

立法會
Legislative Council

LC Paper No. CB(2)860/01-02
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

Minutes of meeting
held on Friday, 14 December 2001 at 10:45am
in the Chamber of the Legislative Council Building

- Members Present** : Hon IP Kwok-him, JP (Chairman)
Hon Andrew CHENG Kar-foo (Deputy Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon TANG Siu-tong, JP
Hon Henry WU King-cheong, BBS
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
- Members Absent** : Hon Albert HO Chun-yan
Hon Emily LAU Wai-hing, JP
Hon LAU Wong-fat, GBS, JP
Hon MA Fung-kwok
- Member Attending** : Hon Audrey EU Yuet-mee, SC, JP

Public Officers : Item IV
Attending

Ms CHANG King-yiu
Deputy Director of Administration

Ms Maggie WONG
Assistant Director of Administration

Mr David WONG
Principal Assistant Secretary for Security

Mr CHAN Chun-yan
Assistant Commissioner (Operations),
Correctional Services Department

Mr YING Kwok-ching
Senior Superintendent (Penal Operations),
Correctional Services Department

Item V

Mr NG Sek-hon, JP
Deputy Secretary for Home Affairs (3)

Mr Paul LEUNG, JP
Director of Leisure and Cultural Services

Ms Lolly CHIU, JP
Deputy Director of Leisure and Cultural Services
(Administration)

Miss CHOI Suk-kuen
Deputy Director of Leisure and Cultural Services (Culture)

Mr HO Wing-him
Deputy Director of Leisure and Cultural Services
(Leisure Services)

Item VI

Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs (2)

Attendance by Invitation : Hong Kong Press Council

Prof Edward K Y CHAN
Chairman
(also President of Lingnan University)

Mr CHOI Chi-sum
Exco member
(also General Secretary of the Society for Truth and Light)

Mr YAU Shing-mu
Exco Member
(also Executive Chief Editor of Hong Kong Economic Times)

Mr David WONG
Director-General

The Law Reform Commission of Hong Kong

Dr John BACON-SHONE
Member of the Law Reform Commission Privacy sub-committee

Mr Godfrey K F KAN
Secretary of the Law Reform Commission Privacy sub-committee

Hong Kong Journalists Association

Ms MAK Yin-ting
Chairperson

Mr Cliff BALE
Convenor of Press Freedom Sub-Committee

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Miss Irene MAN
Senior Assistant Secretary (2)9

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I. Confirmation of minutes
[LC Paper No. CB(2)654/01-02]

The minutes of the meeting held on 9 November 2001 were confirmed.

II. Information paper(s) issued since the last meeting

2. Members noted that no information paper had been issued since the last meeting.

III. Items for discussion at the next meeting
[Appendices I and II to LC Paper No. CB(2)667/01-02]

3. Members agreed that the following items would be discussed at the next regular meeting scheduled for Friday, 11 January 2002 at 10:45 a.m.:

- (a) intermediary body for the collection of maintenance payments; and
- (b) provision of community facilities.

4. Members further agreed to include the following items into the list of discussion items for future meetings -

- (a) scheme for contracting out cultural, arts, recreational and sports services and venue management (as proposed by Mr Albert CHAN);
- (b) Sports Policy Review (as proposed by Mr Andrew CHENG); and
- (c) briefing on relevant data of the 2001 Population Census on the policy area of home affairs eg. number of ethnic minorities (as proposed by Ms Cyd HO).

[Post-meeting note: With the concurrence of the Panel Chairman, the scheme for contracting out cultural, arts, recreational and sports services and venue management instead of the intermediary body for the collection of maintenance payments would be discussed at the next regular meeting.]

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IV. Review of the visit system of the Justices of the Peace

[LC Paper Nos. CB(2)667/01-02(01) and (02)]

5. At the invitation of the Chairman, Deputy Director of Administration (DD of A) briefed members on the salient points of the information paper. She said that the objective of the visit system of the Justices of the Peace (JPs) was to ensure that the rights of the inmates were safeguarded through a system of unannounced visits and receipt of complaints by visiting JPs. Therefore, apart from the channels of redress through the Ombudsman, Legislative Council (LegCo) Members and the Chief Executive in writing and the channels within the prison, the JP visit system provided another independent redress mechanism for the inmates to complain to the visiting JPs in person.

6. DD of A advised that the Prison Rules had stipulated the inspection and visiting duties of visiting JPs. For example, visiting JPs would have to give a report on the prison management matters and the complaints received after each visit so that the Correctional Services Department (CSD) might undertake investigations and the follow-up actions accordingly. A copy of the report would be filed with the JP Secretariat for the purpose of monitoring the progress of CSD's work. Prior and simple arrangements by the JP Secretariat was necessary so that visiting JPs were able to exercise the full range of inspection and visiting duties under the Prison Rules. She added that all JP visits were surprise in nature as the date and time of such visits were not made known to the institutions beforehand. The visits were further enhanced by encouraging the Non-official JPs to exercise their choice of pairing with either an Official JP or Non-official JP.

Additional visits

7. The Chairman said that he was a JP. He enquired about the number of additional visits which had been conducted by visiting JPs so far. DD of A responded that under the JP visit system, one JP visit would be arranged to a prison once every fortnight. No additional visit by visiting justices had been recorded. However, individual JPs had carried out five surprise visits to institutions since 1997 as person of respectability under Prison Rule 77(9) but such visits were outside the JP visit system. She explained that the Commissioner of Correctional Services (C of CS) could permit under Prison Rule 77 (9) persons of respectability to view the institutions under his control at such time as he might approve.

8. Ms Cyd HO said that she appreciated that the Administration had responded positively to improve the JP visit system. She sought clarification about the arrangement for persons of respectability to visit a CSD institution.

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9. DD of A responded that if individuals, including JPs, chose to visit a CSD institution under Prison Rule 77(9) as persons of respectability, he should seek permission from C of CS and conduct the visit within the time as allowed by C of CS. In that case, he would not be conducting a statutory JP visit under Prison Rule 222. The requirement to perform the full range of inspection and visiting duties such as handling of complaints and making a report would only apply to visiting JPs arranged under Prison Rule 222.

10. Mr James TO pointed out that a visiting JP who wished to visit the institution just to verify a particular complaint received from an inmate might not wish to inspect the routine activities of the inmates or fulfill the full range of duties assigned to visiting JPs. The Administration should consider introducing relevant legislative amendments or administrative measures to facilitate visits of such nature by exempting the JPs from fulfilling all the duties so required. As for those visiting the institution as persons of respectability, the Administration should consider expanding their power so that these persons could handle complaints.

11. DD of A responded that the Prison Rules enabled a visiting JP to hear, investigate and handle complaints from inmates and to make a report after the visit. Although visiting JPs would be advised on their full range of inspection duties, it would be up to individual JPs to decide on the priority areas they wished to focus on for a particular visit.

Number of visiting JPs for each prison visit

12. The Chairman asked whether it was feasible to allow more than two JPs to visit an institution at a time. DD of A advised that the number of JPs for each prison visit should be two under the Prison Rules. While the Administration did not see the merit of having a group of JPs for one visit, it would give special consideration to any special request in the light of the particular circumstances of the case. She stressed that by virtue of Prison Rule 117, an officer not below the rank of Chief Officer of CSD (i.e. at or above the level of deputy head for bulk of the penal institutions) should accompany the visiting JPs throughout their visits. It might not be practicable for too many JPs to visit an institution at the same time as it could create a burden on the institution management especially as it sought to fulfil the visit requirements and maintain good discipline and order at the institutions at all times.

13. Mr Tommy CHEUNG said that he was a JP. He enquired about the arrangement for the pairing of Official and Non-official JPs in conducting a visit. DD of A confirmed that the Administration had effected legislative amendments in 2000 to enable Non-official JPs to pair with either an Official or a Non-official JP for visits to institutions.

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Impromptu visits by JPs

14. Ms Cyd HO asked whether JPs could conduct impromptu visits in the evening. DD of A replied that JPs were advised to conduct their visits during the daytime from 9 am to 5 pm when the full programme of the inmates' activities could be inspected and the institution heads were on duty to accompany the visiting JPs throughout their visit as required. She explained that the routine activities of inmates ceased after 5 pm and it would be difficult to locate books or registers for visiting JPs to inspect when the registry staff were off duty. DD of A added that a late night visit would interrupt the inmates' resting time.

15. Mr James TO was of the view that the Administration should appreciate that a JP might need to conduct impromptu visits at night to verify a particular kind of complaint.

16. DD of A advised that the manpower deployment of the institution after 5 pm would be scaled down. The ratio between the numbers of CSD staff and inmates at night was much lower than that of the daytime. Moreover, there would only be the Chief Officer as the most senior staff to oversee the lock up of the whole institution. If the Chief Officer were to accompany a JP during the late evening visit, he would not be able to take care of his duties of the institution. Therefore, the Administration would require the visiting JPs to explain the need for a visit outside reasonable time and give sufficient prior notice to the Administration Wing so that special management measures could be arranged beforehand.

17. Mr James TO queried the need to assign an officer not below the rank of Chief Officer to accompany visiting JPs. He also urged the Administration to further enhance impromptu visits by JPs to correctional institutions. DD of A reiterated that if the JPs were already at the door of a particular institution that they wished to visit, standing administrative arrangements were in place for the JP Secretariat to process the request expeditiously and appoint the JPs as visiting JPs for the particular institution. It would not take more than 30 minutes. She pointed out that the Administration had introduced various changes to improve the JP visit system and more time would be needed to prove the effectiveness of the present system.

18. Mr Tommy CHEUNG said that as a visiting JP, he had only visited CSD institutions from Monday to Friday. He was also concerned that the surprise element of JP visits, particularly those to institutions located in outlying islands, would be diminished because of the need to make prior transportation arrangements.

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19. DD of A responded that as inmates would carry out their normal activities from Monday to Saturday, JPs would not be able to observe their normal routine if a visit was made on Sunday. As regards the transportation arrangements, DD of A explained that JPs could choose to arrive at institutions located in urban areas or in the New Territories by themselves or by the vehicle arranged by an Official JP. In either case, the Administration had reminded visiting JPs not to give any prior notification to the institution concerned. If the JPs were visiting the institutions on the outlying islands by helicopter, they could request the District Office concerned to arrange transportation from the helicopter pad or notify the institution concerned of the need for transportation only when they landed. She stressed that JPs should maintain the principle that the date and time of their visit was kept in confidence before their arrival at the institution.

V. Review of the supernumerary Deputy Director (Administration) and Assistant Director (Finance) posts in the Leisure and Cultural Services Department

20. Members noted the Administration's paper on "Review of the Supernumerary Deputy Director (Administration) and Assistant Director (Finance) Posts in the Leisure and Cultural Services Department" [LC Paper No. CB(2)278/01-02(01)]. Members also noted that the Administration had provided supplementary information [LC Paper No. CB(2)667/01-02(03)] as requested by members at the Panel meeting on 9 November 2001 to facilitate further consideration of the staffing proposal.

21. At the invitation of the Chairman, Director of Leisure and Cultural Services (D of LCS) emphasised that LCSD did not propose to create a new post of Deputy Director (Administration) (DD(A)) but sought to retain this supernumerary post for another three years and to replace the supernumerary Assistant Director (Finance) (AD(F)) post by a permanent Chief Treasury Accountant (CTA) post with effect from 1 January 2002. The AD(F) post would be downgraded to the CTA post from D2 to D1. He pointed out that since the dissolution of the two municipal councils, the directorate establishment had already decreased by 29.4% from 17 to 12 posts. He urged members to support the staffing proposal.

Supporting views

22. Mr Andrew WONG said that he considered the staffing proposal reasonable for 5 directorate posts had already been reduced from the LCSD's establishment since the dissolution of the former municipal councils. Given the current ratio of directorate to non-directorate posts in LCSD was 1:728 which was considerably

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smaller when compared with the position in the former municipal services departments which was 1: 590, Mr WONG expressed support for the proposal.

23. Miss CHOY So-yuk noted that the overall number of non-directorate posts had been decreased by 12.9% and that of directorate by 29.4% since the dissolution of the former municipal councils. She recognised that LCSD had been trying to save manpower since its establishment. Miss CHOY said that to meet the public's demand for better services and accountability, LCSD should have sufficient human resources to meet the need. She therefore supported the proposal.

24. Mr NG Leung-sing also expressed support for the staffing proposal. He said that in order to provide satisfactory services to the public, LCSD had a genuine need to extend the duration of the DD(A) post and establish a permanent CTA post.

25. Dr TANG Siu-tong said that as there were considerable numbers of outstanding capital works projects of the former municipal councils needed to be followed up, there was a need to extend the supernumerary DD(A) post for a limited period. He considered that an extension of two years would be sufficient since one of the objectives of dissolving the former municipal councils was to save manpower. Dr TANG further referred to Enclosure 2 to LC Paper No. CB(2)278/01-02(01) and said that one Deputy Director should be made responsible for following up the progress of initiatives and reform measures. D of LCS said that LCSD aimed at speeding up the progress of works projects and would increase the number of works projects in the years ahead. It was estimated that over \$8 billion would be spent in the coming five years on works projects. However, he would welcome members' views on the period of extension for the DD(A) post.

26. Dr TANG Siu-tong asked whether it would be feasible to replace the AD(F) post with a rank lower than that of a CTA post.

27. Deputy Director of Leisure and Cultural Services (Administration) (DD of LCS(A)) advised that LCSD had a recurrent budget of some \$5,220M and Non-works capital budget of \$152.7M covering a wide range of expenditure and revenue transactions. Apart from other government departments with a similar size of financial scale, like the Food and Environmental Hygiene Department (FEHD), smaller departments such as Department of Health, Marine Department and the Civil Aviation Department also had CTAs to handle their financial matters.

Opposing views

28. Mr Tommy CHEUNG said that the Liberal Party objected to the staffing proposal. While Mr CHEUNG appreciated the LCSD's effort in reducing five of its directorate posts, he considered that reduction of directorate posts should be the natural result of dissolving the former municipal councils. He pointed out that the Administration had all along claimed that dissolution of the former municipal councils would streamline unnecessary work and avoid duplication of manpower. Mr CHEUNG also expressed dissatisfaction that the Administration always tended to pave the way for opening permanent posts by creating supernumerary ones in the beginning and sought to keep extending the duration of supernumerary posts.

29. Mr Tommy CHEUNG said that when he was a member of the Urban Council, he had observed many duplications of posts in the former Urban Services Department in respect of the provision of cultural and leisure services. He stressed that the Liberal Party did not object to the staffing proposal simply because it would not support any increase in directorate post. He actually failed to see any genuine need for the posts requested in the proposal.

30. D of LCS explained that the AD(F) post was initially created on supernumerary basis pending a job review to ascertain the need for a permanent post. The job review had concluded that a permanent post was necessary. However, LCSD agreed to downgrade it to a CTA rank with due consideration to the economic downturn. He reiterated that LCSD was justified to have a permanent CTA post given the scale of the financial control of the department. D of LCS also pointed out that it would not be appropriate to draw direct comparison between the establishment of LCSD and that of the former municipal services departments because the two had different modes of operation. He added that LCSD had to take over a lot of policy work after the dissolution of the two municipal councils.

31. Mr Andrew CHENG observed that LCSD was currently expanding the number of directorate posts while confining the downsizing to the lower ranks. For instance, the total number of directorate posts of LCSD and FEHD had outnumbered that of the two former municipal services departments. As a result, the objective of saving manpower upon the dissolution of the former municipal councils as undertaken by the Administration could hardly be fulfilled. As the Democratic Party had objected to the dissolution of the councils in the first place, it would be difficult for the Party to support the staffing proposal. Given the economic downturn, he considered it high time for LCSD to review the whole directorate structure instead of reverting to LegCo every now and then for extending the duration of posts. Given the fact that the planning and implementation work of capital works projects would be carried out on an on-

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going basis, he also suggested merging the DD(Culture) and DD(Leisure Services) posts into one if the Administration considered the DD(A) post was essential to oversee the works projects ahead.

32. Deputy Secretary for Home Affairs (3) (DS(HA)3) said that LCSD had saved a lot of manpower ever since the dissolution of the former municipal councils. He remarked that the Administration had been very restrained in putting forward the staffing proposal. DS(HA)3 stressed that there were a lot of works to be re-organised after the dissolution of the former municipal councils. It was also the community's aspiration to expedite the progress of the outstanding capital works projects of the former municipal councils. As the public had been more demanding on the standard of services, LCSD needed sufficient manpower to provide satisfactory services to the public.

33. D of LCS clarified that the 17 directorate posts of the former municipal services departments and the 12 directorate posts of LCSD were both related to cultural and leisure positions only, so there was an actual decrease of 5 directorate posts.

34. Mr Andrew CHENG said that he was not convinced. He pointed out that many directorate posts of the former municipal services departments were duplicated and should have been merged. He considered that it would only be meaningful to compare the directorate establishment of the former municipal services departments with LCSD and FEHD together. He expressed concern that it was the Administration's tactic seeking to convert supernumerary posts into permanent ones if circumstances permitted in the future. Mr CHENG maintained that the Home Affairs Bureau (HAB) should review the directorate structure of LCSD comprehensively in order to ascertain the manpower needs on a permanent basis, i.e. whether two permanent DD posts would suffice.

35. Mr Albert CHAN pointed out that LCSD and FEHD had 26 directorate posts as compared with 25 directorate posts in the former municipal services departments. On the contrary, the reduction for non-directorate posts was very significant. The number of non-directorate posts dropped from about 10 000 before the dissolution of the municipal councils to 8 735 at present. The drop represented a decrease of 10% in total. The present staffing proposal indicated that LCSD had no intention to downsize its establishment of the upper rank.

36. Referring to Appendix 3 to LC Paper No.CB(2)667/01-02(03), Mr Albert CHAN pointed out that certain directorate posts were bound to be deleted, such as the Secretary to the Provisional Municipal Councils and the Deputy Principal Government Counsel as LCSD had no operational need to retain these posts, yet the overall number of directorate posts in LCSD and FEHD had increased from 25

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to 26. Mr CHAN considered that instead of comparing its establishment with that of other departments, LCSD should focus on its actual manpower need. In general, the Administration should apply a consistent principle in determining the size of the staff establishment. It was unfair that the number of lower rank posts had been cut whereas that of higher rank was proposed to be increased. He therefore would not support the staffing proposal.

37. D of LCS did not agree that LCSD was only reducing lower rank posts because five directorate posts had been reduced since the dissolution of the two municipal councils. Regarding the change in the number of non-directorate posts, he clarified that LCSD had not reduced them deliberately since some vacant posts had simply been deleted and some staff had left the department either by joining the Voluntary Retirement Scheme or by natural wastage.

38. Mr Albert CHAN pointed out that there was also natural wastage in the directorate rank but vacant directorate posts were soon filled. He had received complaints from junior staff of LCSD alleging that they were required to shoulder more work as vacant posts in their division would not be filled.

39. Ms Cyd HO held the view that the workload of LCSD should have reduced significantly after the dissolution of the two municipal councils because the department was not required to report to elected councils and to be accountable to the public. She said that the present situation was not satisfactory. Unless LCSD made an effort to enhance its transparency and accountability, she was not ready to support the staffing proposal. In this connection, she requested that LCSD should undertake to enhance its transparency and accountability by the following ways:

- (a) LCSD would invite District Council (DC) members to its meetings and these meetings should be open to the public and the media;
- (b) the arrangement to hold monthly tea gatherings for the discussion of cultural policies should be formalised and public participation should be allowed; and
- (c) LCSD should provide LegCo, DC and the public with a quarterly report on its progress of work and any plan to introduce new policies.

40. Besides, Ms Cyd HO said that after the Culture and Heritage Commission (CHC) had published a consultation paper in March 2001, it planned to consult the public on policy proposals in the first half of 2002. She pointed out that the recommendations of CHC might have implications on the manpower resources of LCSD.

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41. In reply, D of LCS said that if CHC's recommendations were adopted by the Administration, LCSD would comply accordingly. Regarding the transparency and accountability of LCSD, he emphasised that LCSD, as other government departments, was subject to the monitoring by the bureau concerned, LegCo, DCs, the Audit Department, the Ombudsman and the Independent Commission Against Corruption etc. LCSD was also ready to report to the Panel on issues of concern upon request. Nevertheless, he undertook to consider Ms HO's suggestion on the arrangement of the tea gatherings. He would also discuss with HAB about the frequency of producing work report.

Clerk

42. The Chairman said that the Establishment Subcommittee (ESC) would discuss the staffing proposal at its meeting on 16 January 2002, and relevant minutes of the meeting would be provided for ESC.

VI. The Consultation Paper of the Hong Kong Press Council on qualified libel privilege

43. Members noted that the LegCo Secretariat had prepared a background paper which provided information on the formation and composition of HKPC and gave an account of past discussions relating to HKPC and relevant issues held by LegCo Members since the first term of LegCo [LC Paper No. CB(2)667/01-02(06)]. Members also noted that the Society of Publishers in Asia had made a written submission on the draft bill proposed by HKPC [LC Paper No. CB(2)667/01-02(08)].

Meeting with deputations

The Hong Kong Press Council (HKPC)
[LC Paper Nos. CB(2)667/01-02(04) and (05)]

44. Referring to the HKPC's consultation paper on qualified libel privilege and the relevant draft bill, Professor Edward K Y CHAN, Chairman of HKPC, made the following points -

- (a) HKPC had taken into the views of the industry in drafting the bill. The Lingnan University had conducted an opinion survey to ascertain the industry's views on media ethics and self-regulatory mechanism. 55% of the respondents had agreed to set up a self-regulatory regime while only 23.7% indicated objection.

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[The survey report provided by HKPC was tabled at the meeting and subsequently circulated to members vide LC Paper No.CB(2)733/01-02(01).]

- (b) HKPC supported the principle of press freedom but any kind of freedom should be subject to certain checks and balances. As no professional qualifications were required to practice in the press industry, apart from a monitoring mechanism, a channel of redress should be provided for the public against mal-practices of the press industry.
- (c) The draft bill only sought for a very limited qualified privilege. At present, newspapers with about 70% of readers had not joined HKPC and HKPC needed protection against defamation action in the process of making comments in adjudication because of the possible high legal cost involved. Although the Hong Kong Journalists Association (HKJA) had commented on the conduct of the press in handling complaints, most newspapers were unwilling to publish the HKJA's result of investigation for fear of legal action.
- (d) Once the bill was enacted, HKPC would be subject to LegCo's monitoring which could monitor HKPC in exercising its powers. HKPC had not sought the power to impose any fine, compensation or cost or to order suspension of publication.
- (e) As past experience had shown that self-regulatory mechanism of the press industry was not effective, HKPC saw the need to become a statutory self-regulatory body which was independent from the Government and comprised members of the industry.

The Law Reform Commission of Hong Kong (LRC)

45. Dr John BACON-SHONE, member of the LRC Privacy Sub-committee, pointed out that the Privacy Sub-committee of the LRC had previously proposed for public consultation the creation of a Press Council for the Protection of Privacy in order to address the concerns over invasion of privacy in the process of news reporting. The grounds for complaints as proposed under the draft bill covered more than invasion of privacy by the press. He said that it was clear that the public was not satisfied with media intrusion into privacy and the question was how to address the problem. The Privacy Sub-committee was in the process of making the final proposal to LRC and was ready to listen to views of LegCo Members and the public.

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Hong Kong Journalists Association (HKJA)
[LC Paper No. CB(2)667/01-02(07)]

46. Miss MAK Yin-ting, Chairperson of HKJA said that HKJA was strongly opposed to the HKPC's proposal for setting up a statutory press council on the following grounds -

- (a) A statutory press council would threaten press freedom and free flow of information, and would open the door to government intervention.
- (b) HKPC's proposal had ignored the important experience of many overseas press councils. Many countries had been upholding the principle of self-regulation and rejected the idea of a statutory regulatory mechanism to improve the ethical standards of the press industry.
- (c) It would be unfair to empower HKPC to force its non-members to abide its rules and regulations. HKPC should, however, bring non-members into its fold and strengthen its representation status.
- (d) The number of libel lawsuits involving the media had decreased since the delivery of the Court of Final Appeal judgment in respect of the case of *TSE Wai-chun v CHENG & Another*. Apart from the huge legal costs involved in that case, it was because the freedom of speech was given a broader room of protection in the judgment. HKJA suggested that the proper way forward would be to ask the Government to grant legal aid for defamation actions. HKJA further suggested that the cost for such legal aid could be reduced by requesting the return of a portion of the compensation awarded to the Legal Aid Department or setting the maximum amount of compensation to be awarded for each case.

Discussion

47. Mr Andrew CHENG said that the Democratic Party had set up a subcommittee to monitor the mal-practices of the media industry on the basis of the existing legal framework. The subcommittee would propose amendments to improve the Control of Obscene and Indecent Articles Ordinance and make recommendations to enhance the representativeness of the Obscene Articles Tribunal. While the concerns over the ineffectiveness of the self-regulatory mechanism of the press were justified, it was equally important to protect press freedom. Given the relevant overseas experience in democratic countries, Mr CHENG considered that the proper way forward was to improve the existing

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framework to address the problem of mal-practices of the industry instead of setting up a statutory press council. Mr CHENG recalled that the press industry set up HKPC in order to avoid Government intervention, he was worried that the HKPC's proposal might open the door to Government intervention and press freedom would be compromised.

48. Chairman of HKPC said that he did not consider that setting up a statutory press council would invite Government intervention or compromise press freedom. He stressed that there was a need for a more effective regulatory mechanism for the press industry but he failed to see there was much room left under the existing legal framework to make improvements. However, HKPC had an open mind on the issue and would be ready to consider any feasible alternative to address the problem of mal-practices of the press such as amending the Defamation Ordinance.

49. Ms Cyd HO was of a strong view that press freedom was not a privilege of the industry and public interest was at stake as far as the right to know was concerned. As such, the issue should not be considered only from the industry's perspectives. Ms HO noted with concern that the draft bill as presently worded seemed to provide for various privileges for HKPC such as any candidate who was proposed to be admitted as a public member needed to be nominated by at least two press members, the Code of Conduct could be amended by not less than three quarters of all its press members, and HKPC could only be sued as a body corporate. She therefore requested HKPC to clarify whether it only sought to have immunity from libel action. Ms HO considered that HKPC should explain clearly to the public the implications of the privileges it sought in the draft bill.

50. Chairman of HKPC said that he agreed with Ms Cyd HO that the opinions of both the industry and the public should be considered in deciding whether a statutory press council should be set up. HKPC would therefore conduct an opinion survey to ascertain the views of the public. Responding to Ms HO's query about the membership of the proposed statutory press council, Chairman of HKPC explained that it was important to have a balanced composition of press and public members in HKPC so as to maintain its self-regulatory nature for the industry. He pointed out that the draft bill sought to balance the interest of all parties and HKPC would welcome any suggestion to amend the bill as appropriate.

51. Mr CHOI Chi-sum, Exco member of HKPC was of the view that different sectors of the community such as parents, teachers and social workers should be consulted on the draft bill. He pointed out that as many surveys had reflected the public's dissatisfaction at the mal-practices of the press, there should be an effective mechanism to redress their grievances. However, the public was unable to take legal action against the mal-practices of the press because of the cost involved. He said that members should put forward other effective and economic

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means to address the problem if they did not consider the proposal of a statutory press council appropriate.

52. Mr YAU Shing-mu, Exco member of HKPC said that he appreciated members' concern about the need to protect press freedom. However, it was also important to protect freedom of expression. He pointed out that the public and frontline staff of the press industry had reservations about criticising other press agencies publicly for fear of legal action. In order to alleviate such fear and remove the hindrance to freedom of expression, making HKPC a statutory body and giving it the qualified libel privilege would be a way to address the problem. As a member of the industry, he objected to the LRC's recommendation to set up a statutory press council which would be empowered to impose sanctions.

53. Chairman of HKJA said that she could not agree with the HKPC's claim that HKPC did not seek power of sanction. She pointed out that the draft bill provide HKPC with the power to censure an offending newspaper and to require the offending newspaper to publish the censure and an apology as HKPC considered appropriate. She took the view that HKPC should not be afraid of legal challenge if it had been fair and honest in the process of adjudication.

54. Ms Audrey EU referred to paragraphs 2.3 and 2.7 of the survey report and said that most respondents supported strengthening the self-regulatory mechanism by the industry rather than setting up a statutory monitoring body. Ms EU considered that HKPC should not only take the majority view of the respondents in paragraph 2.9 as an indication of support for setting up a statutory press council. It was clear from the survey report that most respondents had only considered a statutory monitoring body as an alternative.

55. Ms Audrey EU also expressed concern that a large measure of subjective judgment was allowed in adjudicating complaints about indecency and sensationalism. She queried whether HKPC was able to make such a judgment.

56. Chairman of HKPC agreed with Ms Audrey EU that most respondents to the survey preferred to have an effective self-regulatory mechanism. However, the mechanism was found not effective and it was opportune to consider other alternative.

57. Chairman of HKJC said that as HKPC had only been established for a year, it might be too hasty to conclude that the self-regulatory mechanism was not effective. She pointed out that the industry's efforts to improve standards should not be brushed aside and some recent improvements had been made. Instead of imposing a statutory monitoring body, it was necessary to allow more time for the self-regulatory mechanism to perform.

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58. Mr NG Leung-sing considered that the existing self-regulatory mechanism of the industry was not effective to alleviate the public's concerns over the mal-practices of the press. He queried whether HKJA had exercised fair judgement in handling complaints against the industry. Mr NG further asked why HKJA would expect the public to be silent if HKPC enjoyed immunity from legal action.

59. Chairman of HKJA responded that HKJA had all along made fair and objective judgement on the complaint cases received. Yet, the matter should be left to the public to assess. HKJA was afraid that the HKPC's proposal would have a chilling effect on the freedom of expression because while the council was granted qualified libel privilege and could express their comments freely, the general public had to be held liable personally for criticisms against the press without any protection. In that case, the general public would be deterred from expressing their views freely.

60. Mr Cliff BALE, Convenor of Press Freedom Sub-Committee of HKJA supplemented that the ethics committee of HKJA had been operating and taking public complaints for some time without any legal immunity. The committee simply took the precautions of going to their legal advisers before giving forthright comments or judgements, yet it had not been sued by any press agencies. He would appreciate if HKPC could adopt a similar approach that no statutory powers would be required in order to gain immunity from legal action.

61. Ms Cyd HO said that she could not support the HKPC's draft bill because she failed to see why only HKPC should enjoy immunity from legal action. she considered that expanding the coverage of legal aid to include defamation cases would be the proper way forward.

62. Mr CHOI Chi-sum of HKPC said that even if legal aid would be granted for defamation cases, the public might not wish to pursue the complaints through legal means. He pointed out that the problem of mal-practices of the press industry had been very serious and it was clear that a self-regulatory mechanism was unable to address the problem. Mr CHOI urged LegCo Members not to rule out the idea of a statutory press council completely. HKPC was willing to refine the proposal as appropriate. Mr CHOI further clarified that the draft bill did not preclude the offending newspaper from publishing its own defence. HKPC considered it important that other newspapers should be allowed to publish the HKPC's censure without the fear of getting involved in any legal liabilities.

63. Mr Andrew WONG said that before giving views on the draft bill, it was important to identify whether there was a problem regarding the self-regulatory

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mechanism in the industry. If HKPC was able to raise the standard of the industry, the problem might have already been solved.

64. Having noted the views expressed by members at the meeting, Chairman of HKPC said that it was generally agreed that there were problems with the media ethics. He considered that since the redress system of HKJA had proved to be ineffective, a breakthrough would be required to deal with the situation. The HKPC's proposal might not be the best solution to the problem and other suggestions to achieve the same goal would be welcomed.

65. At the invitation of the Chairman, Principal Assistant Secretary for Home Affairs (2) clarified, in response to an earlier comment made by a member, that the Administration was not in any way involved in formulating the proposal. The Administration was aware that the community had different views on the subject. It kept an open mind on the draft bill. Its stand was that the best way to deal with the concerns of the public about the media would be for the industry itself to establish an effective self-regulatory mechanism.

66. The Chairman thanked representatives of HKPC, LRC, HKJA and the Administration for attending the meeting.

VII. Any other business

67. There being no other business, the meeting ended at 1:20 p.m.

Council Business Division 2
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