

**OFFICIAL REPORT OF PROCEEDINGS****Meeting of 29th November 1961**

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**PRESENT:**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ROBERT BROWN BLACK, KCMG, OBE

HIS EXCELLENCY LIEUTENANT-GENERAL SIR RODERICK WILLIAM McLEOD, KCB,  
CBE

COMMANDER BRITISH FORCES

THE HONOURABLE CLAUDE BRAMALL BURGESS, CMG, OBE  
COLONIAL SECRETARYTHE HONOURABLE MAURICE HEENAN,  
ACTING ATTORNEY GENERALTHE HONOURABLE PATRICK CARDINALL MASON SEDGWICK  
ACTING SECRETARY FOR CHINESE AFFAIRSTHE HONOURABLE JOHN JAMES COWPERTHWAITTE, OBE  
FINANCIAL SECRETARYTHE HONOURABLE ALLAN INGLIS  
DIRECTOR OF PUBLIC WORKSDR THE HONOURABLE DAVID JAMES MASTERTON MacKENZIE, CMG, OBE  
DIRECTOR OF MEDICAL AND HEALTH SERVICESTHE HONOURABLE KENNETH STRATHMORE KINGHORN  
DIRECTOR OF URBAN SERVICESTHE HONOURABLE PETER DONOHUE  
DIRECTOR OF EDUCATION

THE HONOURABLE KWOK CHAN, OBE

THE HONOURABLE HUGH DAVID MacEWEN BARTON, MBE

THE HONOURABLE DHUN JEHANGIR RUTTONJEE, OBE

THE HONOURABLE RICHARD CHARLES LEE, OBE

THE HONOURABLE KWAN CHO-YIU, OBE

THE HONOURABLE KAN YUET-KEUNG, OBE

THE HONOURABLE WILLIAM CHARLES GODDARD KNOWLES  
MR ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*)**ABSENT:**

THE HONOURABLE FUNG PING-FAN, OBE

**MINUTES**

The minutes of the meeting of the Council held on 15th November 1961 were confirmed.

**PAPERS**

THE COLONIAL SECRETARY, by Command of His Excellency the Governor, laid upon the table the following papers: —

<i>Subject</i>	<i>GN No</i>
Sessional Papers, 1961: —	
No. 32—Report of the Director of Audit on the Accounts of the Colony for the year 1960-61.	
No. 33—Annual Report by the Manager and Chief Engineer, Railway for the year 1960-61.	
Cremation Ordinance.	
Cremation and Gardens of Remembrance Regulations, 1961 .....	A 132
Quarantine and Prevention of Disease Ordinance.	
Prevention of the Spread of Infectious Diseases (Amendment) Regulations, 1961 .....	A 133
Public Health and Urban Services Ordinance, 1960.	
Cheung Chau Public Cemetery (Graves Removal) Order, 1961.	A 134
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-registration) (No. 18) Order, 1961.	A 135
Births and Deaths Registration Ordinance.	
Births and Deaths Registration (Amendment of First Schedule) Regulations, 1961 .....	A 136

**QUESTIONS**

MR KWAN CHO-YIU, pursuant to notice, asked the following question: —

At the last Budget Debate I raised the question that the New Territories Ordinance should be amended, with particular reference to sections 27, 28 and 29 thereof, which unnecessarily restrict the form of conveyance and mortgage in respect of land in the New Territories, and in his reply my honourable Friend the Colonial Secretary assured me that Government already had such a proposal under consideration and that it was hoped to submit an appropriate

Bill to this Council in the near future. May I be informed as to what is the present position regarding the proposed amendment of the said Ordinance?

Meanwhile, may I suggest that administrative action be taken by Government to reduce the red tape as much as possible for the giving of the approval of form of mortgage when submitted for approval. Considerable time will be saved, if the Land Officer, who actually approves the form, be authorized to communicate direct with the party submitting the form for approval, instead of through a District Officer in the New Territories.

THE COLONIAL SECRETARY replied as follows: —

Sir, it is hoped to introduce a Bill to amend the New Territories Ordinance into this Council in the very near future. The terms of the Bill have been the subject of wide consultation and that accounts for the time that has elapsed since my honourable Friend raised the matter in the Budget Debate. For the brief interval before the Bill is introduced it is Government's view, with which I hope my honourable Friend will agree, that it is desirable, particularly so in the interests of the persons dealing with the land, to adhere to the present practice.

The routing of correspondence through the District Officer is not a mere formality, but is intended to ensure that any special outstanding points affecting the land which may be known to the New Territories District Administration can be brought to the attention of the solicitors concerned.

### **SUPPLEMENTARY PROVISIONS FOR THE QUARTER ENDED 30TH SEPTEMBER 1961**

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved that the Supplementary Provisions for the Quarter ended 30th September 1961, as set out in Schedule No. 2 of 1961-62, be approved.

He said: Sir, the Schedule before Council is the second list of supplementary provisions on the 1961-62 account. The total supplementary vote required is \$17,350,000 against which savings of just under \$80,000 are recorded in the Schedule.

Just over \$12 million of this is accounted for by changes in priorities and other adjustments in the Public Works Department; these will not have the effect of increasing total spending on public works this year over the amount shown in the Estimates.

A further substantial sum of \$2 million is to meet the cost of the revision of salaries at Hong Kong University.

All the items in the Schedule have been approved by Finance Committee and the covering approval of this Council is now sought.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

### **TRADE UNION REGISTRATION BILL, 1961**

THE COLONIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to make provision for the registration and better control of trade unions, and matters ancillary thereto."

He said: Sir, as the purpose of this Bill and the necessity for it are fully explained in the Objects and Reasons accompanying it, I propose, Sir, to confine my remarks to comments of a general nature.

The effect of this Bill, Sir, will be to make a division in the law relating to trade unions, all of which is at present contained in the Trade Unions and Trades Disputes Ordinance, Chapter 64. If this Bill is enacted, only those sections of the present Ordinance relating to arbitration will remain in force; all matters relating to the registration of trade unions and the control of their internal administration will be covered by the Bill now before Council which will be called the "Trade Union Registration Ordinance". In order to allow for the completion of the necessary administrative arrangements, Clause 1 provides that the Bill will not come into operation until a date to be proclaimed in the *Gazette*, and under the transitional provisions contained in Clause 68 all trade unions at present on the register will be deemed to be registered under this Bill.

I should here, if I may, Sir, comment briefly on the historical background to the present Trade Unions Ordinance. The purpose of that Ordinance which was enacted in 1948, was to fill a long felt need (which did in fact extend to the years immediately preceding the last war) for legislation for the regulation and guidance of our local trade unions. It was, of course, a natural result of the historical development of trade unions in general that this legislation should be based on the English law. This was achieved by adapting a model Ordinance which closely followed and in part reproduced provisions in that legislation. In conferring legal status on trade unions in Hong Kong by introducing a system of compulsory registration, the 1948 Ordinance gave unions a measure of exemption from liability in the civil and criminal Courts. It also imposed on the trade unions certain obligations. These were

because it was necessary and reasonable to expect from trade unions duly registered, a high sense of responsibility and a measure of administrative regularity.

At the time when the present Ordinance was enacted, Sir, the great industrial developments which we have witnessed in recent years, and the consequent growth in the body of industrial workers, could not possibly have been foreseen. The growth of trade unions in Hong Kong has naturally accompanied these developments. Inevitably experience has revealed certain defects, not only in trade union organization, administration and practice, but in the Ordinance itself. It is clear that these defects must be remedied if the trade union movement is to be provided with greater opportunity for healthy development. This will enable the unions to make an even more responsible contribution towards Hong Kong's social and economic life.

It is also clear that there is still a great need for guidance and education in trade union principles, practice and administration, but it is equally clear that the legislative framework must take into account the increasing complexity of trade union activity, if this assistance is to be of value and if the future development of the movement is to be properly safeguarded. Government is fully aware of these needs and the Bill now before Council which has been drafted in the light of local experience will, I submit, Sir, go a long way towards fulfilling them.

The basic policy of Government towards the trade union movement I need hardly say remains unchanged, that is, to sponsor and encourage the formation and growth of sound, well-run trade unions. In fulfilment of this policy, it is, I suggest the duty of Government to protect so far as it is practicable, not only the interests of the trade unions themselves, but more particularly their members and their dependants. To ensure this, the Bill seeks to give greater powers to the Registrar of Trade Unions and it will be his responsibility to see that the law is enforced effectively.

The act of registration, which remains compulsory, does not of itself ensure that unions will be well governed and administered. Nor does it ensure that the rights of members will always be respected. There is evidence that unions have disregarded registered rules, and that union officials have been lax in financial matters, with the result that union business has been wastefully or negligently managed. Some degree of supervision and control is therefore essential if the interests of the union members are to be adequately safeguarded; and those provisions in the Bill dealing with the Registrar's responsibility for financial affairs and accounts are consequently of particular importance.

Adequate control and protection of a union's funds will be insisted upon. Accounts will have to be properly kept and expenditure of members' money regulated and confined to authorized projects. The

purposes for which funds of unions can be expended are clearly defined in the Bill, and are in fact much wider than those under the present Ordinance. The protection of welfare funds has received special consideration. Such funds, which are derived mainly from contributions by members for welfare purposes, may not be spent upon the general purposes of the trade union, but only in relation to the precise object for which they were contributed. A separate account of these welfare funds will be required to be kept.

The presentation of audited accounts to the members at a general meeting of the union will be compulsory. As satisfactory auditing is an essential safeguard of union funds, the person who audits such accounts must, as under the present Ordinance, be a person approved by the Registrar. The interests of members are further protected by provision for account books, and registers of members, to be open for inspection by any member of a trade union as under the present Ordinance but in addition, the Registrar is now empowered to have similar access, but he will exercise this right only when he believes it to be in the general interest.

I think it will be agreed that the development of sound trade unionism must depend to a large extent on the quality of its leadership. I need hardly say that there are in Hong Kong persons of the calibre which fits them to assume the responsibilities of office in a trade union on a voluntary basis, and who, when elected, can contribute greatly to the benefit of the unions' ordinary members by conducting themselves and union business with efficiency, honesty and integrity. To overcome past difficulties regarding qualifications for office, the Bill changes the present requirement that candidates must be "actually" employed in that industry to being "habitually" employed. Exemption from this provision may now be granted by the Registrar of Trade Unions instead of, as at present, by the Governor in Council.

It is most desirable that members of a trade union should be adequately protected against persons seeking to use unions for their own personal gain. The Bill seeks to guard against this, by making it quite clear that no person who has been convicted of any crime involving fraud, dishonesty, extortion, or membership of a triad society, shall normally act as an office bearer in a trade union.

Further, to ensure that the election of office bearers is truly representative of the wishes and the interests of the members of a trade union, provision is made for their election by Secret Ballot.

The internal control of a union's financial administration will also be strengthened, since it will be possible under the Bill for a union or any of its voting members, or the Registrar of Trade Unions to make application to a District Court for an order for the surrender of funds

or property wrongfully obtained or withheld or fraudulently misapplied. The same parties may also apply to the District Court for an injunction restraining a trade union officer, or any other person, from improperly holding office or controlling trade union funds.

The Bill is, Sir, in some respects, considerably more liberal than the present Ordinance. One of its most important and interesting provisions is that registration of a trade union will make the union a corporate body for all purposes. This provision for incorporation and the consequential provisions for liquidation, will enable unions to hold property without further formality and without the expense of trust deeds. It is believed that this particular provision will fill a real need, because Hong Kong trade unions generally appear to be reluctant to appoint trustees, with the result that property belonging to union members is often inadequately safeguarded.

There are over three hundred registered trade unions in Hong Kong, but no serious desire among the smaller unions to amalgamate has yet become apparent. This reluctance to amalgamate may be due, to some extent, to the limitations imposed under the present Ordinance, in that unions seeking to amalgamate must be within the same trade or industry. This restriction has been removed under the new Bill. In addition, there is the entirely new provision for the formation of trade union federations which must, however, still be restricted to unions within the same trade or industry.

The Bill not only extends the range of purposes on which unions may expend their funds but it also increases the time limit for transmission of their accounts to the Registrar to three months instead of one month as at present. A similar period is allowed in which to furnish annual returns of membership.

Appeals from the decision of the Registrar on all matters affecting the registration or cancellation of a trade union will now lie to the Full Court instead of to the Governor in Council as at present.

It is of course necessary in any legislation of such a comprehensive nature as this to provide adequate remedies to deal with any violation of its provisions. The Bill consequently contains clauses relating to offences and it prescribes penalties for them, but the provision in the present Ordinance prohibiting the use of trade union funds for payment of fines or penalties imposed upon a union or any officer or member, has been deleted.

The Labour Advisory Board, on which four workers' representatives, all officers of trade unions, serve as members, has been fully consulted on the Bill and has unanimously endorsed the general principles underlying it, at the same time suggesting certain amendments of detail which have been incorporated.

This, Sir, completes my outline of the main purposes of the Bill and I would now invite the attention of Honourable Members to the statement of Objects and Reasons which is appended to it and to the comparative table which indicates in detail the legislation from which the Bill is derived.

Finally, Sir, I may say that I am fully confident that this Bill provides a much firmer foundation for the further healthy development of trade unionism in Hong Kong.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a First time.

### *Objects and Reasons*

The "Objects and Reasons" for the Bill were stated as follows: —

The purpose of this Bill is to amend and revise the law relating to trade unions in the Colony. The revision proposed is comprehensive and the form of the Bill is widely different from that of the present Trade Unions and Trade Disputes Ordinance, Chapter 64.

2. The short title of the Bill, when enacted, will be "The Trade Union Registration Ordinance, 1961". The reason for this change is that the measures provided in the Trade Unions and Trade Disputes Ordinance relating to the machinery provided for the settlement of disputes are omitted and will remain for the time being in the original Ordinance, the short title of which will be amended to read "The Trade Disputes Ordinance". Registration and all matters relating to the conduct and rights or liabilities of trade unions and their members will be provided for by this Bill and the measures relating to settlement of, as opposed to the conduct of, a trade dispute, will continue to be provided for by the original Ordinance.

3. The enactments which have been particularly examined in the course of the drafting of the Bill are as follows—

- (a) the Trade Union Acts of the United Kingdom;
- (b) Trade Union Enactment 1940 of Federated Malay States;
- (c) the Trade Unions Ordinance, 1952, of Kenya;
- (d) Trade Unions and Trade Disputes Ordinance, Chapter 64 of Hong Kong.

4. Arising out of the amendments proposed in the law, a number of additional definitions have been inserted in the Bill. The following definitions have been based on the Statutory Rules and Orders, 1940,

No. 1305 of the United Kingdom and are of particular importance to the Bill: "lock-out", "strike", "trade dispute", "trade union" and "workmen". The definition of trade union has been amended by deleting from the United Kingdom definition the reference to "restrictive conditions". This has been done in order to prevent societies, whose principal objects are the control of prices and whose secondary objects only (if at all) are the regulation of industrial relations, seeking protection as trade unions. While it is true that the deletion of these words narrows the scope of a trade union considerably, it was felt that local conditions rendered such a limitation appropriate. There is one original definition of importance, namely, "trade union federation". Part IX of the Bill deals specifically with trade union federations. Owing to the lack of comparative legislation covering federations, the provisions in that part of the Bill are largely original and it was found necessary to define what amounts to a trade union federation for the purposes of this Colony. It will be noticed that, as defined, a trade union federation is nothing more than a trade union whose members are other trade unions, as opposed to individual persons. This conception is facilitated by the fact that under the provisions of this Bill trade unions are incorporated.

5. Part III of the Bill deals with applications for registration, registration, powers of the Registrar to refuse registration, cancellation of registration, appeals to the Full Court against a refusal to register and cancellation of registration and the effect of an application for registration, registration and cancellation or refusal of registration. It will be seen that on application for registration the provisions of the Bill come into operation for all purposes. This is a new feature. It is rendered necessary by the fact that the Societies Ordinance makes any combination or association of persons an unlawful society until it is registered as a trade union; on the other hand, such is the present state of trade unionism in the Colony that the rules and objects of a prospective trade union must be carefully scrutinized and frequently amended before it can properly be registered as a trade union at all. During this interim period, it must be protected from the rigours of the Societies Ordinance. Kenya has dealt with this situation in a different manner, namely, by calling such trade unions "probationary trade unions", but it was felt that for local consumption such an appellation might sound invidious and, therefore, this Bill has dealt with it in the manner described. The result of the provisions relating to application is therefore that an association applying to be registered as a trade union becomes incorporated under clause 13 of the Bill from the date of its application and can acquire such property as it wishes by direct treaty and will be liable in its own name for its contracts and the like as though it were already registered as a trade union. This interim situation is terminated either by registration under clause 6 or by refusal of registration under clause 7. The effect of refusal by the

Registrar to register a trade union under clause 7 is to cast it back into the position of an unlawful society under the provisions of the Societies Ordinance. It will cease to be a corporate body and its individual members will enjoy no protection under this Bill. Similarly, a trade union whose registration is cancelled ceases to be a body corporate and its members cease to enjoy protection under this Bill.

6. It is not to be thought that the whole of this Part of the Bill is original to Hong Kong. The only really original features lie in the effect of registration resulting in making trade unions corporate bodies for all purposes and the consequential provisions relating to liquidation. The reason for incorporating trade unions in Hong Kong arises out of the historical fact that for an ever-increasing number of purposes, trade unions have been held by the courts of the United Kingdom to have corporate status, though always there is the reservation that they are not corporations for all purposes. The state of the law is such that it is becoming increasingly hard to see for what purposes they are not corporations. The United Kingdom legislation gets over the difficulty of refusal to recognize a trade union as a corporate body for all purposes by providing for the appointment of trustees, because, broadly speaking, it is only by this means that a trade union is able to hold property. Under the Trade Unions and Trade Disputes Ordinance of Hong Kong there was no provision relating to trustees and a number of trade unions therefore purport to own property without any trust deeds at all which results in devices and undesirable dealings with property belonging to the members. For one reason or another trustees are unpopular in Hong Kong and therefore it was decided to meet the difficulty by incorporating the unions.

7. The provisions in the Bill relating to the liquidation of trade unions are based upon those contained in the Co-operative Societies Ordinance (Chapter 33), with minor reference to the Companies Ordinance (Chapter 32). Following the Co-operative Societies Ordinance, large powers in this respect have been given to the Registrar because a number of local trade unions do not possess among their members much business acumen, nor have all of them sufficient funds to employ a business firm to act for them.

8. Part IV deals with the constitution, membership, rules, changes of name and amalgamation of trade unions. There is nothing very novel about the provisions of this Part of the Bill and the provisions of the United Kingdom Trade Union Acts have been used as a basis, subject to certain qualifications inserted to meet local needs. The principal qualifying features are to be found in clause 17 which restricts the membership of a trade union to persons ordinarily resident in the Colony and habitually engaged or employed in a trade or industry with which the trade union is directly concerned. In other words, the clause does not permit the existence of one trade union

made up of members of a number of separate trades or industries unless the trade union by its constitution is directly concerned with each of them. On the other hand, as will be seen from Part IX of the Bill, membership of trade union federations is restricted to those trade unions the members of which are engaged in the same trade or industry. Thus, whereas there may be a trade union composed of members from more than one trade or industry, such a trade union may not federate. There are in clause 17 certain restrictions on persons who have been convicted of various crimes becoming officers of trade unions and provisions relating to minors.

9. Clause 18, relating to the rules of trade unions, provides for certain matters which must be included in the rules and those matters are specified in the First Schedule to the Bill. After the coming into operation of these provisions, it will be necessary for a number of trade unions to revise their rules and clause 18 contains the necessary transitional provisions. After the transition period has expired, the rules of all trade unions must conform with that Schedule and any alterations or additions must be reported to the Registrar.

10. Clause 21 is peculiar in that it requires every trade union to report to the Registrar particulars of any branch of the trade union or any business or charitable, cultural, educational or medical undertaking that is operated by or in the name of the trade union. The running of schools, clinics and other similar undertakings is a feature of Hong Kong trade unionism and it is considered necessary that the Registrar should be kept informed at all times of these subsidiary undertakings.

11. Provisions as to the amalgamation of trade unions are contained in clauses 24 to 31. In this respect, the provisions of the Trade Union Act, 1876 have not been followed. It is considered that, in Hong Kong, it is undesirable to permit trade unions to amalgamate until, in the ordinary case, it is reasonably certain that the Registrar will register the trade union formed by the amalgamation. It is obvious that serious practical difficulties may arise if, an amalgamation having taken place, the Registrar refused to register the trade union formed thereby. The Bill, therefore, provides as follows. No amalgamation may take place until the consent of the Registrar has been obtained (clause 24). The grounds upon which the Registrar may refuse to give his consent, set out in clause 27, are the same as those upon which he may refuse to register a trade union, and there is an appeal to the Full Court against a refusal of consent if it is alleged that the Registrar had no ground for the refusal. The procedure for effecting the amalgamation, once the consent of the Registrar has been obtained, is specified in clause 30. It is envisaged that, in the vast majority of cases, once the Registrar has consented to the amalgamation, registration of the trade union subsequently formed thereby will be essentially a formality. However, in case some material change of circumstances should occur

between the giving by the Registrar of his consent to an amalgamation and the making of an application for the registration of the trade union formed thereby, subclause (2) of clause 29 seeks to make it clear that the powers of the Registrar in respect of the application for registration are not prejudiced by the fact that he has previously consented to the amalgamation. It is considered that the procedure for amalgamation so established by the Bill is, though considerably more complicated than the equivalent provisions in the United Kingdom, justified having regard to the problems that might arise if the provisions were otherwise.

12. Part V deals with funds, accounts and returns of trade unions. Clause 33 restricts the expenditure of the funds of a trade union to a number of specified purposes. That seems to be usual in Colonial trade union legislation, but the following is original to Hong Kong. The clause specifically excludes expenditure from a welfare fund of a trade union. Welfare funds are very popular among Hong Kong trade unions, but it frequently happens that a trade union over-spends its general funds and then uses the welfare fund to make up the difference. It is usual for welfare funds to be supplied by special contribution among members or from outside sources, and the object of the donors or contributors is that it should be spent on the objects of the welfare and not on other matters. The tendency to use the welfare funds in this way makes it necessary to protect them as far as possible. The Bill provides for control in this way: clause 18 requires provision to be made in the rules of a trade union for the separate operation of and accounting for the welfare fund. This leaves it to each trade union to decide what welfare purposes it wishes to support and the definition of such purposes rests with the union. The funds cannot be spent upon the general purposes of the trade union though, of course, in a liquidation of a trade union the unexpended welfare funds would come into the general account. Clause 33 enables the general funds to be donated to the welfare fund, but there is no provision for the reverse process. This control of the welfare funds is thought to be unique.

13. Clause 34 prohibits the expenditure of trade union funds for any political purposes whatsoever. A political purpose has been left undefined in the Bill and it may be that border-line cases will arise. It is, however, considered advisable to leave such cases to be decided by the courts, if ever the issue should be taken, rather than to endeavour to define exactly the scope of that phrase.

14. Clause 35 is based on section 11 of the Trade Union Act, 1871. It provides for the submission of accounts of a trade union to the members at least once in every year and at such other times as the members or the rules of the trade union may require. Clause 36 is based on section 16 of the Trade Union Act, 1871, and provides for the furnishing of an account of the trade union funds to the Registrar once in every year. In conjunction with the statutory rules prescribed

in the First Schedule to the Bill, this clause provides that each trade union must fix its own financial year and that within three months after the termination of each financial year, the trade union must render a full account to the Registrar. In practice this account will usually be a copy of the same account as is submitted to the members under clause 35. The fixing of the financial year is a special feature and is designed to prevent the statutory accounts required to be rendered to the Registrar, being sent in by all unions at the same time. This flexibility is desirable in view of the staff limitations in the office of the Registrar. On the other hand, subclause (2) of clause 36 provides that a return of membership and officers of a trade union shall be sent to the Registrar on or before the 31st day of March in each year, showing the position as at the 31st day of December in the preceding year. This statutory date for the return of officers and members is prescribed in order to enable the Registrar to maintain an overall appreciation of the state of trade unionism in the Colony, but this consideration does not apply to the state of any particular trade union's accounts.

15. In addition to the provisions of clauses 35 and 36, clauses 37 and 38 enable the Registrar to inspect the books of a trade union at any time and to call for a special account at any time.

16. Part VI deals with the rights and liabilities of trade unions and to some extent Part VII, dealing with picketing, intimidation and conspiracy, forms a continuation of the same subject. Clause 39 specifically provides that no rights or immunities of a registered trade union shall apply to a trade union which is neither registered, nor has applied for registration, under clause 9. Such a trade union is an unlawful association under the Societies Ordinance and the Bill is in no way intended to affect that position. Clauses 40 to 44 closely follow the corresponding provisions in the United Kingdom legislation. Clause 44 provides that a number of kinds of contracts entered into by trade unions shall not be directly enforceable at law; for example, the rules of a trade union, which constitute the contract between each member and each other member and between each member and the trade union. This does not prevent a member of a trade union applying to the courts for an injunction to restrain the doing of something in breach of the rules, but it does prevent a member applying to the courts for a mandatory injunction enforcing compliance with the rules. If this were not so, the strange position could arise in which one member could apply to the courts for an injunction compelling his fellow members to obey a "strike rule". This clause is new to Hong Kong, but is a standard provision in all other trade union legislation examined.

17. Clause 45 provides a restriction on affiliation and is not to be found in the United Kingdom legislation. It is intended to prevent local trade unions falling under the influence or direction of associations

established outside the Colony and over which the authorities in this Colony have no control.

18. Part VII deals with picketing, intimidation and conspiracy by members of a trade union in furtherance of a trade dispute. The contents of this part closely follow the corresponding standard provisions of the United Kingdom legislation and are designed to modify the general law relating to such matters.

19. Part VIII deals with miscellaneous offences relating to registered trade unions and their members. Clause 49 closely follows section 12 of the Trade Union Act, 1871, and provides an easy method for recovery in a District Court of moneys or property belonging to a trade union, that is wrongfully withheld from the union. This does not prejudice the right of a trade union (now a corporate body) to sue in the appropriate civil court for the recovery of any such money or property. Clause 49(2) introduces a right in a member of a registered trade union, and in the Registrar, to apply to the District Court for an injunction to restrain an officer from holding office or controlling trade union funds where that officer has, *prima facie*, been guilty of the misuse of the funds or of the funds of any other trade union.

20. Clause 50 is based on section 18 of the Trade Union Act, 1871, and is designed to protect members of trade unions, or members of the public, from being misled by persons circulating among them false sets of trade union rules. Clause 51 is not to be found in the United Kingdom legislation, but the substance is taken from section 34(1) of the Trade Unions and Trade Disputes Ordinance (Chapter 64). In the Bill, its scope has been limited so that it will not overlap the provisions of the Control of Publications Consolidation Ordinance, 1951 (15 of 1951). It is designed to prevent dissemination among members of trade unions of literature and directions issued by organizations established outside the Colony.

21. Clause 52 is entirely new. It does not appear in any other trade union legislation that has been examined. Disobedience by officers and members of the rules of their trade unions is a regrettable feature of trade unionism in the Colony and it is felt necessary in some way to encourage obedience. On the other hand, it is an important feature of trade unionism as such that the rules of a trade union shall not be directly enforceable at law as between members. Thus, clause 52 was inserted to enable the Registrar to prosecute persistent disobedience of rules relating to matters specified in the First Schedule. It does not deprive a member of a trade union of his own right to apply to the courts for an injunction to restrain infringement of a rule as opposed to the enforcement of a rule, but, so far as is known, no member of a trade union in Hong Kong ever has applied for such an injunction so that breaches of the rules have hitherto gone unrestrained.

This clause therefore, gives the Registrar a power, at his discretion, to intervene and in effect renders the more important of the rules of a trade union enforceable by him.

22. Part IX deals with trade union federations. Clause 53 provides that the whole of the Bill shall apply, so far as it is applicable and except as otherwise expressly provided, to trade union federations in the same way as it applies to an ordinary trade union. Indeed, a trade union federation is defined as nothing more than an ordinary trade union, except that its members are corporations as opposed to individuals. This Part is, therefore, concerned only with such modifications of the general provisions as are necessary by reason of the nature of the membership of a trade union federation.

23. Clause 54 deals with the manner of application for registration, and clause 55 restricts federation to registered trade unions the members of which are engaged in the same trade or industry. The effect of this clause has been described in paragraph 8. Clause 56 deals with the manner in which a trade union may join an already registered federation and clause 57 provides that no person shall be an officer of a registered trade union federation unless he is also an officer or a voting member of one of the component trade unions.

24. Part X provides for the making of regulations and for forms. Clause 58 enables the Registrar to prescribe all such forms as, in his opinion, may be necessary for the proper carrying out of the Ordinance. It is anticipated that a number of forms will be required and a certain amount of experiment giving rise to alteration of forms from time to time is bound to take place. It was, therefore, considered appropriate that the Registrar should retain in full his present power of designing and introducing such forms as he thinks necessary. Subclauses (3) and (4) of this clause provide for offences in relation to prescribed forms.

25. Clause 59 provides for the making of regulations by the Governor in Council and covers a wide range of matters.

26. Part XI deals with miscellaneous matters. Clause 60 vests in the Registrar power to delegate to officers of the Registry of Trade Unions any of his powers, functions or duties under the Ordinance if he considers that it is expedient to do so.

27. It is considered that, where a trade union has committed an offence under the Bill, the officers of the trade union should each be guilty of the like offence unless they prove to the satisfaction of the court that the act constituting the offence took place without their knowledge or consent. Clause 61 will make the necessary provisions.

28. Clause 62 extends the time within which proceedings in respect of offences under the Bill must be instituted from six months, as provided by section 26 of the Magistrates Ordinance, to two years. This

provision is considered necessary particularly in relation to financial offences which are unlikely to be discovered until the annual accounts of the trade union in question have been submitted and audited.

29. Clause 63 provides for the service of legal process upon a registered trade union and clause 66 provides for publication in the *Gazette* of a number of matters of interest to the public. Clause 67 provides that the Co-operative Societies Ordinance and the Companies Ordinance shall not apply to registered trade unions.

30. Clause 65 excludes from the operation of this Bill certain types of contracts, namely, agreements between partners as to their business, agreements between employers and employed as to employment, and agreements for the sale of the goodwill of businesses or instruction in professions, trades or handicrafts. These provisions are to be found in section 23 of the Trade Union Act, 1871, and are included in that section as part of the definition of a trade union. It was found in the Malayan legislation that this provision had been placed in a separate section and that method has been adopted in the drafting of this Bill as a matter of convenience.

31. Clause 68 is transitional and provides that trade unions registered under the Trade Unions and Trade Disputes Ordinance shall be deemed to be registered under this Bill, and also that a notice of cancellation served under the Trade Unions and Trade Disputes Ordinance shall be deemed to have been served under this Bill. Subclause (3) of this clause provides for the case of an association that is in fact a trade union but is, at the commencement of this Bill, registered either as a company under the Companies Ordinance (Chapter 32) or a society under the Societies Ordinance (Chapter 151). Clause 69, in conjunction with the Second Schedule, provides for the repeal of the necessary portions of the Trade Unions and Trade Disputes Ordinance (Chapter 64).

32. A comparative table is annexed to these Objects and Reasons to indicate the legislation from which the Bill is derived.

#### COMPARATIVE TABLE.

##### *References.*

TU	—Trade Union Act, 1871.
TUA	—Trade Union (Amendment) Act, 1876.
TD	—Trade Disputes Act, 1906.
TUN	—Trade Union (Northern Ireland) Act, 1927.
CP	—Conspiracy and Protection of Property Act, 1875.
K	—The Trade Union Ordinance, 1952, of Kenya.
M	—The Trade Union Enactment, 1940, of the Federated Malay States.
Cap. 64	—Trade Union and Trade Disputes Ordinance of Hong Kong.
Vol. VIII	—Trade Union (Registration) Rules of Hong Kong.
Cap. 32	—The Companies Ordinance of Hong Kong.
Cap. 33	—The Co-operative Societies Ordinance of Hong Kong.

<i>Clause.</i>	<i>Origin other than Cap. 64.</i>	<i>Comparable sections of Cap. 64.</i>	<i>Remarks.</i>
1	—	1	Short title and commencement.
2	—	2	Interpretation. The definitions of the following expressions are based on those contained in Statutory Rules and Orders, 1940, No. 1305, of the United Kingdom— "lock-out", "strike", "trade dispute", "workman". The definition of "trade union" is based on TUA s.16.
3	—	6	Appointment of Registrar, etc.
4(1)	—	Vol. VIII r. 2	Register of trade unions.
4(2)	—	—	New. To permit the production in evidence of certified copies of extracts from the register of trade unions.
5(1)	TU s. 6	7	Adapted and modified.
5(2)	—	—	New. To provide trade unions applying for registration with evidence of that fact during the interim period before registration.
6(1)	TU s. 6	—	Registration of trade unions.
6(2)	K s. 14	—	New. To empower the Registrar to call for particulars before registering a trade union.
7(1)(a) & (b)	—	10(1)(a) & (b)	Amended as to form.
7(1)(c)	TU s. 13(3)	9(c)	Adapted.
7(2)	—	10(3)	Amended as to form.
8	—	—	New. To provide an appeal to Full Court against refusal to register.
9(1)	—	—	New. To apply the provisions of the Bill to trade unions during the period between application for registration and registration.
9(2)	—	—	New. To protect trade unions applying for registration from infringement of the Societies Ordinance (Cap. 151) during the interim period before registration.
10	TUA s. 8 (in part)	11(1)	Adapted.
11	TUA s. 8 (in part)	11(2)	Adapted.
12	—	—	New. To provide an appeal to Full Court against cancellation of registration.

<i>Clause.</i>	<i>Origin other than Cap. 64.</i>	<i>Comparable sections of Cap. 64.</i>	<i>Remarks.</i>
13	Cap. 33, s. 8	—	Adapted.
14(a)	Cap. 33, s. 40	—	Adapted.
14(b)	M s. 18(a)	—	Adapted.
14(c)	M s. 18(c) & (d)	—	Adapted.
15(1)	Cap. 32, s. 184 & Cap. 33, ss.42 (1)(i)& 43	—	Adapted generally to apply to an incorporated trade union.
15 (2) & (3)	—	—	New. To make liquidators of trade unions subject to direct control by the Registrar.
15(4)	Cap. 33, s. 42(2)	—	Adapted.
16	Cap. 33, s. 46	—	Adapted.
17(1), (2) & (3)	K s. 29	13	Adapted.
17(4)	—	—	New. To regularize a local practice in Hong Kong.
17(5)	TUA s. 9	12	c.f.
18	—	—	Rules.
19	K s. 37	—	Adapted.
20	K s. 35	—	c.f.
21	—	—	To provide for registration of branches of trade unions and ancillary activities.
22	K s. 38	—	Adapted.
23(1)	TUA s. 11	15	Adapted.
23(2), (3), (4)&(5)	TUA s. 13	17	Adapted. Subclause (5) provides an appeal to Full Court against refusal to register a change of name.
23 (6) & (7)	TUA s. 11	18(1)	Adapted.
24	—	—	New. To prohibit amalgamation without consent.
25			
26 } 27	—	—	New. To provide procedure on application for consent to amalgamation.
28			
29	—	—	New. Procedure on giving of consent to amalgamation, etc.
30	—	—	New. Procedure for amalgamation, etc.
31	—	—	New. Provisions for transfer of liabilities, etc. of trade unions comprised therein to trade union formed by amalgamation.

<i>Clause.</i>	<i>Origin other than Cap. 64.</i>	<i>Comparable sections of Cap. 64.</i>	<i>Remarks.</i>
32(1)	TUA s. 14	19	Adapted.
33	K s. 43	20	Adapted.
34	—	22	Modified.
35	TU s. 11	23	Adapted and modified.
36	TU s. 16	24	Adapted and modified to stagger the dates upon which certain annual returns must be submitted to the Registrar.
37	K s. 48	—	— Adapted.
38	K s. 50	—	— Adapted.
39	—	—	— New. To clarify the position of an unregistered trade union.
40	TU s. 2	3	Modified to relate only to registered trade unions.
41	TU s. 3	4	Modified to relate only to registered trade unions.
42	TD s. 3	30	Modified to relate only to registered trade unions.
43(1)	TD s. 4(1)	28(1)	Modified to relate only to registered trade unions.
43(2)	TD s. 4(2)	28(2)	Modified to relate only to registered trade unions and to take account of the effect of incorporation.
44	TU s. 4	—	Adapted and modified as to item (c).
45(1)	—	14(1)	Modified to grant the Governor in Council greater discretion.
45(2)	—	14(2)	Modified to provide financial penalty.
46	TD s. 1	33	Modified to relate only to registered trade unions.
46 proviso	TUN s. 3	—	Adapted.
47(1)	CP s. 7	32	c.f.
47(2)	K s. 53(2)	—	Adapted.
48(1)—(5)	CP s. 3	29	c.f.
48(6)	—	—	New. Saving relating to effect of Societies Ordinance.
49	TU s. 12	31	Modified— (a) to relate to registered trade unions only; and (b) to substitute District Court for Magistrates Court.
50	TU s. 18	—	Modified to refer to— (a) members of registered trade unions only; and (b) registered rules of registered trade unions only.

<i>Clause.</i>	<i>Origin other than Cap. 64.</i>	<i>Comparable sections of Cap. 64.</i>	<i>Remarks.</i>
51	—	34	Modified to relate to foreign "labour, political, cultural or social organizations" as well as foreign trade unions.
52	—	—	New. To provide some measure of enforcement of the rules of registered trade unions.
53	—	—	New. To make provision for federations of registered trade unions. Compare (as regards funds) the Trade Union Act, 1913, s. 3(5).
54	—	—	New. To provide for the making of application for registration of trade union federations.
55	—	—	New. To restrict federation to registered trade unions whose members are engaged in the same trade or industry.
56	—	—	New. To provide for increase in membership of a federation.
57	—	—	New. To restrict persons who may be officers of a federation to persons who are officers or members of the registered trade unions comprising the federation.
58	—	—	New. To enable the Registrar to prescribe forms, and offences in relation thereto.
59	M s. 46	27	Adapted and modified to widen the power to make regulations.
60	—	—	New. To provide for delegation by Registrar of powers, etc.
61	—	—	New. To provide that, where a trade union has committed an offence, officers thereof are equally liable unless they prove that same occurred without their knowledge or consent.
62	—	—	New. To extend the time within which informations may be laid in respect of offences under the Bill. Contrast s. 26 of the Magistrates Ordinance (Cap. 227).
63	K s. 62	—	Modified to permit service of documents on a registered trade union being made— (a) by registered post; and (b) on any officer.
64	—	—	To prescribe procedure, etc., on appeal to Full Court.
65	TU s. 23	3(a)(i)	c.f.
66	—	46	Modified to relate only to registered trade unions.
67	TU s. 5	—	Adapted.
68	—	—	New. Transitional provisions.
69	—	—	New Repeals and amendments.

**INDUSTRIAL EMPLOYMENT (HOLIDAYS WITH PAY AND  
SICKNESS ALLOWANCE) BILL, 1961**

THE COLONIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to provide for the grant to workers employed in industrial undertakings of certain holidays and for the payment to them of a measure of sick pay and for matters connected with the purposes aforesaid."

He said: This Bill, Sir, breaks new ground in the field of labour legislation. It provides that six holidays a year must be given to all workers employed in industrial undertakings. These six holidays must be granted with full pay in the case of a wide range of workers who satisfy certain qualifying conditions. In addition, such workers are entitled to sickness allowances at half-pay up to twelve days each year. The range embraces non-manual industrial workers earning not more than \$700 a month, and all manual industrial workers (including men, women, and young persons) whether they are engaged by the day or for longer periods. To qualify for benefits a worker must have worked for an employer both for not less than 180 days out of the twelve months, and for 20 out of 28 days immediately preceding a statutory holiday or the day on which the worker falls sick.

Over 300,000 local workers will be affected by this legislation and, taking into account dependants, well over a million people should benefit directly or indirectly by this Bill. There are many employees who are already granted paid holidays and sickness pay in excess of the statutory minimum benefits proposed, and they will derive no additional benefits. There are others who now receive part or all of some of the benefits; to these the Bill will have limited application. On the other hand, there are many industrial workers who can take holidays only by foregoing their wages, and who go to work when they are ill for fear of losing the family income. The Bill attempts to prescribe reasonable minimum standards for all qualified industrial workers. Experience of previous labour legislation suggests that employers who provide better terms of service than those required by statute will continue to do so.

The Bill goes a considerable way towards meeting the provisions of an International Labour Convention on holidays with pay which does not at present apply to Hong Kong. This Convention calls for annual holidays with pay of six working days. The Bill now before Council selects six days associated with traditional Chinese holidays on which a worker may be granted a holiday with pay. Workers are not obliged to take these holidays, but they will, if qualified, be entitled to the holiday pay. Where it is not possible to grant these selected holidays either because of the practical impossibility of all employees being away on the same day, or where, by custom of the trade, other more

suitable days are convenient, provision is made for arranging alternative holidays. The six paid holidays are additional to the weekly rest days to which women and young persons are entitled under the Factories and Industrial Undertakings Ordinance, 1955.

The payment of sickness allowance of up to twelve days a year on half pay complements the provisions of the Workmen's Compensation Ordinance, 1953, in respect of periodical payments during absence from work on account of injury in the course of employment. A medical certificate is required in respect of claims for sickness allowance, and the Bill contains safeguards against wilful misconduct and malingering. The certificate must be given either by a registered medical practitioner engaged by an employer operating a scheme of medical treatment recognized by the Director of Medical and Health Services, or, in the case of recognized schemes, by any registered medical practitioner.

It is intended to enforce the Ordinance primarily by complaint made to the Industrial Relations Section of the Labour Department. Success in enforcement will consequently depend largely on the adequacy of records kept by both employers and workers of earnings and the number of days worked. The Commissioner of Labour is given considerable powers to require the keeping of adequate records. Workers in regular employment who are paid otherwise than daily will be given a monthly notice setting out in detail the earnings and days worked. Workers who are paid daily must be given a similar notice if they request it. Alternatively, an employer may issue a notice to a worker declaring that holiday pay or sickness allowance will be paid without proof that he or she is qualified. All records must be kept by employers for at least twelve months.

Whether or not complaint is lodged with the Labour Department recourse may be had to the District Court and as in the case of proceedings initiated under the Employers and Servants Ordinance, 1961, no fees will be payable, and no costs exceeding \$50 can be awarded.

The Objects and Reasons appended to the Bill give a fuller account of its provisions and I have limited my remarks to those general points in which there is likely to be most public interest. If this Bill is passed it will be brought into force by proclamation. Partly because employers will need time to study the provisions and to prepare the necessary records, and partly because of the incidence of Chinese New Year in 1962, the most convenient time to proclaim the Ordinance as effective will be the spring of next year. The first benefits will, consequently, be enjoyed by next autumn.

I think, Sir, that it would be appropriate to conclude by saying that the Commissioner of Labour was greatly assisted in devising the administrative measures embodied in this legislation by helpful suggestions from employers' organizations principally affected. Furthermore,

the provisions of this legislation were unanimously endorsed by the Labour Advisory Board which, as I said earlier, consists of equal representation of employers and workers.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a First time.

### *Objects and Reasons*

The "Objects and Reasons" for the Bill were stated as follows: —

This Bill seeks to make provision for the grant of certain holidays to the workers to whom it applies, in respect of which they will be paid holiday pay if they are duly qualified, and to make provision for the payment to such workers of a limited amount of sick pay. With certain exceptions, which are set out in sub-clause (2) of clause 3, the Bill will apply to every worker employed under a contract of service or apprenticeship in an industrial undertaking, and the expression "worker", when used herein, means an employee to whom the Bill will apply. For the purposes of its application, the Bill draws no distinction between one class of worker and another. It will apply equally to those who are engaged under a continuing contract and those engaged by the day, to those paid a fixed wage and those paid by the piece and so on. It is, however, envisaged that the monetary benefits for which it provides will come mainly to those who are in regular continuing employment.

2. Employers will be required to grant six holidays each year to all their workers. Subject to certain other provisions of the Bill that are mentioned hereafter, the holidays, which are designated "statutory holidays", are to be granted on Chinese New Year's Day, the day of the Tsing Ming Festival, the day of the Dragon Boat Festival and the day of the Chinese Mid-Autumn Festival and, at the option of the employer, on the day preceding or the day following Chinese New Year's Day and on the day of the Chinese Winter Solstice Festival or the first day of January next following that day (clause 5(1) and (2)). In some trades and industries, particularly the utility undertakings, it is not possible for all employees to take a holiday on the same day and in others it may well not be convenient for them to do so. By sub-clause (3) of clause 5, therefore, an employer is given the right to grant a worker a holiday on another day within sixty days after a statutory holiday instead of granting him a holiday on the statutory holiday. The exercise of this right is subject to the condition that the alternative holiday must be notified to the worker or workers concerned not less than two days before the statutory holiday. In addition, under sub-clause (5) of clause 5, another day may be substituted for a holiday by agreement between a worker

and his employer. These provisions are as flexible as possible having regard to the interest of both employers and employees.

It is intended that the holidays for which the Bill provides shall be additional to the rest days to which women and young persons are entitled under the Factories and Industrial Undertakings Ordinance, 1955. Where, therefore, a statutory holiday or an alternative holiday falls on the rest day for a woman or young person, the employer will be required to grant that woman or young person a holiday on the day next following the rest day that is not a holiday (sub-clause (4) of clause 5).

Every worker will be entitled to a holiday regardless of the length of time for which he has served the employer for whom he is working when the holiday occurs. A worker's right to be paid in respect of a statutory holiday is, however, dependent upon his being qualified, which means that he must have worked for his employer on not less than one hundred and eighty days during the year preceding the statutory holiday and on not less than twenty days during the period of twenty-eight days preceding that day (clause 6). Workers will not be obliged to take a holiday that their employers grant to them in accordance with the Bill, but will, if they are qualified, nevertheless be entitled to the holiday pay.

The holiday pay will be an amount equivalent to the average daily earnings of the worker during the period of twenty-eight days preceding the statutory holiday (clause 10(1)).

3. By virtue of clause 7, a worker who is qualified will be entitled to receive sick pay for not more than twelve days in a calendar year. The sick pay for each day will be an amount equivalent to half of the average daily earnings of the worker during the period of twenty-eight days preceding the first day of his sickness. The qualification for sick pay is basically the same as the qualification for holiday pay, and a worker will be qualified to receive sick pay if he has worked for his employer on not less than one hundred and eighty days during the year preceding the first day of his sickness and on not less than twenty days during the period of twenty-eight days preceding that day.

In addition to that qualification, a worker's right to receive sick pay will be subject to a number of other conditions, which are specified in sub-clause (2) of clause 7. Two of these conditions merit particular mention. Firstly, paragraph (c) provides that, where on any occasion the duration of a worker's sickness is less than seven days he will not be entitled to receive sick pay in respect of the first three days. This provision is designed to restrain malingering. Secondly, paragraph (e) provides that sick pay will not be payable to a worker in respect of any day that is not specified in an "appropriate medical certificate" as a day on which the worker was, is, or will be unfit for work on account of his sickness. Detailed provisions as to medical certificates are contained in

clause 8. In this regard, the Bill draws a distinction between employers who operate their own schemes of medical treatment for their workers and those who do not. An employer who operates his own scheme of medical treatment will not be obliged to pay the sick pay to a worker except upon production of a certificate issued by the doctor whom he has engaged for the purposes of the scheme or, if the worker is an inpatient in one of the specified hospitals or nursing homes, by the doctor who is attending the worker in the hospital or nursing home. An employer who does not operate a scheme of medical treatment will be obliged to pay the sick pay to a worker who produces a certificate issued by any registered doctor. In order to ensure that they meet reasonable minimum standards, the Bill provides that schemes of medical treatment must be recognized by the Director of Medical and Health Services.

The right to sick pay of a worker whose employer operates a recognized scheme of medical treatment is subject to two further conditions, which are specified in paragraphs (f) and (g) of sub-clause (2) of clause 7. Firstly, a worker will not, unless he is an in-patient in one of the specified hospitals or nursing homes, be entitled to sick pay if he refuses to submit himself for treatment by the doctor engaged by his employer for the purposes of the scheme, and, secondly, a worker who disregards the advice of that doctor or, if he is an in-patient in one of the specified hospitals or nursing homes, the advice of the doctor by whom he is being attended will not be entitled to sick pay in respect of any day during the sickness or injury in question after the advice is disregarded.

4. A worker will not be deprived of any holiday pay or sick pay to which he is entitled solely by reason of the fact that he is no longer employed by the person from whom he claims payment thereof, unless his employment was terminated for cause (clause 9(4)). However, the requirement that a worker must have worked for the person from whom he claims payment of the holiday pay or sick pay on not less than twenty days during the period of twenty-eight days preceding the statutory holiday or the first day of his sickness, as the case may be, substantially limits the liability of an employer to a worker who has left his service, since, by virtue of that requirement, he will be liable only in respect of a holiday that occurs or a sickness that commences within the first eight days after the worker's employment terminated.

5. The remainder of the provisions of the Bill are ancillary or supplementary to the foregoing provisions. The following are the more important.

- (a) The enforcement by a worker of the benefits that the Bill seeks to confer on him is dependent in very large measure on the adequacy of the record that he and his employer has of the number of days on which he has worked and of his earnings.

Clauses 13 to 16, together with clause 18, seek to ensure that adequate records are available to both employers and workers. For this purpose, workers are divided into two classes, those who are paid daily and those who are not. The latter class comprises workers who are normally in regular employment with the same employer; the former class comprises workers who may or may not work regularly for the same employer. In relation to workers who are not paid daily, the Bill provides for the delivery, once in each month or on a worker's pay day at the option of the employer, of a notice containing the required information (clause 13). This notice may be combined with the pay-slip that many employers already deliver to their workers when they are paid their wages. By clause 15, the employer of a daily paid worker is obliged to deliver to the worker a notice containing the required information if the worker so requires. In addition, all employers are required to keep their own records of the service and earnings of their employees (clauses 14 and 16).

By clause 22, an employer who wishes to do so is empowered to issue to a worker a notice declaring that he will pay the worker any holiday pay or sick pay to which he may be entitled without proof that he is qualified therefor. These provisions will particularly benefit employers who have a constant labour force, since an employer is exempt from the provisions of the Bill relating to the delivery of notices and the keeping of records in respect of each worker to whom he issues such a notice.

Under clause 17, the Commissioner of Labour may, subject to such conditions as he specifies, grant exemption from the provisions of the Bill relating to the delivery of notices and the keeping of records if he is satisfied that to do so will not prejudice the enforcement of the Bill.

- (b) Clause 23 seeks to protect the position of a worker who continues to be employed in a business that has undergone a change of proprietor. In such a case, an employee not unnaturally looks to the business for which he is working rather than to the person for the time being owning it, and this clause provides that days worked for the person by whom a business was formerly owned shall be deemed to have been worked for his successor, save that the successor is not liable in respect of any holiday pay or sick pay that became payable before he or it took over the business.
- (c) Clause 24 provides for the assessment of average daily earnings, and follows closely comparable provisions in the Workmen's Compensation Ordinance, 1953.

- (d) Clause 28 seeks to confer on employees a measure of protection from termination of their employment or discrimination by reason of their having given evidence in proceedings for the enforcement of the Bill or by reason of their having assisted in inquiries made for the purposes of its enforcement.
- (e) The effect of clause 30 is that, in bankruptcy and in the winding up of a company and in certain other cases, any holiday pay or sick pay to which a worker is entitled will have the same priority as it would have if it were wages in respect of services rendered during the period prescribed by law for this purpose. This means that, whilst a new class of debt due to an employee will have priority, there is no increase in the aggregate amount that may be recovered by an employee in priority to other debts.

### **PROBATION OF OFFENDERS (AMENDMENT) BILL, 1961**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Probation of Offenders Ordinance, 1956."

He said: Sir, the purposes of this short Bill are sufficiently explained in the statement of Objects and Reasons to which I have nothing to add.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

#### *Objects and Reasons*

The "Objects and Reasons" for the Bill were stated as follows: —

The purpose of this Bill is to seek the amendment of the Probation of Offenders Ordinance, 1956, in certain respects which experience of the operation of the Ordinance has indicated would be advantageous to the working of the probation system under local conditions.

2. Clause 2 seeks the amendment of section 3 of the Ordinance in order to enable offenders to be placed on probation without the necessity of recording a conviction against them.

3. Clause 3 seeks the amendment of section 4 of the Ordinance to enable any court, on the application of the probationer or the probation officer, to discharge a probation order as opposed to only the court which made the original order, and to ensure that orders discharging, or amending probation orders and sentences passed upon

probationers for offences in respect of which probation orders were made are endorsed upon the records in which the original probation orders appear.

4. Clause 4 seeks amendment of section 5 of the Ordinance to enable a court to caution a probationer who is found to be in breach of a probation order in some minor respect instead of necessarily fining him for the breach of the order or sentencing him for the offence in respect of which the probation order was made.

5. Clause 5 seeks to amend section 6 of the Ordinance consequential upon the proposed amendment to section 4 and in addition seeks the correction of one typographical error.

### **STAMP DUTIES MANAGEMENT (AMENDMENT) BILL, 1961**

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to amend the Stamp Duties Management Ordinance, Chapter 121."

He said: Sir, as the law stands at present, when duty is overpaid or a stamp spoiled, the payer is given an allowance card which permits free stamping of documents subsequently presented, up to the value involved. While this adequately covers the case of those persons who require frequent stamping of documents, it is not suitable for those who require to stamp documents on single or infrequent occasions. Since 1948, 1,477 allowance cards of a total value of \$12,000 have accumulated and remain outstanding.

The Bill before Council authorizes the Collector, in his discretion, to give cash up to the full value of stamps misused or spoiled.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

#### *Objects and Reasons*

The "Objects and Reasons" for the Bill were stated as follows: —

This Bill seeks to permit the Collector of Stamp Revenue to give money in replacement of spoiled or misused stamps instead of other stamps.

### **SIR ROBERT BLACK TRUST FUND BILL, 1961**

THE COLONIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to make provision for the establishment of a trust fund to be known as the Sir Robert Black Trust Fund, and for the

due administration thereof and for purposes connected with the matters aforesaid."

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a Second time.

Council then went into Committee to consider the Bill clause by clause.

Clauses 1 to 11 and the Preamble were agreed to.

Council then resumed.

THE COLONIAL SECRETARY reported that the Sir Robert Black Trust Fund Bill, 1961, had passed through Committee without amendment and moved the Third reading.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

The Bill was read a Third time and passed into law.

### ADDRESS BY THE GOVERNOR

HE THE GOVERNOR: — Gentlemen, this is the last occasion on which Lieutenant General Sir Roderick McLEOD, Commander British Forces, will be with us in Legislative Council. He departs at the beginning of next week to take over another command. General McLEOD has, during his period of service here, been a most loyal colleague of the Government and a very good friend indeed to Hong Kong, and he has given us the benefit of wisdom and experience of a kind which we would expect from such a distinguished soldier. I am sure that Honourable Members will wish me to convey to him our thanks for the service he has rendered to Hong Kong and, through him, to Lady McLEOD, with very best wishes for their happiness in the future. (*Applause*).

HE LIEUT GENERAL SIR RODERICK McLEOD: — Your Excellency, Honourable Members, may I say first of all how much I appreciate the way in which you have spoken about myself and my wife. We are very sorry indeed to leave Hong Kong, to take up another appointment, after a comparatively short stay here. I think our outstanding recollection of our time here will be the way in which we have been made to feel a part of the community. It is very sad that we should have to leave so many good friends here.

I should like to take this opportunity to thank you, Sir, and Honourable Members and the Heads of the various departments of Government for the remarkably helpful and understanding way in which Government invariably co-operates with the Services. On several public occasions you, Sir, have gone out of your way to pay tribute to the help which the Armed Forces have been able to give to the community. Co-operation is never one-sided and I can truthfully say that in 37 years of service I have never known such close relations as exist in Hong Kong between the Forces and departments of Government, particularly the Police, and I believe, in this respect as in many others, Hong Kong is an example to the world.

I very much regret that I have been unable latterly to play as full a part in the life of the Colony as I would have wished and I must ask the indulgence of Honourable Members for not accepting their very kind offers of hospitality. As we all know, this has been a very busy month.

Finally, Your Excellency, may I say again what a great privilege it has been for me to play my part in this remarkable Colony and to wish you and all Honourable Members our very best wishes for the future. We have been very happy indeed in Hong Kong and it was our hope that we might have been permitted to serve the Colony for a longer period.

Once again, Your Excellency, thank you very much for all you have done for us, and for your many kindnesses.

### **ADJOURNMENT**

HE THE GOVERNOR: —That concludes the business for to-day, gentlemen. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL: —May I suggest this day two weeks, Sir?

HE THE GOVERNOR: —Council stands adjourned until this day two weeks.