

Judges and politics don't mix

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With protester-turned-lawmaker Leung Kwok-hung's legal challenge over the legislators' oath of office put to the sword, what is left in people's minds may be only his success in drawing attention to his fight against the orthodoxy. One little-known fact, though, is that the case has raised questions about whether Hong Kong's judiciary is becoming increasingly political.

I respect the ruling of Mr Justice Michael Hartmann, the presiding judge in Mr Leung's case. Yet, I - like many other members of the public - cannot agree with his unusual decision that Mr Leung had no obligation to pay the legal costs of the Legislative Council secretariat, which opposed his application for a judicial review.

What bothers me most is the judge's view that Mr Leung had no private interest in the outcome of the application. While Mr Leung might not have gained personally from the challenge, he was apparently using the court as a platform to pursue his own interests, namely to voice his political aspirations and convictions. Mr Leung said that he should not have to shoulder any costs because he had merely sought to clarify the bounds of the law on the text of the oath of office. But the judge's decision on costs is, in my view, a reflection of at least some degree of sympathy towards him. Given that the respondent chose to be represented in the public's interest, to ensure the integrity of the Legislative Council proceedings, it would have been more sensible for the judge to have at least adopted Mr Leung's alternative submission that he be made to pay only a token penalty of \$1.

While fully respecting the judge's decision, I feel that, following this case, an increasing number of people may try to use the court as a means to pursue their own political interests - unless our judges manage to uphold their role as gatekeepers by resisting any bids to abuse the legal process, and by demonstrating this in their rulings.

Mr Leung's case reminds me of another recent example of the apparent increasingly political stance of some members of the judiciary. However, this did not happen in the law courts, but at an annual function attended by hundreds of members of the legal profession.

As guest of honour, this member of the judiciary - who I will not name - showered the

four legislators from the Article 45 Concern Group with praise, adding that their successful bids for office would strike fear into the hearts of those who oppose or undermine the rule of law. He said that all but one of the former chairmen of the Bar had upheld their traditional role as defender of the rule of law in Hong Kong, adding that only like-minded people should fill the post. Coincidentally, these comments were made in the run-up to the election of a new Bar chairman, which will take place at the end of the year.

I appreciate that the judge in question is entitled to freedom of expression, and I well know that it is rare, once a likely successor has been chosen, for another person to come forward to contest the Bar chairmanship. Nevertheless, it left one wondering whether it is good for some quarters of our judiciary to be so involved in Hong Kong politics.

Judges have tremendous influence, and are highly respected by society. One of Hong Kong's pillars of success is that we have an independent judiciary, one which is politically neutral. It is all the more important for judges to exercise restraint when they make public remarks, particularly on political issues.

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