



香 港 記 者 協 會
HONG KONG JOURNALISTS ASSOCIATION

HKJA SAYS NO TO STATUTORY PRESS COUNCIL

The Hong Kong Press Council has proposed the establishment of a statutory press council, as a way to obtain protection from defamation action. The HKJA is strongly opposed to this proposal for the following reasons:

- *It threatens press freedom and opens the door to government intervention.
- *It ignores the important experience of many overseas press councils.
- *The Hong Kong Press Council fails to make a convincing case, apart from fear of legal action.
- *The proposal fails to take into account improvements in media ethics.

A statutory body is at odds with press freedom

Press freedom is of fundamental importance to all media organizations. Without press freedom, the media cannot act as an effective watchdog of the powers that be. Without sufficient supervision, governments and businesses can abuse their powers with impunity.

The proposal to set up a statutory press council threatens this vital freedom. By acting as an overseer of the media, it could have a serious chilling effect on press freedom. This in turn could threaten the free flow of information - and the ability of business and interest groups to obtain the information they need for rational decision-making.

All this in the name of improving ethical standards. This is not to say that ethical standards should not be improved. Rather, the Hong Kong Journalists Association (HKJA) argues that improvements have been made, and should be made on a voluntary basis, without resorting to the creation of a statutory press council.

Indeed, it is precisely because a statutory body is at odds with press freedom and diversity of opinion that most press councils in democratic countries rely on voluntary participation by news organizations and self-discipline through consensus. Very few statutory councils exist.

The Australian press council, for example, was set up voluntarily by the media about 20 years ago. Recently, the Australian parliament tried to persuade the council to become statutory, so that the media could be regulated more effectively. The council rejected the idea, saying such a step would move Australia's news media closer to that in authoritarian countries. This is not an option Hong Kong should consider.

Opening the door to government intervention

This is especially true as Hong Kong does not have the same democratic and judicial safeguards as Australia. The political system is not democratic, and is unlikely to be so for many years. The judicial system is open to influence from Beijing. Without proper safeguards, journalists and community groups and leaders should not contemplate the legislative route in considering how best to solve the problem of media excesses.

A quest for statutory status would require passage of an appropriate law by the Legislative Council. This means that the news media, in order to perform a watchdog function, would require the approval of those they are supposed to be watching over. The absurdity of this situation recalls the Chinese saying: "Attacking one's shield with one's own spear". Such a situation would bring into question the ability of the news media to perform this vital watchdog function independently.

As everyone knows, news organizations strive to defend the public's right to know. They should be responsible to the public, not to the legislature or to some other organ of power. When they become accountable to a press council that derives its authority from a legislature that is an intrinsic part of the government structure, doubts would be raised as to whether newspapers and magazines could adequately defend the public's right to know.

The Hong Kong Press Council claims that the proposed statutory body would be filled by representatives elected from chosen organizations, thus reducing the chances of government intervention. In practice, just how democratic these selection processes would be is open to question. One only needs to recall the widespread criticism of the selection process for the Provisional Legislative Council to recognize the potential pitfalls.

The greatest threat of abuse, however, would come from the government and the Legislative Council themselves. Even if the draft press council bill was flawless, and its membership could be shown to be truly representative, who can guarantee that the proposal would pass without amendment? Even if it did, who can guarantee that the government wouldn't amend it at some future date? The fact is, once a draft bill becomes law, the original movers will cease to have any influence over its fate. The way our Legislative Council is structured, it wouldn't be hard for the authorities - if they so wish -- to amend the press council ordinance, turning it into a weapon against the media. We fail to understand why anyone would want to take the first step in a process which could open the door to potential government control of the media.

The Hong Kong Press Council moves with indecent haste

The HKJA also fails to understand why the Hong Kong Press Council is considering turning itself into a statutory body just one year after its creation. Not even the government would act with such haste, unless there was an emergency. And most agree this is not the case regarding media ethics.

The Hong Kong Press Council has so far considered only a limited number of complaints. This may be partly because it fears the legal consequences of adjudicating on complaints concerning the major media players.

But instead of rushing headlong into the legislative process, it should be making efforts to bring non-member (newspapers) into its fold. It should also be prodding member and non-member organisations alike to become more accountable to their readers, by introducing, where these do not already

exist, letters to the editor and correction columns. It has also made scant effort to organise discussions and seminars aimed at raising professional media standards. Such action takes time. The Hong Kong Press Council should give itself much more time before considering the statutory option.

Further, there is no evidence that the profession is united in wishing to see a statutory press council. Indeed, all media organizations and representative groups opposed such a move, when the Law Reform Commission's privacy sub-committee proposed the creation of a statutory body. And a survey of news industry professionals conducted one year ago by four professional media organizations found that 40% of respondents agreed that a statutory council wouldn't be necessary if the news media could improve their self-regulatory mechanisms. The "agrees" exceeded the "don't agrees" by 12 percentage points, an indication of the profession's wariness about a statutory organization.

Media efforts to improve standards are brushed aside

Clearly, the news media's way of operating leaves much to be desired. At the same time, we should not overlook some recent improvements in media ethics. According to studies by the University of Hong Kong, the credibility of the news media has risen to 6.08 in April 2001 from 5.48 in August 1999 (on a ten-point scale).

The improvement is due in part to some newspapers creating corrections and complaints columns, the exercise of self-discipline and greater responsiveness to readers' criticism. Some newspapers have responded to the calls by the four media associations, including the HKJA, to establish a code of ethics, going so far in some cases as to include it in employment contracts, thus giving it the backing of contractual obligation. All this shows that the industry is striving towards effective self-regulation. By pushing at this moment for an involuntary form of regulation, the Hong Kong Press Council is ignoring these efforts.

What the news media need above all at this time is more time to reach a consensus on how to raise standards and create effective mechanisms for self-regulation; not the imposition of a statutory body that claims to represent the united voice of the media and the public. The public is right to

highlight certain media excesses - for example, intrusive behaviour and the use of gory photographs - but we believe coercion is not the best way to tackle the problem.

A misguided quest for immunity

The Hong Kong Press Council has consistently emphasized that it cannot do its job properly unless it has immunity from libel action. The HKJA disagrees with this view.

The HKJA believes that everyone should be equal before the law. Why should the Hong Kong Press Council enjoy immunity from legal action, when members of the public risk being taken to court if they criticise a newspaper. Would that not lead to a situation where the Press Council could say whatever it likes, while the public is silenced? Should the Press Council monopolise the discussion of media ethics? We believe these questions are worthy of careful consideration.

The HKJA believes the proper protection against defamation action ought to be the fairness of comments made in adjudications. This is how the HKJA handles complaints to its ethics committee. The HKJA has never sought immunity because of fears that it may one day be sued. And indeed, it never has faced legal action over its ethics judgments.

If the Hong Kong Press Council truly believes that the existing defamation law puts it in a difficult position, then it should seek law reform, instead of promoting a new ordinance to give itself special protection. The reality is that every additional law has the potential of creating additional problems, and a statutory press council has the potential of gravely undermining freedom of expression and press freedom.

If the Press Council feels that it cannot marshal sufficient resources to defend itself against powerful media organisations, then the proper way forward would be to ask the government to grant legal aid for defamation actions. The media could, alternatively, consider establishing a legal defence fund.

Conclusion

The Hong Kong Press Council came into being to pre-empt possible moves by the government to create a statutory body. Now the council itself is making that very same proposal. It appears that sections of the industry, having warded off the wolf at the front door, now contemplate letting the tiger in by the back door. In the face of a serious threat to freedom of expression, the HKJA sees no alternative but to oppose the proposal in the strongest terms possible, and to urge others - media organisations and community leaders alike - to do likewise - for the sake of a truly free media environment in Hong Kong.

HKJA Executive Committee
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