clusters affecting four persons, and reminded the public to maintain personal, food and environmental hygiene to prevent foodborne diseases.

The first cluster involved two females, aged 22 and 24, who developed abdominal pain, diarrhoea and nausea about 12 to 14 hours after having dinner at a restaurant in Mong Kok on October 21.

The other cluster involved a 20-year-old male and a 21-year-old female, who developed abdominal pain, diarrhoea, nausea, vomiting and fever about 21 to 23 hours after having dinner at the same restaurant on October 26.

All of the affected persons sought medical advice and none required hospitalisation. All affected persons are in stable condition.

Initial investigations of the CHP revealed that the affected persons had consumed common food and the food concerned was tiramisu. The poisoning might have been caused by Salmonella.

The personnel from the Centre for Food Safety of the Food and Environmental Hygiene Department have conducted an inspection at the restaurant. The CHP's investigation is ongoing.

To prevent foodborne diseases, members of the public are reminded to maintain personal, food and environmental hygiene at all times. When dining out:

- Patronise only reliable and licensed restaurants;
- Avoid eating raw seafood;
- Be a discerning consumer in choosing cold dishes, including sashimi, sushi and raw oysters, at a buffet;
- Pre-cooked or leftover foods should be stored and reheated properly before consumption;

- Ensure food is thoroughly cooked before eating during a hotpot or barbecue meal;
 - Handle raw and cooked foods carefully and separate them completely during the cooking process;
 - Use two sets of chopsticks and utensils to handle raw and cooked foods;
 - Do not patronise illegal food hawkers;
 - Drink boiled water;
 - Do not try to use salt, vinegar, wine or wasabi to kill bacteria as they are not effective; and
 - Always wash hands before eating and after going to the toilet.
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LCQ3: Handling of unauthorised building works

Following is a question by the Hon Doreen Kong and a reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (November 1):

Question:

There are views that the number of unauthorised building works (UBWs) in Hong Kong is significant. Such UBWs are not only illegal, but also cause structural safety problems of buildings and endanger the safety of residents. In this connection, will the Government inform this Council:

(1) of the respective numbers of removal orders and notices issued by the Government this year for cases of UBWs, additional storeys built illegally and unauthorised occupation of government land, and the number of prosecutions instituted; of the number of cases of non-compliance with the removal orders and notices, as well as the effectiveness of the enforcement measures and follow-up actions taken by the Government under the "risk-based" principle;

(2) of the number and percentage of cases in which the aforesaid removal orders and notices were complied with in each of the past three years; of the current number of government officers dedicated to handling cases of UBWs, additional storeys built illegally and unauthorised occupation of government land, and whether it has estimated how long it will take to clear the current backlog of cases; whether it will consider increasing manpower to enhance the efficiency of case handling; and

(3) whether it will consider making good use of technologies to introduce more ways of inspecting UBWs so as to enhance enforcement efficiency; if so, whether it has the details of the specific plan and a timetable?

Reply:

President,

The Buildings Department (BD) and the Lands Department (LandsD) take enforcement actions against unauthorised building works (UBWs) and unlawful occupation of government land in accordance with the Buildings Ordinance (BO) and the Land (Miscellaneous Provisions) Ordinance respectively. In view of the large number of cases and the limited manpower resources, the departments have to adopt a pragmatic "risk-based" approach to set priorities for enforcement, according priority to cases of a larger scale, more serious contraventions, or cases involving safety or environmental hygiene risks.

In respect of handling UBWs that are categorised as "actionable" by the BD, i.e. posing a threat or imminent danger, serious health or environmental nuisance, etc., the BD will accord priority to enforcement by issuing removal orders to the owner and registering the removal order in the Land Registry, i.e. commonly known as "imposing an encumbrance". If the owner fails to rectify the situation within the specified period without reasonable excuse, the BD will consider instigating prosecution.

For unlawful occupation of government land, the LandsD also adopts the "risk-based" approach in setting priorities by targeting cases with occupation of large areas, and posting a statutory notice requiring the occupier to cease occupation before a specified deadline. If the situation does not improve after the specified deadline, the LandsD will take control actions, including taking possession of and clearing the property or structures remaining on the land. If the identity of the occupier can be ascertained with evidence, the LandsD will also consider instituting prosecution.

My respective replies to the various parts of the Hon Kong's question are as follows:

(1) The relevant figures on enforcement against UBWs and unlawful occupation of government land by the BD and the LandsD respectively from 2020 to September this year are set out in the Annex. Depending on the nature and complexity of the cases, the time required for handling each case varies and it is rather difficult to make a generalisation.

Under the "risk-based" policy framework, the two departments will also adjust their enforcement priorities in the light of the latest situation and public concerns. For example, the landslide incident on the Redhill Peninsula in September has revealed the safety hazard of detached houses located near the coastal slope and with irregularities. Therefore, the two departments launched a joint operation at the end of September to accord priority to handling detached houses along the coast; and for instance, in response to public concerns about unauthorised brownfield operations in the New Territories, the LandsD set up the Special Duties Task Force in 2019 to step up targeted enforcement against unlawful occupation of large areas of government land or serious lease breaches involving private agricultural land.

(2) At present, there are about 720 staff in the BD responsible for handling

UBWs, and about 610 staff in the LandsD responsible for enforcement work in relation to government land. These staff are also responsible for other duties of their departments. The average numbers of reported cases of UBWs and cases of unlawful occupation of government land handled each year by the two departments are about 30 000 and over 10 000 respectively. It is difficult to handle non-compliant cases effectively on a sustainable basis by solely relying on increasing manpower deployment, nor is it the most cost-effective way. The two departments will re-organise and re-deploy manpower to tackle the issue. For example, with effect from April this year, the LandsD has consolidated the land enforcement functions at various District Lands Offices level, such that one single team can handle unauthorised cases in the same geographical area in an integrated manner; the BD has also set up a special task force to carry out special duties relating to building safety and to expedite the clearance of outstanding removal orders. Where necessary, the departments will consider outsourcing to increase their handling capacity.

(3) The two departments will review and optimise the mode of enforcement from time to time, including:

(i) on the application of innovative technology, the BD will make wider use of drones to assist in the inspection of UBWs on the exterior of buildings. The BD is also developing a new system for patrolling areas with a patrolling vehicle equipped with cameras and LiDAR equipment to identify damaged signboards. If the technology is mature, it could assist in identifying UBWs. The LandsD will also continue to use drones and mobile devices to enhance the effectiveness of inspection and the overall efficiency of regular land enforcement work;

(ii) both departments will strengthen law enforcement and deterrent effect by stepping up prosecution work. For example, the BD will instigate not less than 3 600 prosecutions per year for non-compliant removal orders from 2024 onwards, as well as streamline internal workflow and leverage on validation by external professionals to expedite the handling of cases; and

(iii) as stated in the Policy Address delivered last week, we will conduct a comprehensive review of the BO to strengthen the BD's enforcement powers. We will examine ways to increase penalties and consider streamlining prosecution procedures through, for example, summary offences or fixed penalties; and at the same time explore lowering of the prosecution threshold, so as to be more effective in combating the erection of UBWs and other contraventions of the BO. We will put forth recommendations for legislative amendments next year.

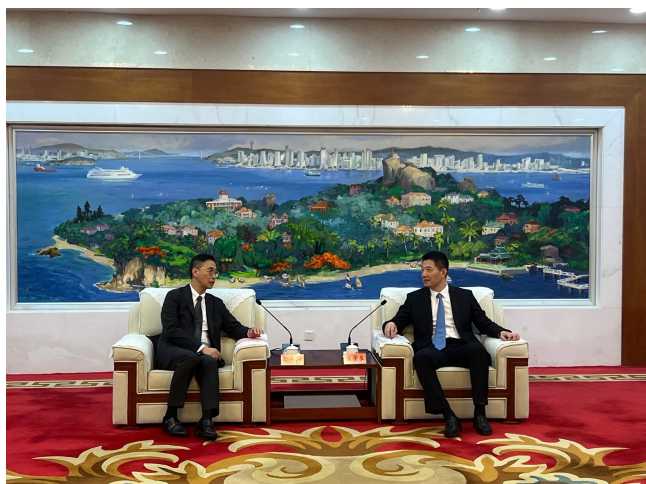
[SCST meets with Vice Mayor in Xiamen](#)

(with photos)

The Secretary for Culture, Sports and Tourism, Mr Kevin Yeung, began his visit today (November 1) to Xiamen.

Mr Yeung met with Vice Mayor of the Xiamen Municipal People's Government Mr Zhuang Rongliang, and the Head of the Culture and Tourism Bureau of Xiamen, Ms Huang Bishan, to share their experiences in promoting tourism and cultural development, and explore opportunities in strengthening exchanges and co-operation.

He also visited the Xiamen waterfront area to learn about the promotion of tourism and provision of recreational facilities for the public in Xiamen.



20 projects commended in celebration of 25th anniversary of OEP (with photos)

The Social Welfare Department (SWD) today (November 1) held the 2023 Award Presentation Ceremony of the Opportunities for the Elderly Project (OEP) themed "Golden Years Journey" to commemorate the 25th anniversary of the OEP and commend 20 outstanding projects. More than 900 participants from across the territory enjoyed a variety of games and exciting performances at the ceremony, while some 2 000 others participated in the event online via live broadcast.

The ceremony was officiated by the Director of Social Welfare, Miss Charmaine Lee; the Chairman of the Elderly Commission, Dr Donald Li; and the Chairman of the OEP Advisory Committee, Professor Diana Lee. Six Special OEP Awards, 11 District Best OEP Awards and the top three of the Hong Kong Best OEP Awards for the 2022-23 one-year projects were presented at the ceremony to commend outstanding participating organisations.

Addressing the ceremony, Miss Lee said that the Government has all along been providing support for elderly persons on various fronts. Apart from allocating extra resources to facilitate ageing in place, it also attaches great importance to the needs of retiring persons. To encourage elderly persons to continue to develop their talents, contribute to society and achieve positive ageing in their retirement life, the Government has enhanced pre-retirement planning services in more than 200 District Elderly Community Centres and Neighbourhood Elderly Centres.

She also commended the remarkable achievements of the OEP, which has subsidised nearly 6 800 district programmes with more than 4.1 million participants, including 2.49 million elderly people, since it was launched 25 years ago.

Dr Li reviewed the development of the OEP over the past 25 years at the ceremony and commended the OEP for its progression with the times. He hoped that elderly persons would continue to join different activities, including the emerging activities organised by the elderly centres, such as darts and floor curling, in order to exercise more, embrace new things and attain physical and mental wellness.

Caritas Elderly Centre – Shatin was awarded the Championship of the Hong Kong Best OEP Award for one-year projects with their programme, which aims to promote cross-generational integration through the production of micro-films and picture books. The award-winning project demonstrates the joyful spirit of the elderly in moving with the times through their participation in project design, planning and implementation.

Starting from 2020, the first Thursday of November has been selected as the OEP Day by the SWD. The SWD has continued to recruit elderly volunteers to be OEP Ambassadors for promoting activities for four years in a row. The OEP Ambassadors will be holding exercise sessions at the District Elderly Centres and the Neighbourhood Elderly Centres in different districts tomorrow (November 2) to show their energy and promote the OEP Day across the territory.

For details of the OEP and an archive of the ceremony, please visit the OEP Facebook page (www.facebook.com/OpportunitiesForTheElderlyProject/live).

