

立法會
Legislative Council

LC Paper No. CB(2)667/01-02(06)

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

Background paper prepared by Legislative Council Secretariat

Hong Kong Press Council

Purpose

The Hong Kong Press Council (HKPC), which was incorporated on 23 June 2000 as a company limited, is a self-regulatory body for the newspaper industry in Hong Kong to handle complaints from the public. Recently, HKPC has put forward a proposal seeking statutory status and qualified privilege to be exempt from liability for defamation.

2. This paper provides background information on the formation and composition of HKPC. It also gives an account of past discussions relating to HKPC and relevant issues held by Legislative Council (LegCo) Members since the first term of LegCo.

Formation of HKPC

3. The Law Reform Commission (LRC) published in August 1999 the Consultation Paper on the Regulation of Media Intrusion prepared by its Privacy Subcommittee. The Paper expressed, inter alia, concern over invasion of privacy in the process of news reporting. LRC recommended the establishment by law of a body to be known as the Press Council for the Protection of Privacy. This proposal aroused immediate and widespread debate in the newspaper industry and the community about the issues of freedom of the press, media intrusion and self-regulation of the media. (Discussion of the LegCo Panel on Home Affairs on the LRC's proposal is detailed in paragraphs 10 and 11 below.)

4. Some newspapers and journalists' associations held a meeting in November 1999 to discuss the need for a self-regulatory body to address the problem of invasion of privacy in the process of news reporting. In order to maintain freedom of the press and avoid Government intervention, the industry decided to set up HKPC on 25 July 2000 to deal with public complaints against local newspapers. Initially,

HKPC only dealt with public complaints arising from intrusion of privacy. Since July 2001, HKPC has expanded its remit to also handle complaints concerning prurience, indecency and sensationalism.

Composition of HKPC

5. HKPC has 27 members including 15 Public Members and 12 Ordinary Corporate Members. The membership list is in **Appendix I**. The Memorandum and Articles of Association of HKPC stipulate that both the chairman and vice-chairman should not be engaged in the newspaper industry, and that Public Members shall comprise more than 50% of the total membership of the Council. HKPC has at present adopted the Journalists' Code of Professional Ethics, which was promulgated in June 2000 jointly by Hong Kong Journalists Association, the Hong Kong Federation of Journalists, the Hong Kong News Executives' Association and the Hong Kong Press Photographers Association, as a code of ethics and guidelines for local journalists in carrying out their professional duties. The Code is based on the Code of Ethics previously adopted by the Hong Kong Journalists Association.

Main points of relevant past discussions held by LegCo Members

6. The LegCo Panel on Home Affairs is responsible for monitoring the Government's policies concerning freedom of the press and protection of privacy. The Panel has closely monitored the issue of professional ethics of the media and self-regulation of media industry.

1998-1999 legislative session

Special meeting of the LegCo Panel on Home Affairs on 25 November 1998

7. The LegCo Panel on Home Affairs discussed professional ethics of journalists and improper reporting by the media with deputations and the Administration at its special meeting on 25 November 1998. While representatives of journalists' associations and news practitioners expressed support for setting up a media monitoring forum, they stressed that such a forum should be set up at the industry's initiative without Government involvement or participation of legislators.

8. The Administration indicated that the Government had no intention to legislate or set up a new mechanism to monitor media behaviour. Most members agreed that there should be minimal regulation of the media by the Government and that a monitoring mechanism should be set up either by the industry or other organisations to influence the media. A member, however, had expressed doubts about the effectiveness of promoting media ethics by a public forum, since journalists had to follow orders of their bosses whose primary consideration was circulation figures or audience ratings. The minutes of the special meeting are in **Appendix II**.

Special meeting of the LegCo Panel on Home Affairs on 26 April 1999

9. The LegCo Panel on Home Affairs discussed the issue of professional ethics of newspapers with deputations and the Administration at its special meeting on 26 April 1999. Members expressed concern about the professional ethics of newspapers in view of the deterioration of reporting standards and the publication of obscene or indecent articles and photographs. A member queried the effectiveness of existing self-regulatory mechanism such as the Code of Ethics adopted by the Hong Kong Journalists Association in upholding media ethics. An academic suggested that a statutory body to be exempt from regulation of the defamation law should be set up to monitor media ethics. Representatives of journalists' associations and news practitioners were of the view that there should be minimum regulation and minimal governmental control in order to safeguard freedom of expression. They emphasised the importance of public education and public monitoring in upholding media ethics. The minutes of the special meeting are in **Appendix III**.

1999-2000 legislative session

Meeting of the LegCo Panel on Home Affairs on 8 November 1999

10. The LegCo Panel on Home Affairs held a meeting on 8 November 1999 to discuss the Consultation Paper on the Regulation of Media Intrusion with LRC, concern organisations and the Administration. The Research and Library Services Division of LegCo Secretariat also prepared a research report entitled "The Regulation of Media Intrusion of Privacy : the Experiences in Taiwan, the United Kingdom and the United States" (Ref : RL/202/86 issued vide LC Paper No. CB(2)309/99-00(01) dated 5 November 1999) to facilitate members' discussion. Findings of this research show that cases involving intrusion of privacy by the press are resolved through either legal actions initiated by the victims to seek remedies or the self-regulatory mechanism in the three jurisdictions. Although the idea of establishing a statutory press complaints tribunal was floated in the United Kingdom in the early 1990's, it has never been adopted by the Parliament or the Government. Members noted that the Press Council for the Protection of Privacy recommended by LRC is very similar in nature to a tribunal, and is different from those press councils established by the press on their own initiative in these jurisdictions.

11. Some members expressed reservations about the need for the proposed Press Council for the Protection of Privacy since the court could adjudicate cases of media intrusion in the light of existing legislation, e.g. the Personal Data (Privacy) Ordinance, and a statutory press council would have adverse impact on freedom of the press. They urged that the newspaper industry should expedite the progress of putting in place a self-regulatory mechanism in order to address the public's concern about professional ethics of the industry. The minutes of the meeting are in **Appendix IV**.

Council meeting on 17 November 1999

12. Hon Cyd HO moved the following motion on "Education on media literacy" at the Council meeting on 17 November 1999 -

"That this Council urges the authorities to promote education on media literacy across the board so as to foster media self-regulation, and at the same time safeguard freedom of speech and of the press."

Hon Cyd HO expressed the view that setting up of a statutory press council as recommended by LRC would not only compromise the freedom of speech and of the press, but would also leave little room for the media to monitor the administration of the Government. She considered that it was more effective to promote education on media literacy so that the public could exert pressure on the media to exercise self-regulation through their choice as consumers.

13. An amendment was proposed by Hon YEUNG Yiu-chung to Hon Cyd HO's motion calling for the setting up of a self-regulatory mechanism by the media, protection of privacy and preservation public morality. Mr YEUNG considered that education on media literacy was inadequate to address the problems of improper practices of the media and there was a need to set up a self-regulatory mechanism by the media to enhance its professional conduct.

14. An amendment was proposed by Hon Albert HO to Hon YEUNG Yiu-chung's amendment expressing opposition to the establishment of a government-appointed press council. Mr HO was of the view that the establishment was tantamount to having a government press tribunal appointed by the Chief Executive to regulate the conduct of the press. The industry should develop a non-government body to handle complaints so that the public could play a part in supervising the industry.

15. Most of the Members who spoke at the debate expressed opposition to the LRC's recommendation to set up the Press Council for the Protection of Privacy. They urged that the industry should expeditiously set up an effective self-regulatory mechanism in order to address the problems of malpractices of the media. A few other Members, however, had expressed doubts about the effectiveness of a self-regulatory mechanism because not all media agencies would be willing to subject themselves to monitoring by the mechanism and the mechanism might not have the financial capability to deal with litigation cases which would very likely arise in discharging its monitoring functions. One of these Members was of the view that although he had great reservations about the arrangement, it was too early to decide whether there should be a press council established by the Government.

16. The Secretary for Home Affairs, in his speech made during the debate, pointed out that the Government had always held the idea that the best way to improve media conduct was to have an effective self-regulatory mechanism formed by the press.

17. The amendments proposed by Hon YEUNG Yiu-chung and Hon Albert HO were passed. Hon Cyd HO's motion as amended was also carried. The wording of the motion is as follows -

"That this Council urges the authorities to promote education on media literacy across the board, opposes the establishment of a Government-appointed press council and hopes that the media will expeditiously set up an effective self-regulatory mechanism which safeguards freedom of speech and of the press, protects personal privacy and preserves public morality."

Council Business Division 2
Legislative Council Secretariat
11 December 2001

Membership list of the Hong Kong Press Council

Public Members :

Mr AU Pak-kuen
Vice President, Hong Kong Professional Teachers' Union

Prof Johannes M M CHAN
Head of Department of Law, University of Hong Kong

Prof CHAN Man
Journalism and Communication, The Chinese University of Hong Kong

Prof Edward K Y CHEN
President of Lingnan University

CHENG Huan SC, QC

Prof CHENG Kai-ming
Pro-Vice-Chancellor, University of Hong Kong

Miss Ann CHIANG
Chartered President, Hong Kong Young Industrialists Council

Mr CHOI Chi-sum
General Secretary, The Society for Truth and Light

Prof Leonard CHU
Dean, School of Communication, Baptist University of Hong Kong

Arthur Garcia JP

Mr LEUNG Siu-tong
Vice Chairman, Hong Kong Federation of Education Workers

Mr TAI Hay-lap
Member, Education Commission, HKSAR

Mr Melvin WONG
Barrister at Law, Vice President of Hong Kong Performing Artistes Guild

Donald YAP JP

Dr Angelina YUEN
President of Hong Kong Social Workers Association Limited

Ordinary Corporate Members :
(Newspapers/Associations and their Representative)

Ta Kung Pao

Mr HONG Ming-ping
Assistant Chief Editor

China Daily Hong Kong

Mr ZHANG Yifan
Edition Assistant to Editor-in-Chief

Wen Wei Po

Mr WONG Bak-yao
Deputy Chief Editor

Ming Pao

Mr LAU Chun-to
Chief Writer

Hong Kong Commercial Daily

Mr LEE Cho-jat
Chairman

Sing Tao Daily News

Mr LO Wing-hung
Chief Executive Officer

Hong Kong Economic Times

Mr YAU Shing-mu
Executive Chief Editor

Hong Kong Daily News

Mr CHEUNG Wai-tak
Chief Editor

Hong Kong iMail

Miss Fanny FUNG
Deputy Editor

South China Morning Post

Mr LAU Chi-kuen
Assistant Managing Editor

Hong Kong Federation of Journalists

Mr CHIU Wai-piu
Chairman

Hong Kong News Executives' Association

Dr CHEUNG Kwai-yeung
Vice-chairman

立法會
Legislative Council

LC Paper No. CB(2)1400/98-99
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of special meeting
held on Wednesday, 25 November 1998 at 9:00 am
in the Chamber of the Legislative Council Building**

Members Present : Hon CHOY So-yuk (Chairman)
Hon Albert HO Chun-yan (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon Ambrose CHEUNG Wing-sum, JP
Hon Gary CHENG Kai-nam
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon LAW Chi-kwong, JP

Members Absent : Hon Edward HO Sing-tin, JP
Hon MA Fung-kwok
Hon James TO Kun-sun
Hon Christine LOH
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, JP

Member Attending : Hon SIN Chung-kai

Public Officers : Mr John WAN
Attending Principal Assistant Secretary for Home Affairs

Mr Gary Y S YEUNG
Assistant Commissioner for Television and
Entertainment Licensing (Entertainment)

Ms Ava CHIU
Assistant Commissioner for Television and
Entertainment Licensing (Broadcasting)

Mr Eric K LEE
Assistant Secretary for Home Affairs

Attendance by : Hong Kong Journalists Association
Invitation

Mr LIU Kin-ming
Chairman

Mr Cliff BALE

Hong Kong News Executives' Association

Mr Raymond WONG

Mr PAO Wan-lung

Hong Kong Federation of Journalists

Mr CHIU Wai-piu

Hong Kong Press Photographers' Association

Mr SIN Wai-keung

The Society for Truth & Light Ltd

Ms Mary LEUNG LING Tien-wai
Vice Chairman

Mr KWAN Kai-man
Board Member

Mr Alben WONG
Staff member

Television Broadcasts Limited

Mr Stephen C W CHAN
Controller of Programme Division & External Affairs Division

Mr LEUNG Ka-wing
Controller of News and Public Affairs Division

Asia Television Limited

Mr CHAN Shu-hung, Desmond
Corporate Lawyer & Company Secretary

Mr CHAN Wing-hung, Jeffrey
Controller - Programme Acquisition

Mr WONG Yuk-man

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Miss Flora TAI
Senior Assistant Secretary (2) 2

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I. Opening remark

The Chairman welcomed representatives of the deputations and the Administration for attending the special meeting to discuss the professional ethics of journalists and improper reporting by the media. In response to Mr CHENG Kai-nam's enquiry, the Chairman clarified that as the discussion would be on media ethics and improper reporting by the media in general rather than specific incidents of reporting, representatives of individual magazines and newspapers had not been invited to discuss specific recent incidents of unethical reporting. She then invited the deputations to give their views and members to raise questions afterwards. The gist of discussion is summarised in paragraphs 2 - 23.

II. Meeting with deputations

[LC Paper Nos. CB(2)699/98-99 and CB(2)737/98-99]

Hong Kong Journalists Association

2. Referring to a questionnaire survey conducted by Hong Kong Journalists Association (HKJA) among its members, representative of HKJA informed the Panel that 77% of the respondents considered that media ethics were worse or much worse than that 12 months ago. The respondents also believed that media ethics had deteriorated because of keen commercial competition. However, there was little support of setting up a press council and introduction of media ethics legislation. Many respondents considered that HKJA should take a higher profile in monitoring journalists' ethics standards without government or legislature interference. To enhance media accountability, there should be formal channels for the public to lodge complaints and publish their views on media ethics.

3. Chairman of HKJA said that there had been more discussion on media ethics in recent years, and HKJA pledged to take the lead in setting up a media monitoring forum and consult the public in mapping the way forward. The media monitoring forum would operate independently from HKJA and would basically be a forum enhancing greater awareness of media ethics, providing education, exerting pressure on unethical reporting and handling public complaints. He stressed that there should be no involvement of the Government and political personalities including Members of the Legislative Council. The media monitoring forum should consist of people outside the media industry such as teachers, social workers and concerned individuals. Chairman of HKJA said that while HKJA had a ethics committee which was a disciplinary mechanism to receive and adjudicate complaints on media ethics, a public monitoring mechanism would be necessary to strengthen media ethics. To avoid conflict of interest, no member of the mass media should participate in the forum.

Hong Kong News Executives' Association

4. Representative of the Hong Kong News Executives' Association (HKNEA) presented the Association's views on the recent behaviour of some media [LC Paper No. CB(2)737/98-99]. While HKNEA did not support legislation to restrict media behaviour, HKNEA held fast to its belief that any mass medium was a public trust and the proprietors and media workers must be aware of their social responsibility and abide by the ethics. HKNEA was of the view that information consumers should also take an active part in monitoring the media and exposing the latter's shortcomings.

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5. Responding to Mr Andrew CHENG, representative of HKNEA said that they supported the idea of setting up a media monitoring forum as proposed by HKJA, or a media council comprising representatives of the media, on the understanding that the mechanism was the trade's initiative without Government involvement or participation of legislators. It was always HKNEA's position that public monitoring and transparency of the trade were effective tools to uphold media ethics.

Hong Kong Press Photographers' Association (HKPPA)

6. Representative of the Hong Kong Press Photographers' Association (HKPPA) informed members that according to a survey of HKPPA during January 1997 - May 1998, there had been 39 cases of press photographers being attacked or having their films snatched. He pointed out that the figure had doubled when compared to the past, indicating that the public trust in the press was declining. Referring to the recent case of CHAN Kin-hong, the representative said that several press organisations had organised a signature campaign to express dissatisfaction over the unethical means employed by some members of the press in soliciting news on the case. A total of 633 signatures had been collected and published in seven newspapers in form of a statement. Noting that the statement was issued in the names of HKJA, HKNEA, Hong Kong Federation of Journalists (HKFJ) and HKPPA, Ms Emily LAU asked why the Newspaper Society of Hong Kong was not represented. Chairman of HKJA explained that the signature campaign was initiated by news practitioners and therefore the Newspaper Society of Hong Kong was not included.

7. In response to Mr CHENG Kai-nam's enquiry, representative of HKPPA said that he personally was not aware of any press photographer receiving rewards from or preferential treatment by their bosses for taking nauseating photos. In fact, the reputation of the newspaper or press photographer would be adversely affected if they published vulgar or nauseating photographs. In this connection, representative of HKJA drew members' attention to the Ethics of News Photographs issued by HKJA [LC Paper No. CB(2)699/98-99] which set out the criteria for publishing photographs of a violent or vulgar nature. The most important consideration of journalists was whether it was really necessary or appropriate to publish such photos for legitimate reasons.

8. Representative of HKPPA agreed with other deputations that a non-governmental and non-statutory public monitoring mechanism should be set up to exert more influence on the media behaviour. As legislation was already in place to regulate certain aspects of media behaviour (e.g. Control of Obscene and Indecent Articles Ordinance, Defamation Ordinance and Copyright Ordinance), it would not be necessary to impose more legislative control over the media. The representative was of the view that the direction should be to

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remove, rather than increase, legislation that would hinder press freedom. He welcomed the Chief Executive's recent statement that the Government had no intention to set up a monitoring body on the mass media. However, the representative considered it important for the mass media to exercise self-regulation to maintain quality reporting. Interactive communication between the public and the mass media would definitely help the media abide by their code of ethics.

The Society for Truth & Light Ltd

9. Vice-Chairman of the Society for Truth & Light (the Society) briefed members on the Society's views and actions on the recent incidents of unethical reporting by the media[LC Paper No. CB(2)737/98-99]. She stressed that it would be important to educate the public and our second generation about the roles and functions of the mass media so that the public could make demands on the mass media. The Society would continue its efforts in providing a channel for the public to monitor the mass media and make their views known to the mass media and the Government.

10. Responding to the Deputy Chairman, Vice-Chairman of the Society shared her experience in getting news coverage on the Society's activities. She said that the mass media was usually selective and had commercial considerations in their news coverage, and that the Society had experienced difficulties in disseminating their messages to the public through the mass media.

Television Broadcasts Limited

11. Representative of the Television Broadcasts Limited (TVB) said that television news reporting must be factual and objective, and the media also had social and moral responsibilities. He said that TVB had always upheld the following principles of media ethics -

- (a) the news being reported must have an impact on the life of the general public, and the taste or interest of the audience should not be the primary consideration;
- (b) news must be obtained by fair and proper means;
- (c) there should be stringent in-house editorial guideline; and
- (d) there should be a high degree of self-regulation among news reporters and editors.

12. Representative of TVB was of the view that public comments and feedback would be the most effective means to monitor television news

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reporting, and that any disciplinary body of media ethics should only be set up by the trade rather than outsiders. He agreed with the Society for Truth and Light Ltd that public education was important and the public should be encouraged to participate in monitoring the media. The representative, however, reminded members that in discussing media ethics, a distinction should be made between television information/entertainment programmes and television news programmes.

Asia Television Limited

13. Representative of the Asia Television Limited (ATV) briefed members on ATV's statement [LC Paper No. CB(2)737/98-99]. He said that ATV had an internal monitoring mechanism to ensure that its programmes followed the legislation and guidelines issued by the Broadcasting Authority.

Hong Kong Federation of Journalists

14. Representative of the Hong Kong Federation of Journalists (HKFJ) said that HKFJ strongly opposed to obtaining news by unethical means, such as offering monetary rewards to the persons being reported. HKFJ believed that news reporting must be fair, factual and objective. While the mass media enjoyed press freedom, they should be aware of their social responsibility and must exercise self-regulation.

Mr WONG Yuk-man

15. Mr WONG Yuk-man was of the view that most media behaviour was market-driven and that a media monitoring forum or the code of ethics issued by HKJA could achieve little effect in improving the situation of improper news reporting. He said that commercial principles such as circulation figures and audience ratings had always been the principal concern of the media proprietors. He considered that public monitoring groups had only limited achievements in exerting pressure on the media. While political influence was not prominent in Hong Kong and legislation was less stringent on the print media, the media industry was largely driven by the income to be earned by advertisement. It would be more important, therefore, to enhance the quality of the audience or readers in order to exert pressure on the media proprietors to exercise self-regulation.

Discussion

Monitoring mechanism over the mass media

16. Deputy Chairman shared the views of deputations that there should be minimal regulation of the media by the Government and that a monitoring mechanism should be set up either by the trade or other organizations to

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influence the media. However, Mr CHENG Kai-nam expressed doubt on the effectiveness of promoting media ethics by a public forum, since journalists had to follow orders of their bosses whose primary consideration would be the circulation figures or audience ratings. Mr Andrew CHENG shared Mr CHENG Kai-nam's views. In response, Chairman of HKJA said that while HKJA was fully aware of the prevalence of “market-driven journalism”, he believed that it would be a long-term campaign to enhance awareness of and compliance with the media ethics within the trade. It would be necessary to take action now before media ethics further deteriorated.

17. Mr Ambrose CHEUNG commented that there were different levels in the decision-making process of a newspaper or other media when selecting what to be reported, and the decision often involved a balance between social responsibilities and commercial considerations. He expressed doubts on the effectiveness of a public monitoring system in the absence of a reward and punishment mechanism. Chairman of HKJA responded that he would welcome suggestions on how to improve the effectiveness of a public monitoring forum. He was of the view that as mass media was a public trust, profits should not be the only consideration of media proprietors. He hoped the public could be educated to exert pressure on the mass media. Representative of HKNEA considered that public monitoring could have an impact on the media but he would not agree to formalizing the monitoring mechanism or introducing legislation in this respect. Ms Emily LAU remarked that the deputations had not called for legislation on the media ethics. She was more concerned about the establishment of a mechanism to receive and act on complaints concerning media ethics. Representative of HKNEA said that television companies were currently subject to more stringent regulation than the print media, and the former had already established complaint mechanisms. He considered that the public or the audience should have a say in what they would like the media to deliver.

Code of ethics for the media

18. Referring to the code of ethics adopted by members of HKJA, Deputy Chairman asked whether there was a unified code generally accepted by journalists or the media industry. He also asked whether there were any concrete guidelines for the media workers to follow, for example, when reporting student suicides. Representative of HKNEA said that introducing a unified code would run the risk of formalizing a regulatory framework for the media industry, as the move would ultimately lead to legislation restricting press freedom. HKNEA considered that the media should follow some basic principles while different media could adopt different standards within the parameters of existing legislation.

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Information and entertainment programmes

19. Ms Emily LAU expressed concern that the general public might not be able to differentiate a television information and entertainment programme, e.g. “Focus on Focus” or “Hong Kong Today”, from the news programmes since both types of programmes adopted similar reporting approaches. She asked whether reporters of the information and entertainment programmes should also receive similar training as news reporters. Representative of TVB clarified that “Focus on Focus” provided light entertainment rather than hard-stuff news, and the audience should be able to tell the difference. He also confirmed that reporters of information and entertainment programmes were also trained and subject to the code of conduct issued by the Broadcasting Authority. Representative of ATV pointed out that “Hong Kong Today” was a comprehensive information and entertainment programmes which reported on social and topical issues, and they were also subject to the code of conduct of the Broadcasting Authority. He added that there was an internal audit team in ATV to monitor all non-news programmes including advertisements on ATV.

20. In response to Ms HO Sau-lan’s enquiry on whether reporters of the television information and entertainment programmes should also be admitted as members of HKJA, Chairman of HKJA said that admission to HKJA was based on the employer's certification that the applicant was engaged in news reporting, and that HKJA members must abide by the Code of Ethics. In this connection, Mr CHENG Kai-nam also asked about the definition of news reporting. Representative of HKJA responded that there had been some debate on what should be regarded as news reporting and HKJA had adopted a broad definition in this regard. Mr WONG Yuk-man remarked that news practitioners themselves had a very clear concept of news reporting which was different from other factual or feature programmes. Representative of HKNEA said that he personally would not regard reporters of information and entertainment programmes as news reporters. However, all media practitioners should abide by the code of ethics generally.

III. Meeting with the Administration

21. The Chairman then invited the Administration to respond to members' concerns.

22. Principal Assistant Secretary for Home Affairs (PAS(HA)) stated that the Government had all along adopted a policy of minimum regulation of the media in protecting freedom of expression. He stressed that the Government had no intention to legislate or set up a new mechanism to monitor media behaviour. It was Government’s position that education and public monitoring were more effective means to uphold media ethics. He assured members that press freedom had been provided in the Basic Law.

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23. Referring to a deputation's suggestion that Government should step up its efforts and increase manpower resources in monitoring the mass media, Assistant Commissioner for Television and Entertainment Licensing (Entertainment) explained that the Television and Entertainment Licensing Authority (TELA) had deployed sufficient manpower to enforce the relevant legislation, such as the Control of Obscene and Indecent Articles Ordinance. However, issues of public concern often involved the editorial policy of a newspaper or magazine more than the classification standard of obscene and indecent articles. TELA would continue to work with concerned organizations to enhance publicity and public education in tackling the problem.

24. The Chairman thanked representatives of the deputations and the Administration for attending the meeting.

25. The meeting ended at 10:45 am.

Legislative Council Secretariat

3 March 1999

立法會
Legislative Council

LC Paper No. CB(2)653/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of special meeting
held on Monday, 26 April 1999 at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members Present** : Hon CHOY So-yuk (Chairman)
Hon Albert HO Chun-yan (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon Edward HO Sing-tin, JP
Hon LEE Wing-tat
Hon MA Fung-kwok
Hon James TO Kun-sun
Hon Christine LOH
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon Andrew WONG Wang-fat, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, JP
- Members Absent** : Hon Ambrose CHEUNG Wing-sum, JP
Hon Gary CHENG Kai-nam
Hon Jasper TSANG Yok-sing, JP
Hon LAU Wong-fat, GBS, JP
Hon LAW Chi-kwong, JP
- Member Attending** : Hon Ronald ARCULLI, JP

Public Officers : Mr NG Hon-wah
Attending Principal Assistant Secretary for Home Affairs

Mr Eddy CHAN
Commissioner for Television and Entertainment Licensing

Attendance by : Hong Kong News Executives' Association
Invitation

Mr CHEUNG Kwai-yeung

Hong Kong Chinese Press Association

Mr HUE Pui-ying

Hong Kong Journalists Association

Mr LIU Kin-ming
Chairperson

Hong Kong Press Photographers' Association

Mr Leon SUEN Shu-kwan

Mr YI Chiu-kwan

Mr Tim HAMLETT, Associate Professor,
Department of Journalism,
Hong Kong Baptist University

Mr LEUNG Wai-yin, Senior Professor,
Journalism and Communication Department,
Chinese University of Hong Kong

Sing Pao Newspaper And Publications, Limited

Mr YEUNG Kam-kuen
Chief Editor

South China Morning Post

Mr Robin BOWMAN
Executive Editor

Hong Kong Daily News

Mr CHEUNG Wai-tak
Editor-in-Chief

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Flora TAI
Senior Assistant Secretary (2) 2

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I. Opening remarks

The Chairman welcomed representatives of the deputations and the Administration for attending the special meeting. The Chairman said that members were concerned about the recent deterioration of professional ethics of newspapers as evidenced by the increased incidents of publication of articles and photographs of a violent or indecent/obscene nature in newspapers. A special meeting was therefore convened to invite newspaper practitioners and journalists' associations to express their views and discuss ways to address the problem.

II. Meeting with deputations

Hong Kong News Executives' Association
[Paper No. CB(2)1785/98-99(01)]

2. At the Chairman's invitation, representative of the Hong Kong News Executives' Association (HKNEA) briefed members on the written submission. He stressed that it was HKNEA's position that legislative control over the media was inappropriate as this would jeopardise press freedom. HKNEA would prefer self-regulation in dealing with the problem of declining reporting standards and publication of obscene and indecent articles or photographs in

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newspapers. Representative of HKNEA said that HKNEA was now preparing a draft Code of Ethics for news practitioners and would widely consult news executives of the media, media proprietors and the general public.

Hong Kong Chinese Press Association

[Paper No. CB(2)1791/98-99(01)]

3. Chairman of the Hong Kong Chinese Press Association (HKCPA) briefed members on the written submission. He said that HKCPA would welcome public comments and suggestions of Members of the Legislative Council (LegCo) on the professional ethics of newspapers. HKCPA's position was that self-regulation rather than legislative control would be the effective and proper means to address the problem.

4. Chairman of CPA stressed that self-regulation of the media industry would require the co-operation of both news practitioners and media proprietors. He therefore supported the idea of joint ventures of news associations to promote and improve professional ethics, for example, organization of seminars on professional ethics to exert more influence on the industry.

Hong Kong Journalists Association

[Paper No. CB(2)1808/98-99(01)]

5. Members noted the written submission of the Hong Kong Journalists Association (HKJA). HKJA Chairman said that those media workers who did not abide by the professional ethics and who failed to perform properly the job of a media professional were not entitled to press freedom. He stressed, however, that there should not be legislative control over the media. He also expressed reservations about the idea of a media monitoring council with government participation as this would hamper press freedom and open the gate for restriction on expression. To address the problem of media practitioners not upholding the professional ethics, HKJA Chairman suggested the following measures -

- (a) media proprietors must be aware of their social responsibility and should not run the business purely on commercial principles;
- (b) each media body should have a set of ethics for compliance by its staff;
- (c) all Chinese newspapers should provide a public forum such as "Letters to the Editor" or set up an ombudsman system to receive complaints and feedback from readers; and

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- (d) more efforts should be made to enhance the quality of the audience or readers in order to exert pressure on media proprietors to exercise self-regulation.

Hong Kong Press Photographers' Association

6. Representative of the Hong Kong Press Photographers' Association (HKPPA) said that HKPPA attached great value to press freedom and considered it important for the mass media to exercise self-regulation to maintain quality reporting. Representative of HKPPA noted that some newspapers had changed their reporting approach but the general public had remained silent on the situation of declining ethical standard in reporting. He stressed that public monitoring and self-awareness of the media practitioners were important in exerting pressure on newspaper proprietors.

Mr Tim HAMLETT

[Paper No. CB(2)1785/98-99(02)]

7. Mr Tim HAMLETT briefed members on his written submission which represented his personal views. Mr HAMLETT said that Hong Kong was not different from other places in that there were constant complaints about popular newspapers. However, readers in Hong Kong could choose from among various newspapers. He stressed that there must be a critical and deserving readership for upholding media ethics. He suggested that training of journalists, public education and encouragement to the media would help upholding quality and serious reporting. Regarding the role of the Obscene Articles Tribunal (OAT), Mr HAMLETT said that OAT was primarily targeted at magazines and publications rather than newspapers, and that the existing piece-meal approach to regulate individual articles or photographs in newspapers out of context was unsatisfactory.

Mr LEUNG Wai-yin

8. Mr LEUNG Wai-yin said that he attended the meeting in his personal capacity and his views did not represent that of the Journalism and Communication Department of the Chinese University of Hong Kong. Mr LEUNG said that Hong Kong had all along enjoyed a high degree of freedom of expression with minimum legislative or governmental control. Unfortunately, there were incidents recently that the mass media had abused the freedom. Mr LEUNG stressed that he always believed that market or reader pressure was more effective than legislative or governmental control in upholding media ethics. However, survey statistics had shown that the two most criticised newspapers had the highest circulation figures, which indicated that the public or readers had not exercised the market force to uphold media ethics. He pointed out that the spirit of freedom of expression was to ensure

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freedom in the transmission of information for public good and in the public interest. He considered that news reports infringing personal privacy had abused press freedom. In this connection, Mr LEUNG suggested setting up a statutory body, to be modelled on the Consumer Council or the Office of the Ombudsman and exempt from regulation of the defamation law, to monitor media ethics by ways of receiving complaints, investigation and research studies. He explained that such a monitoring body would aim at exerting pressure on the media by exposing its shortcomings without imposing penalty, while maintaining a high degree of press freedom.

Sing Pao Newspaper and Publications, Limited

9. Chief Editor of the Sing Pao Newspapers and Publications, Limited informed members that Sing Pao had been published for sixty years and it had stringent in-house editorial guideline to uphold professional ethics. He said that it was his personal view that Hong Kong was a society of diversity and the press industry also reflected such diversity. It was therefore inappropriate to disparage one group of newspapers because they did not share the methods and values of the others. However, newspapers should operate within legal parameters and moral standards of the community. He shared the concern that the prevalence of “market-driven journalism” would compromise media ethics. The unhealthy competition of the industry had also created difficulties for the operation of newspapers. He believed that public monitoring and media education would have an impact on the media but would not agree to tightening control by legislation. In this connection, he urged Government to make more efforts in journalists training and public education. Government should also take appropriate enforcement action against publication of articles or photographs of an obscene and indecent nature based on existing legislation.

South China Morning Post

10. Executive Editor of the South China Morning Post said that he concurred with most of the views expressed by other deputations. He was not in favour of legislative control as this would be an over-reaction to a few cases of improper reporting or publication of indecent articles or photographs. He considered that legislative control would give a wrong message abroad that Hong Kong would have less press freedom. However, as most media behaviour was market-driven, a collective Code of Ethics for the press industry could achieve little effect in improving the situation of improper news reporting. He believed that only readers could exert pressure on the media to uphold media ethics as circulation figure was the principal concern of media proprietors. In this connection, public education, especially for the younger generation, was more important to enhance the quality of readers so that people could make informed choices in buying newspapers.

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Hong Kong Daily News

11. Publisher of the Hong Kong Daily News said that he agreed with other deputations that there should not be legislation to restrict press freedom. If the concern was about the bad taste of some newspapers which published photographs and articles infringing the personal privacy of individuals, Government should consider actions such as introducing legislation to protect the rights of individuals in this respect. He said that Government should provide resources for media education and assist in setting up a monitoring mechanism on the mass media to press for improvement of reporting standards and media ethics. He stressed that interactive communication between the public and the mass media would definitely help the media abide by their code of ethics.

12. Publisher of the Hong Kong Daily News further said that despite recent incidents of improper reporting and bad taste of some newspapers, Hong Kong remained to be the global centre of Chinese newspapers and Hong Kong media still enjoyed a high degree of credibility. He added that it would be more important for a news report to reflect the facts, and the selection of photographs was more of a matter of taste.

Other submissions

13. Members also noted that a Mr 徐濟時 had provided a written submission which was tabled at the meeting and issued to absent members vide Paper No. CB(2)1808/98-99(02).

Discussion

14. Miss Emily LAU expressed serious concern about the deterioration of reporting standard in newspapers and the publication of obscene/indecent articles and photographs. She welcomed the move of HKNEA to prepare a Code of Ethics for news practitioners, and asked whether the Code would be acceptable to and binding on the media industry. Representative of HKNEA responded that, through consultation and participation of the media industry, HKNEA hoped that the Code could be generally accepted by media practitioners. If such efforts failed, the next step would be to consider setting up a media monitoring council for upholding media ethics. With regard to the composition of HKNEA, representative of HKNEA said that the current executive committee of HKNEA comprised 11 members who were news practitioners from five electronic media and six newspapers.

15. Noting that HKJA also had a code of ethics, Deputy Chairman asked whether it was feasible for HKNEA and HKJA to draw up a unified code generally applicable to the whole industry. Representative of HKNEA replied that in drafting its code of ethics, HKNEA would also make reference to that of

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HKJA and overseas countries. He said that a unified code would be feasible as there had been similar joint ventures of journalists' organisations. For example, HKNEA, Hong Kong Federation of Journalists and Hong Kong Press Photographers' Association had issued a joint statement on the case of CHAN Kin-hong last year. In this connection, Chairman of HKJA commented that it would be difficult to require all media bodies to join hands and abide by a unified code, since many newspapers' representatives were absent even for discussions on the subject. Chief Editor of Sing Pao Newspaper and Publications Limited held similar views, pointing out that the media industry did not have a statutory professional body which could take effective disciplinary actions against breaches of a Code of Ethics.

16. HKJA Chairman informed members that HKJA had an ethics committee which was a disciplinary mechanism to receive and adjudicate complaints concerning media ethics. HKJA was considering publicizing the committee's adjudication with a view to exerting more pressure on media proprietors and practitioners.

17. Mr Edward HO expressed concern about the declining standard of media ethics as evidenced by the increasing incidence of improper reporting. He said that while everyone supported the principle of press freedom, there was also concern in the community about the trend of improper reporting by the media. He observed that the problem had existed for a considerable period of time, but there appeared to have no effective means to solve the problem. He could not agree with the view that the issue was simply a matter of taste which should be left entirely for readers to choose. He had noted the arguments of market force and self-regulation, but he considered that the media must operate within legal parameters and follow the moral standards of the community. Chairman of HKJA responded that there was no immediate solution to the problem of media ethics and that long-term joint efforts would be required. Representative of HKCPA said that self-regulation depended much on the co-operation of concerned parties and that he would support the idea of a media council to exert more influence on the industry.

18. Mr MA Fung-kwok said that press freedom was important but the problem of media ethics was deteriorating. He could not agree with HKNEA that recent incidents of improper reporting and publication of obscene articles and photographs were only isolated cases. In this respect, Mr MA queried the effectiveness of the existing mechanism such as the Code of Ethics adopted by HKJA.

19. To address members' concerns, the Chairman asked whether deputations had any views on the suggestion of setting up a media council with disciplinary powers. Chairman of HKJA responded that HKJA's ethics committee would adjudicate complaints about media ethics based on its code of ethics. He admitted that some newspapers would simply ignore HKJA's request for

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response to complaints. However, he said that the case of CHAN Kin-hong had aroused much public concern and that public monitoring was an effective tool to uphold media ethics. He hoped that a media monitoring forum would be useful in gathering voices in the community. Chief Editor of Sing Pao agreed that public monitoring would be an effective means.

20. In response to Miss Emily LAU, representative of HKPPA informed members that where it came to HKPPA's attention that a newspaper had published nauseating photographs against the professional ethics, HKPPA would write to the concerned media body expressing objections. However, he pointed out that media proprietors often simply ignored HKPPA's complaint or threatened to take legal action against individual responsible persons of HKPPA. He said that the legal cost was a financial burden on HKPPA and its members. In response to Miss Emily LAU's further enquiry, representative of HKPPA said that as far as he could recall, HKPPA had not issued such complaint letters to media bodies in the past six months. In this regard, Deputy Chairman commented that disciplinary actions should be taken against any member who had breached the Code of Ethics, and that professional associations and media bodies should support individual journalists who faced the threat of legal action for complying with the professional ethics in reporting.

21. Miss Emily LAU reiterated her concern about the recent prevalence of photographs of a violent or indecent/obscene nature in newspapers. In response, representative of HKPPA clarified that many of those photographs published in newspapers were taken by different kinds of press photographers who were not news photographers. He admitted that there was very little HKPPA could do apart from refusing those photographers from joining the association. Representative of HKPPA pointed out that professional training was not a job requirement of press photographers who might therefore be unaware of or not required to abide by media ethics. He was of the view that the editors or news executives who were responsible for selecting photographers in newspapers should educate press photographers on the profession's ethical standards.

22. In view of deputations' emphasis on the importance of media education, Miss Cyd HO asked whether tertiary institutions could assist in promoting media ethics education in primary and secondary schools. Mr LEUNG Wai-yin replied that he had attended seminars on media ethics and news morality organised by Education Department for secondary school teachers. However, he was not aware of any regular education forum on the subject.

III. Meeting with the Administration

[Paper Nos. CB(2)1785/98-99(03) and CB(2)1793/98-99(01)]

23. At the invitation of the Chairman, Assistant Legal Adviser 4 briefed members on his paper on the legislative measures regulating publication of articles and photographs of a violent, indecent or obscene nature in newspapers [Paper No. CB(2)1793/9899(01)]. Members also noted the Administration's paper on "Regulation of Publication of Articles and Photographs of a Violent or Indecent/Obscene Nature" [Paper No. CB(2)1785/98-99(03)].

24. Concerning the increasing trend of publication of violent or indecent/obscene nature in newspapers, Mr Andrew CHENG expressed dissatisfaction that the Television and Entertainment Licensing Authority (TELA) had failed to take proactive action to enforce the Control of Obscene and Indecent Articles Ordinance (Cap. 390) (COIAO). The Commissioner, Television and Entertainment Licensing Authority (C/TELA) responded that the Administration regularly monitored the publication of articles and photographs of obscene/indecent nature in newspapers and magazines. Daily surveillance was made on newspapers and magazines; where a breach of COIAO was suspected, TELA would submit the articles concerned to Obscene Articles Tribunal (OAT) for classification. In 1997 and 1998, TELA had made 138 and 137 referrals respectively to OAT. In the first quarter of 1999, TELA referred 62 cases to OAT, 22 of which were classified as Class I, 12 were classified as Class II and 28 as Class III. In this regard, Miss Cyd HO expressed concern that the statutory requirements for indecent publications to be sealed in wrappers with a warning notice were not complied with by newspapers. The Commissioner responded that TELA had taken prosecution against the publisher of a newspaper for breaches of the statutory requirements. At Miss Cyd HO's request, the Commissioner undertook to provide more detailed information on the number of referrals concerning newspapers, the results of OAT classification and the range of penalty imposed in 1996 - 1998 for this category.

(Post-meeting note : The Administration had provided the requested information which was circulated to members vide LC Paper No. CB(2)1841/98-99.)

25. Mr Andrew CHENG asked about TELA's response to the comments made by the Director of Audit that TELA failed to provide systematic training to inspectors on classification standards and to effectively monitor the inspectors' performance. C/TELA responded that TELA accepted the Director of Audit's suggestions which would help improve the enforcement work of TELA. In this respect, TELA would arrange inspectors to visit the depository of OAT so that inspectors would have first-hand information on OAT's classification standard. TELA would also review the strategic

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planning for daily surveillance work based on the risk categories. Mr Andrew CHENG asked whether COIAO or the classification standards should be reviewed to facilitate enforcement. C/TELA pointed out that the classification was made by OAT, which was an independent judicial body comprising a presiding magistrate and two or more members of the public serving as lay adjudicators. TELA could appeal against OAT classifications. He said that under COIAO, OAT was required to give regard to standards of morality, decency and propriety that were generally accepted by reasonable members of the community in making a ruling on classification. C/TELA added that TELA had commissioned Lingnan College to carry out an opinion survey on the enforcement of COIAO. The survey findings would be discussed at a coming meeting of the LegCo Panel on Information Technology and Broadcasting.

26. Referring to a court case years ago that a newspaper was charged with the offence of conspiracy to corrupt public moral for publication of ladies' names for sex services, Deputy Chairman asked whether similar action could be taken against some newspapers publishing sex services information. C/TELA replied that existing legislation did not provide for an offence of conspiracy to corrupt public moral. However, obscenity and indecency as defined in COIAO included violence, depravity and repulsiveness. Publication of any article classified as Class II by OAT must comply with certain statutory requirements whereas Class III articles were prohibited from publication. The Administration could submit newspapers for OAT for a classification ruling.

27. The Chairman also invited the Administration to respond to the views expressed by deputations. Principal Assistant Secretary for Home Affairs (PAS(HA)) said that the Administration shared the views of deputations that there should be minimum regulation and minimal governmental control in order to safeguard freedom of expression. He also informed members that the Privacy Subcommittee of the Law Reform Commission was now studying issues relating to intrusive reporting and press freedom. The Privacy Subcommittee would put forward its recommendations for public consultation.

28. Miss Cyd HO noted that deputations had emphasized the importance of public education in upholding media ethics. She asked whether the Administration had discussed with Education Department about any work plans to incorporate media education in primary and secondary school education. PAS(HA) responded that school was not the only venue for media education, and that he would check whether the guidelines for civic education already covered media education.

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IV. Any other business

29 The Chairman informed members that the Administration would brief the LegCo Panel on Information Technology and Broadcasting on the review of COIAO at its meeting on 10 May 1999 at 2:30 pm. The Chairman suggested and members agreed that members of the LegCo Panel on Home Affairs should be invited to attend discussion at that meeting.

Clerk

30. The Chairman thanked representatives of the deputations and the Administration for attending the meeting.

31. There being no other business, the meeting ended at 4:40 pm.

Legislative Council Secretariat

5 October 1999

立法會
Legislative Council

LC Paper No. CB(2)983/99-00

Ref : CB2/PL/HA

LegCo Panel on Home Affairs

**Minutes of meeting
held on Monday, 8 November 1999 at 4:30 pm
in the Chamber of the Legislative Council Building**

- Members Present** : Hon CHOY So-yuk (Chairman)
Hon Albert HO Chun-yan (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon MA Fung-kwok
Hon James TO Kun-sun
Hon Ambrose CHEUNG Wing-sum, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, JP
- Members Absent** : Hon Edward HO Sing-tin, JP
Hon LEE Wing-tat
Hon Christine LOH
Hon Gary CHENG Kai-nam
Hon Andrew WONG Wang-fat, JP
- Public Officer Attending** : Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs
- Attendance by Invitation** : Hong Kong Journalists Association
Ms MAK Yin-ting
Chairman
Hong Kong Press Photographers Association
Mr. Edmund LO
Vice Chairman

Hong Kong Chinese Press Association

Mr HUE Pue-ying
Chairman

Citizens Party

Mr Alex CHAN
Executive Committee member

The Society for Truth & Light Ltd

Mr CHOI Chi-sum
General Secretary

Hong Kong Baptist University

Mr Tim HAMLETT
Associate Professor, Department of Journalism

The Law Reform Commission of Hong Kong

Prof Raymond WACKS
Chairman of Privacy Sub-committee

Mr A F M CONWAY
Member of Privacy Sub-committee

Mr Edwin C K LAU
Member of Privacy Sub-committee

Mr James O'NEIL
Member of Privacy Sub-Committee

Mr Don BRECH
Member of Privacy Sub-Committee

Mr Peter SO
Member of Privacy Sub-committee

Mr WONG Kwok-wah
Member of Privacy Sub-committee

Mr Godfrey KAN
Secretary of Privacy Sub-committee

Mr Stuart M I STOKER
Secretary

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Miss Flora TAI
Senior Assistant Secretary (2) 2

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I. Confirmation of minutes

[LC Paper Nos. CB(2)223/99-00 and CB(2)295/99-00]

The minutes of the meetings held on 7 October 1999 and 12 October 1999 were confirmed.

II. Information papers issued since the meeting on 12 July 1999

[LC Paper Nos. CB(2)122/99-00, CB(2)230/99-00 and CB(2)248/99-00]

2. Members noted that the following information papers had been issued since the last meeting on 12 July 1999 -

(a) Concluding Observations of the United Nations Committee on the Initial Report on the Hong Kong Special Administrative Region (HKSAR) under the Convention on the Elimination of All Forms of Discrimination against Women [LC Paper No. CB(2)122/99-00];

(b) Outline of topics for the Report on the HKSAR under the International Convention on the Elimination of All Forms of Racial Discrimination [LC Paper No. CB(2)230/99-00]; and

(c) Information paper provided by the Home Affairs Bureau (HAB) on "Year 2000 Compliance within the HAB and in related departments and non-government organisations" [LC Paper No. CB(2)248/99-00].

III. Items for discussion at the next meeting

[Appendix I to LC Paper No. CB(2)296/99-00]

3. With reference to the list of discussion items for future meeting, members agreed to discuss the following at the next regular meeting scheduled for 4:30 pm on Monday, 13 December 1999 -

(a) Performance venue in the West Kowloon reclamation and sports complex in Southeast Kowloon; and

(b) Investigation report of the Equal Opportunities Commission on the issues arising from the Kowloon Bay Health Centre case.

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4. At Miss Emily LAU's suggestion, members agreed that a special meeting should be held in early December 1999 to follow up with the Administration the Concluding Observations made by the United Nations (UN) Human Rights Committee after its hearing on the HKSAR's Report in the light of the International Covenant on Civil and Political Rights (ICCPR).

(*Post meeting note* : The meeting to follow up the UN hearing of the ICCPR report was subsequently deferred at the request of the Administration.)

IV. Consultation Papers on Regulation of Media Intrusion and Civil Liability for Invasion of Privacy published by the Subcommittee on Privacy of the Law Reform Commission of Hong Kong (Privacy Subcommittee)

5. Members noted that the Research and Library Services Division of the Legislative Council (LegCo) Secretariat had prepared a research report entitled "The Regulation of Media Intrusion of Privacy : the Experiences in Taiwan, the United Kingdom and the United States" [RL01/99-00].

Meeting with deputations

6. The Chairman welcomed representatives of the deputations and invited them to present their views on the two consultation papers published by the Privacy Subcommittee of the Law Reform Commission (LRC). She said that the Panel would discuss with the LRC Privacy Subcommittee and the deputations on the issues raised.

Hong Kong Journalists Association (HKJA)

7. The Chairman of HKJA said that while HKJA agreed that the right of privacy should be protected, it would not accept the proposal of setting up a statutory Press Council for the Protection of Privacy (the Press Council), initiated either by the Government or by the industry itself, as such a mechanism would undermine press freedom. She explained that according to the International Covenant on Civil and Political Rights (ICCPR), the exercise of the rights provided for should not be subject to any restrictions unless such restrictions were proved to be necessary. HKJA also rejected the Privacy Subcommittee's claim that the gravity of media intrusion justified such restrictions because -

- (a) some cases of media intrusion cited in Chapter 2 of the Consultation Paper on *the Intrusion by the Media* were not privacy infringement and could be dealt with by other legislation;

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- (b) since the commencement of the Personal Data (Privacy) Ordinance (Cap. 486) in December 1996 and up to September 1999, only 37 complaint cases (4% of the total cases) involving the media had been received by the Office of the Privacy Commissioner for Personal Data (the Privacy Commissioner); and
- (c) the 37 cases received by the Privacy Commissioner included complaints against media agencies for not responding to requests for information within the statutory period.

8. The Chairman of HKJA pointed out that the Privacy Subcommittee's recommendation of a Press Council ran counter to the practice of developed countries which relied on civil law and self-regulation by the media to protect privacy. These overseas media regulatory bodies were non-statutory and could not impose sanctions on media. The Chairman of HKJA added that the Press Council should be responsible for the criticisms it made and it would be unfair to exempt it from regulation of the defamation law.

9. The Chairman of HKJA disagreed with paragraphs 7.23 - 7.31 of the Consultation Paper that a legislature elected by universal suffrage would not modify the Press Council in such a way that would knowingly infringe fundamental human rights. She pointed out that at present only one-third of the Members of the LegCo were returned by election and a review would only be conducted in 2007 as to whether all LegCo Members were to be returned by universal suffrage.

10. The Chairman of HKJA did not agree that the media had made no signs of improvement in self-regulation. She said that public concern about media intrusion only surfaced in recent years, and the media should be allowed some time to devise a self-regulatory mechanism. HKJA hoped that media agencies and news practitioners' associations would adopt a common code of ethics and set up a complaints or ombudsman system. She was of the view that setting up a Press Council should only be the last resort when all such efforts failed.

Hong Kong Press Photographers' Association (HKPPA)

11. The Vice-Chairman of HKPPA said that although there were merits in having a Press Council, HKPPA did not accept the Privacy Subcommittee's recommendation that a statutory Press Council should be set up because the latter could become a tool to control the media. Moreover, members representing the media in the Press Council would have conflict of interest. HKPPA also did not support the establishment of a non-statutory Press Council at the present stage as it would have adverse impact on press freedom. HKPPA considered that the media should establish a self-regulation mechanism, and that legal aid should be granted to those persons who had their privacy infringed to seek legal remedies. HKPPA took the view that the establishment

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of a non-statutory Press Council should only be considered if these efforts failed.

Hong Kong Chinese Press Association (HKCPA)

[Paper No. CB(2)296/99-00(01)]

12. The Chairman of HKCPA briefed members on the HKCPA's written submission. He said that HKCPA was opposed to media intrusion and abuse of press freedom. However, HKCPA was of the view that there were already adequate legislation and mechanism to regulate the media. HKCPA supported self-regulation instead of setting up a Press Council because government involvement in a Press Council would hamper press freedom.

Citizens Party

[Paper No. CB(2)320/99-00(01)]

13. The Executive Committee member of the Citizens Party briefed members on the written submission which set out the problems of having a statutory Press Council. The Citizens Party opposed in principle the establishment of a statutory Press Council which would be vested with power to impose penalties. He stressed that a voluntary mechanism without disciplinary powers would help uphold press freedom and promote responsible journalism.

The Society for Truth & Light Ltd (the Society)

[Paper No. CB(2)332/99-00(01)]

14. The General Secretary of the Society briefed members on the written submission which was tabled at the meeting and issued to absent members vide Paper No. CB(2)332/99-00(01). The Society proposed to set up a statutory, independent Press Council to receive and adjudicate complaints against the media for invasion of privacy, inaccurate reporting, and publication of violent or pornographic materials. The Society emphasized that members of the Press Council should not be appointed by the Government, and they should be elected from the media and concern groups. The Society also made recommendations on the functions and powers of the proposed Press Council as detailed in its written submission.

(The Deputy Chairman took the chair during the temporary absence of the Chairman.)

Mr Tim HAMLETT

[Paper No. CB(2)313/99-00]

15. Mr Tim HAMLETT briefed members on his written submission. He pointed out several shortcomings of the Consultation Paper. He said that the Privacy Subcommittee had overlooked the fundamental principle that there

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were limits in privacy rights, and that the Consultation Paper had taken an unduly restrictive view of the human need for information, communication and exchange. He opined that the Privacy Subcommittee had not given evidence to justify its recommendation for a statutory Press Council to regulate media intrusion, as the cases cited in the Consultation Paper were more related to matters of public record, legitimate reporting and public interest instead of media intrusion. In the absence of information on the sample size and survey methodology, he found it difficult to accept the recommendation.

16. Mr Tim HAMLETT pointed out that while the Privacy Subcommittee had elaborated its justifications for not recommending the creation of a general tort of invasion of privacy, it had not recommended any safeguards against possible abuses by the Press Council. For example, it did not provide the accused with the right to make legal representation. Mr HAMLETT added that a Press Council would naturally seek to expand its jurisdiction beyond protection of privacy, irrespective of whether it was established with Government's initiative. He said that the same happened to the Equal Opportunities Commission and the Obscene Articles Tribunal which had sought to expand their jurisdictions.

17. Mr HAMLETT said that at the Panel meeting on 26 April 1999, there appeared to be a consensus that legislative control over the media was inappropriate. He hoped that the consensus would sustain.

Meeting with the Privacy Subcommittee of Law Reform Commission (LRC)

Response to views expressed by deputations

18. The Deputy Chairman invited the Privacy Subcommittee of LRC to respond to the views expressed by deputations. Prof Raymond WACKS, Chairman of the Privacy Subcommittee, responded by emphasizing that there was no argument about the importance of freedom of speech which was protected by the Basic Law, the Hong Kong Bill of Rights Ordinance (Cap. 383), and ICCPR. However, as all rights were limited, it was necessary to strike a balance among different rights and interests. He said that the Privacy Subcommittee would not make any recommendation which would compromise press freedom in Hong Kong unless there was a legitimate need for some restrictions over media practices. He pointed out that the right of privacy, which was an American invention, had not existed in the English laws and was therefore not adopted in the laws of Hong Kong. During the study, the Privacy Subcommittee found that the common law did not provide adequate protection against infringement of privacy by the media.

19. Prof Raymond WACKS noted that deputations were concerned that Government might use the Press Council to suppress the media. He clarified that it was highly unlikely that the Press Council could be used to regulate the media other than its intrusion into privacy, if the legislation was properly

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drafted and if the Press Council strictly adhered to its terms of reference.

20. Responding to the views expressed by Mr. Tim HAMLETT, Prof Raymond WACKS said that he did not see any problem in making reference to the psychological aspects of privacy. He pointed out that many remedies in law aimed at protecting individuals from damages to their psychological well-being. As regards the right to make legal representation, he clarified that the proposed Press Council was intended to be an informal mechanism to adjudicate complaints on media intrusion of privacy. To save time and money, legal representation was not recommended for an informal system. Concerning the possibility of the Press Council expanding its jurisdiction beyond privacy issues, Prof WACKS said that a screening mechanism could be introduced to exclude those complaints which did not meet the criteria. He said that such a system had proved to be successful in the Office of the Privacy Commissioner for Personal Data which had been operating effectively within its jurisdiction.

21. Referring to HKJA's argument that only a few cases received by the Privacy Commissioner were directly related to media intrusion, Prof Raymond WACKS said that individuals normally would not make complaints of media intrusion to the Privacy Commissioner because the present legislation was not designed for that purpose. However, he cited a recent case in which a magazine sought judicial review of the Privacy Commissioner's ruling that the publication of a photograph of a woman without her consent was in breach of the Personal Data (Privacy) Ordinance. Prof WACKS considered that cases of this kind would require balancing the right of privacy and press freedom, and that a Press Council would be the appropriate body to adjudicate such complaints. With regard to the reference to overseas experience in the Consultation Paper, Prof WACKS said that this would help people to compare and decide on the best model for Hong Kong.

22. Mr A F M CONWAY, member of Privacy Subcommittee, said that the Privacy Subcommittee had been working on the subject of privacy for ten years and there was impeccable evidence that ordinary citizens had been subject to unwarranted media intrusion. Public poll and research had shown that the public did not believe that the media agencies would respond voluntarily or positively to the legitimate concern of privacy. He said that many people supported most of the recommendations in the Consultation Paper for the regulation of media intrusion, particularly the proposal of setting up a Press Council. He stressed that the proposed Press Council was only one option for the public to protect the right of privacy. If the media industry could organise its own monitoring and disciplinary body similar to the Press Council, it would also be acceptable to the public.

23. Mr James O'NEIL, member of Privacy Subcommittee, said that the Privacy Committee concurred with the depositions that there should not be a government-controlled body to regulate media intrusion. He clarified that the

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proposal of a statutory Press Council was only to confer legal status to the monitoring body and that it would not be a government organization.

24. Mr Edwin LAU, member of Privacy Subcommittee, said that the discussion had been focused on whether the media should be exempt from the regulation of the Personal Data (Privacy) Ordinance. He stressed that the proposed Press Council was only to deal with protection of privacy but not to regulate the media in general.

Discussion

25. Miss Emily LAU said that the Chief Executive indicated his support for the Privacy Subcommittee's recommendation to set up a statutory Press Council when the Consultation Paper was published. As the LRC was appointed by the Government, many people were of the view that its recommendation was pro-government. She therefore asked whether Privacy Subcommittee's recommendation was made independently or with Government's blessing.

26. Prof Raymond WACKS responded that the proposal of a Press Council was to address the specific concern about inadequate protection in law against media intrusion of privacy. He said that LRC was not a political body; it was tasked to examine the current state of law and to make recommendations on law reforms. The Privacy Subcommittee had also published another Consultation Paper on *Civil Liability for Invasion of Privacy* at the same time on a related subject of law reform. The Consultation Paper on *Civil Liability for Invasion of Privacy* sought to provide a remedy for individuals against intrusion of privacy by any person and not just by the media. While the Privacy Subcommittee considered that the media should operate within an ethical framework, it had noted that the media had not made adequate efforts to set up such a framework over the years.

27. Miss Emily LAU asked whether Mr Raymond WACKS was in support of the recommendation of setting up a Press Council. Prof WACKS responded that although most recommendations in the Consultation Paper had been discussed before he took over the chair of the Privacy Subcommittee, the proposal of setting up a Press Council was the collective recommendation of the Privacy Subcommittee. Prof. WACKS was of the view that although existing legislation had provided remedy for individuals whose privacy had been infringed by the media, the legislation was not designed specifically for the purpose of protecting individuals from media intrusion. His personal opinion was that it would provide a better solution if the existing legislation could be amended to enable the Privacy Commissioner to adjudicate complaints against media intrusion.

28. Miss Emily LAU referred to paragraph 37.8 of the LegCo Secretariat research report which stated that the Press Council as proposed in the Consultation Paper would have statutory power to launch investigations and

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take punitive actions and that would inevitably touch upon Article 27 of the Basic Law. She therefore asked whether the proposed Press Council would contravene Article 27 of the Basic Law.

29. Prof Raymond WACKS said that the right of privacy and freedom of speech and of the press were human rights subject to limitations necessary for the protection of the rights of others. He pointed out that the European Convention on Human Rights, the United Nations Declaration on Human Rights and the Basic Law had all acknowledged that the rights to freedom of speech and of press were restricted.

30. Mr WONG Kwok-wah, member of Privacy Subcommittee, disagreed that the proposed Press Council would contravene Article 27 of the Basic Law. He said that Chapter One of the Consultation Paper had discussed in detail the right to privacy and freedom of expression.

(The Chairman resumed the chair at this juncture)

31. Mr Andrew CHENG expressed reservation about the need for a Press Council since the court could now adjudicate cases of media intrusion in the light of the Basic Law and Personal Data (Privacy) Ordinance. He was concerned that a Government-appointed Press Council vested with a wide range of powers would have adverse impact on press freedom. Mr CHENG also asked the Privacy Subcommittee the reasons for not recommending the model of the Press Complaints Commission of the United Kingdom, which was an independent body without any sanction powers.

32. Prof. Raymond WACKS responded that the Privacy Subcommittee was obliged to propose a remedy in law which was acceptable to the community and adequate to address the problem of media intrusion. A Press Council without punitive power would be tantamount to "a tiger without teeth". He said that the community in Hong Kong generally had little faith in self-regulation by the media because the three most popular newspapers had shown little inclination to be involved in the self-regulation process. Mr Andrew CHENG reiterated that he had serious concern about the proposal of a Press Council as governments in overseas countries had not initiated the establishment of similar press monitoring bodies.

Discussion with deputations

33. Referring to Prof Raymond WACKS's remarks that a Press Council without adequate powers would become "a tiger without teeth", the Chairman of HKJA said that, to her knowledge, no media regulatory bodies in overseas countries had punitive power, as this would require a statutory and strict standard in law which would restrict press freedom.

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34. Mr Andrew CHENG said that the public had justified concern about the viability of self-regulation because there was little evidence that the media in Hong Kong was committed to self-regulation. He asked whether a press council modelled on the Press Complaints Commission in the United Kingdom was acceptable to HKJA. The Chairman of HKJA responded that HKJA did not support the establishment of a collective monitoring body, statutory or non-statutory, to improve media ethics, for the following reasons -

- (a) according to a survey conducted by HKJA in 1992-93, the self-regulatory bodies of the press in overseas countries were not effective;
- (b) the 1994 survey of the Australian Press Council revealed that over half of the respondents were not satisfied with the settlement of the complaints; and
- (c) HKJA was concerned that a press council would be subject to pressure to expand its powers and jurisdiction, which might eventually restrict press freedom.

35. The Chairman of HKJA was of the view that the public did not have adequate understanding about the notion of privacy. She pointed out that according to a recent survey conducted by the Society for the Truth and Light Ltd, most respondents had referred to the infringement of privacy of public figures, celebrities and government officials. Nevertheless, she considered that it was commonly accepted that public figures enjoyed comparatively less privacy right when compared with ordinary citizens. She was therefore of the view that the problem of media intrusion was not so serious that warranted regulation.

36. Mr Andrew CHENG stressed that to counteract the proposal of setting up a Press Council, the media must demonstrate to the public that efforts had been made to improve media ethics. The Chairman of HKJA responded that HKJA had pledged to take the lead in establishing a media monitoring forum but progress was slow due to ideological differences among media agencies and resource constraints of the HKJA. She informed members that a draft code of ethics for news practitioners was being compiled by the Hong Kong News Executives' Association (HKNEA) in consultation with news executives of the media, media proprietors and concerned parties. She reiterated that the media would need more time to put in place a self-regulatory mechanism.

37. The Chairman of HKCPA added that a statutory media monitoring forum was unnecessary because voluntary joint action by the industry would achieve the same effect. He said that the media bodies had been actively working on the self-regulatory mechanism although the progress was slow.

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38. The General Secretary of the Society expressed reservation about HKJA's capability to establish a self-regulatory mechanism in view of its resource limitations. The Chairman of HKJA clarified that media agencies and news practitioners' associations made joint efforts in establishing the media monitoring forum. She added that HKJA already had an ethics committee which was a disciplinary mechanism to receive and adjudicate complaints on media ethics. The HKJA's constitution had been amended recently so that its adjudication on these cases could be released to the public, instead of publication in the bulletin.

39. Miss Cyd HO sought clarification from HKJA and HKPPA about their position on the establishment of a non-statutory Press Council. The Chairman of HKJA responded that if a non-statutory press council was to be established, it should be organised by the community and should enjoy a high degree of freedom of speech. The Vice Chairman of HKPAA reiterated that although there were merits in having a non-statutory Press Council, HKPAA was concerned about its negative impact on press freedom. HKPPA was therefore of the view that it was not the best solution to the problem of media intrusion.

40. In response to Miss Cyd HO, the Chairman of HKJA said that the media must be aware of its social responsibility, and if the industry could not show any sign of progress in self-regulation, the media would have difficulties to justify its opposition to statutory control especially when the public had generally accepted the idea.

(Post-meeting note : A letter dated 8 November 1999 from HKJA clarifying its position on the regulation of media intrusion was issued to members vide Paper No. CB(2)332/99-00(02).)

41. Referring to the survey conducted by the Society, Miss Emily LAU and Miss Cyd HO inquired about the sample size and methodology. The General Secretary of the Society informed members that it was a small-scale questionnaire survey conducted randomly at various locations in the territory. He said that the Society's recommendations were put forward after thorough discussion by its Board and the survey result was attached for reference only. Miss LAU expressed concern about the accuracy of the survey findings. She was of the view that the Society should explain clearly in its paper the survey method when releasing the findings and that the media had the responsibility to present the full picture to the public. The General Secretary of the Society responded that the Society had no intention to mislead the public because it had explained the methodology and sample size in its paper. It would be up to the media to decide how to present the data.

42. In response to Miss Cyd HO, the General Secretary of the Society said that he did not agree that public figures or their relatives should not enjoy the same degree of privacy as ordinary people.

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43. On the Society's recommendation that the Press Council should also adjudicate complaints on reports of sex and violence, Miss Cyd HO remarked that the public apparently was not concerned about the prevalence of violent and pornographic materials in newspapers since the two most criticised newspapers had the highest circulation figures. She commented that the Society had failed to point out in the survey that readers also had the responsibility to uphold media ethics through market force. The General Secretary of the Society responded that newspapers with high circulation figures were not free from unethical reporting. The Society would continue its effort to educate the public on how to select newspapers. He added that readers' responsibility was not included in the questionnaire because this was not the objective of the survey.

44. Mr Andrew CHENG reiterated his concern that the Society proposed to set up a Press Council with extensive powers and wide jurisdiction beyond intrusion of privacy. While agreeing that existing legislation did not adequately address the problem of media intrusion of privacy, Mr CHENG opined that the problem should be dealt with by the existing legislative framework rather than by setting up a new mechanism such as a statutory Press Council. The General Secretary of the Society responded that parents, teachers and social workers were more concerned about excessive reporting on sex and violence instead of intrusion of privacy. They were also concerned about other improper practices of the media such as "beautifying" unlawful acts of triad members and inaccurate reporting on sex offences.

45. The Executive Committee member of Citizens Party expressed concern that most cases of unethical reporting quoted by the Society involved subjective and moral judgement but the Press Council proposed by the Society would not have the legal power to adjudicate such complaints.

46. The General Secretary of the Society said that members of the Press Council should be elected by the media and concerned groups, and that it should abide by a unified code of practice. Miss HO expressed doubts that the Press Council could make independent and impartial judgement when most of all its members were to be returned by functional constituencies, i.e. the media, social workers, lawyers and teachers. The General Secretary of the Society disagreed that elections of functional constituencies were not representative. He considered it essential to include participation of the industry in a regulatory mechanism.

47. The Deputy Chairman said that the Consultation Paper had triggered off heated debate in the community. It was regrettable that the progress of putting in place a self-regulatory mechanism by the industry itself was far from satisfactory. He stressed that freedom of speech and of the press were effective and important tools to monitor the executive-led Administration particularly when the legislature was not returned by universal suffrage. Nevertheless, protection of privacy was also important. He said that the

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Democratic Party was of the view that the existing legislation should be amended to provide adequate remedies to victims of privacy intrusion while legal aid should be granted to enable such victims to seek remedies. The Deputy Chairman also pointed out that the Court of Final Appeal had recently ruled in favour of a television presenter who had made adverse comment on a newspaper with high circulation figure. In this case, the Court of Final Appeal had taken a broader view on the scope of fair comment on a matter of public interest as a defence to an action of defamation.

48. To address the problem of media intrusion, the Deputy Chairman suggested the media establish a self-regulatory mechanism which could reprimand a media agency for breaching the unified code of ethics. In this connection, the Chairman of HKJA informed members that the HKJA, HKPPA, HKNEA, Hong Kong Federation of Journalists had set up a "Joint Working Group on Press Ethics" to study various proposals and to make recommendations to improve media ethics to meet public expectations. She was of the view that social sanction would work, as one of the most criticised newspapers with high circulation figure had recently set up a working group to put in place a complaint mechanism. She had also discussed with the Newspaper Society of Hong Kong on the common grounds for joint actions. However, the Newspaper Society of Hong Kong was in favour of having a statutory self-regulatory Press Council. The Vice Chairman of HKPPA remarked that a voluntary media monitoring system might not be effective in restraining intrusive reporting.

49. On the question of including lay members in the media monitoring forum to enhance credibility, the Chairman of HKJA stressed that HKJA did not reject public participation in monitoring the media. The Chairman of HKCPA considered, however, that inclusion of lay members would cause operational difficulties and would further delay the establishment of such a forum. In this regard, Miss Emily LAU held a strong view that a media monitoring forum which excluded public participation would not have any credibility.

50. The Chairman thanked representatives of the deputations, the LRC and the Administration for attending the meeting.

51. There being no other business, the meeting ended at 7:00 pm.