

OFFICIAL RECORD OF PROCEEDINGS

Friday, 11 July 2008

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.M., G.B.S., J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S.,
S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE MARTIN LEE CHU-MING, S.C., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, J.P.

DR THE HONOURABLE LUI MING-WAH, S.B.S., J.P.

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHAN YUEN-HAN, S.B.S., J.P.

THE HONOURABLE BERNARD CHAN, G.B.S., J.P.

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, S.B.S., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM, J.P.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, S.B.S., J.P.

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H., J.P.

DR THE HONOURABLE JOSEPH LEE KOK-LONG, J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, S.B.S., J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE CHEUNG HOK-MING, S.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.

MEMBERS ABSENT:

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

THE HONOURABLE ALBERT JINGHAN CHENG, J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE STEPHEN LAM SUI-LUNG, J.P.
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

THE HONOURABLE AMBROSE LEE SIU-KWONG, I.D.S.M., J.P.
SECRETARY FOR SECURITY

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, S.B.S., J.P., SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): A quorum is not present. There are only 19 Members. Clerk, please ring the bell.

(After the summoning bell had been rung, a number of Members entered the Chamber)

PRESIDENT (in Cantonese): A quorum is already present. The meeting now starts.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Independent Police Complaints Council Bill.

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

MS MARGARET NG (in Cantonese): President, looking back at times past, an Independent Police Complaints Council (IPCC) Bill was under the scrutiny of the then Legislative Council in this Chamber exactly 11 years ago. At that time, a very prominent member of my constituency — Mr Denis CHANG Khen-lee, SC — made a personal visit to the Legislative Council and urged us to put our hearts into scrutinizing the Bill to ensure its passage before the reunification. President, of course, things did not happen afterwards as we had wished. Despite the passage of the Bill, it was, however, withdrawn by the then Secretary for Security, Mr Peter LAI, when it was read the Third time, and a huge storm was stirred up. We all shared the view that we were obliged to urge the Government to table the Bill to this Council again at an early date.

President, after a long wait of 10 years, the Bill is finally back. Today, I am standing here and I wish to say, "It would not be a pity even if we do not have this Bill." I can even ask, "What worth does it have?" I can even say that it is harmful rather than helpful. President, why would it turn out to be like this?

Because we can now see the major difference between a non-statutory body and an IPCC with a statutory status. Basically, the ultimate person in charge of a non-statutory body is either the Chief Executive or the Governor. A non-statutory body functions merely like a committee assisting Chief Executive or the Governor in undertaking certain tasks. Therefore, it would be the honour of the Chief Executive or the Governor should the non-statutory body do a good job; and a dereliction of duty on the part of the Chief Executive or the Governor should the non-statutory body perform badly. But what would the situation be like after that non-statutory body is turned into a statutory one? What changes will the IPCC experience after it is given a statutory status? As the law will confer on it powers and resources, the IPCC will be wholly responsible for what it has done. Whether performing well or otherwise, it would be the IPCC's own business. President, every one of us supports the establishment of an independent body to undertake work in this regard. In principle, an independent statutory body will be subject to public supervision and accountable to the public. This is the goal we have been striving to achieve.

When I saw the Bill, I could not help asking these questions: Can the Bill deliver? Can the Bill confer on the IPCC to be set up in the future the required powers, resources, support and trust to enable it to discharge its duties?

The former Chairman of the IPCC was a Senior Counsel, as well as a prominent member of my constituency. When he attended the meetings of the Bills Committee, he offered his advice on numerous occasions. In the end, he said that he was wary of the Bill because the IPCC was given the legal responsibility of functioning like a body with adjudication functions. In the event that complaints are lodged by the public about improper handling by the police, the IPCC would be required to discharge its adjudication role. This actually means that the IPCC would be required to possess adjudication functions, and so it would be required to make rulings. If its rulings are deemed unfair or improper, members of the public can apply for a judicial review to challenge its rulings. So, judging from the present circumstances, does the IPCC have adequate information and capacity to complete its work fairly and impartially within the parameter of the law? He said that the IPCC was not confident that this could be achieved. Despite repeated examinations of the Bill, the conclusion drawn was that this could not possibly be achieved.

Therefore, the cause of the death of the Bill really lies with the Government's attitude towards the IPCC. President, what magic did the IPCC

have before the reunification? Although the IPCC was criticized by everyone for its inadequate powers and poor performance, why did the public still have a certain degree of confidence in it? Because some people with high credibility were appointed at that time to be IPCC members. As the Government had great respect for them, there was an impression that, first, these people were very smart and capable; and second, they would uphold justice, and as a result, the Government would take them seriously. Therefore, it was hoped that, in the absence of supervision, they would still, irrespective of the degree of supervision and openness, complete the tasks entrusted by the Government.

Being the Chairman of the IPCC before 1997, Mr Denis CHANG Khen-lee, SC, as I mentioned earlier, was also a former chairman of the Bar Association of Hong Kong. His successor, Mr Robert TANG, SC, another prominent member of my constituency, was also a former chairman of the Bar Association of Hong Kong. He is currently a judge of the Court of Appeal. These people with credibility were appointed by the IPCC the relevant documents were provided just in case they were needed. The IPCC members did not necessarily have to go through all of the documents, but random inspection could be carried out at any time. Should that happen, evasions would not be allowed, and the truth must be revealed. This was the approach adopted by the IPCC at that time. However, President, this approach actually sought to create an illusion, whereby people were given the impression that all IPCC members were trustworthy.

Nevertheless, during the deliberation of the Bill, we found that the Government's increasing distrust in, and indifference to, the IPCC was completely exposed. Therefore, President, it felt like scrutinizing the Race Discrimination Bill as we proceeded with the scrutiny of the IPCC Bill. Worries grew as we proceeded with the scrutiny and as we examined the Bill in greater detail, and we became even more convinced that the passage of the Bill should not be allowed.

President, this Bill, as well as the one tabled before the reunification, involves a key issue of controversy, which is also considered to be very sensitive by both parties, and that is, investigative powers. Should the IPCC possess independent investigative powers? Prior to the reunification, the then Secretary for Security said that no one outside the Police Force could be allowed to carry out investigation into police officers. Why? Apparently, he said, because no one met the required professional standard or possessed the ability to carry out investigations. We disagreed because we trusted that the ICAC also had the

ability to perform the task. The Secretary responded that, except for the ICAC, no other people had the ability to carry out investigations. President, what was the truth? Prior to the reunification, this was regarded as a sensitive issue because internal security and the faithfulness and integrity of the Police Force are of paramount importance. Therefore, even the British Hong Kong Government was reluctant to do anything that might affect the morale of the Police Force. Having experienced the British Hong Kong era, we know what this was all about. I believe Members well understand the underlying reasons too.

What was the situation like after the reunification? What issues can be regarded as so sensitive? Where is the sensitive part? President, another reason cited at that time was that even the Complaints Against Police Office in Britain did not possess any independent investigative power. Let us look at overseas practices. Right, a Police Complaint Board, which functioned like the IPCC in Hong Kong, was established in Britain in the 1970s to carry out vetting work on paper. The police officers in Britain might be smarter than those in Hong Kong because, over the past 18 years, a lot of investigations had been conducted but no one had ever queried the independence of the members of the Police Complaint Board. Meanwhile, however, the fact that not a single substantiated complaint had been found over the past 18 years does demonstrate a lack of public confidence in the Board and the system. Consequently, a Police Complaint Authority was established in 1984. Despite its lacking in independent investigative powers, the Authority was empowered to monitor the handling of complaints against police officers.

Nevertheless, public confidence in the Police Complaint Authority system was still inadequate. Subsequently, legislation was enacted in 2002 for the establishment of the existing IPCC. Is it not very ironic? Both Britain and Hong Kong have this body called IPCC, but the one in Britain has independent investigative powers. There are also several grades of investigative powers in Britain: With powers classified as Grade 1, or the lowest grade, the IPCC can supervise the handling of complaints against police officers; with powers of a higher grade, the IPCC can manage the relevant investigation; with powers of an even higher grade, the IPCC can conduct independent investigation. In other words, investigations are conducted by police officers into relevant complaints with powers of the first two grades, but still the IPCC can intervene in these investigations. And then a totally independent investigation can be carried out by the IPCC exercising powers of the highest grade. The British Government

will provide them with adequate resources to undertake the relevant investigative work. This arrangement has been in place since 2004.

President, even if we must follow the practices of others, why should we copy such a backward practice? Why do we not follow those systems which are more advanced and compatible with public sentiment? Therefore, there is no reason for the Government not to allow the IPCC to possess investigative powers, which are considered to be most sensitive.

Chairman, what worries me most is the Government's lack of commitment to the IPCC. Most shockingly, when the leakage of data by the secretariat of the IPCC triggered grave concern in the community, did the Government tell the public that it would bear all the responsibility should the public suffer any losses? Not only has the Government failed to do so, it has even passed all the responsibility onto IPCC members. Worse still, some government appointees even advised the public to sue the IPCC, saying that the IPCC must bear the solicitors' fees on its own, for the Government had nothing to do with it because of its independent status. They said, "Although the IPCC is not a statutory body, it is an independent organization. Just go ahead and sue them." As for the solicitors' fees, it was with great reluctance that the Government finally agreed to let the Department of Justice pay the bills on behalf of them. What sort of a government is this? It can all of a sudden betray someone who is appointed by it to assist in its work or, to put it bluntly, bear the responsibility on behalf of the Government with respect to credibility. This is how the IPCC has been treated by the Government. So, how can I not study this Bill carefully?

Chairman, let us look at some basic matters. If you are to set up an independent organization, or turn an organization into an independent statutory body and continue to operate, you must pay attention to these two points: First, the composition of the secretariat which will serve the newly established organization. Chairman, there were plenty of cases in which government officers were seconded or deployed to help until the organization can operate independently. The Legislative Council is a case in point. However, when the Legislative Council was established by virtue of the Legislative Council Commission Ordinance in 1994, its secretariat started operating with the support of almost every member of the original team. Not only was the secretariat of the Legislative Council given a long transitional period, it was also provided with ample resources and office space to commence its work. Let me quote another example by looking at The Ombudsman. What about The Ombudsman?

Being an exceptionally experienced administrative officer, The Ombudsman, Ms Alice TAI, was a D8 officer with many years of working experience. Not only had she worked as Judiciary Administrator in the Judiciary, she had also worked as a full-time civil servant. She has also been working as The Ombudsman for a long time. With the original team to help her, she was provided with excellent conditions to go through the transition.

What about the IPCC? With a mere \$16 million allocated by the Government, the IPCC has to recruit its own staff and rent its own office. So far, I have only seen one similar case, and that was the Legal Aid Services Council, a very honourable case indeed. Not only are its chairman and members served by members of the community, the Legal Aid Services Council has also received only very little money to run its secretariat. This explains why the Legal Aid Services Council would approach the Panel on Administration of Justice year after year to reflect their situation of having inadequate resources.

Another noteworthy point is that, should someone seek compensation from the independent IPCC for its momentary lapse into negligence, and once the Court rules that the IPCC is to offer compensation, who will be responsible for the compensation? When I asked the Government whether it would take responsibility, it said that it would discuss the matter with the IPCC. How could this happen? Why did the Government not say, "We have absolute confidence in the people we have appointed to serve the IPCC. However, in the unlikely event of negligence without anyone making a mistake, the Government will bear the responsibility of offering compensation to the public because we have confidence in the IPCC. We know that such things should not be allowed to happen, but if it does, we will bear all the responsibility." Only in doing so can the Government establish an IPCC which can command public confidence and serve as an independent statutory body. Thank you, Chairman.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR LAU KONG-WAH (in Cantonese): President, just now I heard Ms Margaret NG reminisce about the past. Certainly, 11 years ago

PRESIDENT (in Cantonese): Mr LAU Kong-wah, you spoke in your capacity as Chairman of the Bills Committee when you delivered your previous speech, right?

MR LAU KONG-WAH (in Cantonese): Yes.

PRESIDENT (in Cantonese): Please continue.

MR LAU KONG-WAH (in Cantonese): Never mind. Just now I heard Ms Margaret NG reminisce about the past, that is, the deliberation work carried out 11 years ago. I was not one of the participants at that time. Ms Margaret NG said she rendered her support at that time in the spirit that the IPCC Bill should be worthy of support if enhanced monitoring was made possible as a result of it. I think I should also deliberate the Bill in the same spirit this time around.

However, I find Ms Margaret NG's opposition today a bit strange, even though she had cited some reasons. Eleven years ago, the Bill was withdrawn by the Government. Members who raise objection today might be the same as those who supported the introduction of the Bill at that time. This is indeed regrettable. In my personal opinion, the Bill has been going around in circles for 11 years. It is the public's wish that the IPCC can enjoy statutory functions and independence so that it can monitor complaints lodged against the police in the future. This is also based on public opinions.

I also found it quite regrettable when I heard Ms Emily LAU describe the entire Bill as rubbish yesterday. This is because, during the entire deliberation, many Members, including Ms Emily LAU and other Members who spoke today as well as yesterday in opposition to the Second Reading — I was able to observe the deliberation process all the time because I was the Chairman of the Bills Committee — had expressed a lot of constructive opinions, and the Government had also heeded a lot of their proactive and positive advice. When the Government proposes the amendments later, we will find that a lot of the opinions expressed by Members at that time have been incorporated into the amendments. I am quite surprised that, despite the proactive and positive nature of the advice, and the fact that it has been heeded by the Government,

Members still insist on describing the Bill as rubbish in the end. In my opinion, such an extreme comment might not be able to give an accurate description of the Bill which we hope to pass today.

Yesterday, Mr James TO also spoke at great length on the complete lack of interest demonstrated by police officers in carrying out investigations when performing their monitoring duties, and he emphasized repeatedly the police officers' "lack of interest". Certainly, I do not think that everything can be perfect, neither do I believe all police officers will discharge their duties impartially. Sometimes, there certainly exist in the Police Force unscrupulous elements abusing their powers or failing to perform their investigation duties wholeheartedly and sincerely. Such things are bound to happen. However, it would be an insult to all members of the Police Force should all police officers or all members of the Police Force be criticized for lacking interest in carrying out investigations. Personally, I find this unacceptable.

On the one hand, we have been praising the Police Force for its quality performance in Hong Kong over the years. But, on the other hand, when it comes to investigations, they are being criticized as totally worthless and useless. Is the Police Force having such a serious personality disorder? I think this is not necessarily the case.

President, opposing Members have raised the point that, under the existing Bill, the IPCC would be in a "three nos" situation, which means that it has no powers to investigate, make decisions and impose sanctions. This description is, in my opinion, absolutely accurate. Actually, the Bill does not contain these powers in terms of either its original spirit or contents. This is also the most prominent divergence between opposing Members and me: Should the IPCC be given investigative powers?

As regards investigative powers, we would often come across this question: Is it necessary to set up another organ to monitor an independent organ with investigative powers? This is indeed a perpetual issue. Therefore, it is very important that a monitoring organ should always exist. I have often hoped to uphold a principle and that is, investigation and monitoring should not co-exist. It is a matter of fact that the IPCC does not have the power to impose sanctions. Would it be quite dangerous should a group of amateur community members — they are lay members, not full-time staff — be expected to deliver a verdict on the disciplinary action taken against police officers? Therefore,

while "three nos" is an apt description of the IPCC, such an arrangement is also essential.

In contrast, seen from a proactive point of view, three "affirmations" can be found in the Bill. Firstly, the Bill will affirm the statutory status to be enjoyed by the future IPCC. This is a very important affirmation, and this is also what the public would like to see. We can see from the IPCC's existing operational procedures that there are no provisions that can serve as guidelines. During the deliberation, we would sometimes wish to look for some guidelines or at least some words or expressions for reference, but we would usually end up getting nothing. This Bill, if passed, can at least provide a framework for provisions for compliance by the police, members of the public, and even the IPCC to be established in the future. I think the public will agree to this view.

Secondly, the independent nature of the future IPCC will be affirmed. Although different interpretations of the IPCC's independence were proposed by Members in the debate yesterday, I am convinced that it is not ideal for the existing secretariat to be staffed entirely by civil servants. The future secretariat will be independent from the Government, as with the case of the Legislative Council Secretariat, which was established independently from the Government years ago. For the sake of assuming its independence, the Secretary-General of the IPCC's secretariat will not be a civil servant. Instead, the post will be filled by someone directly recruited by the IPCC on its own. This is very important. If we can find someone who is ready to face future challenges fearlessly to take up the post of Secretary-General, and if this person can be directly recruited by the IPCC, it would definitely be better than the existing arrangement whereby the post is taken up by a civil servant. This point has been reflected in the Bill, too.

In connection with the IPCC's future members, observers and the secretariat, the participation of civil servants or the appointment of the relatives of certain persons to perform certain duties should no longer exist. It should also be spelt out in the provisions that disclosure must be made should conflicts of interest be detected in the course of operation. These should ensure the independence of the IPCC.

Thirdly, the monitoring and review powers of the IPCC will be affirmed. The Bill will also empower future members and observers to conduct "random" or even "surprise" visits. Certainly, some Members also mentioned later

on I will say a few words on the arrangement of making surprise visits in the past which was not quite satisfactory, for the number of surprise visits conducted was zero. But actually, the Bill has empowered members and observers to attend interviews of this sort at any time. Such monitoring is very important. After the submission of reports or interim reports, IPCC members would also be able to interview witnesses or complainants, since monitoring can be achieved by direct interviews.

Similarly, in the event of extreme circumstances when conflicts between the IPCC and the Police Force cannot be properly resolved through negotiations, or when there is divergence of views, the IPCC may seek public advice, or submit the cases to be dealt with by the Chief Executive. By then, the monitoring role performed by public opinion will become very important too.

President, the new organ will have a statutory status, an independent secretariat, as well as monitoring and review powers. After all, I am convinced that this "three yes" situation is more progressive. Of course, I do not rule out the possibility of the IPCC becoming an organ similar to that which is found in Britain. While this possibility cannot be completely ruled out, there is bound to be a process of evolution for everything. Even if there could only be slight improvement or progress, or a certain degree of independence, I would still consider it worthy of support rather than regard it as completely useless.

President, I would like to say a few words about some of the operational problems encountered by the IPCC at present, as we have observed during the deliberation of the Bill. I very much hope that, upon the establishment of the new organ, the Security Bureau and IPCC members can pay attention to the following issues.

First, with respect to the current cases, there are more than 2 000 reportable complaints a year, or more than 40 reportable complaints a week, but only 10-plus members are available, making it very difficult for such a large number of complaints to be digested, for a lot of energy and time would be needed if in-depth investigations are to be carried out for thorough understanding. This explains why all relevant cases were examined by circulation of papers in the past, but such an arrangement was not satisfactory.

Hence, I hope the IPCC can come up with its own set of rules to define the cases which need to be dealt with by the holding of meetings or those which are

to be handled by the circulation of papers, and those which may involve the holding of meetings during the circulation process. This is the work which I think the IPCC should deal with in the future. As regards whether there is a need for the requirements to be laid down in legislation, it is certainly not absolutely necessary. After all, when the IPCC assumes an independent status in the future, it will be responsible for taking care of these matters.

Another unsatisfactory condition is related to observers. At present, members of the community are appointed by the Government to be observers, and they are mostly members of district fight crime committees. I think this has to be changed in the future. The first question I wish to ask is: In terms of composition, should the net be cast wider to beyond members of district fight crime committees so that more people from outside can be appointed as observers? Given the present emphasis on civic participation, this provides an excellent opportunity for civic participation. The network for the appointment of observers should therefore be widened.

Second, the effectiveness of observers has been relatively low and it is less than 20%. In 2006, 2 085 notifications were issued, but only 317 cases were attended by IPCC members or observers. In 2007, a total of 2 147 notifications were issued, but only 263 cases were attended by IPCC members or observers, and the attendance was below 20%. This is quite regrettable.

In addition, surprise visits can also be conducted. Actually, IPCC members can definitely conduct "surprise" observations, but no IPCC member has ever made an attempt to do so. I find this situation unsatisfactory. Therefore, we hope the new organ to be established in the future can pay attention to this.

But does it mean that the Government or the Security Bureau has no responsibility at all? I do not think so. Despite the independent status of the IPCC, the power of appointment and dismissal is still in the hands of the Secretary for Security, and therefore the Secretary cannot shirk his responsibility. In the future, the Security Bureau would be accountable for the performance, expectation and supervision of the observers or IPCC members. It must not think that it merely possesses the power to appoint but without having any responsibility for the results. Therefore, the Bills Committee has requested the Security Bureau to submit data one year after the establishment of the new

organ, to the relevant panel of the Legislative Council, and the data must cover the problems cited by me earlier.

President, the problem of nomenclature has also been discussed during the deliberation of the Bill. While the existing IPCC hopes that "警監會" can continue to be used and the Secretary-General of the future IPCC can become a member of the new organ, we disagree to this arrangement. As Members of the Bills Committee prefer the new name "獨立監察警方處理投訴委員會" or "監警會" in short, to the one appears in the existing Bill, "監警會" would be more appropriate from a logical point of view. Furthermore, it is hoped that the adoption of a new name can bring along a new approach.

Lastly, the Government has undertaken to the Bills Committee that the new IPCC will be informed of the new financial arrangements in August. We hope the financial arrangements proposed by the IPCC will finally be accepted and we wish it every success. Thank you, President.

PRESIDENT (in Cantonese): Members, each Member may only speak once during the debate on the resumption of the Second Reading of the Bill, but the Chairman of the Bills Committee may, apart from delivering a speech on the report of the Bills Committee, also speak on his personal stance or the stance of the political party he represents. I was not in this Chamber when it came to the second half of the speech delivered by Mr LAU Kong-wah in his capacity as the Chairman of the Bills Committee. As I am satisfied that he was speaking in his capacity as the Chairman of the Bills Committee at that time, I now give him permission to speak for a second time.

MR LEUNG YIU-CHUNG (in Cantonese): President, yesterday, when some Honourable colleagues expressed their views on the Independent Police Complaints Council Bill being discussed today, they said that the passage or otherwise of the Bill did not make so much difference in terms of the result achieved. Some Members even pointed out that the Bill, if passed, might even be counterproductive. Therefore, it is even better for the Bill to be negated than passed. Actually, I also share these two observations. There are two reasons for this.

The first question is: What is the underlying justification for thinking that the passage or otherwise of the Bill does not make much difference? Actually,

the IPCC has nothing to do with the CAPO, which is directly responsible for investigating into the complaint cases lodged by members of the public against police officers. But the crux of the problem is, police officers are being investigated by their peers inside the CAPO, and this has long been a topic of debate among us. Why is this issue considered to be the crux of the problem? Why do we keep debating on this issue?

We can see from the IPCC's previous annual reports that only a very low percentage, or a few percent, of cases out of some 3 000 to 4 000 or 2 000 to 3 000 complaint cases received annually can be substantiated. Why? The Government would certainly argue that problems could at least be detected, and the efforts thus made were not completely futile. In other words, when the relevant police officers are found to have problems, actions would be taken to address the problems squarely. While I certainly agree that things should be dealt with in this manner, the point is that the police officers concerned were brought to justice probably because there is no way for them to deny their wrongdoings, just like offending police officers must be brought to justice. These cases are exactly the same. With the availability of concrete evidence, there is no way for the police officers to deny their wrongdoings, and this is it.

But the point is whether relatively ambiguous or minor cases can be investigated in an impartial and independent manner. This is a frequently-asked question from the public. Actually, we can often see in the past I suppose Honourable colleagues who have met with the public would definitely have heard incessant complaints from the public about police officers' abuse of powers or undesirable conduct. But what action can be taken? We can only refer the cases to the CAPO, but what would happen in the end? In the end, nothing could be achieved, probably because there was inadequate evidence or the cases were simply allowed to vanish into obscurity. Before I became a Legislative Council Member, I had the experience of being treated very badly by police officers, and I had once lodged a complaint in this connection. I was subsequently interviewed by an officer of the CAPO, who spent more than three hours taking statements from me. Yet, I did not hear anything even after several months had passed. When I pursued the case with the CAPO, I was eventually told that my case could not be substantiated because of a lack of further information. Since then, I have not heard anything from the CAPO. This is my personal experience. Therefore, we very much hope that an organ can be set up to investigate independently into complaints lodged by the public. But much to our regret, this piece of legislation can still not achieve this goal.

This explains why I think that this Bill, whether it is passed or not, does not carry much significance.

On the other hand, some Honourable colleagues shared the view that the Bill, if passed, might even be counterproductive. Why am I saying so? Today, the IPCC will acquire a statutory status, and things will not be the same as before when the IPCC did not yet have a statutory status. With a statutory status, the IPCC will be empowered by legal provisions to handle a lot of things. In other words, a framework will be created whereby the IPCC can only do what it is empowered to do by the legal provisions. This would mean that the IPCC can only do things within the ambit of the framework. In the past, when such provisions did not exist, there might be room for manoeuvre, but now everything has to be defined clearly. The powers of the IPCC, after being tied up by legal provisions, may on the contrary be narrowed, and no further actions can be taken. This is indeed worrying.

Some Honourable colleagues have also mentioned such issues as "three nos" and so on. Today, Mr LAU Kong-wah said that although the "three nos" might probably exist, it does not really matter even if they exist because the points established in the proposal would be helpful. One of the points raised by Mr LAU Kong-wah just now was that the IPCC would be given monitoring and reviewing powers. On the face of it, this is pretty good. This would mean that whenever things are not done properly, the police officers concerned would be requested to do it again, and things would be sorted out more clearly or in a more in-depth manner. Although this seems to be good, our experience tells us that the situation will actually turn out to be more or less the same as before. In the past, if the information obtained by the police after investigating certain issues was considered inadequate, the IPCC might request for more information. This, when compared with the results achieved by the proposed review, is more or less the same, only that the IPCC may request for more information. This is different from allowing another group of people to investigate into the entire case independently and seriously. There is actually not much difference between conducting a review and providing further information. It really makes no difference even if the case is reviewed one more time.

I have an example which might be totally irrelevant but, President, I would like to tell Members about this anyway. I was once involved in the fight for compensation in connection with the Wah Kai Industrial Centre. At that time, the government officials coaxed the relevant tenants into filling out a Form A,

saying that it was the quickest way for them to obtain compensation, so that they could repay their debts to the banks, and so on. As a result, many of the tenants filled in the Form A. But what was the underlying significance of Form A? It was later found out that those who had filled out Form A could not make further claims for compensation in the future even if they were not satisfied with the amounts of compensation. For people who filled out another form called Form C, however, they could continue to pursue their claims for compensation if they were not satisfied with the payments. When the 10-odd tenants who made their applications on Form A received the compensation payments and found the payments too little, they decided to make further claims for compensation. However, they were told by the Government that they were not allowed to do so because, according to the terms and conditions of the agreements they had signed, they had already given up their right to further compensation once they signed Form A. It was only after a lot of efforts made by the tenants that the Deputy Director subsequently agreed to re-examine their applications, and the tenants were told that they would receive further compensation should it be found that the amounts of compensation granted to them were less than what they deserved. The Deputy Director had even promised them to review the relevant applications. On the other hand, while those tenants who filled out Form C continued to fight for their compensation, they were persistently asked by officers of the Lands Department to provide them with more information. Now, 11 years have already passed. But there are still incessant disputes, with the relevant government officials accusing the tenants of failing to provide adequate information and requesting them to provide more information. Subsequently, the 10-odd tenants submitted their Form A to the Deputy Director for review, and it took the Deputy Director less than three months to complete the review. What is more, he said that as far as the amounts of compensation were concerned, the amounts of compensation were already adequate, and he even declared the review was completed without requesting for more information or other things.

Therefore, President, I feel that when the Deputy Director told the tenants that their cases had been reviewed, he was actually implying to the tenants that they should stop making further claims for compensation as the review was over and no more action could be taken. The tenants were really amazed by the Deputy Director because he managed to review the 10-odd applications within three months, but for the dozens of applications being reviewed over the past 11 years, the relevant officers were still requesting the tenants for more information, and the cases were still in progress. But then, they were told by

the Deputy Director that the review had been completed without requesting them for more information. So, how should a review be defined? The Deputy Director could say whatever he wished. He could say that he had conducted a review by reading the documents once more or asking the same questions one more time. Will he look at the problem from a new angle? This is where the problem lies. Therefore, although the so-called conferment of power appears to be something new and quite effective, when things are put into actual implementation and operation, the situation might turn out to be more or less the same as before, with the tenants being pressed for further information only. But what difference will it actually make? Nothing can be done to truly facilitate the handling of complaints. This explains why I share the two observations raised earlier by Honourable colleagues, that is, it does not matter whether the Bill is passed or not and it would be counter-productive even if the Bill is passed.

This is a question for the Secretary: Can the Secretary explain the reasons for the large number of complainants with reference to the large number of complaints (thousands of complaints) lodged by members of the public every year, as is stated in his annual report? Is it because the people had nothing better to do or they held a grudge against police officers and so they decided to lodge a complaint against them? Or has something really gone wrong and so people are willing to spend time lodging complaints? President, it is time-consuming to lodge a complaint. As I told you earlier, I spent three hours taking statements in connection with a complaint I lodged. The complaint was merely about a trivial matter. A police officer suddenly shouted at me as I walked by. He was actually shouting at a group of people and I did not know whether he was calling for me, and so I did not pay any attention to him and continued walking. Then, he shouted again, but I still did not know he was yelling at me until an elderly man told me that he might be shouting at me. I then approached the police officer, who said to me, "Why did you not stop when I shouted at you?" I said, "How could I know you were shouting at me? Why would you shout at me when there were so many people on the street? I really have no idea. How could you behave in this manner?" Can such an attitude be acceptable? Because of this incident, I spent three hours filing a complaint, but eventually, no problems were found. President, please think about this. Considering the large number of complainants and the time spent every year, how could the Government give us such a simple response! This is really extremely unfair to the public.

Yesterday, Mr Martin LEE raised a remarkable question. Let me put aside the negative aspect and focus on the positive side only, and that is, a merit will always be recognized. Why would the Secretary be afraid of police officers being investigated if he is so full of confidence in them and considers their behaviour and performance good? I think this is precisely where the problem lies. Just as Members of this Council would like to bring everything out into the open without any fear for investigation, the logic of bringing everything out into the open is the same. As we are talking about the improving and progressive working attitude of the Police Force today, I feel that this is what we should celebrate, and here I would like to congratulate them on this.

Actually, I agree that the attitude of some police officers is excellent, and their performance really deserves our appreciation and commendation. However, what should be done when some so-called black sheep appear? Should we protect them or act impartially? This is what we wish to pursue. Such being the case, why can we not allow investigations to be conducted openly when complaints are lodged? I believe only in doing so can our Police Force take pride in themselves. In other words, why should we be afraid if we act impartially? Only in this way can good results be achieved.

Therefore, irrespective of the passage or otherwise of the Bill, I still hope the Secretary can reconsider what can be done to enhance public's confidence in the work of the Police Force and encourage the public to accommodate and accept the Police Force. This is the most important task. As far as this point is concerned, the situation will surely be improved with greater transparency and enhanced openness, and this is actually the case. I hope the Secretary can consider this in detail.

President, I so submit.

DR YEUNG SUM (in Cantonese): Madam President, I am not a member of the committee responsible for scrutinizing this Bill, and I was not even a member of the bills committee 11 years ago. However, when this Bill was scrutinized 11 years ago, detailed discussion was conducted within the Democratic Party. Therefore, I basically understand matters relating to this Bill.

I would only like to respond briefly to Mr LAU Kong-wah's view. He asked why the same group of Members who supported the Bill relating to the

Independent Police Complaints Council (IPCC), though it was subsequently withdrawn by the Government, would express opposition when it is re-introduced by the Government 11 years later. He expressed regret about it.

I would like to state clearly and put it in record that we supported the Bill back then because the Democratic Party succeeded in including investigative power by way of amendment at the committee stage, just that the Bill was withdrawn by the Government unequivocally during the Third Reading due to this newly added investigative power.

Now that 11 years have passed and this Bill is re-introduced into this Council. Mr James TO intended to propose on behalf of the Democratic Party to add in this Bill independent investigative power. However, Madam President, it seems that they think this has gone beyond the scope of the Bill and thus they consider this infeasible.

An investigative power is indeed lacking in this Bill, and this is precisely why the Democratic Party finds it impossible to support it. Therefore, I have responded to Mr LAU Kong-wah's question of why we supported the Bill 11 years ago but express opposition to it when it is re-introduced. The above is actually the major reason.

I find Mr LAU Kong-wah's stance very strange. Sometimes, I find that it is actually not easy to be the Members of the pro-government camp nowadays. While having to express their stance, they cannot be excessively biased towards the Government, which can be said to be a typical case of "offering a great favour by giving a mild rebuke". For example, he has said it is quite satisfactory now because independence is given, it is an independent body, clear guidelines are established and there are observers to observe the investigation of cases. In sum, passing the Bill is better than not passing anything at all.

I would like to share one point with Members. That is, although the Independent Commission Against Corruption (ICAC) is an independent body with monitoring power, if it does not have any investigative power, do you think this independent body is an ineffectual body after all?

I find it very strange that Mr LAU Kong-wah should maintain that this Bill is not too bad after all and that setting up the IPCC as an independent body first is better than none. However, the question is the IPCC still lacks investigative

power and independence, and investigation of police matters will still be carried out by the police. The Secretary may also know that in the mind of the public, this practice can hardly create the impression of impartiality. Although there are some very upright police officers, the problem lies in the image, impression and public impression. In any case, it will give a feeling that when "the police are investigated by the police", it is an exclusive pact among "cronies".

I would only like to give the above brief response. Thank you, Madam President.

DR LUI MING-WAH (in Cantonese): President, originally, I did not intend to speak. However, as I am a member of the Independent Police Complaints Council (IPCC), being one of the three Members of this Council to serve as vice-chairmen, I have to speak. Nevertheless, this is not the reason why I wish to speak. I wish to speak because I am stunned. Why? Yesterday, I listened to the speeches made by some Honourable colleagues. Although I was not present, I could still listen to the insightful views expressed by Members upstairs. I was really stunned by the comment made by two to three Honourable colleagues that they would oppose resuming the Second Reading of the Bill if it was not amended. I would like to call on these Honourable colleagues to re-consider it.

After holding so many meetings and spending so much time on detailed discussion, this Bills Committee has finally reached a consensus, even though some people are very dissatisfied about this outcome actually, there was not a single bill which was passed in this Council to the satisfaction of all. Very often, every one has to make compromises. If this Bill is passed, it is better than none. Just like the Race Discrimination Ordinance, is everybody satisfied with it? No, but it was eventually passed. Opposing this Bill even at this stage is just not the right thing for a Member of this Council to do, neither is it something that the people of Hong Kong would like to see. This is the first point I would like to make.

Secondly, the IPCC is actually a monitoring body responsible for overseeing the Complaints Against Police Office (CAPO) instead of investigating into complaints against the police, as in the case of the relevant organization provided for in the most recent legislation in the United Kingdom. As such, conferring it with investigative power calls for the overhaul of the entire

legislation as well as its background, and the situation is totally different from that in question. Under the present circumstance, when the IPCC identifies any problem, as mentioned by some Honourable colleagues just now, the last resort will be to make available to the public all the circumstances surrounding the incident so that a ruling can be made by the Chief Executive. With this last resort in place, I believe every one will act seriously. Just assume that the IPCC is conferred with investigative power, will such purpose be achieved? Under the present circumstance, I think it will be impossible to achieve the required or expected effect unless the fundamental scheme is overhauled.

Thirdly, although the new legislation which transforms the IPCC into an independent body may not be regarded as satisfactory by all, as indicated by many Honourable colleagues who expressed reservation about it, after all the change of the IPCC from an affiliate agency to become an independent body is a sign of progress, although not a very great one. However, I still hope it will be allowed to operate for a few years so that we can find out about its performance. Improvement can be made gradually in the future when necessary, as in the case of the United Kingdom. This is also one of the feasible options. Therefore, it is indeed unnecessary to deny it of a future at present. After all, we should be tolerant of matters which bring progress and allow novel approaches to operate for a period of time before they are re-examined. The above are the three points I would like to make. Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

DR FERNANDO CHEUNG (in Cantonese): President, the crux of the problem has been revealed just now by Members' speeches, including those made yesterday afternoon and yesterday evening. The Police Force is the largest department in the Hong Kong Government, and police officers, equipped with handguns to enforce the law for the citizens of Hong Kong, possess extensive power. It is important for them to have such power because there are both good and evil, the righteous and the wicked in the world. In order to combat the bad elements and the evil forces, we must empower the Police Force to carry out investigations, prevention, combat and arrest and pass unscrupulous people onto the judiciary for penalty. Only in that way will there be stability and progress in society.

Generally speaking, the performance of the Police Force of Hong Kong has been improving, and it gives the public the impression that progress has been made. In this regard, I think the Police Force warrants congratulations and commendation. The Police Force and the Government have all along been making continuous efforts to strive for improvement. To date, there are great improvements in both its overall qualifications and training methods, and training of various kinds and in many aspects, such as that in domestic violence which I am more concerned about, is provided. All of these deserve commendation.

However, there are bound to be black sheep in a flock. When the police possess such an extensive power, very serious problems will arise if this power is abused by people in charge. When abuse of power exists in the police, when problems develop in some members of this largest government department — this most powerful law enforcement agency — what should we do? This is where the crux of the entire Bill lies. In the absence of a genuinely independent monitoring body which can really guard against such a huge force, it will indeed be impossible for us to exercise monitoring over the police and challenge the way matters are handled by it, not to mention conducting investigation and imposing punishment.

At present, the entire mechanism for complaints against the police is actually ineffectual. The Independent Police Complaints Council (IPCC) only passively receives documents submitted by the Complaints Against Police Office (CAPO), and members of the public can only lodge their complaints against the police with the IPCC after going through the CAPO. It is often not easy to lodge a complaint with the CAPO. Many members of the public have told me that their calls of complaints are often refused. Even when members of the public lodge complaints against the conduct of a certain police officer in person, they have to write a letter of complaint themselves because if they request the CAPO to write the letter on their behalf, the contents will turn out to be different from what they would like to express. This is the first hurdle which will ward off many complaints. If the channel for complaint was really open, easy and user-friendly, there would not have been only some 4 000 complaints.

Then, even if an investigation is carried out by the CAPO, it will only submit its report to the IPCC after a conclusion has been reached. Actually the IPCC is a misnomer, for instead of being able to monitor the police, it can at most review the complaints. The IPCC has presented itself as a grandiose

organization in its website, claiming that it is independent and just and will exercise thorough monitoring over the CAPO's investigation results of each case. However, as Ms Emily LAU said yesterday, when over 4 000 complaints were received, how could the IPCC, with only 18 members and 20 staff, handle them? Then, let us take a look at the procedures as published in the IPCC website. If the IPCC accepts the investigation report of a case, the procedures will be very simple. However, if it does not, what will happen? The IPCC will then require the CAPO to make a clarification or it will put questions to the CAPO, and the CAPO will provide further information before the IPCC re-examines the relevant case. If the IPCC still does not accept the investigation report after examining the case, the IPCC and the CAPO will discuss the case thoroughly again before re-examination is carried out. If the IPCC still does not accept the investigation report, it can only require the CAPO to provide further clarification again. President, this procedure is tactfully designed. If the IPCC is not satisfied with the investigation report of a particular case, the case will be caught in a never ending loop and stuck between the IPCC and the CAPO forever. The CAPO will conduct investigation again and another report will be submitted to the IPCC, and if the IPCC is not satisfied with it, it will require the CAPO to continue with its investigation.

The CAPO actually comprises police officers, that is, an investigation will be conducted by the police officers themselves. Then, this so-called independent and just IPCC, which is committed to digging for the truth thoroughly, impartially and with perseverance, has to rely solely on the further information provided by the CAPO all the time and will be trapped in this never-ending loop so formed. How can it be independent? That is why Mr LAU Kong-wah said just now that it is an organization with "three-nos", that is, no investigative power, no power to reach a verdict and no punitive power to mete out punishment. Without these three powers, the IPCC is definitely a "toothless tiger", as Mr Alan LEONG put it yesterday. Under this circumstance, how can improvement be made to this "toothless tiger"?

Basically, the greatest change is that a piece of legislation has been introduced into this Council. Mr LAU Kong-wah immediately commented that with this legislation, the IPCC would be given a statutory status. Is being given a statutory status necessarily desirable? When the IPCC is given a statutory status, it will not be subject to abolition through administrative measures, that is, it will not vanish the following day because of Mr Donald TSANG's sudden

dislike towards it. This is indeed the advantage of being given a statutory status.

However, is it really a great advantage? The question is whether the Hong Kong Special Administrative Region (SAR) Government may abandon the IPCC casually? If it really does so, what kind of rebound of public opinion will there be? Therefore, even if a statutory status is not given today, frankly speaking, I do not believe the SAR Government will abolish the IPCC casually. Of course, it is always better to enjoy a statutory status. I agree that it is "better than none".

Secondly, its independence is related to the secretariat, the positions in which will ultimately not be taken up by civil servants. At least, the IPCC has its own staff, which is an improvement. It is an improvement as far as the operation of the IPCC is concerned. However, as it is only a "toothless tiger", what is the use of this improvement? Therefore, this is only a very, very minor improvement.

Thirdly, Mr LAU Kong-wah pointed out that the IPCC has the power of review — it does have the power of review but it is still caught in the loop mentioned just now. Once it is caught in this loop, it will not be able to break away. What then about review? Is it not the referral of cases to the CAPO after all? If the CAPO advises that a certain complaint is not substantiated as the police have not committed any mistake and rules in favour of the police, what will happen?

The IPCC can only return the case to the CAPO, while "witnessing helplessly" that the police have apparently committed some mistakes. The CAPO is part of the police. Although the police officers working under it do not belong to the enforcement units of the Police Force and do not have to carry out the duties of these units, they will have to return to their original positions in a year or two. As a matter of fact, they are part of the police establishment. How will thorough investigation be possible when it is conducted by police officers themselves? The reason is that those being investigated by them today may become their superiors tomorrow. The logic is as simple as this. It is true that there is review, but it is futile.

People may think that there is yet another safeguard. That is, if the IPCC is still unsatisfied, it may make recommendation or submit a written report to the

Commissioner of Police or even the Chief Executive. Actually, the IPCC is appointed by the Chief Executive, what use will there be even if it submits a written report to the Chief Executive expressing its dissatisfaction about the CAPO and the Commissioner of Police? As a matter of fact, the Chief Executive may choose not to respond to it. The IPCC may think that perhaps the Chief Executive will provide a response. It may think that as it has submitted a written report to him expressing the gravity of the matter, he will definitely provide a formal response. Of course, this is not the case in reality.

The overall framework is ineffectual. Regarding the present Bill, can we say that there is no improvement at all? We cannot. From the "three points" mentioned by Mr LAU Kong-wah, we can really see that there are some minor improvements.

As early as 11 years ago, Mr James TO succeeded in moving an amendment to confer the IPCC with power. Investigative power is a very important power, and it means actual strength to defend against the black sheep in the Police Force and to conduct independent investigation immediately to find out the truth and then impose penalty according to the truth to prevent further abuse of power. While Mr James TO was able to move the amendment 11 years ago, we are unable to do so today. Today, Mr James TO is even unable to propose this amendment. Is it a regression?

Well, let us not talk about the issue of procedures for the time being. However, as far as today's discussion is concerned, we can notice that with regard to the most fundamental independent investigative power, power to reach a verdict and punitive power, there is no improvement at all. President, when this Bill lacks material improvement, do we have to support it? I doubt it very much.

Among the over 4 000 complaints, only 2.3% of them were substantiated, while the remaining were classified as unsubstantiated, false, no fault, curtailed and withdrawn. To be frank, an average person will find it problematic just by looking at these figures. Mr LAU Kong-wah pointed out just now and Ms Emily LAU also said yesterday that the independent observers have not conducted even a single surprise independent observation so far. What does this imply? The entire regime has collapsed. Judging from the relevant figures, the regime can hardly achieve any actual effect. Under the Bill, the

original framework will continue to be implemented, just that it will be translated into some legal provisions. In other words, it will even be more difficult to make any changes to this framework because legislative amendment will be involved.

Against this background, should we support this Bill? Should we include in the legislation a framework which is unable to allow the IPCC to achieve its functions?

I really think Members have to consider this clearly. Why do Members have to describe something which is necessary as if it is not? Why do they have to say that the IPCC members only have limited capacity because all of them only serve on a part-time basis and they are very busy as they are celebrities? Why do they have to say that as there are only 18 people, it is impossible for them to follow up over 4 000 allegations? Why do they have to say that as these members have limited capacity, we cannot ask them to do too much? This is indeed taking the effect as the cause. I think in that case we have to change them into full-time positions and recruit additional manpower. Without any actual power of resistance, the IPCC is unable to achieve any effect.

Relying solely on the self-discipline of the Police Force may be useful in most of the cases. However, a small minority of black sheep will still undermine the reputation of the police as a whole. I hope Members will think twice about it. Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR ALBERT HO (in Cantonese): President, what we hope to pass here in this Council today is a piece of legislation on an Independent Police Complaints Council (IPCC) which is independent. What we would like to see is the establishment of a regime with an organization which is independent of the Police Force and is dedicated to the investigation into complaints against the police and imposition of penalties in relation to such complaints instead of the establishment and the retitling of an alternative regime to oversee the Complaints Against Police Office (CAPO) in the absence of an independent regime to investigate into matters relating to the police. The most serious flaw of this legislation today is the intention to retitle a regime in the hope that such a regime

so retitled can rationalize an existing irrational regime, that is, the CAPO. I will go through this point by point.

The Democratic Party moves a motion to delete the expenditure incurred by the CAPO during the budget debate every year. Why? Because the existence of the CAPO is not only unable to help in the fair handling of public complaints against the police but will also send a wrong message and create a wrong impression that these complaints have received fair handling, thereby misleading people into thinking that as these so-called problems of the police are handled and fair results have achieved. As for those complaints which are unsubstantiated, people may think that they are groundless and unjustified.

President, in this regard, I think no speech is more convincing than the one made by Mr Ronny WONG, former IPCC Chairman. Frankly speaking, I find his remarks made at this Council a bit shocking because I have known him for years, and I think he must have found it so unbearable that after pondering over it, he decided to make such a strong accusation of the CAPO and disclose the facts here. Of course, I am not saying that he is not an honest person, and we even consider him a bit conservative. He would do his best to co-operate with the Government and improve the policy under the existing regime for the Government. Under this circumstance, even he found it so unbearable that he had no choice but to voice it. He said that the entire design of the CAPO is actually unfortunate — I mean the result — that is, it is used to make the substantiation of complaints against the police difficult, the purpose or effect of which is to protect the police instead of the complainants. Some members of the CAPO have tried their very best to identify problematic cases with very limited information under very difficult situations, and have made continuous efforts to press for information from the CAPO to facilitate their relatively effective reviews. Satisfactory results could hardly be achieved in this way. Therefore, despite great effort, review was considered to be helpful only for a handful of cases.

President, the Government and Members who maintain that there is no need for the CAPO to become independent have all along been stressing one point. They said: "Do you think our Police Force is incompetent? Do we not always commend the Hong Kong police for being considerably reputable or ranking even among the top Police Forces in the world?" President, we should not confuse the two. While police officers are capable of conducting investigation into and solving cases and detecting offenders, it does not mean that

they will conduct independent investigation against their fellow police officers. These are two different issues. I think departments all over the world will face the same problem when they have to conduct investigation against members within the same department. The problem involved is when a colleague of many years who has gone through circumstances of life and death (this is the wording used by them) with one has committed a mistake, be it small or big, should one try his best to give him a chance and protect him, so that he will not be easily subject to penalty because of his fault, thereby ruining his hard-earned achievement of so many years? This is a natural idea, and it is understandable. This is precisely why it is necessary to set up an independent monitoring or investigation regime.

The reason is actually very simple. President, 30 years ago when we were still studying, why was there discussion on the setting up of an independent anti-corruption organization? The reason was the same. At that time, the police seriously rebuked us and asked whether the Anti-Triad Squads were not already taking up the tasks that we would like that organization to do. Yet we said that if the investigation was conducted by the Anti-Triad Squads, it would just mean that they would receive an additional share of "bribe money". Would they really be able to solve the cases? President, of course not every one of the Anti-Triad Squads would take an additional share of "bribe money" and refuse to conduct any investigation into the bribery cases, but in reality, it was exactly because the Anti-Triad Squads were unable to achieve any success in anti-triad endeavours and corruption prevention that there was the campaign to "combat corruption and apprehend Peter GODBER". This was also why the Independent Commission Against Corruption (ICAC) was set up. After its establishment, it was found that many police officers had allegedly breached the anti-corruption law, which had made it necessary for the then Governor to grant amnesty. The then Governor actually did not have the power of amnesty. According to the many studies conducted, under the legal system at that time, the Governor did not have the power to withhold the implementation of a certain piece of legislation. The Governor announced the amnesty himself — probably after discussing with the Executive Council, but the then Governor-in-Council did not have the power of amnesty. It was because even the Crown, not to mention the Governor, did not have the power to withhold the implementation of a piece of legislation under the constitution at that time, while the introduction of legislation was required.

However, no one would apply for judicial review then because at that time people also thought that it did not matter whether or not it was legal because

society found that compelling the ICAC to investigate against all members of the police was unacceptable and the pressure arising from it was too much to bear. In any case, the authorities were compelled to set up the ICAC against this background in order to handle serious corruption cases in the Police Force arising as a result of the lack of an independent anti-corruption organization. Of course, I am not trying to draw a complete parallel between the two situations, but the rationale behind is the same. The Police Force, which possesses very diverse and extensive investigative and law enforcement powers, is arguably the law enforcement department which will create the greatest impact on the public among the numerous law enforcement departments.

Recently, a group of people from a union of disciplined services came to me. They noted that the remuneration structure for the Police Force is better than those of the other departments, be it the Fire Services Department or the Correctional Services Department. The entire remuneration structure and promotion structure for the Police Force are much better than those of the others. These police officers told me that it is a result of their job nature. However, the power they exercise is closely related to the everyday life of the public. It is true that without a good Police Force, there will not be good law and order and a good living environment for the public. It is also true that the Police Force of Hong Kong as a whole has made quite a good impression on the public. However, under this circumstance, why is the Government still afraid of or why does it still lack the courage to, with regard to the entire regime, and public complaints are only directed against an extremely small minority of the undesirable elements in the Police Force, or police officers who have allegedly breached the law once or twice. Why is the Government reluctant to conduct comprehensive, independent and credible investigations? Why does it still have to tolerate and harbour a regime which is unjust and hence tarnishing the reputation of the Police Force? Please bear in mind that the reputation of the entire Police Force is hampered because the community finds the performance of the CAPO unacceptable. Why is the Government unable to do so?

For years, the Government has been refusing to give the CAPO an independent status and allow it to become a statutory body. Today, it is trying to make use of the IPCC — this "toothless tiger", as Mr Alan LEONG put it — to rationalize the CAPO. Today, it is even trying to retitle this "toothless tiger", hoping that it will enjoy a proper title and an official status, so that its orders will be followed. Unfortunately, however, this is impossible. It is

because from the various examples provided by Honourable colleagues in the process of the debate, we can see that the IPCC does not have the capability to effectively perform its role and functions as expected and claimed by the public or the Government. When it is not even granted the second tier of investigative power, which is the only power we hope it will possess, why should we support it? How can we accept a regime which is established only nominally? The second tier of investigative power which we want is in fact subject to many limitations. The IPCC has to go through every procedure with great caution and can only exercise this power when it considers that a second investigation is required for the case concerned, and even prior consent of the Secretary has to be obtained. For example, when a certain case is so exceptional that it may affect the reputation of the entire Police Force or has aroused extensive concern in society, examination will be conducted for the case in order to protect the entire regime. Why do we not do so? Because we have to provide all-encompassing protection to this CAPO — is this the answer we will get from the Government? The IPCC will only observe and review the cases at a distance or even participate in some investigatory activities. Is this the only answer? Can the credibility of the entire regime really be restored in this way?

President, many front-line and elected Members have many opportunities to receive public complaints. Mr LEUNG Yiu-chung mentioned some earlier and I also handled some complaints, the results of most of which were very disappointing. Even if the present Bill is passed today with the support of the Government and some political parties supportive of the pro-establishment faction, the problem brought up by us will remain unsolved. Even if a few thousand complaints are transferred to the IPCC for review, the IPCC will only be concerned about or attach some importance to a few of them. Among the few thousand complaints, only a few or 20 to 30 of them will be so-called "substantiated", that is, wholly or partially substantiated. The problem cannot be solved in this way and the Government has to face the public concern about this issue.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Security to reply.

SECRETARY FOR SECURITY (in Cantonese): Madam President, first of all, I am very grateful to Mr LAU Kong-wah, Chairman of the Bills Committee, and members of the Bills Committee for conducting a detailed and thorough examination on the Independent Police Complaints Commission (IPCC) Bill which involves a staggering 80 hours of deliberation at 31 meetings of the Bills Committee.

The Bills Committee's deliberation covers not only policy matters in relation to the Bill, but also drafting details of each provision. Although some members of the Bills Committee have different views on certain provisions of the Bill, there is full exchange on all views and opinions at meetings of the Bills Committee. The Administration has also taken on board a number of suggestions made by Members, and hence, I will move the relevant amendments at the Committee stage later on. Having the benefit of collective input from members of the Bills Committee, the Bill as amended by the Government will stand better to provide a solid legal basis for the establishment of a fair and effective mechanism to monitor the police's handling of public complaints against the Police Force so as to ensure that such complaints are fairly and impartially handled.

Under the existing police complaints system, the police are responsible for investigating into complaints lodged by members of the public relating to the conduct of members of the Police Force, as well as the procedures and practices adopted by the police. The IPCC is responsible for monitoring the relevant investigations. Since its inception in 1977, this system has been working effectively. While maintaining the existing two-tier police complaints system, the Bill proposes to take this forward by converting IPCC into a statutory body. The Bill also specifies in detail the monitoring functions and other relevant powers of IPCC. There are provisions which clearly state that the police are duty-bound to provide assistance to IPCC in various matters. This legislation is conducive to promoting and strengthening the independent status and monitoring functions of IPCC, while enhancing the transparency and accountability of the police complaints system.

I notice that during the Bills Committee's deliberation, some negative opinions have been expressed. For instance, some say that as the police are responsible for the investigation of public complaints under the existing system, it is a case of "people investigating into their own people" and the outcome of investigation is invariably in favour of the member of the Police Force concerned. They thus suggest that IPCC should be empowered to conduct its own investigations directly if it is not satisfied with the police's investigation findings, or even that IPCC be vested with full powers to investigate any complaints against members of the Police Force. As regards the Bill's proposals to codify the existing system and to convert IPCC into a statutory body, some Members opine that if IPCC is not vested with any powers to investigate, make final decisions or sanction, they would prefer no legislation at all and let IPCC continue to operate under the current administrative framework. I cannot concur with these views.

These negative viewpoints, which stem from misunderstandings of the existing system and suspicions about the Administration's motive for legislation, are also unfair to the members and observers of IPCC who have been dutifully monitoring the police's investigations into public complaints. I think it is imperative for us to clear these misunderstandings and suspicions so as to allow both Members and the public to have a clear understanding on how the two-tier police complaints system actually operates and how the Bill can further improve its efficiency.

First of all, I have to point out that the police complaints system has long been established for over 30 years. This long history is a testimony of the Administration's strong emphasis that comprehensive procedures must be in place within the police for the enforcement of law as well as its day-to-day operation, and that members of the Police Force must enforce the law impartially under strict discipline. Nowadays, members of the public would by and large agree that the Hong Kong Police Force is an outstanding dedicated professional team. Over the years, our Police Force has worked very hard to ensure that Hong Kong can maintain its reputation as one of the safest cities in the world. The police are also responsible for maintaining public security and social order during large-scale international events in recent years. In December 2005 when the Sixth World Trade Organization Ministerial Conference was held in Hong Kong, large crowds of foreign and local protestors were holding demonstrations outside the meeting venue. Under the world's scrutiny, our Police Force had properly dealt with the demonstrations in a peaceful yet steadfast manner, and

this had won recognition from the Hong Kong people as well as other world communities. In May this year, the Olympic Torch Relay was successfully held in Hong Kong as a result of detailed preparations made by the police. The Hong Kong people can therefore participate in the excitement and joyous anticipation of the upcoming Beijing Olympic Games to the fullest extent. In August this year, the equestrian events of the Olympic Games will be held in Hong Kong. The police have already drawn up a comprehensive security plan and no effort will be spared to ensure the smooth conduct of the events.

The Hong Kong Police Force is a highly professional team. Moreover, it has managed to build up a people-oriented service culture through internal reform. According to the result of a public opinion poll released by the University of Hong Kong recently, Hong Kong people's satisfaction towards the police is as high as 70%. I want to tell everyone that this rating truly reflects the high regard our people have for the overall performance of the Hong Kong Police Force. This is an exceptional achievement among Police Forces worldwide. But our Police Force will not be complacent and rest on its laurels. Both the management as well as rank and file officers will strive to further enhance the performance and services of the police.

In recent years, the police have made great efforts in setting up communication channels in various divisions and districts so as to maintain active dialogue with different groups and people from all sectors, including non-ethnic Chinese communities, concern groups, youth organizations, trade organizations, professional bodies, mutual aid committees and owners' corporations, and so on. This can help promote community involvement in the fight against crime, enhance public understanding on police work, and channel more public views on how to improve police work. Ultimately, it will help increase public understanding on and recognition for the work of police officers.

The present Bill seeks to provide a sound legal basis for the existing police complaints system with the establishment of a statutory IPCC. With the inception of this Bill, the Administration and all officers of the Police Force are proclaiming their on-going commitment to work in a pragmatic manner, to respond positively to public complaints and criticisms, and to come under more stringent monitoring from IPCC.

Whenever there is a public complaint against the conduct of a member of the Police Force or the practices and procedures adopted by the police, we are

obliged to ensure that each case is thoroughly and impartially investigated to ascertain the truth as to whether the concerned member of the Police Force has any misconduct, or whether there is any room for improvement in the practices and procedures adopted by the police. In various places around the world, such as Alberta and the British Columbia in Canada, Seattle in the United States, and Scotland in England, their police complaints systems are similar to that in Hong Kong. The police are responsible for investigation into complaint cases while a monitoring body is responsible for reviewing the investigation reports to ensure proper handling of the cases. The relevant monitoring bodies neither have independent investigative powers nor do they take up any investigation work.

The police are tasked to investigate public complaints because these cases often involve the practices and procedures of the police, internal disciplinary matters, as well as the question of whether the member of the Police Force concerned has been properly discharging his statutory powers. Investigation officers of the police are well-versed with the internal rules and the requirements of the law, and they are armed with the necessary investigative powers including the search and seizure powers. They can check against the duty roster of relevant police units, communication records of regional command and control centres, notebooks of the members of the Police Force concerned to identify the complainees. Given their rich experience in conducting investigations, they can timely seek the help of experts in forensic pathology, finger print identification and firearm forensics to analyze scientific evidence, finger prints, ballistic evidence, and so on. Therefore, investigation by the police into public complaints is by far a more efficient arrangement.

To avoid any possibility of partiality, the Complaints Against Police Office (CAPO), which is responsible for handling public complaints against members of the Police Force, operates separately from other police formations. Moreover, the Police General Orders clearly specify that no police officer should forewarn the complainee about any information in relation to a complaint. Any breach of this order shall amount to a disciplinary offence. By stipulating this provision, the aim is to ensure the integrity of investigation by minimizing the opportunity for a complainee/police witness involved in a complaint to interfere with the complainant or other witnesses in order to conceal, destroy or alter evidence.

Although IPCC does not take part in any investigation, it has oversight on all aspects in relation to the handling and investigation of public complaints against the police. The IPCC is a civilian body consisted of members drawn

from a wide spectrum of the community including Members of the Legislative Council, legal practitioners and medical professionals. With their wealth of social experience and public service, IPCC members can directly monitor the police's investigation into the complaint cases in a thorough and objective manner. The IPCC is also supported by a full-time secretariat which operates as a separate government department.

Under the existing arrangement, IPCC is empowered to monitor each and every step in the police's handling and investigation of "reportable complaints". As regards categorization of complaints, IPCC will consider the list of "non-reportable complaints" submitted by the police on a regular basis to ensure that each "non-reportable complaint" has been categorized correctly. As for complaints which have been rightly categorized as "reportable complaints", they will be closely monitored by IPCC. Regarding the police's handling and investigation of "reportable complaints", IPCC members and more than 70 lay observers can undertake scheduled or surprise observation of the interviews and collection of evidence conducted by the police. After making an observation, members and the observers are required to report to IPCC their comments on whether the interviews or collection of evidence have been conducted in a fair and impartial manner as well as any irregularities detected. The CAPO will prepare detailed investigation reports on all "reportable complaints" for submission to IPCC. The IPCC will examine the reports rigorously, and it can request the police to submit for its reference any documents or information relevant to a "reportable complaint", or to clarify any fact, discrepancy or finding relating thereto. The police are required to respond to IPCC's suggestions on the investigation reports; and if necessary, submit amended or supplementary investigation reports to IPCC. Apart from monitoring the investigation of individual complaint cases, IPCC will also identify and make recommendations in respect of faulty or deficient police practices or procedures that may cause or have indeed caused "reportable complaints".

The IPCC's monitoring functions and powers have already been clearly specified in the Bill. The Bill also provides for effective checks and balances to assist IPCC to discharge its monitoring functions fully. One of these measures is set out in clause 27 which states that the Commissioner of Police must comply with IPCC's requirements. I will move relevant Committee stage amendments (CSAs) later on to better safeguard IPCC under clause 27. Furthermore, clause 28 provides that IPCC may make a report to the Chief Executive as it thinks

necessary. In other words, if in the course of discharging its monitoring functions, IPCC considers that there is any matter which should be dealt with by the Chief Executive, it can report the relevant matter as well as its recommendations to the Chief Executive. Clause 37 also provides that IPCC can disclose any matter relating to "reportable complaints" as long as such disclosure is necessary for the performance of its functions. This may help the public understand how IPCC monitors the handling and investigation of "reportable complaints" by the police. I will propose CSAs to add section (2A) under clause 37 to specify that IPCC may, for the purpose of discharging its statutory functions, disclose to the public any disagreement between IPCC and the police on the outcome or classification of a "reportable complaint", or its opinion on the action taken or to be taken by the Commissioner of Police. As a matter of fact, such disclosures have already been included in the annual reports of IPCC. In line with existing practice, the future statutory IPCC will table its annual reports to the Legislative Council under section 23 of Schedule 1.

Having regard to our practical experience and similar arrangements in overseas places, we believe that the existing two-tier police complaints system in Hong Kong is a reasonable and effective regime. Together with the checks and balances I have just mentioned, IPCC has all the necessary scope and powers to effectively monitor the police's handling of public complaints. Performance and effectiveness of the statutory IPCC's work will in turn come under the scrutiny of the Legislative Council, the media and the public.

In yesterday's debate, Ms Emily LAU has mentioned in her speech earlier on that when examining Hong Kong's report under the International Covenant on Civil and Political Rights, the Human Rights Committee of the United Nations commented that Hong Kong should ensure that investigation into public complaints against the police be carried out by an independent body, and that the investigation outcome should be binding on the relevant authorities. In this regard, just as I have said when I explained the existing police complaints system earlier on, the current two-tier system (that is the police are responsible for investigation, and IPCC is responsible for monitoring the police's investigation) can adequately ensure that public complaints against members of the police are dealt with properly and impartially. Although we do not have an authority outside the government to handle the investigation, an independent IPCC is functioning well in its role of checking and monitoring the police's handling of complaints. By converting IPCC into a statutory body, its independent status

can be emphasized, thereby increasing public confidence in the police complaints system.

I would like to emphasize here that the police have always had a high regard on IPCC's suggestions and comments. In fact, the police have always strived to upgrade its service quality. The police also strongly believe that under IPCC's monitoring, and through thorough investigation on public complaints, it can effectively identify ways for service improvements. In other words, IPCC's suggestions on the investigation of complaints have remarkable results. The Bill also provides that IPCC can require the police to submit a report to it on its recommendations. If IPCC is not satisfied with the police's investigation, the Bill also has an express provision to empower IPCC to make a report to the Chief Executive as it sees necessary.

Hence, for the case of Hong Kong, we think it is most suitable for Hong Kong's present needs and social conditions to distinguish between the role of monitoring by IPCC and the role of investigation by the police and to establish effective checks and balances between these two roles under the existing two-tier system.

In terms of the effect of IPCC's monitoring, IPCC has just tabled its annual report 2007 to the Legislative Council on 2 July. I notice that some media reports have focussed on the increasing number of complaints. I want to point out that the police has near 28 000 disciplinary officers and near 5 000 civilian staff, and they have very wide contact with the general public on a daily basis. In 2007, the police have responded to more than 680 000 times of 999 calls, received more than 1.3 million reports of all kinds, conducted more than 8 700 raids, and arrested more than 7 400 persons by uniformed police officers. Each year, members of the Police Force have contacts with the public for more than 4 million times. I cite these figures not to downplay public complaints against the police, but to give us a better understanding of the overall picture when we are discussing the number of complaints against members of the Police Force.

One of the functions of the statutory IPCC under the Bill is "to promote public awareness of the role of the Council". If IPCC can achieve more results in this aspect and further enhance public confidence on our police complaints system, one possible consequence is that there may be a further increase in the number of complaints. I hope that when we see this one day, we can discuss the

situation objectively instead of interpreting the figure one-sidedly to mean a decline in the quality of our police officers or a deterioration in the standards of police service.

I want to stress that the management of the Police Force is also very concerned about the increasing number of public complaints last year. Apart from taking disciplinary actions against those members of the Police Force who have misconduct, the management of the Police Force will also actively consider and study the causes of complaints and take follow-up actions accordingly to improve the existing system and minimize public grievance. In other words, the existing police complaints system does not only function when there are known cases. The police will also identify and rectify deficiencies in its practices and procedures through investigation into public complaints and understanding the relevant causes.

The Bill clearly stipulates that IPCC is responsible for monitoring the investigation of "reportable complaints" by the police. Such complaints relate to the conduct of a member of the Police Force while on duty or in the execution or purported execution of his duties, the conduct of a member of the Police Force who identified himself as such a member while off duty, or any practice or procedure adopted by the Police Force. The complaint will have to be made by a complainant directly affected by the police conduct, or on his behalf under certain specified circumstances. Having thoroughly investigated into a "reportable complaint", CAPO should submit a detailed report to IPCC. Under the Bill, some public complaints are categorized as "non-reportable complaints" which include those from anonymous persons, those not made by the directly affected persons or their representatives, or those that are vexatious or frivolous. IPCC will monitor whether "non-reportable" complaints have been properly categorized. While the police is not required to submit investigation reports to IPCC on "non-reportable complaints", it will properly handle and follow-up on these cases according to the established mechanism.

When scrutinizing the Bill, some Members took the view that investigation into complaints not lodged by the directly affected persons (that is those so-called "third-party complaints"), or matters which come to light through media reports only, should also come under the purview of IPCC. Some Members even suggested that IPCC should be empowered to investigate all probable complaints against the Police Force. But I do not agree with this view. From a practical point of view, CAPO's investigation, if conducted without the voluntary

assistance of the directly affected persons by providing the necessary information, would be futile as no useful evidence can be collected. There is no way IPCC can effectively monitor the investigation under such circumstances. It will only result in a waste of resources for all parties concerned.

I can assure Members here that the police will seriously handle all public complaints. Although the actual channel and procedure for handling individual cases may vary, there is no question of any member of the public being denied an opportunity to lodge a complaint with the police or any complaint lodged with the police being left unattended to. Nonetheless, the effectiveness of follow-up work by the police will largely depend on whether the directly affected persons are willing to lodge their complaints, assist in investigation and provide information. Hence, we consider that there must be a clear distinction as to what complaints should be monitored by IPCC to ensure effective use of resources by the investigating unit and IPCC, and avoid the situation where the complaints system has a bloated structure with unclear division of labour.

Moreover, some Members opined that IPCC should be empowered to take over the Commissioner of Police's function to directly decide the classification of the outcome of complaints, that is, whether a complaint is "substantiated", "unsubstantiated", or "not fully substantiated", and so on. They also considered that IPCC should have the authority to decide the time limit for requiring CAPO to submit investigation reports and to inform the complainant of the outcome of investigation. These suggestions were made largely on the assumption that IPCC, if not vested with such decision-making or executive powers, would not be able to effectively monitor the police's work or have efficiency in the handling and investigation of public complaints. But actually, the police and IPCC should continue to co-operate with each other under the existing system of independent operation, such as IPCC and CAPO should be allowed to discuss and arrive at a mutually acceptable agreement on the time limit for investigation and finalizing investigation outcome.

Such suggestions also fail to take into account the fact that the Bill has already set out an effective mechanism which allows IPCC to make reports to the Chief Executive as it considers necessary. This is a very powerful checks and balances provision. I truly believe that IPCC and the police will try their utmost to work out an agreement. They will not take this provision lightly and put all matters to the Chief Executive for decision. In other words, the police would carefully consider every suggestion or request made by IPCC and try its best to comply. If there is ultimately a case where a report is made by IPCC to

the Chief Executive, I believe that the police must have considerations relating to certain matters of principle or practical difficulties. Taking these matters to the Chief Executive through IPCC's report for a solution would also be a good arrangement.

Under the Bill, IPCC is empowered to require the police to provide any information or material relating to "reportable complaints". There is also a provision which safeguards the principle of legal profession privilege (LPP) under the common law. But some members and the last Chairman of IPCC suggested that IPCC should be empowered to require the police to provide information covered under LPP. This suggestion is tantamount to the abrogation of LLP, a right we have always maintained strongly, through legislative means. We do not agree with the suggestion because of legal policy consideration.

LPP is the cornerstone of Hong Kong's legal system, and is enshrined and safeguarded in the Basic Law. Article 35 of the Basic Law stipulates that "Hong Kong residents shall have the right to confidential legal advice". In terms of the right to confidential legal advice, the scope of Article 35 of the Basic Law does not distinguish between a Hong Kong resident enjoying this right in one's own personal capacity or in an official capacity. Therefore, according to Article 35 of the Basic Law, persons referred to under the Bill including the Commissioner of Police shall have the same right to confidential legal advice.

The Bill allows the police to consider waiving its right to LPP on a case-by-case basis to enable IPCC to acquire adequate information relating to "reportable complaints" for the discharge of its function of monitoring the police's handling and investigation of public complaint cases. This arrangement can strike a proper balance between maintaining Hong Kong's legal system and ensuring IPCC's discharge of its statutory functions. I call for Members' support in this matter.

When scrutinizing the Bill, some Members took the strong view that the Government should widen IPCC's functions and powers, but they also suggested that IPCC's mode of operation and procedures should be circumscribed. Examples of the latter include the suggestion that certain matters must be considered by IPCC at meetings and not by circulation of papers. Furthermore, there is the suggestion that IPCC should not be allowed to delegate its authority to the Secretary, the Legal Adviser or any other employee of IPCC, and so on. But in fact under the current administrative arrangements, IPCC have to adopt

the mode of operation I have just mentioned so that its matters can be handled flexibly. When IPCC becomes a statutory body in future, its operation would become more independent and we should allow IPCC to have enough room and flexibility in terms of administrative arrangements so that it can effectively discharge its statutory functions.

I will propose various amendments in the Committee stage later on to reflect as widely as possible all the constructive views and suggestions made by the Bills Committee in its scrutiny of the Bill so that the Bill as amended can be better and more precise.

Some of the amendments I intend to propose aim at enhancing the checks and balances under the police complaints system to ensure that public complaints are handled impartially. Under the Bill, the police must try their best to assist IPCC in the discharge of its monitoring functions. Clause 27 provides that the Commissioner of Police must comply with any requirement of IPCC unless the Commissioner of Police considers that compliance with such requirement would probably prejudice the security of Hong Kong or the investigation of any crime. Both the Bills Committee and IPCC have expressed concern that this arrangement might be seen as the Commissioner of Police having the power to decide for himself not to comply with IPCC's requirement. Having considered the views of the Bills Committee, I will move an amendment to the effect that should the Commissioner of Police refuse to comply with IPCC's requirement, he must have a certificate issued by the Security for Security certifying that compliance with the requirement would probably prejudice the security of Hong Kong or the investigation of any crime. This new arrangement is a practical solution made in response to the concern raised by the Bills Committee and IPCC.

In order to highlight IPCC's independence, I will move an amendment to specify that "a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department; or a person who was a member of the police" will not be eligible for appointment as IPCC's members or observers. This amendment aims to exclude all political appointees and other employees of the Government including all civil servants as well as employees on non-civil service contract terms from the scope of appointment to IPCC.

Moreover, I will also introduce amendments to introduce more detailed provisions about dealing with matters relating to the conflict of interest by IPCC

members and observers. This can help increase public confidence on the monitoring functions of IPCC.

In order to allow the public better comprehension and understanding of the contents of the Bill, we have accepted some suggestions from the Bills Committee relating to the name of IPCC. After discussion with the Bills Committee and IPCC, the Chinese name of IPCC after its incorporation as a statutory body will change from "投訴警方獨立監察委員會" to "獨立監察警方處理投訴委員會" to express in more detail IPCC's independent status and monitoring functions. The Chinese term of "Council", that is IPCC's abbreviated form, will accordingly change from "警監會" to "監警會". Furthermore, having regard to the Bills Committee's views, I will move amendments relating to the names of two categories of complaints monitored by IPCC. For "reportable complaints" whose investigation is monitored by IPCC, the Chinese term will change from "須具報投訴" to "須匯報投訴" while the English term will remain unchanged. For "non-reportable complaints" whose categorization is monitored by IPCC, the name will change from "non-reportable complaint" in English and "無須具報投訴" in Chinese to "notifiable complaint" and "須知會投訴" respectively. The proposed changes will illustrate more clearly the different nature of these two categories of complaints.

We have accepted the suggestion of the Bills Committee to formalize certain existing administrative arrangements under the police complaints system into statutory functions of IPCC in the Bill. For example, we have specified that if the police have amended their investigation reports in response to IPCC's recommendations, they must submit "the report as amended" to IPCC. The police are also required to submit a "supplementary report" to IPCC if it further investigates into a complaint in response to the complainant's request for review. After the police have completed the investigation into a complaint and IPCC has examined the investigation report, the police must notify the complainant of the classification of the complaint and the reasons for such classification. The Bill also requires the police to consult IPCC on any proposed new orders or manual of the Police Force that relate to the handling or investigation of "reportable complaints", or any significant amendments proposed to such existing orders or manuals.

I will also propose some amendments to facilitate IPCC's operation. These include a provision to allow IPCC to disclose the identity of parties involved in a complaint to the Chief Executive, a witness invited by IPCC to

attend an interview as well as the person who accompanies the witness at the interview. We will also add a provision relating to the commencement of the Bill to ensure that IPCC will have adequate time to complete all necessary preparatory arrangements for operation as a statutory body before the Bill comes into operation.

In order to ensure that IPCC will continue to discharge its various functions effectively, we have undertaken to provide the statutory IPCC with no less than the current level of financial support and resources under the new regime. Any requests from the statutory IPCC for additional resources will be fairly and carefully considered by the Administration in accordance with the resource bidding procedures. I believe Members will agree that the Government must ensure the prudent use of public funds and hence, requests for additional funding from any government departments, statutory bodies and subvented organizations must be well justified. The Government will carefully deal with such requests taking into consideration the priorities of the financial commitment and the amount of resources sought. Financial provision for IPCC should be dealt with in accordance with this well-established resource allocation mechanism.

Madam President, the present Bill, which seeks to establish IPCC as a statutory body and to provide a legal basis for the existing police complaints regime, is in line with the aspiration of the Hong Kong society. This will help ensure that all public complaints against members of the Police Force are handled impartially and investigated thoroughly, and enhance public confidence on the police complaints system. We thank the Bills Committee for putting forward many constructive suggestions which we have taken on board. Amendments from the Administration are intended to improve various provisions in the Bill. I honestly hope that Members will support the Bill and the CSAs which I will propose later on to enable the statutory IPCC to come into operation as early as possible.

Some Members still have strong objection to the Bill and will propose a number of CSAs. The Government cannot accept these amendments due to policy and drafting considerations. I will explain the Government's position on these amendments from Members in detail when they are moved later during the Committee stage. I urge Members to oppose to these amendments.

Some Members may have different views on how public complaints against members of the Police Force should be dealt with. I can fully understand that. But I think we should all work towards a common goal, that is to further improve our police complaints system. I hope Members can put our differences aside and work towards this common goal, and support the Bill and the amendments proposed by the Government.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Independent Police Complaints Council Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes, after which the division will begin.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr

Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr KWONG Chi-kin and Mrs Anson CHAN voted for the motion.

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Dr KWOK Ka-ki and Dr Fernando CHEUNG voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 43 Members present, 29 were in favour of the motion and 13 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Independence Police Complaints Council Bill.

CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee. I now propose the question to you and that is Ms Margaret NG, is it a point of order?

MS MARGARET NG (in Cantonese): I do not know whether there is any way to correct the voting result just now because just now Mr Alan LEONG and Ms Audrey EU told me President, sorry, I was busy with some other things just now. But I saw that the display panel showed that I voted for the motion. However, I would like to make a correction, actually I voted against it. President

CHAIRMAN (in Cantonese): As I have already announced the voting result, your voting on record cannot be corrected, but you did vote for it. Your explanation now will be reflected in our verbatim record of the proceedings.

MS MARGARET NG (in Cantonese): Very well. Thank you, President.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Independence Police Complaints Council Bill.

CLERK (in Cantonese): Clauses 33 and 39.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 44.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR JAMES TO (in Cantonese): Chairman, I oppose including clause 44 into the Bill. The reason is very simple. It is because clause 44 is actually a consequential provision. Originally, the Independent Police Complaints Council (IPCC) is subject to the Code on Access to Information (the Code) and investigation will be conducted by The Ombudsman in the event of any breach. However, the effect of clause 44 is to remove this requirement. In other words, there are two implications: the first being that the new IPCC will no longer be subject to the Code. Regarding this, the Government is arguably reasonable because the IPCC will not be a government department. As such, of course it does not have to comply with the Code compiled for government departments. Besides, as it is not subject to the Code, it follows that the issue of whether or not it has complied with the Code does not fall within the investigative jurisdiction of The Ombudsman. Therefore, what we have to consider is whether or not we think The Ombudsman should be allowed to conduct investigation into the IPCC's failure to comply with the Code. Should the IPCC or the new IPCC be subject to the Code?

In this connection, first of all, let me quote from a submission of The Ombudsman, which states that it sees no reason why the new IPCC does not have to comply with the Code. It brings out a few simple points: first, as seen in a wider context, existing statutory bodies are, broadly speaking, performing government functions with money from the public coffers. The IPCC is performing the public functions of the Government, including monitoring the Complaints Against Police Office (CAPO), and it has put in place a set of

established practice with regard to the provision of written replies, disclosure of information, and matters relating to whether or not to request information or stop investigations on the ground that confidential information is involved.

However, the Government advised that it is not a government department, and as it is an independent organization, it should operate in an independent manner and be allowed not to comply with the Code. I think this is a blatant regression. The Government may say that it does not require the IPCC not to comply the Code, but rather allows it to decide on its own whether or not to comply with it. I hope Honourable colleagues will understand that if we "set off on the wrong footing" — let us not talk about other issues such as whether it should be given investigative power for the time being — upon its establishment, the original requirement of providing certain information may become more lax or more stringent because of its status as an independent organization. However, my consideration is whether we have any means to ensure that it will at least comply with the Code laid down by the Government, that is, no less than that. Or else the information to be obtained by the public or the level of transparency and accountability of this so-called independent organization will be worse than before. Then, how can we accept it? As far as this is concerned, it is a very big regression.

We are not saying that it will definitely not comply with the Code in the future, but right now Besides, even if it will comply with the Code in the future and assuming that it will do so on a voluntary basis, as we have deleted the part on The Ombudsman in the Schedule, even if it will comply with it voluntarily in the future, The Ombudsman will not be able to conduct any investigation when someone considers that it has violated the Code and has failed to comply with it.

During the scrutiny process, we discussed in passing that there were actually two parts in the legislation concerning The Ombudsman. The second part is about the Code just mentioned. However, there is still the first part on general maladministration. In this connection, I have also proposed an amendment, but the Chairman thought that the amendment was irrelevant to the subject of the Bill — I do not want to argue with the Chairman here, but my view is whether the new statutory organization should be included, and actually it should be considered in the same context. However, The Ombudsman not only will the IPCC become a statutory body, even its secretariat will not be subject to the scrutiny of The Ombudsman. The Ombudsman will not only be unable to monitor its general maladministration but will also be unable to bind it

with the Code. Regarding this, I think it is already clearly stated in The Ombudsman's submission. I hope Honourable colleagues will oppose including this provision in the Bill so as to compel the authorities to retain the requirement that The Ombudsman may conduct investigation into breaches of the Code.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, clause 44 of the Bill, as Mr James TO has said, is a consequential amendment proposed in connection with The Ombudsman Ordinance (the Ordinance). Section 7(1)(b) of the Ordinance provides that The Ombudsman may investigate into any action taken by or on behalf of an organization set out in Part II of Schedule 1 to the Ordinance in the exercise of its administrative functions in relation to the Code on Access to Information (the Code) published by the Government. The Code serves as a framework for the provision of information to the public by government departments. The term "department" includes any department, bureau, force, service, unit, secretariat or other agency of the Government. In fact, the present scope of Part II of Schedule 1 to the Ordinance covers only government agencies, including the IPCC Secretariat in its capacity as a government department with its posts filled by civil servants, that is, the IPCC Secretariat at present.

Subject to the passage of the Bill, the statutory IPCC will have its own secretariat and there will no longer be any government department in the name of the IPCC Secretariat. For that reason, it is inappropriate to mandate the application of the Code to the statutory IPCC. Just like the arrangements applicable to other corporations, we should allow the statutory IPCC to decide by itself the procedure and practice for handling public requests for access to information as it sees fit. Therefore, as a consequential amendment, we propose that the IPCC Secretariat be removed from Part II of Schedule 1 to the Ordinance.

The Bill will introduce no change to the status of the IPCC or that of the statutory IPCC under the Ordinance because at present, the Ordinance does not extend to the IPCC. Section 7(1)(a) of the Ordinance stipulates that The

Ombudsman may investigate into any action taken by or on behalf of an organization set out in Part I of Schedule 1 in the exercise of its administrative functions. At present, both the IPCC and the IPCC Secretariat are not included in Part I of Schedule 1.

It is proposed that the statutory IPCC be included in Parts I and II of Schedule 1 to the Ordinance and that means, in addition to mandating the application of the Code, which is applicable to government departments, to the statutory IPCC, all the actions taken by the IPCC in the exercise of its administrative functions are brought under the purview of The Ombudsman. In view of the purpose of the Bill, which is to codify the current two-tier system for handling and investigating complaints against police officers, we are of the view that issues concerning the purview of The Ombudsman are a matter of policy and for that reason, they should not be addressed by making a consequential amendment to the Bill. The relevant matters can be further discussed in detail when a review of the purview of The Ombudsman is conducted in the future. Thank you, Madam Chairman.

MS EMILY LAU (in Cantonese): Chairman, I speak to oppose the removal of the Independent Police Complaints Council (IPCC) from Part II of Schedule 1 to The Ombudsman Ordinance.

It is indeed meaningful to discuss the issue about The Ombudsman as it is responsible for conducting investigations into public complaints. I can seldom hear the public rebuke The Ombudsman for the lack of credibility or for rejecting complaints unfairly. As both of them are responsible for investigations, people often ask whether investigations should be transferred to The Ombudsman. The rationale behind is that the effectiveness of handling complaints can be enhanced if they are taken up by an organization with credibility and high transparency. Regarding this, of course the authorities would not allow it and they insist that investigations against police officers should be conducted by fellow police officers. I think this is a very poor practice.

They even tried to eliminate issues as micro as this. So at that time the Bills Committee considered this very ridiculous and criticized them for doing so. In this regard, we sought The Ombudsman's view. Chairman, The

Ombudsman meets with us here in this Council every December. In recent years, it advised that a review had been conducted and the conclusion was that some organizations should be included in their scope of investigation. It also advised that in order to do so, consultations would be required because some people would be very anxious and apprehensive for being subject to the investigation of The Ombudsman. I believe The Ombudsman must agree very much with this amendment, therefore it advised the Bills Committee I would like to read out its views. Chairman, this is paragraph 251 of the Bills Committee report.

"The Ombudsman informs the Bills Committee that it sees no need to remove the IPCC Secretariat from Part II of Schedule 1 to The Ombudsman Ordinance. ICAC, similarly a statutory body, has been and is still included in Part II for the purpose of the Code. Organizations listed in Part II of Schedule 1 are not subject to The Ombudsman's general jurisdiction in respect of complaints of maladministration, but are subject to scrutiny only in respect of complaint relating to the Code. The Ombudsman understands the Government's position that the Code applies only to government departments. Since the statutory IPCC and its Secretariat will not be part of the Government," — that is, after the passage of the Bill — "the Code should cease to apply to them. While there is logic in the Government's position, The Ombudsman considers that the matter can be seen in a wider context. ICAC, a statutory body, has been subject to the Code since the latter's inception in 1996 and this has worked well in practice. The Ombudsman, therefore, sees no reason why the incorporated IPCC and its Secretariat could not be treated in the same way as ICAC."

The Secretary is in the best position to express his views because he was once the Commissioner of the ICAC. Why should the ICAC but not the IPCC be subject to regulation? The case is even more serious for the ICAC as it is vested with "boundless power". Regarding the existing IPCC, the public only hopes that there will be some monitoring so that there will be more channels for public access to information. However, the authorities do not even accept such a humble request. The Secretary has even said that this is a two-tier system established in response to the views of the United Nations to enable the proper handling of public complaints. Chairman, the authorities do not even heed the opinions of The Ombudsman, which is a real shock to me.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

DR YEUNG SUM (in Cantonese): I am sorry, Madam Chairman. In citing The Ombudsman's response just now, Ms Emily LAU said that we should view this matter from a macro angle, rather than arguing that the Code on Access to Information was only applicable to government departments, and that as the Independent Police Complaints Council (IPCC) is a non-government independent body, it should not disclose any information.

It is indeed a very desirable thing to take a macro view. As the Secretary may also know, Hong Kong is a very mature civil society, and thus, policies adopted by the Government should be transparent as far as possible. Recently, the incident of Under Secretaries and Political Assistants has been described as a black-box operation and a waste of public money. Let us take a look at the popularity of Chief Executive Mr TSANG. It has taken a nose dive to even lower than 50% now, which is a record low since his assumption of office. In face of this lesson, the Secretary should also be careful as he will be in charge of work in this area. That is to say, being an organization with such a high credibility, the Independent Commission Against Corruption is also not a Even though it is an independent statutory body, it has to disclose the information and be subject to scrutiny in this regard. Why can we not view the matter from this macro angle? The public have now criticized that the new IPCC would have no investigative power. If this part on scrutiny in respect of access to public information is also taken away, the IPCC will only hide in a corner and it will have no way to disclose its implementation process to the public. Access to information is a basic right of the public. But very regrettably, the Secretary still insists on removing it up to this very moment. In case they are being criticized in this regard in future, this will be an indefensible weakness. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR JAMES TO (in Cantonese): I speak in response to the comments made by the Secretary earlier. In fact, there is a dereliction of duty on the part of the Secretary. Why do I say so? It is because the Secretary said that this was only a policy consideration. However, I have to point out that he has not made any decision at all, nor has he decided on how to deal with the problem. This is a

kind of inaction. It is already a dereliction of duty for not taking any action. I have evidence to substantiate my allegation.

According to the view put forth by The Ombudsman, when establishing a new statutory body, what should be considered is whether it should be subject to scrutiny by others in respect of any maladministration that it may involve. They should consider this question immediately. However, Mrs TING, the Deputy Secretary who has all along attended the meetings of our committee, only advised repeatedly that she would take this into consideration later. This question should not be left aside as they have to give birth to their baby now. And thus, they should first consider whether this baby should be subject to the scrutiny by The Ombudsman. If they consider that it is not necessary to do so, they should give us an account. They should explain why this new statutory body is different from the Independent Commission Against Corruption (ICAC) and all other statutory bodies. They should also put forth some convincing arguments to illustrate why it is not necessary to do so.

The Legislative Council is one of the arms in the executive, legislative and judicial branches and being elected by the public, it can be regarded as the most independent one, and it is also responsible for overseeing the executive authorities. However, if the Legislative Council Secretariat has done something wrong and is accused of maladministration, it will also be subject to the scrutiny by The Ombudsman. As for the ICAC mentioned just now, which is directly under the Chief Executive, it is undoubtedly very independent as well. But in case the ICAC is accused of maladministration, it should be subject to the scrutiny by The Ombudsman as well. However, after giving birth to this baby, that is, the Independent Police Complaints Council (IPCC), surprisingly, they have neither considered nor discussed with the IPCC in detail to see if it should be subject to scrutiny. I think this is a dereliction of duty, and they can hardly argue that this is a matter of policy consideration which should be determined later.

The second part is about the Code on Access to Information (the Code). The bureau has in fact made a decision, or at least, considered it briefly. However, as for the first part, it has not made any detailed consideration at all. As such, I consider that this is a dereliction of duty. Chairman, what I can say is only that under the present situation, if we cannot ensure that a new statutory body can comply with the Code, or at least comply with it voluntarily, and that it can be subject to the scrutiny by The Ombudsman upon its establishment, we have to amend the legislation again in future in case we want it to be subject to

the scrutiny by The Ombudsman in respect of its compliance with the Code, as we have to add The Ombudsman Ordinance into the Schedule. The existing IPCC will transform into a new statutory body, and so, we have the new chairman and new members in addition to the former chairman. As it will transform into a new statutory body anyway, I have asked them to hold a meeting to see if they are willing to add the provision on the scrutiny in respect of the Code now. But they have turned me down. In fact, it is just an easy job. If they consider that they should not be subject to such scrutiny as the Code may not be applicable to them sometimes due to the uniqueness of their organization, they can simply give us a detailed account. They can even just put forward some basic viewpoints to illustrate why certain provisions in the Code should not be accepted fundamentally. As such, it may be possible for them to convince us in the early stage, or at least give us an account. If the Government supports my argument, then clause 44 should exist. However, it refuses to take any action. I think this is a very serious problem.

I wonder if it is the case that the Government does not want to cause other troubles anymore and is worried that the Bill cannot be endorsed in this session. In fact, it is a very simple matter. But colleagues of the Government may consider that they are not capable of handling such complicated issues, right? During this period of time, with the incubation for a number of weeks in our committee, it is absolutely possible for them to get it done, right? The only thing they have to do is to ask the IPCC to hold a meeting and look into the matter thoroughly. After that, if they can put forth some arguments which can convince us initially, they can now request us not to In fact, this matter should be dealt with in the previous term of the IPCC. It has been under incubation for many years, and they should have taken it into account. If they find that compliance with the Code is absolutely unnecessary, they should say no and give us an account, rather than leaving it to the new chairman. But up till now, no action has ever been taken. Chairman, I am therefore very disappointed about this.

CHAIRMAN (in Cantonese): I now invite Ms Emily LAU to speak for the second time.

MS EMILY LAU (in Cantonese): Chairman, Mr TO has talked about whether there is a dereliction of duty on the part of the Secretary, and in terms of policy, whether the Independent Police Complaints Council (IPCC) should be included

in the legislation. In fact, some questions have to be considered. Regarding the views put forth by The Ombudsman to the Legislative Council, Part II of Schedule 1 mentioned just now is about the Code on Access to Information (the Code), whilst Part I of Schedule 1 is about bringing the IPCC within the purview of The Ombudsman. In this connection, as pointed out in the last part of paragraph 252 of the report of the Bills Committee of the Legislative Council, The Ombudsman considers that "the decision is ultimately one of policy." Therefore, the Secretary has cited this sentence in his speech as an excuse. But it is useless for him to cite this sentence as he has to make a decision of policy as well. Chairman, The Ombudsman also considers that it is possible to do so. The Ombudsman has helped us a lot as it is also keen on bringing more organizations which should be included within its purview.

What is stated in paragraph 252 of the Bills Committee's report? I quote, "Regarding Part I of Schedule 1 to The Ombudsman Ordinance, The Ombudsman has pointed out that the statutory bodies listed therein share the common features of being substantially funded by General Revenue or statutory fees or charges; performing administrative functions, and are not solely advisory, adjudicative or appellate in nature; and interface with or impact on the public in the course of discharging their functions. Upon the enactment of the Bill" I cannot see any obstacle to including the statutory IPCC in Part I of Schedule 1.

We also notice that among the organizations which have been included in Part I of Schedule 1 now, Chairman, the Legislative Council Secretariat is one of them. Mr Ricky FUNG, our Secretary General, also knows it, it is only that our Secretariat has never been investigated by The Ombudsman so far. However, even if it has been investigated, we cannot bother about it as it is stipulated in the law. In case even the Legislative Council Secretariat is investigated, the Secretary should have nothing to worry about at all, as each organization may be investigated. Moreover, Chairman, there are also the Equal Opportunities Commission (EOC) and the Privacy Commissioner, that is the organizations which have recently complained about the lack of funding. The Privacy Commissioner is in fact the same as Chairman Ronny WONG who has all along been adopting a low profile. However, he has to switch to a high profile approach to oppose the Government now.

Therefore, Chairman, the IPCC should be included in Part II of Schedule 1 and Part I of Schedule 1. The arrangement currently proposed by the

Secretary is really not desirable at all. What we have to pay attention in particular is that, as pointed out by The Ombudsman, organizations which have interface with the public frequently should all be included in the Schedule. Chairman, I have reason to believe that Members of the Legislative Council will not object to such inclusion. However, as the authorities have proposed that it should not be included, some Members will naturally give their support. Some Members simply act in this way. On the contrary, if the authorities propose that it should be included, who will object to it? Although The Ombudsman has advised such that an inclusion will cause panic in some people, I also mentioned at a meeting of the committee the other day, at which the secretary-generals of those organizations were also present, that if it was a policy that it had to be included, it was useless to be afraid.

I think the Secretary definitely has no fear about it, but I do not know why is that so. We have put up so much evidence, and other relevant organizations should be included as well. If the Secretary still insists on removing the IPCC from the Schedule, it will be justified to criticize that there is a dereliction of duty on his part. The Secretary must explain why the IPCC cannot be included in the Schedule to the Bill.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, as what I have pointed out in my speech just now, clause 44 is a consequential amendment. Part II of Schedule I to The Ombudsman Ordinance currently only covers government agencies, for the existing secretariat of the Independent Police Complaints Council (IPCC) is a government department. All along, the IPCC itself has not been included in The Ombudsman Ordinance, whereas its secretariat has been included. As we will transform the IPCC into a statutory body now, its secretariat will no longer be manned by civil servants, and it will

no longer be a government department. As such, we have proposed clause 44 to make a consequential amendment.

The Ombudsman also finds our reasons justified, but she has advised that from a macro angle, she also wants to incorporate more statutory bodies into The Ombudsman Ordinance. In this connection, we consider that it does not only relate to the IPCC or the statutory IPCC to be established in future, because for the time being, many statutory bodies have yet been incorporated into The Ombudsman Ordinance. Of course, Ms Emily LAU has also pointed out some exceptional cases earlier. However, we consider that we should review it after we have formulated this Bill and made the consequential amendment. In view of the operation of the Bill, we can consider the entire policy of the Government in future to see if all statutory bodies are to be incorporated into The Ombudsman Ordinance. This is what I mean by policy consideration. I do not think there is any dereliction of duty on our part. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, the more the Secretary argues, the more mistakes he makes. I can use an "oblique" example to illustrate that he is absolutely wrong. It is an undeniable fact that there are some "omissions". Chairman, clause 43 is about public bodies, which is a consequential amendment regarding the Prevention of Bribery Ordinance (PBO). And as we now have a new body, that is the Independent Police Complaints Council (IPCC), we have to add item 109 in Schedule I to the PBO. Okay? He did remember to add it here, okay? In other words, with the birth of a child, they will consider that according to clause 43, there may be many ordinances which are also applicable to their child. Fine, after taking a look at the PBO, they consider that it should be applicable. Perhaps, the IPCC should be subject to scrutiny or a report on the prevention of bribery should be prepared, and hence, the PBO should be applicable. Therefore, we have incorporated this new body into it.

Fine, we have to bear in mind what clause 44 is about. It is about "Organizations to which this Ordinance applies", that is The Ombudsman. Therefore, in fact, your mind That is to say, if I were the Secretary, it would come immediately to my mind that in case my subordinate submits a draft to me, I will consider whether the Independent Commission Against Corruption (ICAC) should be allowed to investigate it. This is clause 43. Should The Ombudsman be allowed to investigate it? This is clause 44. It should immediately come to your mind that there are two parts relating to The

Ombudsman: the first part is about ordinary maladministration handled by its secretariat, and the second part is related to the Code on Access to Information (the Code). Should it be applicable as well? If so, what is the preparation required? And who should be responsible for it? You should work with the IPCC, and then discuss with The Ombudsman. This is equivalent to the case if it is subject to the scrutiny by the ICAC, you should also consult the IPCC. As it has now become a body which is subject to scrutiny by the ICAC, this is of course necessary. After that, you should consult the ICAC to see if it should scrutinize the IPCC. If the ICAC replies in the affirmative, the matter is settled and clause 43 is made.

However, as for clause 44, none of these have ever been done. And what comes to your mind is that the IPCC is no long a government department. As that is the case, there is no need for it to comply with the Code. You then want to cancel the second part immediately, that is the Schedule to The Ombudsman Ordinance. As such, you have never considered the first part, and this is in fact a dereliction of duty. I have no way to amend it as the Chairman has already ruled it out. But the crux of the question lies in that omission, which does not mean that you In this regard, when comparing clause 43 with clause 44, you have not taken this point into consideration. It cannot be denied that you have not considered it at all, and you cannot say Had it not been the fact that you have not considered it, when we mention When Mr LAU Kong-wah led our discussion, you should state your reasons in a number of pages to make it clear why there was no need for it to comply with the Code, rather than just saying that it was a policy consideration. The submission of The Ombudsman has two pages. If I were the Secretary, I would at least give a reply in 10 pages, as I have justifications to support why I consider that the IPCC is different from the Equal Opportunities Commission and the Legislative Council Secretariat, and why it should not be subject to scrutiny by The Ombudsman in respect of the first part, that is, ordinary maladministration. I will set out all my arguments. But now, the Secretary has done nothing at all.

Obviously, the Secretary has not considered this point. If that is the case, what can he do now? In such a rush — it is impossible for the IPCC to hold a meeting immediately and tell me that it refuses to do so — but he does not have any sound justifications. Therefore, the Secretary advises that this is a policy consideration and he will put it aside for the time being. This is an independent secretariat which has just been established. Should it be subject to scrutiny in

respect of ordinary maladministration? This is an omission. However, what we are debating here is the second part: the Code. Obviously, it gives rise to a question here. Chairman, the heading of clause 44 is "Organizations to which this Ordinance applies", and in fact, it refers to The Ombudsman. If it is a consequential amendment, it should be something of a wider scope. However, let it be. I will not argue about it this time as the Chairman has already made a ruling. I respect her ruling. But that omission is still there. We should blame the Secretary for the dereliction of his executive responsibility here.

CHAIRMAN (in Cantonese): Ms Emily LAU, you are speaking for the third time.

MS EMILY LAU (in Cantonese): In fact, we can still make a remedy for the Secretary in the same way as the Bill on racial discrimination, as long as no deletion is made.

As a matter of fact, Madam Chairman, I cannot accept what the Secretary has just said. What did he say? He said that as to the issue of making additions to the list of statutory bodies in future, we should discuss it later. Wow! This is really something like "until the end of time". Do you think that such a policy will be formulated and he will look into every aspect once again for you? Of course this will never happen.

I do not believe that all the issues have to be dealt with all together, for that reason, whenever there is a new piece of legislation, the relevant issue should be immediately dealt with. If you want to deal with it in future, there is no problem as I have no objection. However, as to the most effective and timely way is — as a Bill is in place — to deal with them once and for all. If you are not going to deal with it, what is the reason then? There is no reason for that at all. Nevertheless, it is absolutely appropriate to deal with it from the perspective of public interest, as well as being accountable to the public.

The only reason is — I do not know why the Secretary says so — that they do not like to deal with it right now. Even if it does not belong to the type of agency, the Commissioner has pointed out that other agencies could also be included. Now if the Secretary can humbly accept good advice — I believe no

one will feel panic — and include it into the Bill. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): I would just like to respond to the point raised by Mr James TO. He made a comparison between clauses 43 and 44 by questioning me as to why clause 43 has added IPCC to the list of statutory bodies under the Prevention of Bribery Ordinance, but clause 44 has not dealt with it in the same way. Actually, it was purely a matter of policy consideration. Because in accordance with government policies, all statutory bodies shall be incorporated into the Prevention of Bribery Ordinance, and that was the reason why we did so. However, bodies under Part II of Schedule 1 to The Ombudsman Ordinance are mostly government agencies. Therefore, if we were to change this practice, we would have to consider them in detail. In addition, the views provided by The Ombudsman Ms Alice TAI were only presented until the final stage of the Bills Committee, and there was really not enough time for us to consider whether or not it should be included. Madam Chairman, for that reason, we have to undertake that we will certainly conduct a review in future.

CHAIRMAN (in Cantonese): Mr James TO, you are speaking for the fourth time.

MR JAMES TO (in Cantonese): Madam Chairman, no matter how the Secretary explains, he should have nothing more to say on realizing his own shaky stand. Why? Just now the Secretary said — fortunately I could hear him clearly — he used the word "most", because we were able to give some examples earlier. Under Schedule 1 to The Ombudsman Ordinance, the Equal Opportunities Commission and the Legislative Council Secretariat are included,

and the list also included more than 100 non-governmental departments. Then, since this is something new, we must therefore take the matter into consideration.

It is even more absurd for him to say that The Ombudsman, Ms Alice TAI, put forward her submission at a very late stage. The Secretary should have sought her view from the outset and he should have discussed with IPCC in the beginning, rather than waiting for the Bills Committee, which is under the chairmanship of Mr LAU Kong-wah, to identify and bring up the issue, and then we have to seek the opinion of The Ombudsman about such an issue before informing him of this problem. If so, would it be needed for you to serve as the Secretary? It would be better for Mr LAU Kong-wah to assume your post as the Secretary. In fact, of course Mr LAU Kong-wah can assume the post of the Secretary, (*Laughter*) besides that, he can even join the Executive Council.

This is the factual reality now. He should have sought the view of The Ombudsman early when the matter was in ferment. This was the case of clause 43. Since there are three agencies, then they should have thought of the need of ICAC. Likewise, does The Ombudsman have the need? That is something he should have considered at once. He has already taken that into consideration for several years he has taken that into consideration for 10 years. After taking that into account for 10 years, he was still unable reckon this — this is certainly unfair to the Secretary, because he has not been assuming the post as the Secretary for 10 years. However, at least he has assumed the post as the Secretary for several years, and he has been saying that he is about to have it tabled every year and the idea has been incubating between him and IPCC for so long.

Furthermore, why has he not thought of maladministration? Earlier, there were several leakage incidents and complaints were subsequently filed. Why could he not think of it? Is it precisely because he has thought of that — this is my scepticism — because he has thought of that, therefore he thinks that under no circumstances should it be done. If The Ombudsman is allowed to intervene, will it not lead to lots of troubles? However, this has nothing to do with him in any case, because even if an investigation is conducted, it will only be conducted against the IPCC Chairman and his subordinates only.

For that reason, it is rather surprising to me, despite this incident has been incubating for quite some time, no advice has been sought, and in the end, the Secretary said The Ombudsman only put forward her views at such a late stage. If I were The Ombudsman, I would be very upset. Had my advice been sought earlier, I would have told him my views as early as possible, right?

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause stands part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Dr Philip WONG, Mr

WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the motion.

Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr LEE Wing-tat, Mr Alan LEONG, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Mrs Anson CHAN voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 36 Members present, 23 were in favour of the motion and 12 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

MS MIRIAM LAU (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of the remaining clauses of the Independent Police Complaints Council Bill or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed. Mr Martin LEE.

MR MARTIN LEE (in Cantonese): Chairman, I seldom raise objection at this stage, but as our meeting time is getting longer and longer, I consider that many Members perhaps need to make themselves available for media interviews or to attend to other matters, and we also need to take into account of their lunch breaks. The fact that they need to vote after the division bell has been rung for

one minute may be more prone to accidents, I therefore consider that the one-minute rule will be acceptable only during the period between 3 pm to 6 pm.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MS EMILY LAU (in Cantonese): Chairman, I agree with what Mr LEE has said. In fact, the Legislative Council Building covers a large floor area, if it is only one minute, sometimes Members may not be able to come back on time. As this is such an important matter, Chairman, it will be disastrous if anything goes wrong. Therefore, I hope Honourable colleagues will not support Ms Miriam LAU's motion.

MR LAU KONG-WAH (in Cantonese): Chairman, in spite of my comparative agility, I have observed that many people cannot do that, as running up and down the stairs is actually very dangerous. Chairman, we should really avoid doing this during meal time.

MR KWOK KA-KI (in Cantonese): Chairman, although I have to save lives from time to time, (*Laughter*) I do not want to save several people's lives at this time. I understand Mr LEE's request, and I agree that we should not shorten the duration this time around. Thank you, Chairman.

MR HOWARD YOUNG (in Cantonese): Chairman, may I ask if we vote down this motion, can we propose it again by 3 pm? Or should we withdraw it before we can

CHAIRMAN (in Cantonese): I know that the Chairman of the House Committee has great respect for views of Members. She will consider whether or not to withdraw the motion.

MRS SELINA CHOW (in Cantonese): I just wish Members will consider that. Since there are a number of amendments to the Bill, and Members have raised a

lot of amendments, I do not know whether divisions will be claimed in respect of each amendment, but I believe that there is a great chance that such divisions will occur. If we retain the three-minute rule, the meeting will be prolonged, that is, it will make this meeting a very long and drawn out one. As we all know, many Members are actually working in the proximity of the Legislative Council Building today, but if we all work in the Legislative Council Building, I have figured that actually one minute is enough for us to walk down from upstairs, and there is no need to run. Nevertheless, I consider that our major duty is to make law, that is something we should take into account, because there will be other things as we all know, the valedictory motion is also a long one, it will be better for us to follow the long-standing practice.

DR PHILIP WONG (in Cantonese): Chairman, shall we put it in this way? Ms LAU may withdraw her motion for the time being, and then she may propose it again by 2 pm.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR HOWARD YOUNG (in Cantonese): Chairman, what I have asked is: if we vote down the motion, then according to the procedure, it cannot be proposed again, but if the motion is withdrawn, can she propose it again at 3 pm?

CHAIRMAN (in Cantonese): Yes she can.

MR HOWARD YOUNG (in Cantonese): Then the problem is solved.

CHAIRMAN (in Cantonese): Mr CHAN Kam-lam, do you wish to speak?

MR CHAN KAM-LAM (in Cantonese): Chairman, very often, the major purpose for us to move this motion at the Committee Stage is to shorten the meeting time. The Bill has some 70 to 80 amendments, if we have to spend

three minutes on each division, then the total time spent on waiting may be as long as several hours. Therefore, in addition to conforming with the long-standing practice as we did in the past, Ms Miriam LAU's motion is actually a move to save our time, therefore it is worthy of our support. With regards to Mr Martin LEE's proposal, I consider that there is no justification at all, because Members should be waiting in the Chamber, or to vote on each motion accordingly where the need arises. Members should not ask for a longer time on the grounds of meal time or attending outside meetings. Therefore, I do not agree with the justifications put forward by Mr Martin LEE, instead, I will support Ms Miriam LAU's motion. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR JAMES TO (in Cantonese): Chairman, of course Mr CHAN Kam-lam may speak in a firm and upright manner, but I consider that rather irritating to the ears. The reason is that we are just talking about one minute or three minutes. The fact that one minute or three minutes makes no difference as long as we are sitting here in this Chamber. However, if there are reasonable needs, members of the public will understand our situation. Sometimes, we need to respond to media calls outside the Chamber, and some Members also need to go to the toilet when nature calls. Frankly speaking, Chairman, during the lunch time earlier, when the Secretary was delivering his speech — in fact, it was rather discourteous to leave the Chamber in that way, but fortunately, I still knew what he was going to say — only then I dared make use of three minutes to respond to nature's call, and it just so happened that the Secretary only took four minutes to finish his speech. Therefore, if the one-minute rule is to be adopted in future, it is very likely that there is not even enough time for some Honourable colleagues to respond to nature's call. This is a problem in reality.

Of course, we have also tried that in the past, but now Mr Martin LEE has no intention to request the application of the three-minute rule throughout the meeting. He has only requested that the rule should be applied after the lunch time, so that Members need not run around without knowing whether or not to have their meals. Moreover, during the debate session, we do not know when which part will be discussed and how many Members will speak. If we have to

vote several times rapidly over a certain period of time, the one-minute rule would be no problem at all, for we are all sitting here in the Chamber. However, the debate session can either be long or short. If Members are required to vote unexpectedly, they will have to run upstairs and downstairs and this will definitely pose problems to them.

CHAIRMAN (in Cantonese): Will Members please listen to section 35(2) of the Rules of Procedure, according that provision, "A motion or an amendment may be withdrawn at the request of the mover by leave of the Council or committee of the whole Council before the question is put thereon, if there is no dissenting voice. A motion or amendment which has been so withdrawn may be proposed again if, in the case of a motion, the notice required by these Rules of Procedure is given.", thus there is no need to give advance notice for moving the motion in relation to the practice of proceeding further divisions immediately after the division bell has been rung for one minute.

MS MIRIAM LAU (in Cantonese): The objective of my motion was to save everybody's time. However, as the motion has caused so many discussions and debates, instead of saving our time, it will only lengthen the meeting. Given that so many Members have expressed different views, I therefore withdraw the motion for the time being in order to really save our time. However, I will discuss with Honourable colleagues later outside the Chamber about whether or not I should propose this motion later. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any Member oppose the withdrawal of the motion? If not, the motion is withdrawn.

CLERK (in Cantonese): Clauses 1, 3, 6, 9, 12, 13, 21, 29, 30, 35, 36, 40 to 43, headings before Part 2 and Part 5, and headings before Divisions 2, 3 and 4 of Part 3.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to the clauses and headings read out just now.

At present, the Chinese name of the Independent Police Complaints Council (IPCC) in full is "投訴警方獨立監察委員會". The Bills Committee has proposed to alter this name to better reflect the independent status of the IPCC, as well as its function in monitoring the police in handling police complaints. Having carefully considered the proposal of the Bills Committee, the IPCC decides to change its Chinese name to "獨立監察警方處理投訴委員會" from the day the IPCC is established as a statutory body, while its English name will be retained as "Independent Police Complaints Council". The amendments to clauses 1, 3 and 43 are proposed mainly to reflect the new Chinese name adopted by the statutory IPCC. Moreover, clause 3 deals with the incorporation of the IPCC as a body corporate. The Bills Committee has also proposed the deletion of "The Independent Police Complaints Council existing immediately before the commencement of this Ordinance" from the original provision of clause 3. We have no objection to this proposal, for clause 40 can effectively deal with the continuance of things done by the existing IPCC.

Concerning the amendments to the terms "non-reportable complaint" and "reportable complaint", the term "reportable complaint" refers to complaints made by the public against certain conduct of a member of the Police Force, as well as any practice or procedure adopted by the Police Force. The coverage of the term is set out specifically in clause 10 of the Bill. The handling and investigation of "reportable complaints" are subject to the close monitoring of the IPCC. The Complaints Against Police Office (CAPO) shall submit detailed and comprehensive investigation reports to the IPCC in respect of these complaints. The investigation of the complaints will only be regarded as completed if the IPCC agrees with the findings and classification of complaints as set out in the investigation reports.

As for "non-reportable complaint", it refers to complaints other than those covered in clauses 9 and 10. For instance, a complaint filed by an individual other than the directly affected person or his or her representative, as well as an anonymous complaint, these will be categorized as non-reportable complaint. The CAPO is not required to submit detailed investigation reports to the IPCC in respect of these complaints. The IPCC will monitor whether the categorization of these complaints is proper. With regard to the specific follow-up actions to be taken for complaint cases, the police will handle this in accordance with the established mechanism.

The Bills Committee is of the view that the terms "reportable complaint" and "non-reportable complaint" are not easily understood by members of the public, and has thus proposed to substitute these two terms more easily comprehensible to the public. We have accepted the views of the Bills Committee. It is proposed that the term "須具報投訴" (the Chinese term of "reportable complaint") will be replaced by "須匯報投訴" in the Chinese text, while the term "reportable complaint" in the English text will be retained. As for the term "無須具報投訴" (the Chinese term of "non-reportable complaint"), it is proposed to replace it by "須知會投訴" in the Chinese text, while the term "non-reportable complaint" in the English text will be replaced by the term "notifiable complaint". These amendments are proposed to reflect that the different types of monitoring adopted by the IPCC on these two categories of complaints. In this connection, amendments are proposed to clauses 12, 13, 21, 35 and 42, and the headings before Divisions 2 and 3 of Part 3, to replace any reference to "須具報投訴" and "無須具報投訴" therein by "須匯報投訴" and "須知會投訴" in the Chinese text respectively.

As I mentioned earlier, the Chinese name of the IPCC will be changed to "獨立監察警方處理投訴委員會" when the IPCC becomes a statutory body. With the change in the Chinese name of IPCC, the Chinese acronym of the IPCC will be changed to "監警會" accordingly. As such, reference to the Chinese term "警監會" in clauses 1, 3, 6, 21, 29, 30, 35, 36, 40 and 41, the headings before Parts 2 and 5 and the heading before Division 4 of Part 3 will be changed to "監警會". I will shortly move the corresponding amendments to other clauses in the Bill which have made reference to the term "警監會".

The administrative service and operation of the IPCC is now supported by a full-time secretariat, with the head of the Secretariat acting as the Secretary of the IPCC. The IPCC once proposed to retitle the Secretary of the IPCC to "Executive Director". Having considered the case, the Bills Committee considers that the retitling of the post title of "Secretary" to "Secretary-General" may reflect more accurately the primary function of the post, which is to provide internal administrative support to the IPCC. We agree with the views of the Bills Committee. We therefore propose to amend the title "Secretary" in clause 36 to "Secretary-General" in the English text, and to amend the title "秘書" to "秘書長" in the Chinese text. I will propose corresponding amendments to other clauses that have made reference to the term "Secretary" ("秘書").

Clause 9 specifies the complaints not to be categorized, namely, complaints made by members of the Police Force, complaints arising from the issue of a summons or notice for the imposition of a fixed penalty and does not relate to police conduct, and complaints covered by the function of other statutory organizations. These complaints are neither "reportable complaints" nor "notifiable complaints", they are thus beyond the scope of monitoring of the IPCC, and should be handled in accordance with other established and proper mechanisms or procedures currently adopted.

The Bills Committee considers that the term "not to be categorized" may not be easily understood by members of the public, and may result in confusion with the term "classification". We have accepted the views of the Bills Committee to amend the wordings of the heading before and the provision of clause 9 to make the formulation more direct, stating clearly that the several types of complaints mentioned by me earlier should not be included in the list of "reportable complaints" and the list of "notifiable complaints" under section 8.

In addition, the Bills Committee considers that since the issue of a summons or notice for the imposition of a fixed penalty, which is the conduct of the police, is expressed in the original text of subclauses (b) and (c) as matters "not related to police conduct", it may cause confusion. We agree with the views of the Bills Committee and will thus propose an amendment to the two subclauses to specify that only complaints purely related to the effective issue of summons or notices for the imposition of fixed penalty are covered.

Clause 12 specifies that request for review made by a complainant is to be treated as a "reportable complaint". Under the existing arrangement, one of the "classifications" for complaints is "informal resolution", which is only applicable to "reportable complaints" of a minor nature. If there is fundamental contradiction between the statements of the complainant and the subject of the complaint, or if the complaint may result in criminal or disciplinary charges, or if the complainant opposes the handling of his complaint via informal resolution, the police cannot handle the complaint concerned with this conciliatory means, but should commence a comprehensive investigation on the complaint. For complaints classified as "one that is for informal resolution", since the complainant has agreed that his or her complaint will be dealt with on a final basis according to this approach, the complainant cannot make a request for review on the classification of the complaint. To express this well-established

practice, we propose the addition of subclause (1A) to clause 12 and a subsequent amendment to subclause (1) of a technical nature.

Subclause (1) specifies that if the Commissioner for Police is of the opinion that the request for review is vexatious or frivolous or not made in good faith, the request for review should not be treated as a "reportable complaint". Taking into account that the IPCC may have views on whether certain request for review is vexatious or frivolous or not made in good faith, we propose the deletion of the phrase "the Commissioner is of the opinion that", which means objective criteria instead of subjective criteria adopted currently will be applied.

I propose technical amendments to clause 21 to specify clearly the interrelationship between clause 12(2) and clause 21(2). The amendments aim at reflecting more clearly the existing practice adopted in handling request for review, so that the police can concentrate their resources on the investigation of new evidence or new perspective arrived from analysis of facts in respect of the request for review.

Clause 29 specifies that the IPCC, as a statutory body, may charge fees for providing copies of, or extracts from, documents or publications of the IPCC.

The Bills Committee considers that fees charged by the IPCC should be set at a reasonable level. We agree with the views of the Bills Committee and therefore propose to specify in the provision that the IPCC may charge "reasonable fees".

The term "copy" in the English text has the meaning of copies or text, we propose to include the term "複製本" in the Chinese text of the clause to fully reflect the meaning of the term "copy" in the English text.

According to existing practice and the provision in clause 34(1), an observer may at any time and without prior appointment observe an interview and the collection of evidence conducted by the police in respect of a "reportable complaint". At present, to facilitate the Secretariat of the IPCC to co-ordinate the observation of observers, observers may notify the Secretariat of the time or venues they in general prefer to conduct the observation. For instance, they may conduct observation at anytime throughout the year or in certain districts. If observers have stated no preference, they will be on duty according to the duty

roster drawn up by the IPCC. Clause 35(c) of the Bill specifies that the IPCC may maintain the existing arrangement and draw up a duty roster of observers.

Be it now or upon the establishment of the statutory IPCC, the duty roster of observers will in no way undermine the power of observers in attending interviews and observing the collection of evidence at any time and conducting surprise observation. In response to the views of the Bills Committee, we propose the addition of subclause (2) to make specific provision about this.

A technical amendment is proposed to the Chinese text of paragraph (f) under clause 36 in respect of the definition of "指明人士" ("specified person") therein, to add the term "任何" before "身分" in the Chinese text.

Clause 40 is a transitional and saving provision, which deals with the continuance of issues done by the existing IPCC. Among other things, clause 40 (3) specifies that anything that, immediately before the commencement date of the Bill, is in the process of being done by the existing IPCC pursuant to its functions may, as from that date, be continued by the statutory IPCC to the extent that it is consistent with the Bill.

The Bills Committee is of the view that the reference of "is required to be done" by the former IPCC in the provision may not be necessary. It considers that the provision has specified clearly that things in the process of being done by, in relation to or on behalf of the IPCC may be continued by the new IPCC to the extent that it is consistent with the Bill, which should be adequate to cover all transitional and saving issues. We agree with the views of the Bills Committee and therefore propose the respective amendment.

Clause 41 stipulates a transitional provision on the continuance of appointment of members and observers of the IPCC and officers of the Secretariat of the IPCC.

At present, the IPCC is supported by a full-time secretariat staffed by civil servants. The Secretariat is a separate government department that supports the work of the IPCC. Clause 5 of the Bills specifies that the IPCC shall appoint a Secretary-General and a Legal Adviser, and it may employ other employees. Clause 41 allows the Secretary, the Legal Adviser and other employees of the existing IPCC to transfer to the new IPCC. The main reason for providing this arrangement is that when the statutory IPCC considers it necessary, the

Government may arrange civil servants on secondment to continue to provide service to the Secretariat until employees employed by the IPCC assume office, so that smooth operation of the Secretariat will be maintained. This is a transitional arrangement. We expect that civil servants on secondment to the Secretariat will be posted out within a short time.

Some members of the Bills Committee are concerned that when clauses 5 and 41 are interpreted together, the reference of "continues to be such officer of the Council" in clause 41, may give rise to the problem of when the existing Secretary, the Legal Adviser or officers will leave. For the sake of clarity, we propose the addition of subclause (2A), stating that the Secretary or the Legal Adviser of the existing IPCC will continue to hold the appointment, until the Secretary-General or the Legal Adviser has been appointed by the new IPCC under section 5(1). The amendment proposed to subclause (3) allows the statutory IPCC to agree on the secondment duration of other individual civil servants at the Secretariat, so as to match with the date of assumption of office of the new employees.

These amendments are supported by the Bills Committee. I implore Members to pass these amendments.

Thank you, Madam Chairman.

Proposed Amendments

Clause 1 (see Annex V)

Clause 3 (see Annex V)

Clause 6 (see Annex V)

Clause 9 (see Annex V)

Clause 12 (see Annex V)

Clause 13 (see Annex V)

Clause 21 (see Annex V)

Clause 29 (see Annex V)

Clause 30 (see Annex V)

Clause 35 (See Annex V)

Clause 36 (see Annex V)

Clause 40 (see Annex V)

Clause 41 (see Annex V)

Clause 42 (see Annex V)

Clause 43 (see Annex V)

Heading before Part 2 (see Annex V)

Heading before Part 5 (see Annex V)

Heading before Division 2 of Part 3 (see Annex V)

Heading before Division 3 of Part 3 (see Annex V)

Heading before Division 4 of Part 3 (see Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR JAMES TO (in Cantonese): Chairman, first, a great majority of the amendments proposed by the Secretary earlier are of a technical nature. For record purpose, I have to state that an overwhelming majority of those amendments are proposed by me. Certainly, when I proposed those amendments, I did so to fulfil my responsibilities as a Member. I understand that in the absence of the power of investigation, it will be a waste of time and resources to try to remedy a "three nos" organization like this. Nonetheless, we know that the Bill will be passed after all, for we know that there are many Members from the pro-government camp — the royalist camp. Therefore, if I

can remind the Government to amend the Bill to make it look better or clearer, or at the very least not contradictory in terms of logic, I have done my level best, though it may not be influential. But still, these issues are not crucial and important. Naturally, I will support these amendments.

However, I would like to remind the public of one point: Why does the legislation have to be so complicated? Why should complaints be categorized as "reportable" and "non-reportable"? Members may think about a remark made by the Secretary earlier. The Secretary said, "not all complaints against police officers have to be handled by the IPCC, or the new IPCC in future." This remark is truly remarkable. What does he mean by saying not all complaints against police have to be handled by the IPCC? What complaints are included then? Why should complaints be classified with such details and complexity to the extent that many issues are beyond the scope of the IPCC? Take clause 9 as an example, for now is the only opportunity we can discuss clause 9, which is on complaints made by members of the Police Force, that is, fellow police officers. In the case where police officer A saw police officer B abusing his power, it is not a complaint related to welfare issues. In another case where police officer A complains police officer B of unfair distribution of holiday flats, we, as outsiders, do not have to consider these issues related to the civil service. As for a case that involves a member of the public seeing a police officer abusing his power and reports the case, it will be monitored by the IPCC and investigated by the Complaints Against Police Office (CAPO). However, if the complaint of power abuse is made by police officer A against police officer B, it will be regarded as a complaint made by his fellow police officer. In that case, no matter how serious the case is, no matter to what extent the interest of the public is involved, and no matter how much public controversy will the issue arouse, the IPCC cannot take up the case.

I am not saying that they will sweep those cases under the carpet. However, they may regard these cases as issues related to their own men, which they think should be treated as internal affairs because the involvement of outsiders is unnecessary in an internal investigation. I think such an approach is ridiculous. Among the excuses to keep out the monitoring of the IPCC, I think this is the most ridiculous of all. It is outrageous. These are cases related to the interest of the public or the abuse of power by the police, not complaints about welfare issues, and these are cases related to the exercise of police power. These cases are monitored by the IPCC under the existing system as claimed by the Government, but why the IPCC has no power to take up such cases under the

Bill? Just because these cases are non-reportable. All issues are then made unnecessary for reporting. If the complaint is made by the public, even if it is on some trivial matters, the case may be put on or recorded in the list of complaints. They may thus have the opportunity to make inquiry of their cases. However, complaints made by police officers are completely excluded from the scope of monitoring of the IPCC. This is the point I vehemently oppose.

Moreover, for anonymous complaints made by the public — the Secretary mentioned anonymous complaints earlier — there may not be information for them to follow up and it is therefore impossible to conduct investigation on those cases. This may be true to some of the cases, but please do not jump to the conclusion before knowing the full picture. Why do the members of the public have to make anonymous complaints? There are complainants who have made non-anonymous complaints before but who dare not pursue their complaints. Why? This may be attributable to all kinds of reasons, and intricate and complicated relationships are involved. However, should the organization overseeing the police not investigate the possibilities of any irregularities or the causes of the situation? The accusation made in the complaint may be true. In a modern society, everyone will help with the monitoring work by revealing information. We may notice this from the incident related to photos uploaded to the Internet. The police eventually regarded the incident as a crime case and conducted investigation. These cases can be detected. If the crime or power abuse case involves a police officer, why will the monitoring of the case by the IPCC be regarded as unnecessary merely because the complaint is made anonymously?

The function of the IPCC is to monitor these cases. It has to monitor a lot of cases. It should have a broad vision to provide good guidance on preventing power abuse. However, anonymous complaints are not required to be followed up by the IPCC. What is the justification? Is it because the complaints cannot be followed up in the absence of the particulars of the complainant, as the Secretary was claimed? Is this reason applicable to all cases? What about those cases that can be followed up? The Government said that it would follow up those cases if possible. However, it is not necessary for the IPCC to deal with these follow-up issues. Even if the investigation reveals that there is abuse of power and dereliction of duty on the part of the police, and that criminal charge will be initiated against them, the IPCC needs not take up the case. Does the case involve the abuse of power on the part of the police? Yes, it does. Is the case related to the public? Yes, it is. But since the case is

originated from an anonymous complaint, the IPCC needs not bother about it. What then is the logic behind this arrangement?

To put it simply and direct, why does Chairman Ronny WONG feel so strongly about it? As I look into the provision more carefully, I understand him more. It is simple. All kinds of barriers and constraints are laid down in the Bill to prevent the involvement of the IPCC. All kinds of feeble excuses are made to prevent the IPCC from interfering, ensuring that the IPCC is shut out. It is said that the IPCC does not have to bother about these cases, or that the IPCC should not be bothered, for everything will be dealt with properly. In short, the coverage of reportable complaints is narrowed down by all means. The coverage is cut here and there to reduce to the smallest. We see that only a very small number of complaints will be subject to the monitoring of the IPCC. Not only that the IPCC will be monitoring only a small number of complaints, worse still, it turns out that its employees cannot be trusted. Chairman WONG said that the number of cases they could monitor had been restricted, and among these very few cases, they had to make strenuous efforts to identify areas they could, to borrow his words, bombard. The intense bombardment is between the IPCC and the CAPO, for only by doing so can they make some of the cases substantiated.

If you are a police officer, you are an expert in conducting investigations. You have the expertise of reading people's mind, knowing how to identify "tricky guys" and applying various tactics to facilitate the investigation. If you want to abuse your power, you may employ effective techniques to cover up, disguise and protect yourself during your course of action. Cases of this kind can hardly be found out. If persons responsible for the investigation sympathize and understand you, for they may have done the same thing in the past, the situation will be even worse. In other words, the IPCC can only depend on the colleagues or subordinates in the CAPO, whom it may not fully trust, to carry out the investigation. This practice is really disastrous.

Besides, the number of colleagues in the IPCC is also a cause of concern. As Ms Emily LAU said earlier, the IPCC will have one Secretary-General and 21 employees. But not all 21 employees are expert at doing investigation, and some of them have to undertake other duties. When I say that they have no expertise in investigation, I am referring to staff members like Executive Officers. These officers do not possess the qualification of barristers, nor do they have a background in investigation work. In fact, it is very difficult to read

between the lines to identify problems from those reports. The report may contain facts being slightly disguised and obscured, where attempts to camouflage the facts are included everywhere in the report, which are all difficult to spot. Under these circumstances, what conclusion will be arrived at eventually? For those conclusions and reports of the complaints, a great majority of them involves serious cases, and they will be passed merely by the circulation of the reports. I hope that the public, having heard our debate today, will know what is happening under the existing system. The former Chairman of the IPCC, who have been in that capacity for four years, said, "What is the CAPO doing? The duty of the CAPO is to investigate into every case to ensure by all means that none of them will be substantiated, while we have to use our wits to find out which of those cases can be substantiated. We have to argue with them about the conclusion made and whether the fact is substantiated. But in the end, an overwhelming majority of those reports is passed by circulation." Poor complainants, they are so unfortunate.

Moreover, in some cases which involve power abuse, people may not necessarily know that they are the direct victims. Why? Sometimes, when a member of the public is subject to the abuse of a police officer, he may not necessarily be aware of it, it is the other police officer at the scene who may know about it. This type of cases is common. However, when the police officer complains another police officer for treating the public unfairly, the member of the public concerned may not know it. As such, the member of the public concerned will not make a complaint under his name. That means the case will never fall within the purview of the IPCC and the IPCC will be kept in the dark about this. When we come across that case in the newspaper, we may query why this is not included in the report. I will then ask the IPCC about the reason, and colleagues of the IPCC will tell us apologetically that because the case is a complaint made by colleagues of the Police Force and investigation has been done by them. But for cases where no investigation can be conducted, how will they be handled? Is the process of investigation fair? They will only provide piecemeal answers on scattered areas. Eventually, they will make an apology and say that those cases are only very small in number. Clause 9 is about this situation.

Chairman, this is also the only opportunity for us to discuss clause 21. The heading of the clause is well-drafted. It says that the IPCC may require the Commissioner to investigate into reportable complaints. The term "reportable complaints" is the key. Why do we only ask about certain complaints earlier,

though there are all kinds of complaints in the world? What complaints should be categorized as "reportable complaints"? Which should be categorized as "non-reportable complaints"? The procedures involved in dealing with these two types of complaints are completely different. But what kind of complaints should be categorized as "reportable complaints" that should be overseen by the IPCC? Who has the power to decide this? The Commissioner of Police, for the power is in his hands. In other words, when the Commissioner of Police considers certain cases among the many complaints made by the public can be monitored by the IPCC, he will categorize those cases as "reportable complaints" and let the IPCC monitor them. The IPCC of course may give its views on the categorization of complaints made by the Commissioner of Police, which determines whether the complaints will be monitored by the IPCC. But if the Commissioner of Police insists that the IPCC should not monitor the case, the IPCC cannot do so. This is the actual situation under the existing system. In other words, whether the complaints received should be monitored by the IPCC depends on the opinion of the Commissioner of Police. If he considers certain complaints can be monitored by the IPCC, he will let the IPCC monitor them. What kind of system is it? To put it direct, it is the "three-nought" system mentioned earlier. The "three-nought" includes the lack of power of investigation and the lack of power to make a decision. A decision can only be made after the completion of an investigation, but the IPCC does not even have the power to initiate investigation. It is not merely a matter of the power of investigation, but the power to initiate investigation. I would say, it is even deprived of the power to start monitoring the investigation of complaints. This is a horrible system. You can hardly imagine that it can be so horrible.

My amendment seeks to let the IPCC decide which complaints should be investigated, though the investigation will still be carried out by the CAPO. However, the Government opposes it. Why? The Government said that it was against the principle and involved the use of public money. It said that if a lot of complaints were received, and the amendment would be made to non-reportable complaints, then the investigation of those cases would be necessary, so a lot money had to be spent on investigation. The Government dared to use this excuse to oppose the amendment. Is it not horrifying? But please bear in mind that the excuse it gave in opposing the proposal is indeed unconvincing. The Government said that if investigation had to be conducted even on non-reportable complaints, it would have to involve the use of public money. But the focus of the present discussion is whether these complaints should be subject to the monitoring of the IPCC, which incurs no additional

public money. Nonetheless, the Government made the incurring of additional expenses as an excuse for opposing my amendment.

I would now sum up my discussion. According to a number of provisions in the Bill, including clauses 9 and 21, we notice that the Commissioner of Police does not allow others to investigate into certain complaints. He adopts this attitude: for those complaints I do not investigate, you have no right to require me to do so. To carry it to the extremes, if the Commissioner of Police categorizes a great majority of complaints as "non-reportable" complaints, no report on such complaints has to be submitted to the IPCC. To put it crudely, your hands are tied. As a common saying goes, "you can do nothing about it", that is to say, you are at your wit's ends. As all the power is rested in the hands of the Commissioner of Police, Hong Kong is now rule by the Commissioner of Police, TANG King-shing. He regards the IPCC as a "foul-tempered" guy, and the IPCC has no power to decide what the Commission has to report to it. We are now under such a system.

MS EMILY LAU (in Cantonese): Chairman, I agree with the remarks made by Mr James TO earlier. Concerning the terms like "reportable complaints", when we first heard of these terms, we were almost speechless. As I said, if we ask people on the streets about these terms, no one will know what they mean. The amended version is better. But categorization is introduced. Some issues are not open to investigation by the IPCC, and the IPCC can only know the categorization of those cases, which are called "notifiable complaints". Earlier on, Secretary Ambrose LEE he has left now. Secretary Stephen LAM now acts as his stand-in, and I hope he is familiar with the issue. For anonymous complaints or complaints not made by the complainant, Chairman, the issues involved in the complaints may indeed be very important. At issue is the nature of the incident which leads to the complaint, but not whether the complaint is made anonymously or by the complainant directly. If an investigation cannot be conducted, there will be no investigation then. My office sometimes receives some anonymous complaints. If I consider that the case is of a rather serious nature, I will forward the case to the authorities. The authorities will return a reply and handle the case. Therefore, if complaints are classified into different groups for no reason, it will appear that the power of the IPCC to monitor has been undermined. Therefore, I have strong views about this.

Many people have cited the remarks of Chairman Ronny WONG earlier. Actually, after that meeting, I particularly requested for a detailed record of the remarks made by him to the Bills Committee on 24 April. Some of the remarks were made in Chinese while some were in English. Some remarks were presented in mixed-language, both Chinese and English. Chairman, I believe this is a characteristic of the legal sector in Hong Kong. He said, "The IPCC is really an instrument being used, I think, to protect the police from abuse. The existing classifications are defective particularly, I think, in relation to the classification of unsubstantiated cases." He gave particular mention to those unsubstantiated cases. He said (I would save myself the trouble of translating his Chinese-English remarks) that the statement must comply with a very high standard. So, Chairman, more often than not, the statements cannot comply with that standard. He said to this effect, "I think this is the saddest issue I have come across since I become the Chairman." He said to this effect, "Over the years, the reports drafted by the Complaints Against Police Office (CAPO) seek (and the following is in English) to ensure that they get unsubstantiated classification." He said to this effect, "We have to fight with the CAPO." He said, "Every time, it is a hard fight. We must have some very strong justification to get the substantiated classification." Chairman, the most dreadful remark made by him is and I quote, "so all the odds are stacked against the complainant." In other words, all unfavourable factors are directed against the complainant. Who gave this remark? The Chairman of the IPCC at the time said so.

He also mentioned some cases, which we have also come across earlier. Since there are so many cases, what should be done? He said that the IPCC had many members, who come from different background and had received different training. He said, "But they really have to be (and the following is in English) you really require dedication in order to function effectively." That means the members have to be dedicated, otherwise, the IPCC cannot function effectively. There are some 4 000 complaints. Chairman, let me tell you, there are some 4 000 complaint cases against an 18-man strong IPCC. How can they deal with all those cases? He said to this effect, "Particularly that you have to examine the report with extreme meticulousness in order to spot the problems." He said, "You have to spend long hours to read those reports", and he went on to say in English that these reports, "therefore, require examination".

Will Members tell me, with only 18 persons, or the composition of one plus 21, dealing with some 4 000 cases, how can they examine the reports with

extreme meticulousness for long hours to spot irregularities? Chairman, this is the case presented by the Chairman of the IPCC. He has not asked Members to support or oppose the arrangement. But will Members not feel frustrated when they see such a structure? Do you think such a structure can protect the interest of the public? You must be joking. I think it is mere self-deception to say that this structure can protect the police.

We hope that a system can be put in place to allow the public to lodge complaints against the police. I do not believe that all complaints against the police are definitely justified, but there should be a system for the handling of these complaints. Like in the United Kingdom, a fair system has been put in place. There should be a fair system like the Courts in Hong Kong. Whenever there are disputes, we will bring it to the Court for judgment. We think that the Court is fair and impartial, and the judgment made will not be biased against either party. The parties involved will accept the judgment no matter it is in their favour or not. If anyone is dissatisfied with the judgment, he or she may lodge an appeal, provided that he or she has the money and capabilities to do so. The public considers the court system acceptable, though the Central Authorities may consider it unacceptable. Even though those who are not in favour of the system try to criticize the Judges concerned, the point is that such a system is in place. But this is not the case for the IPCC, for even the Chairman of the IPCC said so. He has been I wonder how long he has spent on studying those cases. There are thousands of cases. How can he go through all those cases? So, Chairman, though the Secretary said that Members supported those amendments, I am not interested in supporting him. I think, even if the Government manages to have the Bill passed, will Members consider the system worthy of commendation? Is it worthwhile to present this system to the United Nations and tell it that though we have not heeded its advice, this system, as the Secretary claimed earlier, is practicable and effective, and can properly deal with public complaints against the police? Can the system really achieve such targets? I believe if you tell others that it is the case, they will probably think that you are lying.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (represented by Secretary for Constitutional and Mainland Affairs) (in Cantonese): I do not need to speak.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendments passed.

CLERK (in Cantonese): Clauses 1, 3, 6, 9, 12, 13, 21, 29, 30, 35, 36, 40 to 43, headings before Parts 2 and 5, and headings before Divisions 2, 3 and 4 of Part 3 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses and headings as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 4.

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given notice separately to move the amendments to clause 4.

Members may now jointly debate the original provision and the amendments to the provision proposed by the Secretary for Security and Mr James TO respectively. I will call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to clause 4, as set out in the paper which has been circularized to Members.

Clause 4 specifies the membership of the Independent Police Complaints Council (IPCC). The original provision of subclause (2) specifies that a person who is a civil servant of the Government, or who was a member of the Police Force, is not eligible for appointment as a member of the IPCC. After discussion with the Bills Committee, we agree that the term "civil servant" fails to cover political appointees and employees on non-civil service contract terms, while according to the original intension of the policy, these people will not or shall not be appointed as members of the IPCC for the purpose of avoiding any possible conflict of interests. We therefore propose to rewrite subclause (2) to "a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department", to provide explicitly that officials appointed by the Government and all government employees will be ineligible for appointment as members of the IPCC.

Amendments to the heading and subclause (1) are proposed to replace the Chinese name of IPCC ("警監會") with "監警會".

The above amendments have been agreed by a majority of the members of the Bills Committee. I implore Members to pass the amendments.

Mr James TO proposes that the appointment of the Chairman of the IPCC shall be approved by the Legislative Council, two Vice-Chairmen of the IPCC shall be elected from among Members of the Legislative Council, members of the IPCC shall consist of the Commissioner for the Independent Commission Against Corruption (ICAC) and The Ombudsman or the persons nominated by them as representatives, and that at least five members of the IPCC shall have knowledge of, or experience in, or exposure to, criminal investigation, criminal litigation, social work, and affairs of ethnic minority.

During the discussion of the Bills Committee on the appointment of members of the IPCC, we have pointed out repeatedly that the appointments to IPCC are made on an *ad personam* basis. In making such appointments, the Administration is guided by the principle of selecting the best person for the job, having regard to the functions and nature of business of IPCC, and an individual's integrity, ability, experience, expertise and commitment to public service. When we consider the appointments of members to the statutory IPCC, we will also have regard to a potential candidate's background to ensure a balanced composition of the IPCC, and to avoid any real or perceived conflict of interest. During the appointment process, we will give careful considerations to all suitable candidates. Hence, we do not consider there to be a need to stipulate in the Bill the specific sectors from which members of the IPCC should be drawn.

We understand that the governing Ordinances of individual statutory organizations, such as the Hong Kong Examinations and Assessment Authority, the Hong Kong Tourism Board and the Hong Kong Arts Development Council, specify particularly the sectors from which their members should be drawn. However, since these statutory organizations concerned have to fulfill the functions in specified areas, they need the relevant professionals to offer advice for the effective fulfillment of their functions. Concerning the IPCC, in the examination of investigation reports on the complaints made, members have to be objective, impartial and acutely observant, and they should have good analytical power and integrity, but there is not need to specify that they should have knowledge in certain professions or specified areas. We have to emphasize that though a number of incumbent members of the IPCC are professionals, they are appointed to the IPCC not because of their professions or occupations, but their possession of the characteristics and abilities which I have mentioned earlier.

Mr TO's amendments make it a mandatory requirement for members of the IPCC to come from specified sectors, but this arrangement lacks flexibility and is uncalled for. Moreover, Mr TO proposes that the appointment of the Chairman of the IPCC has to be approved by the Legislative Council, while the two Vice-Chairmen shall be elected by the Legislative Council from among its members, but this proposal is not in line with the appointment arrangement applicable to statutory organizations in general. We disagree with the proposed change.

Mr TO proposes that the Commissioner of the ICAC or his representative shall be a member of the IPCC. I have to point out that the function of the Commissioner of the ICAC is to deal with corruption-related crimes rather than complaints against members of the Police Force. If in the course of monitoring the handling and investigation of complaints by the police, the IPCC suspects that acts of corruption is involved, the IPCC may refer the case to the Commissioner of the ICAC according to clause 37(2)(b). Therefore, we consider the appointment of the Commissioner of the ICAC or his representative as a member of the IPCC unnecessary.

On the appointment of The Ombudsman or his representative as a member of the IPCC, our proposed amendment to subclause (2) has not set any restriction, and we consider it unnecessary to make a separate provision in this connection.

Moreover, Mr TO proposes to make explicit provision to specify that the immediate family members, meaning a spouse, child, parent, brother or sister, of members of the Police Force shall be ineligible for appointment as members of the IPCC. I would like to stress that, in the appointment of members of the IPCC, we will do our level best to avoid any real or perceived conflict of interest. Actually, when we consider the appointments concerned, it is our policy direction to avoid appointing immediate family members, that is, a spouse, child, parent, brother or sister, of members of the Police Force. In this connection, before the official appointment of the members, the candidates concerned are required to declare whether any of their immediate family members is a member of the Police Force, which can ensure that persons with conflicts of interests will not be appointed as members of the IPCC. When the appointment of persons with conflicts of interests as members of the IPCC can be avoided by administrative arrangements, we consider the addition of the

proposed provision of Mr TO unnecessary. I implore Members to oppose the amendments proposed by Mr TO. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, since I have to cover all my amendments to clause 4 in my following speech, it may be relatively long. I will explain it point by point.

First, what is clause 4 about? Clause 4 is about the membership of the Independent Police Complaints Council (IPCC). As I said earlier, the IPCC after all has no power of investigation but only the power to monitor. Since it has the power to monitor, who do we wish to be appointed to the IPCC? First, the term "independent" is included in its name. The name is self-explanatory. Is it because we wish that the IPCC can win the confidence of the public that the IPCC is raised to the highest and most independent status? If the appointment is made by the Chief Executive alone, does it represent the greatest independence? Concerning the existing judiciary in Hong Kong, the appointment of Judges of the Court of Final Appeal has to be approved by this Council. Why? To ensure its independence. Besides, the appointment is not made merely on the proposals put forth by the Chief Executive via the committee. The Legislative Council has the power to scrutinize the appointment, which is reflected in the constitution.

If we wish that the public would have confidence in the IPCC Though the IPCC has no power of investigation, it should at least have the independence in appointing its members, and the Chairman in particular. I ponder how this can be achieved. I have made reference to the relevant areas. I then come up with the proposal of seeking approval from the Legislative Council. The approval of the Legislative Council carries a lot of significance. The Legislative Council is another kind of organization that represents the public, for its Members are returned by election. It also represents a concept of exercising collective monitoring of the Government on behalf of the public. If the appointment of the Chairman of the IPCC is approved by the Legislative Council, it certainly will enhance the independent image and credibility of the IPCC as a whole. Honestly, in the delivery of duties in specific terms, we have seen persons like Chairman Ronny WONG. Earlier on, we have quoted a lot of problems raised by him. As mentioned by Ms Margaret NG, a number of Chairmen of the IPCC are the former Chairmen of the Hong Kong Bar Association in the past. However, recently, a new candidate is appointed as the

Chairman, he is Mr JAT. I hate to discuss the selection of candidates. I would only observe this from an objective perspective. Chairman JAT seems to be the first person appointed as the Chairman of the IPCC but is not a former Chairman of the Hong Kong Bar Association. This is a fact. Second, in the legal sector, among all the former Chairmen, he is the one who has received the greatest number of cases from the Government, this is not so only in relative terms but also in absolute terms. I say so not to mean that this will have a bearing on the situation, but some members of the legal sector, at least those I know, have great trust in Chairman JAT. Some of my party comrades in the legal sector also think so. However, at the same time, some veteran members of the legal sector (please bear in mind that these people have high credibility in my opinion) told me, "TO, Chairman JAT has received an enormous number of cases from the Government. Does the Government really need to find someone like him to influence the position of the Government in that organization? Why is the Government so stupid?" This remark is only an objective reflection.

On the other hand, some people may ask, "Does it really have no choice? Should this be attributed to the notorious name brought about by the leakage of restricted information? The person appointed will have to undertake the distasteful task and subject to restrictions of all kinds. Is it really so difficult to identify a suitable candidate?" Some veteran members in the legal sector told me, "The Government can indeed appoint some former justices, for they at least have a higher credibility." Why does the Government not find them? Is it because the Government cannot find them or are there some other reasons?

Certainly, I am now talking about the system, hoping that the appointment of the candidate will be subject to the approval of the Legislative Council. If it requires the approval of the Legislative Council, it implies that we will have the opportunity to ask the Chairman to be appointed some questions. For instance, what will he do to enhance the credibility of the IPCC? Does he plan to follow the established practice, so that most of the cases, including cases of a serious nature, will be handled by circulation, as mentioned by the Secretary? Will there be changes in the practice and mode of operation adopted to enhance accountability and credibility? We may ask the potential Chairman about his work plan and how he plans to enhance the standard of monitoring as a whole. If the IPCC has the power to recruit staff In this connection, Mr LAU Kong-wah said earlier that the IPCC is a "three-haves" organizations, among which is the power to recruit staff. Remarkable talents surely can be identified

via recruitment, but there is also a possibility that the people recruited are less competent than their predecessors. Am I right? In that case, we may ask about the recruitment plan. One of my questions will of course be: "Candidate of the new Chairman, do you plan to recruit more smart employees and to include among your employees more members with a background in criminal investigation or experience in the related field, including those gained overseas?" Hong Kong is not the only place in this world that has investigation officers, there are also retired officers. If more employees with this kind of background are recruited, in comparison with the employment of staff who can only Take the present situation as an example. In respect of the secondment of civil servants from the Government, those seconded to undertake report vetting tasks are not counsels expert at criminal prosecution but Executive Officers. These Executive Officers are seconded to accumulate experience, so as to build up their professional background. I dare not deny such practice. However, will the candidate of the new Chairman plan to recruit more smart and outstanding employees who can discover clues from those reports?

There is the fourth reason. The Secretary cited the situation of several decades ago, that is, 1977. It involves the development between early to mid 1977 and an organization called the Office of Members of the Executive and Legislative Councils (OMELCO), which is the former Legislative Council. Actually, the President was the Member of the Executive Council and the Legislative Council at the time. She must have handled a lot of these complaint cases at the Swire House. Indeed, the Complaint Against Police Office was monitored by the OMELCO.

Actually, the participation of the Legislative Council in a monitoring organization was also found in the past, and appointments were not made by the Chief Executive alone. This is of particular concern to me at present as I learn of the candidates appointed by the Chief Executive, and that the appointment is based on no criteria, where no restriction in background is imposed. Such practice has filled the public with horror. They have seen the appointment of Under Secretaries and Political Assistants made by him, and they know that there is affinity differentiation. With regard to the appointment made by him, be it appointment to the West Kowloon Cultural District Authority or the IPCC, once the appointment is made by the Chief Executive alone, it is known that the principle of total affinity differentiation is adopted. This will send shivers down one's spine.

Let me cite a simple example. We are going to discuss the ineligibility of immediate family members of members of the Police Force. Will it not be a better approach to stipulate their ineligibility for appointment? The Secretary said that it was the policy of the authorities to avoid appointing them. The Secretary did not say that they would not be appointed but only that their appointment would be avoided. Sometimes, I think, when all civil servants are ineligible for appointment, a staff member of the Food and Environmental Hygiene Department responsible for handling animals, a street sweeper, or a humble junior civil servant definitely will not be appointed, for they are government employees. But let us draw a comparison with an immediate family member of a member of the Police Force, whose ineligibility for appointment has not been specified. The civil servant mentioned earlier may bear no relationship with any duty or work of the police, he has no family members and he himself is not a family member of any member of the Police Force. If so, why should it be stipulated that this civil servant is ineligible for appointment? On the contrary, the Secretary said that the ineligibility for appointment of immediate family members should not be subject to regulation. What is the logic of that?

In fact, this point is first brought up by Mr LAU Kong-wah, and I think he has a case. I have been struggling whether such a requirement should be laid down. A clear thought then comes to my mind. When the some 200 000 civil servants who are not related to the Police Force in any way are specified as ineligible for appointment merely because of their civil servant identity, why should an immediate family member of a police officer not be subject to the same requirement? Obviously, these family members may show sympathy towards the work of members of the Police Force. Truly, their identity may give other members of the public an impression of conflicts of interest. They can hardly believe that the cases are handled with complete impartiality. For this reason, a requirement should be laid down. But the authorities refuse to do so.

Why do I propose that two Vice-Chairmen of the IPCC shall be elected by the Legislative Council from among its Members? According to tradition, the three Vice-Chairmen appointed by the Chief Executive in the past were Members of the Legislative Council. Later, though certain Members lost in the election, they stayed on the IPCC until the end of their term as Vice-Chairmen. However, since the IPCC is to be made a statutory body and this process is itself a norm, and the stipulations that go with it will last long. However, the Bill, as drafted in its present wordings, has not specified that the Vice-Chairman must be

a Member of the Legislative Council. It only states that the Vice-Chairmen should be appointed by the Government. So, it can be anyone.

Does the present practice have adequate credibility? Will the Bill so drafted prevent the Government from adopting the affinity differentiation approach? If the Vice-Chairmen are elected by the Legislative Council from among its Members, will it enhance the credibility of the legislature as a whole? As Members so elected are appointed to the IPCC, they may work on the enhancement of its accountability. Will this enhance the credibility of the IPCC and thus improve its image? The price it has to pay is that the Government will have no say in which Members of the Legislative Council will be appointed, for they will be elected by the Legislative Council from among its Members. Do you think that the public will be confident of the choice made by the Chief Executive or an election from among Members of the Legislative Council?

I propose the inclusion of the Commissioner of Independent Commission Against Corruption (ICAC) as a member of the IPCC for the following reasons. First, the credibility of the Commissioner of ICAC is undeniable. Second, he possesses a professional investigation background. Third, he has grasped a lot of intelligence and case information related to power abuse, dereliction of duties and offences of the police, which include cases under investigation and past cases. It is most desirable for the Commissioner of ICAC or his representative to be appointed as member of the IPCC. I also hope that his representative will come from the operation division rather than the division responsible for promotion work. I think if my proposal is passed, they will not designate a colleague from the promotion division as the representative, will they? I believe this arrangement will at least enhance the quality of the membership of the IPCC.

With regard to The Ombudsman, I make the proposal for the same reasons. The Ombudsman is familiarized with professional investigations conducted on various departments, as well as the rules and the exercise of statutory powers by the departments. I thus consider him capable of enhancing the credibility of the IPCC in a proper manner.

Certainly, these are only my views and I do not know whether the Government agrees with them. The Government is keen on staging opposition, urging others not to support me. But on the other hand, it will follow the proposal. It thinks it is a matter of face, does it not? Among the dozen of

members of the IPCC, it is not a surprise to find the Commissioner of the ICAC being appointed. I cannot be sure, for this has not happened in the past and it is not the Government's practice to do so. According to the practice in the past, it seems that the authorities should not and will not do so.

Finally, I will come to subclause 1(c). I propose the addition of a subclause to the effect that at least a certain number of, not all, members appointed should have a knowledge of criminal investigation, criminal litigation, social work, and affairs of ethnic minority. The reason is simple. I am referring to the specialized vetting of reports. These reports are on complaint cases related to the possible abuse of power by the Police Force. The Police Force is a professional team, and its members, who are shrewd and smart, are expert at conducting investigation. Some of them have special skills, while some of them have to disguise to perform undercover duties. They are good at the application of these tactics. If the black sheep in the Police Force want to abuse power, we must have persons with relevant experience and knowledge to stop them.

Recently, we have discussed a lot of issues relating to ethnic minorities. However, the situation can be likened as a scholar meeting a soldier, and they face a lot of communication problems. Many of these people have been wronged, they have been framed or oppressed. So if persons familiar with special social groups and social work are appointed, they may attend to the need of certain social groups, like the ethnic minorities and youth at risk. These members will definitely facilitate the work of the IPCC as a whole. Since they understand the cases concerned, they will examine the cases and offer good advice to the police in preventing and reducing the number of complaints. The Government may oppose the amendments, but eventually, it may appoint these people all the same. At issue is how we can ensure that at least a certain number of members on the IPCC are persons with these backgrounds. I am not saying that all members of the IPCC should have such backgrounds. So, the Secretary does not have to require all members to possess such backgrounds, for it will be adequate if only a few of them have such backgrounds. I think this arrangement will do all good but no harm, nor will it greatly undermine the flexibility the Chief Executive has in making appointment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR ALAN LEONG (in Cantonese): Chairman, certainly, concerning the amendments proposed by Mr James TO, it is open to discussion whether each and every amendment should be included. However, I understand why Mr James TO has put forward such amendments. Members, after the incident of the appointment of Under Secretaries and Political Assistants, we all understand that if the power of appointment of public office is held solely in the hands of the Chief Executive, while the criteria and principles he adopts in appointment are not made public and lack transparency, it will easily result in the use of public money for private purposes and forming cliques and factions. I believe this is also the reason the incident of the appointment of Under Secretaries and Political Assistants has caused such great concern.

I think the proposals of Mr James TO seek to enhance the transparency of the appointment, so that the public will have more trust in the future IPCC. Chairman, the Chairman of the Bills Committee said earlier that the "three nos" approach was necessary. Surely, I agree that the "three nos" status is a fact, for the IPCC has no power of investigation, no power to make decision and no power to impose penalty. But to say that such an approach is necessary, I think it may have gone overboard. In my view, a development direction gearing towards the aspiration of the public should be adopted. For this reason, during the debate on the resumption of the Second Reading debate, Chairman, I said I would accept such a situation for the time being, but hoped that the best arrangement could be made within the existing constraints. I believe the proposals of Mr James TO are put up with a good intention, trying to enhance the credibility of the IPCC despite its "three nos" status.

Mr TO mentioned the new Chairman of the IPCC earlier and said that some people might have doubts about him. I indeed think that we should pay tribute to him instead. For under the existing circumstances, the IPCC is not only a "three nos" organization, but also one that has "no authority", "no say", "no resources" and "no protection", while he is still willing to accept the appointment as the Chairman. I guess mainly two types of persons will be willing to do so — there may perhaps be three, four or five types of such persons, but I will first talk about two of these types. The first type is those who chase after reputation and trying to gain advantages. If they toe the line of the Chief Executive, they will surely get some advantages. Is it not better than playing the opposition? Another type is those who think "no one will go through this hell, if they do not". They have the noble vision of serving the people and acting as the gatekeeper for Hong Kong. They are willing to brave

all danger to achieve this target. Today, I would like to believe that every member on the existing IPCC works with this attitude, that they will brave all danger to achieve the target and that they will go through this hell because no one will. Therefore, I must pay tribute to these members.

Despite the fact that they are respectable, I think the authorities should consider that these members being the gatekeepers should be given the power concerned. Though they are "paper tiger", they should at least be given "paper teeth". It should consider enhancing the transparency to their appointments by introducing some objective criteria. Even though not all the proposals of Mr James TO are acceptable, will the authorities consider proposing the establishment of a more objective mechanism? Chairman, in the earlier scrutiny of the West Kowloon Cultural District Authority Bill, I did make some very humble request, such as making it public the talents the Authority required.

The remarks given by the Secretary earlier was not the whole truth. I have been serving in the IPCC for six years, and I know that its membership will definitely include a number of medical practitioners. Why? For sometimes, we have to probe into the reports written in black and white to identify irregularities. If some of the members possess medical knowledge, it will be easier to spot the loopholes. Moreover, the membership must include some lawyers and social workers. I think the inclusion these members is meaningful. It should not be reduced to a glib definition the Secretary put earlier that their appointments were made only on an *ad personam* basis, but not on the consideration that their professional background would facilitate the effective functioning of the IPCC. I believe this is not the case. I also believe that the Secretary has no intention to make any misleading remarks. It may only be a slip of tongue. However, these persons are definitely included in the membership. This is true at least during my six years of service, for I have seen them during the period. Mr TO's proposals aim at including such an arrangement in the legislation to provide a legal backing, so that the public will have some confidence. This is the actual case about Mr TO's amendments.

Chairman, I would like to point out that the numerous prohibitions and constraints laid down by the executive authorities against the future IPCC is an exhibition of a lack of trust — we will discuss this later. If this was not the case, the authorities would not have specified that the provision of information sought by the IPCC could be refused with the consent of the Secretary and the Commissioner of Police. Neither would it put members of the IPCC under the

worry that they would violate the secrecy provision in clause 37 when they invite public comments, which means they will still worry even if it is a collective decision of the IPCC to invite public comments on a certain case. Members should also have come across the request for resources made by the IPCC, but the authorities refuse to make any commitment in this respect, for they fear the IPCC will eventually wind up.

(THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

I repeat here that, I believe, anyone willing to take up the post of Chairman or members of the IPCC under such circumstances, Deputy Chairman, must have a noble vision of "no one will go through this hell, if they do not". However, I hope after all that the proposals of Mr TO will be considered by the authorities in an open manner. Thank you, Deputy Chairman.

MS EMILY LAU (in Cantonese): Deputy Chairman, I rise to speak in support of Mr James TO's amendments.

I believe the composition of the Independent Police Complaints Council (IPCC), no matter what it is called in Chinese, is of utmost importance. We hope that the appointments will not be decided by the Chief Executive alone, and the Legislative Council should also have a role to play. Members may look at the case in the United States. Most often, certain important appointments have to be referred to the Congress for approval. This is for checks and balances. We strongly support this approach. Therefore, Mr TO said earlier that even Judges of the Court of Final Appeal should be so he proposes that the appointment of the Chairman of the IPCC should be subject to the approval of the Legislative Council. I think this proposal is very good. The authorities should be rest assured about this arrangement, for a majority of the "royalists", or Members from the pro-establishment camp, will support the appointment concerned. Though the Government may sometimes experience failures, which has made it feel insecure, Members hope that the issues will be dealt with properly.

Hence, firstly, I support that the appointment of the Chairman of the IPCC should be approved by the Legislative Council, and that a certain number of

members should be elected by the Legislative Council from among its Members. In respect of the West Kowloon Cultural District Authority, we did propose to adopt this arrangement, but the Government disagreed. Take the case of senates of the universities as an example. All along, some Members of the Legislative Council are nominated to sit on those senates. The nomination is made through negotiation, and there has never been any problem over the years. If there is any problem with a certain university, we will call the Member concerned in the first instance and require him to explain at the House Committee what has happened at the university senate. This arrangement is important, for we have no confidence in it. Though there is a lack of confidence, those members are indeed as in the remarks of Chairman WONG, which I have cited earlier. Some other members of the IPCC had also spoken on that day. What did they say? Dr Michael TSUI Fuk-sun, who is a dentist, is one of them, and he attended the meeting of the Bills Committee on 24 April. He said to this effect, "Let me draw an analogy on the existing structure of the IPCC. It is like a ship. There is a captain on the ship and we are his crew (I believe he is surely comparing the Chairman to the captain). This ship is good, which is given to us by the Government. The sailors on this ship will work for us, and if any problem arises, theoretically, the ship can return to the shipyard for repairs. Many issues are not our concern. But since you ask me about the structure of this ship, and whether or not we have the support of the big dockyards, we take his opportunity to voice out the many problems we have discovered in various aspects. This is no easy task, for in future, we will no longer have backup support when the ship is under repair as we did in the past. For this reason, we must bring up these problems. In my view, I surely want this Bill to be passed, so that the IPCC can be a statutory body. However, I definitely believe that if the passage of the Bill comes with a lot of defects, the situation will be even worse. With the presence of these defects, any problem arises in future may have to be resolved at the Court. We do not necessarily have the money to do so, for our financial resources are very limited. This is obvious to all. Hence, a legal foundation has to be laid down. If the foundation is so weak, it would be more desirable to hold the Government fully responsible for it as in the present case."

Actually, as Dr TSUI has made it clear, the situation now is miserable. On the question of money, this has been discussed before. But the authorities said that the same arrangement applied to other organizations. How will the authorities pay for it? They will only let the organizations deal with the problems themselves. If anything happens, these organizations have to be held

responsible. Mr Alan LEONG said that this Dr TSUI was still serving in the IPCC. We wonder why he is still willing to be a member.

Deputy Chairman, there is another member of the IPCC, Professor Benjamin TSOU, who is the Chair Professor of linguistics and Asian languages at the City University. He said, "I have been on the IPCC for a few years. I think that the co-operation among members over these years is fruitless. Besides, the problem has persisted for a long time. This is quite regrettable." These people came forward to express their views, though their remarks were not as harsh as those expressed by Chairman WONG.

Deputy Chairman, we hope that people from the IPCC will speak directly and to the point, commending the authorities for their good performance and criticizing them if their performance is unsatisfactory. Moreover, they really need the time to As Chairman WONG said, remarks which I have read out earlier, they really have to spend time to study the reports in detail and find out the fact before they can conclude which side wins the case. But there are several thousand such reports. How can they do it? The Vice-Chairmen of the IPCC, who are Members of this Council, may speak later to explain it.

Therefore, I hope that first, persons with credibility will be appointed as members. As Chairman WONG said, they should have the spirit of dedication and the time. Moreover, they should give people the impression that they have credibility and that they are independent. When the police are wrong, they dare to identify the persons concerned. They should be able to do so. Otherwise, how will the public have confidence in the system? The proposal of Mr TO is simple, it only sets out a number of requirements. What are the disadvantages of including representatives of the Independent Commission Against Corruption and The Ombudsman as members of the IPCC? The authorities should know that the public has great trust in these two organizations, and the inclusion of their representative in the IPCC will enhance the credibility of the IPCC. But the authorities refuse to do so. They turn down the assistance offered from different channels, for all they want is black-box operation. Concerning the ineligibility for appointment of family members of members of the Police Force, the authorities again refuse to include this requirement in the Bill. The authorities adopt such attitude in every aspect, which I think is quite unacceptable.

Mr TO said that members of the IPCC should include people with the following five types of background, those with knowledge of and experience in criminal investigation, social work and affairs of ethnic minority. His direction is more than correct, but he misses one type of persons, that is, sex workers. Why? For there seems to be an intrinsic hostility between sex workers and the police. I have received numerous complaints from sex workers that they are often investigated, chased after and harassed by the police. Deputy Chairman, why should these people be included in the IPCC? These people are often investigated by the police and they are the ones who will likely lodge frequent complaints against the police. Since most members of the IPCC have never lodged complaints against the police, they are at a loss when they hear complaints against the police, which they think is very good. Some people say that the Hong Kong Police Force is the best Police Force in Asia, what is there for the people to complain about? Actually, members of the IPCC should include some former victims, for they can tell others of their experience.

It is correct to include ethnic minorities in the membership of the IPCC. Some time ago, I did attend a meeting at the Police Headquarters with representatives of ethnic minorities and sex workers. They pointed out repeatedly that they were often pinpointed by the police on the streets. They might be taken to the police station, and even be beaten up by police officers who forced them to strip off their clothes. Secretary, these people should be members of the IPCC.

Hence, Deputy Chairman, despite asking Members to oppose Mr James TO's amendments earlier, the Secretary fails to tell us how can people in touch with the pulse of the public be appointed to the IPCC without those amendments. How can he assure us that members appointed will know the situation of the complainants, particularly those groups pinpointed so often by the police? How can he ensure that their voice will be heard and that they will be represented in the IPCC, so that a genuine balance of interest of all sectors can be struck, and any possible conflict of interests can be avoided and no family members of members of the Police Force will be appointed? I hope the Secretary will respond to these.

DEPUTY CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LAU KONG-WAH (in Cantonese): Deputy Chairman, I agree with the views put forward by Members earlier that the appointment of members of the future IPCC is a very important duty. In comparison with the appointment of members of the existing IPCC, this duty is more important and its impact is more far-reaching. As the IPCC will acquire a statutory status, the public will hold higher expectation of it. Therefore, concerning the appointment of this group of members or more members, I have reminded the Secretary for Security in my speech made during the resumption of the Second Reading of the Bill that "one should not stop minding a child after its birth". What do I mean? I mean that though the power of appointment is in the hands of the Secretary for Security, and upon the appointment of those members, they will form an independent statutory organization. As for its performance, the Secretary for Secretary may say that he can do nothing about the organization because it is independent. He may say that he cannot query the performance of members no matter how they perform. Certainly, the Secretary has the power of dismissal. During the several years between the appointment and dismissal, the performance of members is of great significance. The public will be able to see it.

Therefore, I very much hope that upon the establishment of the new independent IPCC, the Secretary for Security will fulfill his duties to remind newly appointed members of the expectations of the public. He should also remind them of the absence of surprise interview and observation in the past, which has been mentioned earlier, so that such practice will not continue in future. I think the Secretary for Security has the responsibility to make an effort to remind members of these points and to keep watch on the future development. For those members failing to perform well, they should not be re-appointed. I think the Secretary for Security should fulfill his duties according to the legislation. We very much hope that future members of the IPCC will not purely consider this as a kind of honour when they join the IPCC, nor is it an additional post title listed on the name card. This is not merely an advisory committee, but an organization that needs to handle a lot of work. So, as Mr Alan LEONG said, if no one is willing to sacrifice and join the IPCC, it can hardly perform well. I believe this is a very demanding job.

We will now discuss some of the amendments. Mr James TO proposes the appointment of talents with a background in certain fields, namely, criminal litigation, criminal investigation, medicine, social work, and so on. I understand that the appointment of persons in these fields will facilitate the work of the IPCC, but the list cannot really be exhausted and it is impossible to cover

all kinds of needs. Different needs from different areas are required, including the appointment of representatives of sex workers, as mentioned by Ms Emily LAU earlier, which may not necessarily be unjustified. As the discussion goes on, will there be a need to include teachers? Will it be necessary to include psychologists? Following this logic, Members may propose the inclusion of people from various sectors. In that case, we should instead ask the Secretary for Security to refer to Members' views when making the appointments. I believe flexibility and adaptability are extremely important. We wish to cover people from all walks of life, but it is most important that they have a heart to contribute. This is important.

Concerning Mr James TO's proposal to have ex-officio members elected by the Legislative Council from among its Members, I would like to raise one fundamental question. It seems that for many terms, the Vice-Chairmen of the IPCC have been Members of the Legislative Council. May I ask why the posts must be held by Members of the Legislative Council? Why only Members of the Legislative Council have credibility? A lot of people in society, such as barristers, former Judges, and so on, also have credibility — Mr Daniel LAM of this Council, who is in this Chamber now, is the Vice-Chairman.

Moreover, I think that since the workload of the IPCC is so heavy, as we mentioned earlier, and that Members of the Legislative Council have undertaken great responsibilities in this Council, I often doubt if Members will have the time to deal with the case work of the future IPCC thoroughly. Besides, earlier on, when we discussed the issue of the ringing of the division bell for one minute and three minutes, I learn that Members are really busy. Is it necessary to find Members of the Legislative Council to take up those posts? I have my doubts about that. So, stop talking about the inclusion of Legislative Council Members elected from among themselves. Besides, if not only one statutory organization requires the inclusion of Members elected by and from the Legislative Council, say if there are 10 such organizations, will Members of the Legislative Council be distracted and will they neglect their duties as Members of the Legislative Council? Actually, we are awfully busy with our work of the Legislative Council. I personally think that if I take up more public offices, say the duties of tens of dozens of committee, I will indeed fail to perform these duties well. It will be so good if I can perform well in the Legislative Council. Therefore, I do not agree with the proposal of appointing Members elected by and from the Legislative Council.

The Secretary said earlier in his speech that he had incorporated the views of Members. Mr James TO proposes an amendment to specify that immediate family members of members of the Police Force should not be appointed as members or observers of the IPCC. I think this is correct. The Secretary said earlier that the persons concerned should make a declaration when they joined the service in future. I think this is a practicable solution and it is very important. If the relationship with certain persons concerned is only discovered after the appointment, it will be undesirable. However, the Secretary did not seem to have mentioned the form concerned. I believe all members appointed should fill in a form when they assume office. But what should be included under the item of immediate family members? It is extremely important. Mr James TO's proposal on the definition of immediate family members includes parents, children, brothers and sisters, and spouses. I think the proposal is reasonable. Hence, I suggest that the Secretary should accept this view. Actually, the coverage of the definition is very narrow, for aunts, uncles and so on have all been excluded. If these five types of relationship can be listed on the form under the item of immediate family members, the one filling in the form and the one receiving the form will be in a clear picture, and the secretariat will know the situation clearly. I think the Secretary may respond to this later, stating whether this proposal will be accepted.

Mr TO, I understand why you hate talking about candidates. Having heard your speech, I know why you hate doing so. When you criticize the newly appointed Chairman JAT, you mispronounced his surname as "JAAP". He should be called Chairman JAT Sew-tong. Perhaps, Mr TO did not do so deliberately. He said that the newly appointed Chairman had received a lot of work from the Government, and the subtext seems to be that accepting government cases is an indication of the lack of credibility. I query whether one should comment the performance of others with such an attitude. I think it is somehow dangerous to do so. He mentioned whether no other choice was available. The subtext seems to suggest that: "There is no choice. Chairman JAT is only selected because no other choice is available." I think it is not fair to say so. Exactly because of these remarks from Mr James TO, I feel particularly worried that if the amendments of Mr TO are passed by the Legislative Council It is extremely dangerous if Mr James TO thinks this way. Hence, I cannot accept this proposal.

Finally, Deputy Chairman, incidentally, Mr Alan LEONG is not here now, concerning his response to my remarks made earlier during the resumption

of the Second Reading debate, the exact wordings of my remarks are: "Investigation organizations should be responsible for investigation, and monitoring organizations should be responsible for monitoring. For an organization purely responsible for monitoring, it is necessary that the organization concerned has no power of investigation, no power of reaching a verdict and no power of imposing penalty." These are my remarks. We may surely take the existing practice adopted in Britain as an example. In some cases, some investigations into police officers are conducted by fellow police officers, as some Members put it. There are also independent and genuine investigations. Those practices are mixed together and we really cannot tell whether they are effective and practicable. Such an approach is also open to criticisms. Nothing in this world is perfect. Hence, I insist that even if an independent investigation organization is established, there is still a need to establish a monitoring organization to oversee this independent investigation organization. This monitoring organization must comply with the "three nos" requirements mentioned by me earlier. With regard to the new organization, I think it is indeed a "three-haves" organization, for it has statutory status, independence and the powers to monitor and review.

Deputy Chairman, these are the views I would like to put forward in these aspects. I will support the amendments proposed by the Secretary for Security, particularly on the provisions relating to the types of persons to be appointed. In the original clause proposed by the Government, the term "civil servant" is used, which means civil servants are ineligible for appointment. However, we consider the coverage too narrow, the Government thus accepts our advice to substitute the term "civil servant" with "a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department". We think the amended clause, which is drafted in a more stringent manner, has a wider coverage and greater impartiality, we will therefore support it.

DEPUTY CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MS EMILY LAU (in Cantonese): Deputy Chairman, I agree to the speech made by Mr LAU Kong-wah just now. But most unfortunately, he still supports the Secretary in the end.

However, he has brought out one point as he is fully occupied with various kinds of work. When discussing other bills, we have requested that members' attendance should be disclosed to the authorities. At present, university senates also have such practice in place. Deputy Chairman, I do not know which university you belong to. Universities also have the relevant information now. After perusal, if any member is found to be absent frequently during the past one or two years, he or she will be replaced.

I hope the Secretary can also say a few words about this point later, as it has not been mentioned in this ordinance. However, attendance is very important. The number of meetings they hold is already not so many, and everything has to be circularized. As such, the rate of circulation should be included, so as to see whether the cases have been circularized and read, and whether any responses have been made. I think the Secretary should understand, even if we adopt the amendment proposed by the Administration, there should be transparency in formulating a mechanism, so as to demonstrate that these people can really perform their duty. In case they fail to reach the standard set by the mechanism, they should be replaced.

Deputy Chairman, I have read this paper provided by Dr LUI Ming-wah last week, in which the information of each member is provided. There is an introduction for each of the 18 incumbent members, but the date of appointment has been omitted. In future, the year of appointment, together with the date to which the tenure ends, should also be provided to us. It is because although the authorities refuse to include the "six-six" rule in the ordinance, they have indicated that they will accept it. We should know the year in which members are appointed, and whether the period of appointment has exceeded the limit or is in compliance with the "six-six" rule. I hope such information can be included in future.

The so-called "six-six" rule refers to being appointed for six years and serving for six committees. However, what is written down here is "major public service". This is quite tricky. Some members have joined four committees whilst some have joined five. This may mainly due to the fact that those which are not of a major nature may not be counted under the "six-six" rule. I hope in future, the word "major" can be deleted and only public services are listed, showing the number of committees which members have joined now. As such, we can assess whether they are in compliance with the "six-six" rule.

As for occupation, I hope it will not be so ambiguous. If members are company directors, they should write down the name of companies to which they belong. We want to have transparency in order to know who they are. Deputy Chairman, by taking a look at these 18 people being appointed, I can understand the preference of the authorities. The authorities have appointed three Legislative Council Members; four lawyers (including the then Chairman, as it is hoped that a barrister or a senior counsel can be appointed as the Chairman for each term), among them, two are barristers and two are solicitors; four doctors and dentists altogether; three company directors; three academics, including two headmasters and one university professor; and one consultant in public relations and communications. This is the composition of the Independent Police Complaints Council.

In comparing this composition with the proposal we have just made, we will find that they do not quite match with each other. Neither do I believe such composition of members can really understand the situation faced by those who are always subject to complaints by the police. Therefore, the Secretary should query if these members can really understand those people, no matter if they are sex workers, ethnic minorities or other groups who always lodge complaints, that is, those people whose identity cards are being frequently checked by the police. I think these members will not be so familiar with them.

Even the Secretary does not support Mr TO's amendment, he should ensure that the mechanism to be established should include those whom we consider can understand the hardship of the people. But the incumbent members are very busy. Most of them have already been engaged in four or five public services, in addition to their own business. How can they manage to do so?

Therefore, I think the Secretary should give us a clear account on how to identify people who have the time to vet these cases. As there are some 4 000 cases in total, even if they are divided into three batches, each member has to vet some 1 000 cases per year and then hold meetings for discussion. As pointed out by Mrs Selina CHOW yesterday, they could hardly rely on circulation every time, and sometimes they had to hold meetings for discussion. It is impossible for them to vet some 1 000 cases even if they hold meetings 24 hours a day! The authorities should set up a credible structure to handle these complaints. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR JAMES TO (in Cantonese): Deputy Chairman, on the problem of workload as mentioned by some Honourable colleagues just now, I also find that under the system currently in place, no matter who are appointed, it is different for them to perform their duties under the existing framework. Let us think about it. The Government is now telling us (as a number of meetings have been held already) that, theoretically, the Chairman of the IPCC should read all the reports, and under the leadership of the Vice-Chairmen, three teams are divided, members have to read one-third of the reports. I think it is almost impossible for anyone to do so. In order to achieve this, there is in fact only one possibility and that is (as what I have proposed), appointing full-time members. At present, the parties concerned will definitely recruit some staff from outside, rather than relying on staff seconded from the Government. If possible, some of the members should be full-time members. This can also enhance the confidence of the public.

I have discussed this system with many people who have been appointed as Chairmen, Vice-Chairmen or members, including the incumbent Chairman and Vice-Chairmen. They all consider that they can hardly perform their duties under the existing system. They have also honestly admitted that it is indeed impossible for them to do so. Under the existing system, we have to rely on this group of people — who are called "Eighteen Lohans" as there are 18 members, together with the Goddess of Mercy — for monitoring the police. As for what protection can be obtained by the public, I am really baffled. Even if this system is really to be established, it will be very difficult to recruit its members. In order to perform their duties, they will definitely request the circulation of the reports. If they do not circulate them, how can they hold the meetings? However, if they only circulate the reports, the public (including several Members of this Council) will also find it infeasible to circulate all the reports even when they are in support of the Government, and they will not recognize such practice. As a result, the organization to be established in future can hardly perform its duties. The matter is as simple as that.

Some Honourable colleagues have pointed out several special expertises just now and consider that they are in no way exhaustive — if we just talk about criminal investigation, ethnic minorities and social work, how about education or psychology? What I can only say is that in monitoring whether the police

officers have abused their powers, some hard core work is involved, that is the major work which has to be done. They are something which we will clearly have a chance to encounter. I think this part is really As what the Secretary has pointed out earlier, during criminal investigation, there are many possibilities in which the police are subject to complaints against their abuse of powers. As such, criminal investigation and criminal litigation are really important categories; social work is really an important category; and ethnic minority work is also an important category. If Honourable colleagues consider that education is also an important category, it can also be included. In fact, they can even cite two more examples. However, please bear in mind that I am just giving some examples only and I have not listed out all of them, right? This is what we mean by not allowing the Chief Executive to appoint candidates recklessly. Instead, he should include some hard core work which we consider necessary to be done. As such, it will not give rise to any problem. It may even come up with some combinations of expertise, that is repeated combinations. Therefore, I consider that these expertises are the basic requirement and will not impose any restriction on the Chief Executive.

In making his criticism earlier, Mr LAU Kong-wah queried whether accepting jobs offered by the Government was equivalent to being partial to it. I have also said, "Even Members who belong to my political party have also told me that this 'Ah JAT' is trustworthy." However, if in the same way Even many barristers also consider that what he has accepted are some paid jobs from the Government — rather than jobs with no remuneration — these are regarded as public service — which account for the majority of his jobs. Under such situation, other people will Only if some members of the public would see the matter from this angle — though I may not be one of them, but being a Member of this Council, I cannot tell others what I believe personally. Moreover, I have also extensively consulted one of my colleagues, who is a lawyer and is belonged to the same political party as me, as well as some other Honourable colleagues on this issue, and I found that this matter is really very controversial. Even people from his sector also consider such a practice inappropriate. This is not a matter of trustworthiness, but his appointment will weaken the credibility of the Independent Police Complaints Council. As compared with the previous Chairmen, this is an odd case, as these former Chairmen had never taken up so many cases from the Government and conducted litigation on behalf of it. This is where the problem lies.

I do not know whether the Secretary has considered this point when recommending candidates, or he has indeed no other choices. As Mr Alan LEONG has just mentioned, he is very willing to make such commitment, and has conscience and a very good personality as well. But after all, paid jobs offered by the Government account for the majority of his jobs, which is also his major source of income. In fact, at least some people, including some barristers, will view the matter in this way. These people are well-educated and know that when others offer them jobs, it may not be due to the relationship between them. As someone approaches them to offer them jobs because of their expertise, they will simply accept them. However, they also consider that the existing arrangement is not the most desirable one.

As for Mr LAU Kong-wah regarding this viewpoint as a bias, I have already indicated that I do not have any bias against them. Even if I do have such bias, I say it should be endorsed by the Legislative Council I am the only one in the Legislative Council Regarding comments on this candidate, some members in my political party also have different opinions. Therefore, if all the 60 Members of the Legislative Council accept this candidate, it can be regarded as a very important assurance, showing that he has been endorsed and recognized with a very high credibility. I think this can even enhance his independence.

Mr LAU Kong-wah has just mentioned that an independent monitoring organization will be required for independent investigation as well. He is right. Dr YEUNG Sum has also brought out this point and responded to Mr LAU, has he not? It so happened that Mr LAU was not here. The crux of the existing question lies in independent investigation. Even if the Complaints Against Police Office is abolished, we should set up an organization similar to the Independent Commission Against Corruption, and establish a monitoring organization above it as well. As a number of advisory committees are currently in place, there will be no problem in this regard. The question is: the investigation organization should also be independent. Of course, if the investigation organization becomes an independent body, there is no need for the monitoring organization to possess any investigation power. However, the monitoring organization currently in place does not have any investigation power, as both the organizations for handling complaints and conducting investigations are adopting the practice of "the police investigating into the police". Therefore, I had pointed out that the ordinance of 1996 should have a secondary investigation power, but the Government was not willing to accept it.

Even the secondary investigation power and the primary investigation power would not overlap with each other, the Government was reluctant to accept it. As such, I cannot accept the viewpoint of the Government.

Regarding the attendance rate raised by Ms Emily LAU, I think under the existing system, members have mostly adopted the circulation approach. As such, how can this be regarded as attendance? Moreover, why should they be present? Why should they have discussions? In fact, I will propose the Committee stage amendments later, hoping that those serious cases can be dealt with in a way other than by circulation. If those serious cases are also dealt with by circulation, how can we hold ourselves accountable to the public? I propose that those serious cases should be screened out and handled in a way other than by circulation. As such, the attendance rate will become meaningful. Otherwise, should it be called a circulation response rate? Very often, someone has raised a question and during the discussion, our comments will stimulate the other members and the discussion will become more in-depth. But for circulation, one will read reports on his own and then give comments, if any. This will be much more difficult.

Mr Abraham SHEK is here now. I have worked with him in the Land Development Corporation. At that time, some of the documents were handled by circulation. However, matters involving the major scope of business could not be settled by circulation. We found that during the introduction given by the department on the major scope of business in the first few minutes, there might be no one who would want to speak. However, once someone initiated a discussion, the whole discussion might take a couple of hours. This is due to the fact that sometimes, we may identify our queries or reservations on a certain case or issue through interaction with others. But you may not be able to describe the whole picture on your own. However, if there is another person who has a more in-depth view than yours, the situation will be completely different. Therefore, concerning the attendance rate and the appointment of members, if possible, I propose that some of them should be full-time members, who are responsible for leading, say, three teams, and be in charge of everything, or these full-time members should be responsible for the major vetting work. I would think such a practice is more desirable. Indeed, this is always the fact. If there are some stimulators who can bring about stimulation in respect of a certain case, such as for example, a member has found some problems, and after being reminded by some other members who possess the relevant expertise, he will be stimulated and hence be able to identify where the

problem lies. As such, the approach currently in place can hardly achieve this objective, nor can it be accountable to the public.

MR LEUNG KWOK-HUNG (in Cantonese): Mr James TO is right. If we can settle problems by circulation, there will be no need for us to sit here. We can settle problems by circulation among the 60 people through email. In fact, this is an issue in logic. As the saying goes, "Three cobblers with their wits combined equal ZHUGE Liang the master mind", meaning that two heads are better than one, though such interpretation only brings out part of its meaning. And those who have the same views often refuse to take other issues into consideration. The Independent Police Complaints Council (IPCC), being appointed by the Government to monitor the police to see if there is any misconduct or abuse of power, should be a very important mechanism. The police is the state apparatus, which is subject to discipline and devoid of feeling. Essentially, all state apparatuses are of a "top to bottom" nature, that is, the superiors give orders to their subordinates. As such, these state apparatuses, being different from other departments, have a very weak self-renovating power.

At present, we have to manufacture a state apparatus to ensure order and peace of the state. We have then manufactured it. There will certainly be a greater possibility for a democratic government subject to surveillance, as this apparatus is monitored by the head of government or those appointed by him. This apparatus is a component of the whole government. Not only can it take action to oppress others, but can also deprive them of their freedom for the sake of maintaining law and order. Therefore, this is a very serious problem. Also, such an apparatus has very great powers.

According to the existing system, is it a mistake for us to let the Government appoint a statutory body to monitor this apparatus? How does our mechanism operate? I cannot go to the IPCC directly, neither can Mr LAU Kong-wah. In case anything happens, we have to approach the Complaints Against Police Office (CAPO) first. The Police Force has its mechanism to receive complaints from the public against this state apparatus (that is the Police Force). The scope of complaints may be of a very low level, ranging from being rude to people, framing them up or falsely accusing them.

Why do we have to formulate this ordinance today? In fact, we do so in response to the complaints made by the public over the past years. This is also

a typical complaint received by the offices of the Members of the Legislative Council, that is "although there are channels for lodging complaints, the complaints are made to no avail". Viewing from this perspective, this legislation should aim at enhancing the functions of the IPCC. This is not only due to the fact that the CAPO has all along been operating ineffectively, but logically speaking, in view of people investigating into their own people, the police should be monitored by another independent agency which possesses power, that is, public power. As I have to attend the Court today, I have not mentioned this point during the resumption of the Second Reading.

The reason for my attending the Court today can in fact be taken as a telling example. I have to attend the Court as there were some problems when the police stopped the public from protecting the Queen's Pier, and so they sued two people for assaulting them. I consider that the evidence is seriously flawed. Of course, I dare not teach the Judge what to do. However, if the two people lodge their complaints with the CAPO, it will result in a situation of "people investigating into their own people". This issue is now being handled by the Court and the Court has found them guilty already. Therefore, they have to lodge an appeal.

We notice from this mechanism that, if the IPCC still has responsibilities but no power, or has power but no manpower

DEPUTY CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, I wish to remind you that we are now discussing the composition of the IPCC, and I hope that you can speak on the amendment.

MR LEUNG KWOK-HUNG (in Cantonese): On the composition of this regulatory body — Deputy Chairman, you are very clever for realizing that I have digressed from the topic. I think I have not digressed from the topic at all. You are very clever and smart. Indeed, I have digressed from the topic. Deputy Chairman, please accept my apology.

Talking about the composition of the IPCC again, the leakage of information by the IPCC is a very good example. Most of the IPCC members are working on a voluntary basis for society. Chairman Ronny WONG has left the IPCC now, and he has been treated so badly. Why do I say so? I may be

digressing from the topic a little bit, but I think being a Member of the Legislative Council, I have to be responsible for those who have elected me as well as the public. In fact, I was present or absent I was absent because I was very busy. As far as I know, he has lodged a complaint seriously against the Government for neglecting his opinions as well as those of the IPCC. The Government has appointed him to take up the job. Let us put aside the question whether this appointment system is desirable or not first, we have to recognize it. This appointing body is now renamed as "監警會", but its former chief keeps on complaining to the Legislative Council that the Government has ignored his opinions during the process of reform. And this reform is not those ordinary ones with empty talks, but one with a system being established through legislation. Regarding this point, even as I am a worthless person, I can hardly ignore it. Rather, I think I have to reveal this fact to the public.

In fact, we have a point to note during the scrutiny of this Bill today, and that is, the IPCC Chairman who is no longer in his office. He has taken up the post of the Chairman for two terms. The Government invited him to take up the post for one more term in view of the crisis resulting from the leakage of information by the IPCC. He also considered that it did not matter as he had to hold himself responsible for such a serious incident anyway. Members, please think about it. I do not know Chairman Ronny WONG and I have even scolded him at the IPCC. But I have apologized to him later. I have scolded him when protesting at the IPCC. After listening to his explanation, I apologized to him, "I am sorry, Mr WONG, I do not know this is the case." As for my allegation that he was irresponsible, he told me that there was no need for him to bear any responsibilities at all as he had responsibilities but no power. Moreover, there was one more thing for which he had to be responsible, but it was not a responsibility. Rather, it was a legal obligation. How bad it is! The police have asked someone to do something, but that person has the responsibilities but does not possess the corresponding authority or manpower for implementing what he has to do.

Second, he is bound to be responsible for the "mistakes" made in law. I believe that the IPCC Chairman, being a lawyer himself, should understand that this is a very awkward situation. This is because the Government has all along regarded the IPCC as a spin doctor, though the make-up for the CAPO system is not so successful. Let us take a look. The IPCC does not have any selection system. For example, the incumbent Chairman of the IPCC, Mr JAT, a barrister with whom I was involved in a lawsuit twice. I have not entered into

litigation with him in respect of the IPCC. Rather, he has represented the Government for handling the litigation in respect of my judicial review against the Government and the President of this Council. In fact, he is very famous for handling litigations for the Government in his profession. He is also a young talent and has broken the record for being a barrister a long time ago. And now, he has broken another record for despite being fully occupied with both his personal and public affairs, he also takes up the post of the Chairman of the IPCC.

I have told Mr James TO that we have nothing to discuss in this regard. The Chairman of the IPCC is designated for taking up litigations for the Government, handling judicial review cases and being a gatekeeper. I may have insulted Mr JAT by saying so. Although I enjoy the immunity, I am also an impartial person. He is in a dubious position, am I right? He has such a close relationship with the Government. The Government has appointed a person who specializes in handling government lawsuits as the Chairman of the IPCC, not to mention the handling of litigations. In fact, this is not the case. Even if a person may have prejudice or be selfish (just like me, I am also a person with bias, but I have very clear judgment as well), there is in fact no problem for him to act as the Chairman, only if there is a proper checks and balances system set up against him. Yes, it is correct. Mr Abraham SHEK is really very clever.

As we can see, the CAPO system is a system in tatters, involving people investigating into their own people. The former Chairman of the IPCC has said that legislation should be capable of improving its investigation power or part of its investigation power, and its authorities or functions substantially. The Government has stood against Mr James TO today, but Mr James TO does not want to stand against it (even though he may want to do so at the bottom of his heart). But the problem is, as we all know, should the legislation be made in this way?

I have heard about the issue on circulation mentioned by some Members when I returned earlier on. But when I was about to say a few words on this issue, Deputy Chairman asked me to stick my speech to this topic. Members, the approach of circulation is of course a poor system, as it can only handle some opinions which will never have any "opposing" views (that is there will never be a situation in which one plus one is more than two). For example, I ask Mr Daniel LAM to buy me a bowl of noodles with beef offal and pass the bowl to him. However, he is lazy today. He passes the bowl to Mr LAU Kong-wah

and asks him to buy a bowl of noodles with beef offal. There is of course no problem in doing so. We are not talking about circulation of papers from superiors to their subordinates. Rather, it is just a request of buying a bowl of noodles with beef brisket. What we are discussing is the reason for not providing a dialectic opportunity for all those people who are regarded as talents in the eye of the Government. In fact, SOCRATES was not a very outstanding person at all. As far as I know, he always asked this question, "I do not quite understand, can you explain what you have said?" Eventually, he had established a system of philosophy by raising questions again and again. How can we raise questions by circulation? No one will ask me why I have to eat a bowl of noodles with beef brisket, and no one will ask me why I have to ask someone to buy it for me. Therefore, this is a poor system.

Deputy Chairman, my speech is too long and I have to stop here. I hope the Secretary can understand the public's sentiments, and why the public always lodge complaints with the Legislative Council Members, alleging that the CAPO has not worked effectively whilst the IPCC can hardly perform its duties. I hope the Secretary can give us an account on this.

DEPUTY CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ABRAHAM SHEK (in Cantonese): Deputy Chairman, I am not a member of this Bills Committee. However, as I am sitting here, I have to listen to their speeches. I have read the papers and listened to Mr LEUNG's speech. As mentioned by Mr LEUNG, SOCRATES considered that we had to ask if we did not know. As I do not know, I have to listen.

I have listened to the Government's speeches and read the papers submitted by it. Also, I have listened to James TO's speeches and what you have said. The Government's idea is very clear. The Independent Police Complaints Council will comprise one Chairman, three Vice-Chairmen and eight other members appointed by the Chief Executive. The executive-led Government considers it necessary to appoint these people. That is the whole picture. However, Members indicate that they do not trust the Chief Executive and request to appoint some other people. This is similar to a comparison between apples and oranges. We have no way to argue at all. As enshrined in the Basic Law, the Government is executive-led. If it considers some people

are trustworthy, it can appoint them according to the history and records. As the Chief Executive considers that he has done a lot of things and can work impartially and independently, such practice is correct and I cannot see I have listened to the speech made by "Ah TO", but his idea is completely different. We cannot argue on different ideas, as even we have arguments until this evening, they are still different. As apples and oranges are two different things, I think there is no need for us to debate anymore and we should proceed to vote right away. *(Laughter)* This is also the best solution. Members have already put forward what they have to say and we are very clear about the whole picture.

Deputy Chairman, I support the Bill as proposed by the Government.

MS EMILY LAU (in Cantonese): Deputy Chairman, please take a look at his amendment, as the one you have got in hand is outdated. However, in order to put a chop on it sometimes, we just go ahead no matter it is outdated or not. I call upon Members to take a look at the Secretary's amendment and not just focus on this one; otherwise, you may give a wrong support. In fact, the Secretary should also be glad to see that some of us put a chop on it for you, no matter what you have submitted and whether you have submitted any amendment or not. But if this is really the case, I would think this is tragic. Even if it is executive-led, and the proposal we have raised now has not contravened the Basic Law, however, the Secretary has never mentioned this point. He only disagrees to it, but he has neither mentioned that such practice will contravene the Basic Law, nor has he taken this issue so serious.

Deputy Chairman, Members have mentioned one point just now. As briefed by Dr LUI Ming-wah last week, we have some 4 000 cases now, and among them, 2 509 complaints involve 4 341 allegations. The workload is huge indeed. In fact, even though there are 18 members or 21 staff, it is impossible as what Chairman Ronny WONG has said that they can read the reports in detail and identify some concrete evidence to substantiate the complainants' cases. Therefore, he said, "All the odds are stacked against the complainants." Under the basis proposed by the Secretary, what can we do to minimize the bad or negative impact on the complainants, so as to enhance the opportunity to substantiate their cases? I do not think that in case all the

complaints are substantiated, it will mean that there is anything wrong with the police. I just hope that the system can be more impartial.

Regarding this report, Deputy Chairman, it has in fact covered a lot of areas, including the Observers Scheme of the Independent Police Complaints Council (IPCC). As stated in paragraph 1.7 of the report, as at 31 December 2007, there were 70 lay observers in the IPCC. Who will be regarded as lay observers? As members of the IPCC can also be observers, that is, those 18 people can also be observers, in addition to another 70 members, there are altogether more than 80 observers. Deputy Chairman, how much have they done and what are they responsible for? They are responsible for observing investigations conducted by the Complaints Against Police Office (CAPO) or formation investigating officers, as well as arranging interviews for informal resolution. In fact, there is not much for them to do. They can only sit aside to undertake observations, and then write reports to comment on whether the interviews have been conducted in a fair manner.

As I have just mentioned, there are some 4 000 allegations and some 2 500 complaints. Deputy Chairman, how many cases are there in 2007? As stated in paragraph 1.8, 263 observations (125 for informal resolution and 138 for other cases) were arranged under the IPCC's Observers Scheme, among these 200-odd observations, 13 were conducted by the IPCC members and 250 were conducted by lay observers. Only some 200 people have undertaken observations for these 4 000-odd cases. Indeed, I have to describe such situation as very "serious" and "critical". I believe the Secretary will also agree that the establishment of this system is to enhance credibility. However, at present, there are only some 200 people to be responsible for observing 4 000-odd cases. What is the percentage of cases in which no observations have been undertaken at all? I believe that Mr Daniel LAM has never been assigned to undertake observations. If he has undertaken such observations, please kindly tell us what he has observed. Even as this system is in place, I really do not know whether the authorities have put it into wrong hands or entrusted it to "busy people".

The Secretary should also tell us whether he is satisfied with undertaking only 263 observations among 4 000-odd complaints — no, it should be among 4 000-odd allegations and 2 000-odd complaints! Does the Secretary consider that this system has been put into full play? Is it the case that the authorities are in lack of manpower for undertaking observations, or those being invited as

observers have not undertaken observations at all? Is it necessary to state in the report the number of observers who have never undertaken any observations and their names should be removed? How many of them have undertaken observations for once or a few times only? Although some figures have been provided, they are not comprehensive at all. If there are altogether 4 000-odd cases but only 263 observations have been undertaken so far, it is really appointing, no matter from any perspective we are viewing.

Deputy Chairman, there is another even more powerful scheme, which is named as the Interviewing Scheme. Under this scheme, the IPCC members can examine the CAPO's investigation reports and interview the witnesses to clarify the doubts. After that, they will submit reports to the IPCC and ask all members to follow up their recommendations with the CAPO. As stated in paragraph 1.5 of the report, the IPCC received five serious complaints in 2007. I am really surprised that among the 2 000-odd complaints, only five of them are regarded as serious complaints. How many cases have been handled under this Interviewing Scheme? As stated in paragraph 1.10 of the report, no witness was interviewed by the IPCC under this scheme in 2007. If I were one of the complainants involved in those five cases, I will also be greatly baffled. In view of the fact that they have neither interviewed the witnesses nor undertaken any observations, does the Secretary consider that this is a sound system at all? Can the public rest assured about it? However, I believe that those 2 509 complainants will not be able to obtain such information. Moreover, no one has ever observed their cases or interviewed them. They have only been informed that their cases are not substantiated.

Deputy Chairman, we suppose those things put here can offer us some assistance, but I wonder if such assistance accounts for 1% or even less? Under certain situations, it is indeed helpless. The authorities have not given us an account on this, and only advised that no witness has ever been interviewed. How can we have any confidence in this mechanism? The Secretary should make a serious consideration as we now have some 2 000 complaints and some 4 000 cases. Being widely reported at present, the number of cases may have been increased as a result. In fact, this figure has increased by 18.7% as compared to the number of complaints in 2006, whilst the number of allegations has also increased by 23.4%. In other words, the number of allegations has increased by nearly a quarter, and it may keep on rising. I do not know whether the Secretary considers that this is due to some problems in the Police Force or a greater level of public awareness. As the Secretary may also know, even for

domestic violence, the Secretary also considers that this is not due to the increase in the number of domestic violence cases. Rather, the people have enhanced their awareness in this regard, so the number of reported cases has also increased. This could well be one of the reasons.

(THE CHAIRMAN resumed the Chair)

If the number of cases increases to some 4 000 to 5 000, what can we do? Should we increase the number of the IPCC members or that of its staff, or increase both of them? The Secretary should also have his own opinions. Should we increase the number of observations undertaken by observers? Should we make better use of the Interviewing Scheme? However, a lot of time may be taken, as it seems that this system is not functioning at all. I hope the Secretary can give the public an account on this.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR DANIEL LAM (in Cantonese): Chairman, my name has been mentioned by a number of Members earlier on. Being a member of the IPCC, I have to say a few words as well. I do support the Government's spirit of introducing the Bill, though I also consider that there is much room for improvement. I now respond to some figures of cases which Ms Emily LAU has just mentioned. I think during the process of scrutiny, it is very difficult for us to identify how to make the commitment or judge the performance according to the existing mechanism. In fact, in view of the existing manpower, we have already put in our full efforts.

Earlier on, Mr LAU Kong-wah has queried why three Legislative Council Members have been appointed as members and whether there is such a need. According to the existing mechanism and in order to achieve a bottom-to-top communication, several Members have also taken up other public service outside the Legislative Council, such as the Transport Advisory Committee and the Housing Authority. As for communication in the constitutional sense, this can enhance the objective of legislation. However, I still consider that more resources should be provided to the IPCC. In view of the caseload at present, I

think some people may consider that we are not capable of performing our duties, but we will still put in our utmost efforts.

During the existing process of scrutiny, we have to ask the police to screen the cases first and then pass the papers to us. As for the reasons for adopting the circulation approach in the past and whether it can achieve the best result, I think under certain special situations, the IPCC Chairman will convene meetings to discuss with members, so as to arrive at a conclusion. I hope this Bill can generate a good effect in respect of complaints against the police. I support the Government's motion. Thank you.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, I wish to thank Mr Daniel LAM as eventually, he is willing to tell us what he has done for the Independent Police Complaints Council (IPCC). As far as I know about Mr Daniel LAM's working style and truthfulness, what he says may be very simple. Let me deduce his meaning: "Although the task is hard, we have to put in our utmost efforts. If the cases have been screened by the police, we can do even better. In case there is any serious case, the Chairman will also alert us." I think such a deduction will generally be fair to him.

The phenomenon mentioned by Mr LAM is exactly the situation we are now facing — what can we do? Indeed, nothing can be done. If we rely on the IPCC members, they are in fact in the second tier of vetting, as the first tier will be done by its secretariat. Many members are just responsible for the second tier, but not the first tier.

Under this system, those who are responsible for the first tier will be Executive Officers, who do not possess any expertise in investigation. For example, they are always in the face of two different versions of allegation, that is, different allegations from the complainant and the complaine. Therefore,

gatekeepers should be very "smart" in order to identify the clues involved. I am not joking and I am very serious about that.

Let me cite an example for illustration. When handling litigation in respect of a statement in the Court, a barrister may focus on whether the defendant has been beaten, and whether he has given the statement voluntarily. The barrister may often rely on querying that a signature appears in the middle of a certain page of the statement, whilst the signature in the following page of the statement appears at the bottom instead of in the middle of that page, or querying if the two signatures are different, so as to bring out a point that the defendant's hand might have been beaten during that period of time, and as the one who was in charge of taking the statement dared not sign it for him, the defendant had to sign it himself. As a result, there are signatures in different places. Very often, we can only verify the truth from both sides by looking into some very subtle points to see whether there is any abuse of power by anyone; whether anyone has been beaten; and whether the defendant has given his statement voluntarily or involuntarily, so that the clues can be found.

Under such a system, even if we assume that our colleagues are very smart, most of them are just responsible for the second tier. In order to screen the cases, those who are responsible for the first tier have to read through the entire reports. I have consulted a lot of members on this issue. They also indicate that in vetting serious cases, they have to do cross-checking sometimes, and it will take five or six hours for them to read through a case, provided that they know how to read reports. For those members who are not used to reading criminal statements, they do not understand how these statements are taken and the confusion involved at that time, such as who has been beaten, who has resisted or refused to be arrested, where a person has gone, who have arrived at the scene and the arrival of the police later. They should also know how to conduct the complicated three-dimensional comparisons; otherwise, by just reading the words literally, they may think that there is no problem. Even for those who are used to reading criminal statements, they also have to spend a few hours to compare various statements. Moreover, as pointed out by Chairman Ronny WONG, the colleagues of the Complaints Against Police Office (CAPO) will write the reports in a way that the complaints are not substantiated at all. If a member can notice such a situation, he is really very smart.

Therefore, as mentioned by Ms Emily LAU, if these 18 colleagues can identify a few substantiated cases a year, they are in fact very smart, as the

gatekeepers at the CAPO are all experts. If they can identify these cases, they are already very outstanding. As such, I consider that the existing system is indeed not workable. This is nothing to do with our preference. Rather, the Government has failed to bring this system into play, and the members have no way to pretend that they have read through the reports once. If the authorities pretend that the members have read through the reports once, we can at least argue that the authorities have adopted the same system. What I mean is not the investigation power. However, with the existing system, manpower and secretariat, it is indeed impossible for them to pretend that they have read through all the reports once. What they can do is to rely on circulation rather than discussion. Am I right?

This is my criticism against the existing system in respect of clause 4 — appointing these people will bring about difficulties and restrictions. Even if these people are very brilliant, each of them has got only 24 hours a day, and they are already very busy as well. Therefore, the only solution is to reform the secretariat, as well as provide more manpower and establish a more specialized team. The Government has already indicated its dissatisfaction with the proposal of increasing six members, and so, what can they do? It is utterly impossible for those 18 members to handle all the cases, right? In addition to the existing 18 members, I suggest that it should increase more members and recruit some experts, or even hire some full-time members. As such, it may be possible for the Government to request the members to take a quick glance at the reports once according to its logic.

MR DANIEL LAM (in Cantonese): I speak again to respond to the views expressed by Mr James TO. In my speech just now, I have not indicated any grumbles. Rather, I think we have to put in our utmost efforts under the existing mechanism. In fact, I hope we can share the caseload or consider how to screen the cases.

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): I wish to express my gratitude to Members for providing in their speeches a lot of valuable opinions on the

composition of the Independent Police Complaints Council (IPCC) and how improvements can be made under the existing structure, especially our Observers Scheme. We will consider discussing with the future statutory IPCC on how to enhance its efficiency in this regard later. In particular, Ms Emily LAU has mentioned that some areas in the annual report for this year are not comprehensive enough and she hopes that the annual report for the next year will be more comprehensive. We will convey Members' concerns in this regard to the future statutory IPCC. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to the heading before clause 4 and subclause (1) in order to delete "警監會" and substitute "監警會".

Proposed amendment

Clause 4 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): move the amendment to clause 4(1)(a) to include the requirement that the Chairman should be approved by the Legislative Council.

Proposed amendment

Clause 4 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Ms LI Fung-ying abstained.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, three were in favour of the amendment, 16 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, 11 were in favour of the amendment and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the amendment to clause 4(1)(b) to renumber it as paragraph (b)(i), and the addition of paragraph (b)(ii) to the clause. To put it simply, the two Vice-Chairmen of the Independent Police Complaints Council should be elected by the Legislative Council from among its Members.

Proposed amendment

Clause 4 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, four were in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections, 21 were present, 11 were in favour of the amendment and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the amendment to clause 4(1)(c) and the addition of paragraph (d) to the subclause, so as to include the Commissioner for the Independent Commission Against Corruption or a person nominated by him as his representative in the composition of the Independent Police Complaints Council.

Proposed amendment

Clause 4 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, four were in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections, 18 were present, nine were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the addition of paragraph (e) to clause 4(1), that is to include The Ombudsman or a person nominated by him as his representative in the composition. As this provision is similar to that raised just now, I will not claim a division.

Proposed amendment

Clause 4 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment negatived.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 4(2).

Proposed amendment

Clause 4 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendment to clause 4(2) and the addition of subclause (3) to the clause.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr

CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Mr Martin LEE, Ms Margaret NG, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Miss TAM Heung-man and Mrs Anson CHAN voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 38 Members present, 25 were in favour of the amendment and 12 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As Secretary for Security's amendment has been passed, Mr James TO may not move his amendment to clause 4(2) and the addition of subclause (3) to the clause, which are inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I read out page 9 now.

I move the addition of subclause (4) to clause 4, that is, at least five members of the Independent Police Complaints Council shall, in the opinion of the Chief Executive, have knowledge of criminal investigation, criminal litigation, social work and affairs of ethnic minority.

Proposed amendment

Clause 4 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, four were in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections, 19 were present, 10 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CLERK (in Cantonese): Clause 4 as amended.

CHAIRMAN (in Cantonese): As the committee has earlier on passed the amendment to clause 4, I now put the question to you and that is: That the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 5.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to clause 5 in order to amend the heading and subclauses (2) and (3), as set out in the paper circularized to Members.

The title of "Secretary" of the Independent Police Complaints Council (IPCC) will be renamed as "Secretary-General". I propose to amend the reference of "Secretary" in the heading of clause 5, so as to reflect the change of this post title.

Moreover, I propose to add "of employment" after "terms" regarding the appointment of the IPCC employees in subclause (2), so as to clearly state that such terms refer to terms of employment; and to substitute "警監會" with "監警會" in subclause (3).

The amendment is supported by the Bills Committee. I implore Members to endorse it.

Proposed amendment

Clause 5 (see Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): Secretary for Security and Mr James TO have given notice separately to move amendments to subclause (1) of clause 5.

Members may now debate the original provision, the Secretary for Security's and Mr James TO's amendments to the clause jointly. I now call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to clause 5(1). As what I have mentioned when moving the amendment to the heading of clause 5, the Bills Committee proposes to rename the title of "Secretary" of the Independent Police Complaints Council (IPCC) as "Secretary-General", so as to precisely reflect the supportive function of this post. The amendment to clause 5(1) also reflects the change of this post title.

Similar to the amendment made to subclause (2), I propose to add "of employment" after "terms" regarding the appointment of the Secretary-General and the Legal Adviser of the IPCC in subclause (1), so as to clearly state that such terms refer to the terms of employment. The remaining amendments are to substitute "警監會" with "監警會".

The amendments are supported by the majority of the Bills Committee. I implore Members to support and endorse them.

Mr James TO has proposed that the terms of employment of the Secretary-General of the IPCC should be determined by it and there is no need to seek the Chief Executive's approval. We do not agree to this proposal. As the IPCC is an organization being subsidized by public money, and its

Secretary-General and Legal Adviser are executive officers of the highest rank in the IPCC Secretariat, in order to ensure that public money is properly used, we consider it appropriate to maintain subclause (1) as currently drafted, that is, the terms of employment of its Secretary-General and Legal Adviser should be approved by the Chief Executive. According to our understanding, the appointment of the executive heads of many existing statutory bodies (such as the Consumer Council, the Equal Opportunities Commission, the Urban Renewal Authority and the Hong Kong Trade Development Council) and their terms of employment are determined by the Government of the Special Administrative Region. The arrangement currently stipulated in the Bill is of no exception. In fact, it is stipulated in subclause (1) that the Chief Executive should make the approval on the advice of the IPCC. This can ensure that the Chief Executive has duly considered the viewpoints of the IPCC when taking the relevant issues into account.

Mr TO is concerned whether the appointment of the IPCC Secretary-General will be controlled by the Chief Executive. I have to take this opportunity to clarify one point. It is only stipulated in the provision that the terms of employment of the IPCC Secretary-General and Legal Adviser should be approved by the Chief Executive. The IPCC can appoint suitable candidates to take up these two posts. There is no need for Mr TO to worry about this. I implore Members to object to his amendment. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, the Government thinks that the IPCC will become an independent body or a statutory body if the Bill is enacted. If an independent statutory body is really to be very independent just now, my Honourable colleagues advised me to support the Bill because the IPCC would at least be permitted to recruit its own staff. However, please bear in mind that as written in the Bill here, the IPCC can appoint its Secretary-General and Legal Adviser on its own. But the terms of employment must be approved by the Chief Executive. Here is the crucial point. In my amendment, it is stipulated that the Chief Executive's approval is not required, as long as the IPCC thinks that the appointees and remunerations are fit.

Where does the difference lie? First, my amendment seeks to embody a complete and a higher degree of independence in terms of staff remuneration, which will not require the Chief Executive's approval. If approval by the Chief Executive is required, where can — to put it bluntly — foul play be employed?

I mean how interference can be exercised in respect of the selection of the appointees? How can the Secretary-General and Legal Adviser be easily subject to the influence of the Government? At the time when appointment is made I have raised a question on this to the Government during the scrutiny of the Bill. The requirement of the Chief Executive's approval to the terms of employment will lead to two possible situations. In the first one, the Chief Executive is informed that the recruitment of the Secretary-General or Legal Adviser is intended. The Chief Executive, after being advised that the Secretary-General will be offered a monthly salary of \$150,000, which is in fact lower than that of the Under Secretaries, has granted approval. The IPCC will then conduct an open recruitment exercise and appoint a candidate on the terms of \$150,000 per month, which include health care and educational benefits and so on, as previously approved by the Chief Executive. Under such circumstances, the Chief Executive cannot exert his influence on the selection of candidates because the appointment will be made later by the IPCC alone.

However, this is not the only possibility. I have asked the Government whether the following situation will take place: The IPCC, after a suitable candidate, named CHAN Tai-man, has been selected in a recruitment exercise, will inform the Chief Executive that it is going to appoint CHAN Tai-man with a monthly salary of \$150,000. But the Chief Executive advises that the salary of \$150,000 would be too much for CHAN Tai-man. He further suggests that in view of the recent criticism on the Under Secretaries and Political Assistants, a monthly salary of \$80,000 will be good enough for CHAN because he is even less capable than they. In fact, the Chief Executive knows well that the candidate, given his qualifications, will certainly not accept the appointment on the terms of \$80,000 per month. How come this candidate would like to work for you at such a pay? On seeing the name, CHAN Tai-man, a candidate whom he dislikes, the Chief Executive can simply change the terms of employment from \$130,000 to \$80,000. Although in the original budget, the Secretary-General's salary is at the level of \$130,000, the Chief Executive, on seeing the name of CHAN Tai-man, comments that he is only worth \$80,000 instead of \$130,000. This is tantamount to telling him not to accept the appointment. It is as simple as that. The Government has stated that this second scenario cannot be ruled out.

If this is the case, the Chief Executive's Office will act in accordance with the principle of different affinities. Why? On seeing the name CHAN Tai-man, it will either reject the appointment or propose a pay cut by half of the

original. But on seeing the name of CHAN Siu-man, a person he likes, the Chief Executive will say \$130,000 is too mean to make him accept the appointment and further advises that a monthly salary of \$150,000, which is his current earnings as found in his present employment contract, should be offered. The IPCC will also accept the advice to offer \$150,000 and increase the pay to that level. Thus it is evident that through the employment terms, the Chief Executive can reject in disguise those who are not his favourites and ensure that those whom he favours, or those under his control or manipulation, or the apple of his eye can be selected and appointed. Such a tactic, through changing the terms of employment, can be used to manipulate things.

The second point is that in the budget each year, including the budget we are now talking about, the number of additional staff required will also be indicated. Perhaps the IPCC has submitted this it has submitted a proposal to the Government that six more staff members will be required because of its status as an independent statutory body, including the increase of the maximum salary of the Secretary-General by two points of the pay scale. And the proposal is pending approval by the Government. So, what has been submitted is basically an estimate indicating that, for example, the Secretary-General is a post at D2 or D3, and the Legal Adviser should be at certain ranking. Basically, in the budget approved by the Legislative Council each year Of course, at the Financial Secretary's resources allocation meetings in the past, an estimate would be laid down in respect of the ranking of the post, say D2 or D3, and the amount of remuneration would be set aside. This is already a restriction imposed on the IPCC and so the approval by the Chief Executive is no longer required.

Of course, the Government may maintain that the IPCC may insist to pay the candidate \$130,000 even though the candidate will accept the minimum salary point, say, a monthly salary of \$100,000, on the ground that talent is priceless in the market, just like the recruitment of Under Secretaries by the Government itself. In order to secure the appointment of CHAN Tai-man as the Secretary-General, the IPCC may offer him \$180,000 instead of \$100,000 or \$130,000, which is the remuneration of a D2 or D3 post specified in the estimate, even though the candidate is overpaid at such a salary level, and other expenses or even the post of an executive officer have to be cut as a result. The Government asks: If it is public money, will this be disastrous? With an appropriation of \$200 million or \$10-odd million each year, the IPCC can spend \$10 million at will to hire the Secretary-General, resulting in a lack of resources

for hiring other staff. In such a case, the IPCC will be subject to no monitoring.

If the Government cannot place trust in the IPCC and is still worried that the IPCC will arbitrarily appoint the Secretary-General at an annual salary of \$1 million, \$2 million or even \$3 million after the Chairman and other members have been appointed and the ranking of the Secretary-General at D2 or D3 has been laid down in the estimate, I will think this is very bizarre because the estimate is already formulated and the IPCC has to hold itself accountable to the public. If an extremely unreasonable situation has occurred, there is a last resort, that is, the Chief Executive can dismiss him. However, although his salary is within the range, or says \$130,000, he has demanded a salary of \$140,000, that is \$10,000 over the range, due to his excellent qualifications. In that case, will the IPCC be allowed to appoint this candidate? In view of the excellent qualifications of this candidate, the IPCC will make up its mind to pay him \$140,000, and cut the expenses in other areas, such as reducing the number overseas visits in the current year, or increase efficiency by reducing the number of other staff because of the candidate's excellent performance. So a part-time staff member can be spared in terms of manpower. Under such an arrangement, the salary of this Secretary-General or Legal Adviser can be increased by \$10,000.

It is unreasonable that the IPCC is not allowed to exercise discretion. Basically, it can make its own decision. Moreover, the decision is made by 18 persons instead of one. Furthermore, among these 18 persons, three are the Vice Chairmen and according to the practice of the Government in the past, who are they? They are Members of the Legislative Council. Even if you do not trust the Chairman and do not trust the other members, you should trust these three members who are also Members of the Legislative Council, as in the case for every year and every term. Coming from different political parties and groups, will these three members approve that the salary of this candidate be two or three million dollars or even \$10 million without any justification and at the expense of other manpower resources? They will not. If this is the long-standing arrangement and a situation acceptable to all, what are the justifications for the Administration to put in place a mechanism which will give rise to worries about interference by the Chief Executive and that the independence of the IPCC will be undermined? I am really baffled by this.

So, I urge Honourable colleagues to give careful consideration. We are also very concerned about how government resources are utilized. Members can reflect upon whom have been appointed, their accountability and whether

their salaries are within the budget. Moreover, the Legislative Council will approve funding every year. You can imagine that if a three-year contract is offered for the employment of this person — it is unreasonable that the person will be appointed for just one year and offered a ridiculously high salary — the IPCC may be unable to get the funding in the second year and such a situation is possible. So, this is not possible. As appropriation is made in the budget every year, there is monitoring on this issue. Should the Government let us get into worries that the Chief Executive may do that?

Well, at the very worst, even if my amendment is not passed, I still hope that the Secretary — he can respond after other Honourable colleagues have spoken — he can make a commitment in respect of the two appointment methods I have just said either the pay is fixed first and then decided by the IPCC or the pay will only be rejected under very extreme circumstances. If the pay is within the range and basically within the limit, the IPCC need not consult the Chief Executive and this is the first method.

Regarding the second method, you will require that both the candidate's name and the whole package of his remuneration be submitted for consideration before approval by the Chief Executive is sought. If this is the case if the latter approach is not adopted, only the remuneration package will require approval by the Chief Executive who will not check who the candidate is.

I hope, in the worst scenario, even though the Government may oppose my amendment (in fact, given the specific provisions, my amendment is relatively sound), I hope the Secretary will explicitly state that under such a system, the Chief Executive will not check the name of the candidate. Approval is required only when the remuneration offered has greatly exceeded the specified range which has been fixed at the ranking of D2 or D3, for example. In seeking approval, the name of the candidate should not be disclosed to the Chief Executive because the situation is considered appropriate and this is simply to ensure no extremity is found and to prevent abuse. In my opinion, if such an undertaking can be given, it will at least provide one more protection.

MR HOWARD YOUNG (in Cantonese): Madam Chairman, the provision has laid down the principle which the IPCC will appoint its Secretary-General. The Bills Committee has also agreed that the Government should accept it. But I do

not agree to Mr James TO's amendment. He seems to have suggested that the Chief Executive's role should be completely deleted. I have also noted that the examples raised by Mr James TO are all related to remunerations. I remember that at the last meeting of the Bills Committee, discussion was centred on the setting up of six new posts and the promotion of the Secretary-General's ranking to a higher level after the independence of this new organization. At that time, the Government was uncertain whether resources were available because the matter was not within the jurisdiction of the Security Bureau. However, Members were very concerned about raising the status of the Secretary-General and hoped that resources for this purpose could be safeguarded. At that time we also hoped that, through the efforts of the Secretary of Security, the IPCC could obtain the resources required for hiring a suitable candidate.

The examples given by Mr James TO, in my opinion, are quite extreme. Today, if the Secretary of Security can listen to Members' views and really understand our concern about the sufficiency of resources to operate this new organization, we will be very much relieved.

As for the complete deletion of the Chief Executive's role, I do not agree to that.

MS EMILY LAU (in Cantonese): Chairman, Mr Howard YOUNG hopes that the IPCC can have sufficient resources to operate. We also hope for the same. But who knows whether there will be sufficient resources or not. The Secretary of Security refused to tell us if there would be any. He even said that he had no idea whether things would be clear by August or when. This term of Legislative Council will come to an end after next week. Even if we support the Bill, we will not be able to know the result. The Secretary of Security said that the purpose was not to invite the Chief Executive's approval in the appointment of any candidate. It was just about the terms of employment. But if we want to achieve independence, the organization concerned should be responsible for drafting its own terms of employment. Unfortunately, the Secretary cited the Consumer Council and the Trade Development Council as examples. These examples are actually not comparing an orange with an orange. The best way is to compare with the Legislative Council Secretariat because it is a very independent organization.

The Administration could, right at the beginning, clearly state the pay structure of the highest ranking Secretary-General. Chairman, we had some

discussions at the Legislative Council at that time. Some suggested that the ranking be fixed at D3 or D4 while others suggested that it be D8 or D6. It was subsequently fixed at D6. Do you know why? Because we have to monitor the Administration and communicate with the government officials. No one will pay attention to you if your ranking is not high enough. The Commissioner of Police is at the ranking of D8. I was told that the Commissioner of Police, to a certain extent, took little notice of the Secretary for Security. The current proposal is to fix the ranking at D3. Chairman, we have mentioned Members' concerns at Paragraph 61 of the Bills Committee Report. As indicated by the Secretary for Security, the Administration has proposed an amendment, stipulating that the terms of employment for the Secretary-General and Legal Adviser of IPCC shall be endorsed by the Chief Executive in consultation with the IPCC. Since the advice has now been provided I actually have no idea about the ranking of their future Legal Adviser. Only D3 was mentioned when talking about the ranking of the Secretary-General. The Administration has reiterated that the IPCC would exercise its discretion in a flexible way when choosing the suitable candidates for the two posts.

In fact, I do not wish to see the IPCC exercise any flexibility in this respect. If the ranking is decided to be at D3, then recruitment should be conducted accordingly. I think it is impossible for the IPCC to change it from D3 to D5 as it does not have so many financial resources. Chairman, it is also said that the IPCC can seek the Chief Executive's approval with regard to the terms of employment prior to the recruitment of suitable candidates. Does it mean that prior approval must be sought even if it is looking for the candidates? Hey! It has been written down correctly but that cannot be done.

Chairman, how can it be an independent body then? If it is an independent body, it can decide its own criteria. For instance, they can clearly lay down the Secretary-General's ranking at no higher than D3 and the ranking of Legal Adviser at D2. There is simply no need for the Chief Executive to intervene. If consultation with the Chief Executive has to be done prior to every recruitment exercise, does it mean that adjustment has to be made each time? I do not think it will work. We need a clear and positive criterion so that we can follow accordingly. Unfortunately in our debate today, we are not even sure if there is an estimate. Chairman, even with the addition of five to six

people, how can they be able to handle over 4 000 cases in a year? Therefore, I do not support the Secretary's amendment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

DR FERNANDO CHEUNG (in Cantonese): Chairman, I think the most important part of the Bill as a whole, or if you can take one step forward, is to let the Secretariat of the IPCC to be independent instead of being attached to the civil service system so that it can recruit its own staff according to the terms set out by its own for the operation of the Secretariat. However, in the absence of Mr James TO's amendment which enables the IPCC to set out the terms of employment for its Secretary-General and Legal Adviser without being subject to the Chief Executive's approval, I cannot see the existence of true independence.

To put it simply, if we really allow the Secretariat to be independent, if we are willing to let it truly independent in respect of the framework for providing support to its staff as a whole, then it is unreasonable to place restriction to its terms of employment. The Chief Executive has no role to play here. As Ms Emily LAU and Mr James TO have made it clear, under the pre-determined budget, it should be allowed to operate on its own according to the constraints.

Frankly speaking, this condition is even more stringent than the one-off grant for the social welfare sector. The one-off grant of the social welfare sector can be operated freely and no restriction is imposed on the salaries of their chief executives. What they have to do is to submit an auditor's report at the end of the year. In response to my earlier request to disclose the remunerations of the executives of the social welfare sector, the Government said that it was not necessary and they had no idea either. Now regarding such an important IPCC which should operate independently in view of its own mission and values the only advantage of the Bill is to allow the Secretariat to be independent. But it is still trying to make a lot of restrictions in respect of the appointment of staff, the Secretary-General and Legal Adviser, so that they will be subject to the terms laid down by the Chief Executive. It seems to be too harsh. While trying to

use pressure on it, the Government says that it is allowed to be independent. The Government is really treating us as fools.

So, I hope that Honourable colleagues will support the amendment moved by Mr James TO. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, very simple, I just want to mention two points. First, the Secretary has just mentioned the Trade Development Council and the Consumer Council. But such institutions are completely different from those which are entirely independent. What we need now is an institution which gives people an impression that it requires a high degree of independence. As we all know, the Hong Kong Tourism Board is one of those organizations which help tackle trade and promotion matters for the Government. Regarding what we have said just now such as spending, that is totally out of proportion, right? So, it is inappropriate to make a comparison with those institutions. Ms Emily LAU said rightly that it would be more appropriate if it was compared to the Legislative Council.

I was astonished to hear Dr Fernando CHEUNG say that the treatment of the so-called independent IPCC was even worse than that of the social welfare sector in respect of the one-off grants. I can only say that in the Government's opinion, the Chief Executive or the Secretary for Labour and Welfare need not bother about the amount of funding allocated to the social welfare sector. The truth is actually very simple. The Government takes precautions everywhere. After so many years, a Ronny WONG has suddenly emerged and the Administration will certainly be very carefully in the selection of the Chairman. Besides, as the Administration has no idea of the background of the Secretary-General, it will exercise prudence as far as possible. Why? Because unexpected things may occur at any time. As he is now working so hard and in such an aggressive manner, will it not be easy to deal a great blow to

our police? He is checking everything out and subsequently finds that there is abuse of power and dereliction of duty. He even says that press conference should be held from time to time so as to inform the public of the latest situation. This will cause a lot of troubles to the Secretary for Security, particularly when the Secretary for Security or his recent predecessors all came from the disciplined services. Furthermore, a Political Assistant appointed by the Government is also a retired member of the disciplined services, that is, a police officer from the disciplined services. Under such a situation, to what extent can the Bureau and the one who exercises monitoring dissociate from each other? The public cannot rest assured.

The Government takes precautions everywhere and imposes restrictions everywhere. As a result, appointees are those who are sympathetic and share the cultures of the disciplined services as far as their mindset, values and cultural system are concerned. What should we do? Apart from that, they uphold fraternal loyalty. In response to a relevant question, Secretary Mrs Regina IP supported the adoption of such an attitude by the Director of Bureau. She maintained that fraternal loyalty was a prerequisite. Moreover, the Director of Bureau would have big drink with the public security officers and procurators on the Mainland at any time. This is her statement. I do not know whether or not the incumbent Secretary holds that view. He has not made any public remark in this aspect. If this is the case, how can the people place their trust in them? How can our disciplined services be monitored? How can we have confidence to talk to the Legal Adviser and Secretary-General of the IPCC, not to mention the trust that they will not be subject to the pervasive influence of the Chief Executive? It is indeed very difficult for the people to place their trust.

The same has occurred to the newly appointed Political Assistant. The Administration has deliberately appointed a retired police officer. How independent is the Security Bureau then? In future, we will have to rely on Mr LO, the Political Assistant, and ask him to monitor the IPCC and see whether or not the salaries are suitable, how they have worked, who are to be appointed as observers and whether the observers are devoted to their jobs. Besides, what perspective will he use to see these things? Can he give people sufficient confidence? He was an Assistant Commissioner of Police and has been appointed by the Government to such a position. As the saying goes, "From the first small beginnings one can see how things will develop." To what extent do they believe in dissociation? To what extent do they believe in monitoring?

To what extent do they believe in accountability? These are self-evident. So, in everything we do some Honourable colleagues may query why we are so worried about the Chief Executive interfering with the IPCC's Secretary-General and the Legal Adviser. I am sorry to say that this is due to the breadth of mind of the Chief Executive who adheres to the principle of different affinities, and this is his character. In addition, his brother is the former Commissioner of Police. All these have led to my worry and the people are likewise really worried.

In this regard, the present situation cannot lead to a broad avenue, so to speak. As the saying goes, "A prime minister's heart is big enough to pole a boat." They should be broad-minded and really think that they are playing an independent role in society for the sake of all people. This is worrying indeed.

MS EMILY LAU (in Cantonese): Chairman, I only wish to say a few more words because Mr James TO just now mentioned something about a press conference. I have no idea about the recruitment procedures for this Secretary-General, but I hope the Secretary for Security will understand that they really have to hold a press conference.

Why? We often see The Ombudsman holding press conferences to announce survey findings in a high profile, but we hardly see the IPCC doing the same. The Vice Chairman who is from the Legislative Council will only say a few words upon receipt of the survey findings. It should not be like that. The Secretary should know that handling issues in a high profile or letting things go in a low profile would both affect the organization's credibility and the public's comprehension of the whole picture.

I really hope the Secretary will inform the IPCC that press conferences should be held whenever necessary. It may be difficult for them because the number of cases may be too few to justify holding one. They will be inviting public censure if a press conference is held to inform the public that most of the complaint cases under their investigation are unsubstantiated. I think the Secretary should advise the IPCC that it is important to build up its credibility. Therefore, this Secretary-General or Legal Adviser should learn from The Ombudsman Ms Alice TAI by informing the public of the cases in which they have investigated and made mistakes. In fact, they should point out that there

are disciplinary cases of police officers and cases that are subject to legal proceedings. Why can the IPCC not make a high-profile announcement?

I hope that the Administration will do so, but I think it is more important if the IPCC can have full powers in the recruitment procedures and be free from the intervention of the executive authorities. If the Secretary-General's ranking is fixed at D3, recruitment exercise should go ahead accordingly. As for the Legal Adviser, I think the ranking should at least be D2, just like our Secretariat in which the Secretary-General and the Legal Adviser are at the ranking of D6 and D5 respectively. It may be hard to find qualified personnel to fill the vacancies if the terms of employment are too unattractive.

Therefore, the Secretary must refrain from intervening once the terms of employment have been determined. Otherwise, the independence of the IPCC will become a laughingstock.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Chairman, I would like to reiterate that the Security Bureau has never interfered with the internal operation of the IPCC. Whether the IPCC was or is an administrative organization, or it will become a statutory body, we shall refrain from interfering with its operation because it is an independent body. Ms Emily LAU has just suggested that the upcoming IPCC should adopt an approach similar to the practice of The Ombudsman Ms Alice TAI and announce any established cases of abuse of power by the police. I will reflect her suggestion to the upcoming statutory IPCC, but I cannot teach them what to do because it is an independent body.

Some Members have questioned whether the Chief Executive would interfere with the upcoming statutory IPCC in their recruitment exercise. In my

speech just now, I have clearly explained the issue. I would like to make myself clear: the provision has only specified that the terms of employment for the Secretary-General and Legal Adviser shall be approved by the Chief Executive. The IPCC, let me reiterate, can determine the ideal candidates for the two posts. So Mr James TO does not have to worry about this. We only lay down the pay scale and the terms of employment. As for the qualifications of Legal Adviser, it is reasonable to lay down the basic level of legal knowledge. I think it is also very reasonable for the Chief Executive to lay down such requisites. We are only responsible for laying down the terms of employment including remunerations. The Chief Executive will not interfere with the recruitment, no matter who is employed. The scenario that Mr James TO is so worried about will not happen. After the terms of employment have been laid down, the members and Chairman of the IPCC will commence with the recruitment exercise. Thank you, Chairman.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 5(1).

Proposed amendment

Clause 5 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendment to clause 5(1).

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Ms Miriam LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Mr Albert HO, Mr Martin LEE, Ms Margaret NG, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Dr Fernando CHEUNG, Miss TAM Heung-man and Mrs Anson CHAN voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the 38 Members present, 24 were in favour of the amendment and 13 against it. Since the question was agreed by a

majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, Mr James TO may not move his amendment to clause 5(1), which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 5 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Heading before Part 3 and clause 7.

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given notice separately to move amendments to the heading before Part 3, the heading before clause 7 and the reference before paragraph (a) of subclause (1).

Members may now debate the original provisions, the Secretary for Security's and Mr James TO's amendments to the clause jointly. I now call

upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to the heading before Part 3, the heading before clause 7 and the reference before paragraph (a) of subclause (1) so that "監警會" is substituted for "警監會". As the amendment has obtained the support of most members of the Bills Committee, I urge for Members' support and endorsement.

Mr James TO proposes to add "preventing abuse of power by the Police Force" to paragraph (a) of subclause (1) as the objective of the IPCC, we do not agree to this. As I have reiterated time and again, the function of the IPCC is to monitor how "reportable complaints" are dealt with and investigated by the police. The scope of "reportable complaints" is very wide, including the conduct of a member of the Police Force while on duty, the conduct of a member of the Police Force who identified himself as such a member while off duty and practice or procedure adopted by the Police Force. As members of the Police Force contact with millions of people every year, the complaints may involve the attitude of members of the Police Force while on duty, problems arising from the contact between civilian members of the Police Force with the public, or even the reasonableness of the procedures of the Police Force. Thus matters covered are complex and do not necessarily related to abuse of power.

Therefore, we consider that Mr TO's amendment has unreasonably narrowed down the functions and objectives of the IPCC and hence it is not desirable. And there is no practical need to move the amendment to the title. I urge Members to oppose Mr TO's amendment. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, the amendment is in fact the soul of the provision because the functions of IPCC are laid down in clause 7. I would like to remind Honourable colleagues that the subject of our discussion now is to incorporate an organization into a statutory body. In other words, matters other than those mentioned in the provision are prohibited (as stated by the Government in the Bills Committee in the past) and it will be a violation of the law or *ultra vires* if such acts are committed. This is why I said that with the enactment of this legislation, the situation will even be worse than now because the executive appointment of the IPCC now is actually rather ambiguous. If a

staff member of the IPCC wishes to access to some information about something or monitor certain things, he can do so as long as the Chief Executive does not raise any particular objection, and the Commissioner of Police sometimes does not want to express disapproval either under certain circumstances.

However, as the IPCC will become a statutory body, we have to examine clause 7, which is related to its functions, word by word. I would like to explain to Honourable colleagues that the so-called amendments proposed by the Government have actually sought to change one term only, and that is "the manner" referred to in clause 7(1)(a).

What are the original functions of the IPCC? The functions are "to observe, monitor and review the manner in which reportable complaints are handled or investigated by the Commissioner, and to make recommendations". Now it is proposed that the word "manner" be deleted. So, the functions will be: to "observe, monitor and review" complaints which are "handled or investigated by the Commissioner". Moreover, it must be a reportable complaint rather than all complaints. In other words, in our previous debate, we have talked about a lot of complaints related to abuse of power by the police such as those internal complaints against abuse of power rather than welfare matters. Such complaints, under this clause, are not subject to the IPCC's monitoring because these are not reportable complaints. As far as monitoring is concerned, the function is "to monitor and review" only, thus the scope of its functions is restricted.

I am surprised that Of course, I have proposed a lot of amendments, including the function of investigation and so on, which have all been rejected by the President. I will not argue on this because I respect the President's ruling. However, before 1997, I was able to propose amendments related to an organization's investigative function and were passed. Of course, the Rules of Procedures at that time were different from the prevailing one. So, the amendments proposed now will never touch upon the core functions of the IPCC with the effect of expanding it. What I am saying is that the wordings are so carefully chosen that the IPCC's functions are greatly restricted to a very limited area and no flexibility is allowed. Chairman, this provision is therefore a piece of art. I must commend the law draftsmen for their skills in drafting such a provision which has limited all the functions of the IPCC. I am sure that the

police must have given instructions according to which certain functions have been restricted. Then what is left after all these cuts is what we can see now.

Thus, we can see that the provisions relating to the functions are drafted in a very careful and meticulous manner so as to set obstacles and restrictions here and there like a trap. I originally thought that all my amendments would be rejected. But the President is amazing. My amendment to add "With the objective of preventing abuse of power by the Police Force" before the functions of the IPCC is allowed. In my amendment, no further elaboration to this reference is made. She has granted approval to my amendment. I originally thought that the Government would not oppose the amendment and it will support the objective although it might disagree with the wordings.

However, after listening to the Secretary's response, I found that he held different views. He disagreed with the wordings, saying that the police had to make contact with the public frequently as they had to check people's identity cards and investigate into criminal cases. But now this provision targeted at them on the ground of preventing abuse of power by the Police Force. But in fact they have a lot of things to do. After hearing the Secretary's response, I cannot but ask a question: If the IPCC's objective is not to prevent abuse of power by the police, it will be very simple indeed. As Chairman Ronny WONG has put it bluntly, why not adopt wordings such as "to protect the police from unreasonable complaints" or "to protect the police from being complained"?

So, whenever the Complaints Against Police Office (CAPO) is mentioned in the budget debate every year, I will make a joke to say that the CAPO should be re-named as the Elimination of Complaints Against Police Office, that is, to eliminate complaints against the police as far as possible either by reconciliation or persuasion regardless of whether the complainants are on their beds or in the street. In short, all possible efforts are made to persuade them in order to eliminate all the cases. By the end of the day, if the complainant really wants to make a complaint, it will see whether it can prove that the complaint is unsubstantiated. This will certainly depend on whether the 18 Executive Officers are smart enough so that nobody can see their intention. If the complainants can see through it, they will argue with them on the facts first and then on the conclusion. If the complainant is not convinced, they will say, "I am sorry, I do not agree with your conclusion. You can make your conclusion and you can even hold a press conference. But I do not agree with you."

So, if the IPCC's function is not to prevent abuse of power by the Police Force, does it aim at protecting them when they have abused power, eliminating complaints from the public and preventing them from making complaints? I think this is really ridiculous. Even the amendment which seeks "to prevent abuse of power by the Police Force" I originally thought that the Secretary would say, "Mr TO, such wordings sound quite negative. How come it is 'to prevent abuse of power by the Police Force'? It would be better if we say 'to enhance the quality of the Police Force'."

But we request the IPCC not to do so. We demand the IPCC to monitor so as to ensure that investigations are fair. In this way, the black sheep will dare not abuse power. If we want to enhance the complaint procedures, the police must be restricted from abusing their powers. To make sure that the police can no longer abuse their powers, investigations carried out by the CAPO should be monitored through the IPCC. If the IPCC can make sure that the investigations are impartial, we will be able to get rid of the black sheep. The duty of IPCC is, therefore, to prevent any abuse of power by the police. If the objective is not written down in the provisions as its aim and premise, does it infer that its responsibility is to ensure the covering up of the abuse of powers by the police? Does it mean that the IPCC is established to ensure CAPO's biased investigations will never be unveiled? Does it denote that the black sheep can continue to abuse powers? This is impossible. These are aspects that the IPCC is responsible for monitoring.

I am extremely puzzled. Why does our Government even disagree to such an objective? If this objective is not to be achieved by the IPCC, I would like to know who is responsible for achieving it? The Secretary may say, "Your work is to monitor. Let's give the monitoring duty to Members like LAU Kong-wah, James TO and Emily LAU. Let the Panel on Security of the Legislative Council do the work. It should not be done by the IPCC. It should be done by you."

However, we have not actually come into contact with individual cases. Nor do we have the authority to go into very thorough discussion. Every time when Chairman LAU Kong-wah and we discussed policies with the Government, the Government always said, "Remember, you are not supposed to hold discussion on an individual case. What is the use of discussing an individual case? An individual case is only used as an example. So we cannot discuss like this."

In addition, the cases received by Complaints Division of this Council cannot be discussed also. Why? It is because we have the IPCC. Do not forget that our Members have their own rules — our Assistant Secretary-General Mrs KAM is here. Mrs KAM was in charge of the Complaint Division. She used to remind me every time that, as the IPCC was responsible for the prevention complaint cases against the police, we should not be involved in those cases. However, we could raise queries on cases that could be inter-related. But not on cases otherwise, people would flock to the Secretariat to lodge their complaints, like the era when OMELCO was located at Swire House. People working at OMELCO were so busy that they could hardly find a moment for the toilet. Am I right? These complaint cases are not to be handled by us.

Who, then, is responsible for handling? Suppose the Legislative Council is neither responsible for handling cases nor responsible for monitoring whether the IPCC has abused its powers. Suppose our panels can only discuss policies instead of cases. Then, who is responsible for handling the cases? The answer is nobody. Are the cases going to be handled by the Court? Do we have to resort every time to legal proceedings? This makes me feel puzzled. If ultimately the IPCC is not responsible for handling the cases, then who is? The Security Bureau? I have no idea. Will the Security Bureau be responsible?

If clause 7 describing the functions of the IPCC is not used to prevent the abuse of power by the police but to define point by point in detail, then the IPCC may not be able to do anything once things go beyond the defined jurisdiction. Besides, the functions as laid down in clause 7 are inter-related with the dozens of provisions that we are going to discuss later. Every time when those powers are defined, it must be clearly stated that they are used to perform the functions laid down in clause 7. Therefore, if the provisions are not written in a broad sense to enable a broader use of objectives or interpretation, then the other dozens of provisions, including the rights to access information, report, statistics and the rights to attend, monitor and observe, will all be narrowed down by clause 7.

The Government is very smart this time. It found out that the Ordinance in 1996 was not written in great detail, resulting in leaving a loophole through which the power of investigation can be inserted. The Government this time is

going to draft in great details to ensure that nobody can go beyond the limits, so that even the President cannot give her approval. The Government has succeeded. In future, the IPCC technically possesses only some tiny droplets of well-defined and limited functions. The IPCC will be incapable of doing anything if things do not fall in its jurisdiction.

After the incident of Chairman Ronny WONG, I wonder how the IPCC can add anything more into these wordings under the current restraint. There may be one item, namely: clause 7(1)(d). Clause 7(1)(d) states that upon request of the Commissioner of Police, the IPCC can review anything submitted to it by the Commissioner pursuant to this Ordinance. What does it mean? In simple terms, there will be no problem if the Commissioner of Police volunteers to be monitored or reviewed by the IPCC.

Since the IPCC is under the Commissioner's control in every aspect, it should be re-named to depict the authority of the IPCC is such that it can only monitor to the extent that the Commissioner is willing to be monitored. The IPCC can only monitor matters as agreed and classified by the Commissioner of Police. According to clause 7(1)(d), upon permission by the Commissioner of Police, case review can be carried out. It also states that the Commissioner of Police may provide information as he thinks is available. The current situation is that the IPCC is under the Commissioner's restraint. Some Honourable colleagues just said, "He is not the boss of the IPCC. Do not exaggerate by saying that he is the boss. From time to time, he has to discuss with the IPCC." Both parties are no longer sitting as equals at the same table. If he gives it something, it will have something. It is not his "boss" and he is not giving commands or instructions. There is no such thing. Do not think like that, OK? Otherwise, you are lying. This is the current situation.

Chairman, nothing can be done since everything is confined by the existing Rules of Procedures. I only wish to tell you the truth. If it is not possible to broaden the provisions under clause 7, there will not be any power of investigation. Nothing can be done. According to the Government's own logic, it also wishes to make the definition of "reportable" and "non-reportable" in a broader sense. But it is completely impossible for now. I can only say that I do not know the purpose behind the drafting of clause 7. Its scope is so narrow that the IPCC is completely incapable of performing its monitoring role within a reasonable perimeter on behalf of the public.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendments to the heading before Part 3, heading before clause 7 and reference before paragraph (a) of subclause (1).

Proposed amendments

Heading before Part 3 (see Annex V)

Clause 7 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendments, I wish to remind Members that if the amendments are passed, Mr James TO may not move his amendments to the heading before Part 3, heading before clause 7, reference before paragraph (a) of subclause (1).

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Ms Miriam LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendments.

Mr Albert HO, Mr Martin LEE, Ms Margaret NG, Mr James TO, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Dr Fernando CHEUNG, Miss TAM Heung-man and Mrs Anson CHAN voted against the amendments.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 38 Members present, 24 were in favour of the amendments and 13 against them. Since the question was agreed by a majority of the Members present, she therefore declared that the amendments were carried.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendments have been passed, Mr James TO may not move his amendments to the heading before Part 3, heading before clause 7, reference before paragraph (a) of subclause (1) and the long title, which are inconsistent with the decision already taken.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to the Chinese text of subclause (1) and the amendments to paragraphs (a), (b), (c) and (e), and subclause (2) of clause 7, as set out in the paper circularized to Members.

The functions of the IPCC are set out in clause 7, and in paragraph (a) of subclause (1) in particular, the IPCC is empowered to observe, monitor and review the manner in which reportable complaints are handled or investigated by the police, and to make recommendations (as the IPCC considers appropriate) to the Commissioner of Police or the Chief Executive or both of them in this respect. The Bills Committee considers that even though the term "manner" is deleted, the meaning of the provision will not be affected or become unclear. We have accepted the Bills Committee's proposal to amend subclause (1)(a) so as to directly state that the function of the IPCC is to observe, monitor and review the handling and investigation of reportable complaints by the Commissioner.

Regarding the other amendments, "須具報投訴" is deleted and substituted by "須匯報投訴", and "警監會" is deleted and substituted by "監警會".

The amendments have been given consent by a majority of the members of the Bills Committee. I urge Members to support and pass the amendments.

Proposed amendment

Clause 7 (see Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Heading before Part 3 and clause 7 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed the amendments to the heading before Part 3 and clause 7, I now put the question to you and that is: That the heading and the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 11.

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given notice separately to move amendments to clause 11.

Members may now debate the original provision, the Secretary for Security's and Mr James TO's amendments to the clause jointly. I now call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to clause 11, as set out in the paper circularized to Members.

Clause 11 stipulates that a belated complaint may not be categorized as a reportable complaint unless the complaint is of a serious nature. Some members of the Bills Committee have noted that the wordings "may not" may render some complaints which comply with the criteria of reportable complaints not being classified as such and therefore not subject to the IPCC's monitoring. Members holding such a view are worrying too much. After careful consideration, we have redrafted clause 11 so as to clearly define the meaning of "belated complaint" and stipulate that a belated complaint must be categorized as a reportable complaint if it is serious in nature. In addition, according to the original provision, the Commissioner of Police will decide whether or not the nature of the complaint is serious. As I said in moving clause 10(b), we have accepted the views of the Bills Committee and deleted the subjective criteria that the decision shall be made by the Commissioner of Police.

Most of the members of the Bills Committee are in support of the amendments, I urge Members to support its endorsement.

Mr James TO has proposed that if a complaint is made by a person who is under 16 years old, mentally incapacitated, or cannot make the complaint in person due to illness, the complaint must be classified as "reportable complaint".

In this connection, I must point out that if a complaint is categorized as reportable complaint under clause 10, a person under 16 years old can make a complaint to the police. In addition, according to clause 14, the complainant's parents, relatives or guardians can lodge a complaint on behalf of the complainant as Mr TO said. Therefore, the Bill has provided sufficient flexibility to enable the complainant to lodge a complaint within the period. Furthermore, if the complaint is belated, meaning that a complaint is made more than 24 months from the date of the incident giving rise to the complaint, or if the complaint involves legal proceedings and is made more than 12 months from the date of the final determination of such proceedings, a lot of important evidences have been lost and the police cannot conduct a comprehensive and in-depth investigation. On the basis of this important consideration, we believe that unless the complaint is of a serious nature, investigation should not be conducted.

Besides, Mr TO has proposed that any belated complaint must be classified as "reportable complaint" if justified by good cause. I have already mentioned the practical difficulties in conducting comprehensive and accurate investigation in relation to belated complaints. Moreover, the meaning of "justified by good cause" is too vague. We therefore consider that the approach adopted in the Bill to determine whether a belated complaint be categorized as a reportable one on the basis of its serious nature is desirable.

As for Mr TO's suggestion that the IPCC will decide whether a belated complaint is serious in nature, as I mentioned when proposing an amendment to clause 10(b), the adoption of such a subjective criteria will lead to operational difficulties and lack of balance. So we do not support it.

On the basis of the various considerations I have just explained, I urge Members to oppose Mr TO's amendment.

Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, let me begin by discussing the first point. Just now, the Secretary remarked that the term "justified by good cause" was too vague, to the extent that whenever the Independent Police Complaints Council (IPCC) deemed that it could be justified by good cause, it could continue with investigation and reporting.

When I heard him describe "good cause" as being much too vague, I almost drop to the ground. "Good cause" is a concept applied by the Government itself in lots of legislation. During the discussions on observers, it was said that if the Secretary deems that there is a good cause, he may remove an observer from office. At that time, I questioned whether this was too vague. The topic under discussion at that time was the issue of observers. The Government denied. And, I also asked whether it was possible for the Government to enhance the clarity of the relevant provision. But it replied in the negative, explaining that the term "good cause" covered a wide range of scenarios. It added that when the Secretary deemed that there was a good cause, people just had to trust that he would not remove anyone without good reasons.

The Secretary now thinks that when there is a good cause, an observer can be removed from office, and he even does not think that "good cause" is at all vague in this particular case. But in case the IPCC thinks that there is a good cause to continue with the investigation into a complaint which is made belatedly after the passage of 24 months, he will say that the term "good cause" is too vague.

God! I now understand what people mean when they say that one cannot argue with a government official. The Secretary has actually been dragged into the present trouble by his assistants. He probably did not realize that his assistants had come up with such an argument: an observer can be removed from office when there is a good cause, but the IPCC should not continue with the investigation into a complaint when there is also a good cause. Whatever the case may be, a good cause is a good cause, right? If we say that there is some matter that we cannot list all the items or details, then we have to trust other people. Therefore, speaking of removal from office, for example, it is only natural to let him make the decision. The case is similarly with the IPCC, which has handled so many cases. If there is no good cause, meaning that a complaint is unfounded and made belatedly with intent, the IPCC will not be so stupid as to think otherwise. How can anyone imagine that it will say that there is a good cause? The reason is that in many other laws, the reference to a good cause is invariably qualified by a number of specific factors and circumstances. Chairman, this is the reason for my adding paragraph (e) to clause 11 of the Bill.

Clause 11 is mainly about complaints which have been under investigation for more than 24 months. I do understand that in the case of a complaint which is made belatedly after the passage of 12 months or 24 months (depending on

whether the investigation is complete), we cannot tell whether continued investigation will be to the advantage of any side, as each side may be affected. It may be that the complainant, that is, a member of the public, has already lost all the evidence, or that the police officer involved the complaint has lost all the evidence. The reason is that the loss of all evidence and witnesses can happen at any time in this world. But whatever the case may be, we must bear in mind that under the present system, there is a total imbalance in favour of one side.

Why? As I have explained earlier, unlike the Independent Commission Against Corruption (ICAC), the Complaints Against Police Office (CAPO) is not independent of the police. In some cases, the police will tell the complainant that since he is involved in a criminal case, the team responsible for investigation will continue to investigate his involvement and press charges against him. And, if the complainant's complaint is about improper police practices or abuses or if he is making false allegations, the CAPO will tell him that according to legal advice, any statement he gives to the CAPO may have negative impacts on his case in Court, and that after giving a statement, he may also be prosecuted by the police. For this reason, after seeking legal advice, the complainant may likely refrain from giving the first statement to the CAPO. To the CAPO, this is of course a very desirable situation because they will not need to handle the complaint immediately. What will usually happen is that the police will first prosecute the complainant, and the CAPO can withhold the handling of the complaint. There is thus a total imbalance in favour of one side in many cases unsolved. But the problem remains.

If the CAPO is independent like the ICAC, investigations into the two persons involved can be undertaken in parallel. On the one hand, the police team responsible for criminal investigation can continue to find out whether the complainant is involved in any criminal offences such as drug possession, and they may press charges as warranted. On the other hand, the CAPO, which in that case will be similar to the ICAC, can continue to carry out investigation, so as to ascertain whether the police officer concerned is indeed involved in corruption, abuses, dereliction of duties and framing up, rather than having to suspend investigation. That will be fine. The ICAC will not suspend its investigation and wait until the investigation of the relevant police investigation is completed, because if it does so, all evidence may disappear. When the police complete their investigation, many witnesses may even have died already; when

the police complete their investigation, all evidence may have disappeared, and important witnesses may have escaped.

And, we must also ask, "Why does the ICAC want to investigate police officers without any delay in all cases?" The reason is that in cases where there are disputes over the distribution of illicit benefits generated by the crime in question, those who are police officers, or those police officers who are involved in the crime and also other parties may make use of the resultant confusion at the beginning and persuade the complainant to testify against certain police officers, accusing them of being party to the crime. Or, they may even frame up the complainant, accusing him of drug possession.

Since the CAPO cannot undertake investigation at once, there is a total imbalance in many cases, thus giving rise to the situation covered by clause 11, which mentions the passage of a certain number of months. Many cases are very complicated. In some case, the complainant may be timid, or he is unable to obtain good legal advice. Or, in some cases (I must be very frank), a complainant may approach a Member of this Council for advice, for example, but the Member or his personal assistant does not have sufficient legal knowledge. As a result, the complainant may not be able to obtain sound support despite the Member's enthusiasm, because he does not have the required technical knowledge. Honestly speaking, I have received many such "second-hand" cases. Some Members may have such a problem, and I may be no exception too.

On the other hand, some Honourable colleagues may realize that the time limit of a case has expired, so it is impossible to gather some vital evidence. Besides, he may not know how to grasp the basic facts of the case without any delay and assist the complainant in looking for evidence. He may also be unable to detect disputes over the distribution of illicit benefits, thus failing to assist the complainant in identifying channels of complaints or gathering evidence. As a result, the case may drag on beyond the time limit. Sometimes, once the time period expires, it will be difficult to continue with investigation. Under the Bill, there is one exception — when a complaint is of a serious nature. But who is going to decide whether a complaint is of a serious nature?

At the very beginning, the Government was so bold as to suggest that if the Commissioner of Police deems that a complaint is not of a serious nature, it must not be regarded otherwise. From this, Members can notice the mentality underlying the drafting of the Bill. After we had laid bare its intention, the

Government agreed to make an amendment. But it could be observed that the Government was prepared to make amendments only when Members were clever enough to spot the problems. What actually is the mentality underlying the drafting of the Bill then? The mentality is that if the Commissioner of Police deems that a complaint is not of a serious nature, there must be no investigation after the passage of 12 months or 24 months. In his heart, the Commissioner actually wants to call it a day, and he wants to tell the complainant that he should go home, rather than asking for anything further. This is the mentality underlying the drafting of the Bill. All must depend on the convenience of the Commissioner. He must be the one to decide whether an investigation should be conducted, or whether a complaint is of a serious nature. Such a mentality can be observed in many places of the Bill. Everything must depend on the decision of the Commissioner. He must be the one to decide whether anything should be permitted, and whether any information should be provided. If the Commissioner does not think that a complaint is of a serious nature, or if he thinks that it is made at too late a time, then, sorry, nothing will be done.

What are the amendments proposed in the Bill? The amendments are such that whether a complaint is of a serious nature is to be judged on the basis of some "objective criteria". This means that the Commissioner may still argue with the IPCC that objectively, a complaint is not of a serious nature, and the argument may simply drag on. In case the IPCC deems that a complaint is of a serious nature but the Commissioner thinks the otherwise, what is going to be done? Yes, if the IPCC is not convinced, it may apply for a judicial review. But we must remember that the annual funding for the IPCC is just some \$10 million, which will be used up after one or two lawsuits. When this happens, it may not even have any money to pay the salaries of its staff. Therefore, if the IPCC is really supposed to monitor the CAPO, one must wonder why the Administration still insists on using words to the effect that the seriousness of a complaint is to be judged on the basis of objective criteria. This actually means that the CAPO may continue to argue with the IPCC. Well, if the dispute cannot be settled, the IPCC may of course turn to the Chief Executive for a decision, but the CAPO will stop handling the case anyway. But has the Chief Executive ever stood on the side of the IPCC? The answer is evident from what happened in the past. And, is the IPCC supposed to approach the Chief Executive lightly, just because of the use of some expressions? If the Chief Executive is made upset, he may even dismiss the head of the IPCC. So, they say, people can only wait for a judicial review from the CAPO.

For all these reasons, if the IPCC thinks that a complaint is of a serious nature, its decision should be accepted, and it should be permitted to continue with the investigation. Is one more investigation going to matter so much? In case the investigation of the IPCC turns out to be unsuccessful, it can just say so. This point here is all about "practicality", rather than the seriousness of a complaint. Even if a complaint is of a serious nature, there is always the possibility of unsuccessful investigation because with the passage of time, lots of evidence may be lost. In such cases, the IPCC only needs to compile a report, stating that it has conducted a certain number of site visits, made attempts to contact the witnesses, and even put up search notices in overseas newspapers. It can also state in the report that following searches based on some procedures and intelligence, it still fails to contact the witnesses. In that case it is nobody's fault because there are truly no findings. Many kinds of investigation, whether the criminal cases handled by the police or investigations into alleged police abuses, are unable to bear any fruit. This has nothing to do with the seriousness of cases. If sufficient efforts have been made, no one should be blamed.

Another proposal in my amendment is the addition of paragraph (c). It is about a complaint made by a person who was below the age of 16 at the time of the incident giving rise to the complaint. The Secretary's reply just now was very interesting. He remarked that there was no need to worry because even if a complainant was a teenager, he or she could still make a complaint. My amendment proposes that a complainant who was below the age of 16 at the time of the incident giving rise to the complaint should not be subject to the 24-month requirement. Why? All is because of a reasonable assumption. A teenager (regardless of his or her individual circumstances) will not be as competent as an adult. In the case of an adult, if the 24-month period has already expired In such a case, we can always argue that the person is already an adult, so even if he does not know how to deal with the situation, he may still ask for others' advice. I do not know whether the Government is of the view that a teenager will seek others' advice under such a situation. But does a teenager really know how to seek others' advice? Or, the Government may think that if he does not know how to deal with the situation, he should seek assistance. But does he know how to do so?

A teenager cannot compare with an adult in terms of social experience, the knowledge of how society functions, courage and exposure. Even in civil law, the law of contract, the contracts signed by teenagers are given separate

treatment. In the case under discussion now, it is especially important for us to consider teenagers' circumstances because by the time they reach the majority age, the time period may have expired already. Therefore, before they reach the majority age, they should be allowed to make a decision.

But our Government even argues that minors may seek assistance, as they also have parents. Honestly speaking such teenagers may not have any parents. Or, their parents may simply regard them as already dead. Such teenagers may be youngsters at risk. They may have past quarrels with the police. They may be arrested frequently. They may frequently complain against the police. The parents of many such youngsters at risk may really regard them as already dead. They may even refuse to talk about their children. They may regard their sons as already dead. Many such youngsters at risk are from broken families, devoid of any support, care and attention. Therefore, in case they are abused by the police, they are in special need of sympathy. But our Secretary simply tells us that the teenagers concerned should be "smart" and voluntarily seek assistance. He thinks that they should receive civic education as early as possible, so that they can know how to seek assistance from Members and free legal advice. If they cannot do so, then, very sorry, when the 24-month period expires, the handling of the case must come to an end.

How can we do something like this? How many such cases are there? Not so many. What is more, because of his age, a youngster may fail to express his thoughts completely when he is left alone to deal with the situation. What will happen if he is asked to apply for a review? He will surely feel even more helpless. He may be told to ask a professional to conduct an investigation. But the professional may give him a very complicated report later and then ask him to apply for a review by himself. What can he do? The 24-month period will surely expire.

Even in the case of persons with mental incapacity, the Secretary is equally harsh. He simply says that sorry, after 24 months, the period expires and nothing is possible. What kind of government is this one?

I have said that both the Secretary and the Commissioner of Police are not interested in facilitating the making of complaints as much as possible. They do not want to make things convenient to the public. It is not their wish to receive

as many complaints as possible, and they never want to find out the truth and the real situation. Instead, they just want to erect as many obstacles as possible. The complainant is below 16? Sorry, time is over. The complainant is a person with mental incapacity? Sorry, time is over. They just want to erect obstacles, they have no idea that the Commissioner should investigate or if things are convenient and so on. This is the mentality underlying the drafting of the Bill. The system is designed to minimize complaints.

If there are cases that really require investigation, what are they going to do? They will say that they can handle such cases themselves without involving the IPCC. They will just treat the cases as ordinary complaints. They want to do something like this. However, when we ask for the inclusion of such cases in the system, they will erect various obstacles and even raise the threshold. This is what the present situation is like. Under the present system, there are all sorts of hindrances and obstacles and attempts to suppress complaints as much as possible. This is what the present situation is like. They have designed the system with such a mentality, one of the maximum rejection of complaints. They do not want to do their very best to identify black sheep, to identify police officers who even abuse persons with mental incapacity and teenagers, and to encourage these people to report and make complaints.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that he did not need to speak again)

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 11.

Proposed amendment

Clause 11 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendment to clause 11.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted for the amendment.

Mr LEE Cheuk-yan, Mr Martin LEE, Ms Margaret NG, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Ronny TONG and Mrs Anson CHAN voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 36 Members present, 26 were in favour of the amendment and nine against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, Mr James TO may not move his amendment to clause 11, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 11 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 8.

CHAIRMAN (in Cantonese): Mr James TO and the Secretary for Security have given notice separately to move amendments to the reference before clause 8(1)(a).

Members may now debate the original provision, Mr James TO's and the Secretary for Security's amendments to the clause jointly. I now call upon Mr James TO to speak first, to be followed by the Secretary for Security; but no amendments are to be moved at this stage.

MR JAMES TO (in Cantonese): Chairman, clause 8 forms the basis on which monitoring work can commence. What is it about? It requires the Commissioner of Police, which means the Complaints Against Police Office (CAPO) in actual operational terms, to submit a list of complaints to the Independent Police Complaints Council (IPCC) at regular intervals. The IPCC shall study the brief descriptions of cases there and also the reasons for classifying cases as reportable complaints or non-reportable complaints. After studying the list, if the IPCC sees a need, it will monitor some particular complaints more closely. The clause is about the requirement that the Commissioner must submit a list of complaints.

Chairman, the original Bill provides that the Commissioner must submit a list of complaints to the IPCC at intervals while my amendment proposes at such intervals as the Commissioner and the IPCC may agree. For example, if it is agreed that the interval should be one month, then the Commissioner shall submit a list of complaints on a monthly basis, showing the number of complaints

in the previous month, with breakdowns on the numbers of reportable and notifiable complaints.

But I must ask, "Why must monitoring be conditional upon the Commissioner's consent once again?" If the Commissioner says that a list should be submitted once every three months, then the IPCC will only be informed once every three months of the complaints received in the previous three months or 90 days. In other words, the IPCC will only be informed of a complaint 90 days after it was made. Even if a complaint is of a very serious nature and the IPCC wants to monitor it more closely, it can do nothing, and there will always be a lapse of 90 days. It can only monitor it more closely after a lapse of 90 days. But by that time, all evidence may have been lost.

It is very easy to destroy evidence. A complainant can easily be persuaded to withdraw his complaint, in which case there will be no more complaint. Members may say that this will not happen, as the Commissioner will not act in such an unreasonable manner. They may think that the Commissioner will always be very sensible. But the clause provides clearly that mutual agreement is required. Therefore, we must not cherish any subjective good wishes that the Commissioner will not be so unreasonable. We are talking about a statutory power of the Commissioner to agree or not to agree. By endorsing this power in the Legislative Council, we will be agreeing that if there is no agreement from the Commissioner, the IPCC cannot unilaterally specify the intervals at which a list is to be submitted.

The point here is very simple. The CAPO is responsible for the actual handling of complaints. It can always say that it is unable to submit a list once every month or once every two weeks, and it can always choose to do so at whatever intervals it likes. Therefore, by specifying the need for mutual agreement, the Government is actually trying to give the Commissioner the power to say "no". The clause drafted by the Government sounds very convincing, as it requires mutual agreement. But in reality, if the Commissioner claims that he is unable to submit a list to the IPCC at an interval suggested by the IPCC, can the IPCC still insist? Will the Commissioner still submit a list to the CAPO at the suggested interval? Therefore, we must note what is written in the clause — "the Commissioner and the Council may agree". This means mutual agreement, or the power to say no, in other words. Members may still argue that my point is wrong. They may ask, "Why do you not say that the IPCC is given the power to say no instead?" Yes, there is indeed the possibility that while the Commissioner wants to submit a list every day to the IPCC, the IPCC simply replies that since it does not have enough time,

the Commissioner must not do this so frequently. It is possible that the IPCC may instead ask the Commissioner to submit a list on a biweekly basis. This may be possible. But will this really happen in reality?

This therefore means that the Commissioner is actually given the power to say no. The IPCC may want the Commissioner to submit a list more frequently, so that it can be notified of all non-reportable complaints at an earlier time. But if there is no agreement from the Commissioner, the IPCC will not be able to get what it wants. If the Commissioner of Police is for four weeks and the IPCC for two, the outcome will be the submission of a list once every four weeks. If the Commissioner of Police does not agree to the interval suggested by the IPCC, he will not comply, right? Unless the case is just the opposite, with the Commissioner of Police insisting on two weeks and the IPCC four But I will never believe that this will be the case. Therefore, I am trying to amend this clause, which gives the Commissioner of Police *de facto* power of veto and absolute power under the guise of mutual agreement, and I hope to empower the IPCC to make the decision.

Well, I know that some may ask, "In that case, will the IPCC become the most powerful? If it asks for the submission of a list on an hourly basis, it will be terrible, right?" But I must point out that we must have at least some confidence here. We must realize how the IPCC operates and who are in charge of it. Members of the IPCC are appointed by the Chief Executive. Speaking of this, the amendment I moved to clause 4 at the beginning was already voted down, right? Will all those people appointed by the Chief Executive ask the Commissioner of Police to submit a list on an hourly basis? From other legislation, we can observe that the disagreement of the police or those under monitoring is something that will really occur. And, in such situations, the issue of who has the final say is of vital importance.

I am talking about Mr Justice WOO Kwok-hing, who is the Commissioner on Interception of Communications and Surveillance. I know that he has been in this capacity for slightly more than a year. At the very beginning, there was indeed agreement, but later on, Justice WOO was not satisfied with the frequency of reporting. So, Justice WOO expressed dissatisfaction and requested the submission of reports on a more frequent basis. In the end, the police complied. But we must also note that such compliance is not required under the Interception of Communications and Surveillance Ordinance. For this reason, when it comes to many other powers covered by the Ordinance, whenever Justice WOO and the police are in disagreement, the police will not

care who Mr Justice WOO is, and they will always hold fast to their position, refusing to yield. They will stand firm in their disagreement with him, refusing to yield or take any actions. What is more, legal advice from the Department of Justice will also say that the police are right, or the Department may even say that they have such a right.

Therefore, the police will study the Ordinance word by word and section by section, arguing with Justice WOO over what powers he is vested with under the Ordinance. If they discover that he does not have certain powers, they will say no to him. This is also the case now. They will say that under clause 8 passed by the Legislative Council, they have the power to agree or not to agree. They will say that they do not agree to the submission of a list once every two weeks, and that they only agree to a frequency of four weeks. They will think that the IPCC cannot possibly do anything except grudgingly accept the arrangement of four weeks.

This clause is therefore similar to many other clauses. The Government's hidden position is to vest the Commissioner with the power to say no, to enable the Commissioner of Police to override the IPCC under the guise of various excuses, in all cases. If the Commissioner of Police does not agree, the IPCC shall get nothing; if the Commissioner of Police does not agree to the ruling of the IPCC, the IPCC will be left with nothing; if the Commissioner of Police does not agree to the IPCC's request for more frequent submissions, the IPCC will not be able to do anything either. The whole Bill is meant to vest the Commissioner of Police with extensive powers.

At this juncture, I must say that I really feel very sorry for the IPCC. Honestly speaking, the IPCC is even more powerless than the Appeal Board on Public Meetings and Processions. The Appeal Board is a statutory body, and the IPCC is also a statutory body. But the Appeal Board at least has one power: in cases where the Commissioner of Police refuses to issue a licence but the Appeal Board thinks otherwise, the Commissioner of Police is required to comply with the Appeal Board's request. In contrast, all clauses of the Bill provide that there must be mutual agreement, or the opinions of the Commissioner of Police must prevail. And, in the case of one amendment, after making a deletion, it proposes to adopt "objective criteria", rather than allowing the IPCC to make its own decision. If the Government truly wants to give real powers to the monitoring body, why has it still sought to specify mutual agreement in all cases?

If the IPCC thinks that more frequent reporting is required to facilitate the work of monitoring, then the Commissioner of Police should really review whether it is necessary to increase the manpower of the CAPO. For example, if the IPCC asks for intervals of two weeks, rather than intervals of one month, the Commissioner of Police should compile a list within two weeks for submission to the IPCC, so that it can monitor complaints more closely on a biweekly basis, right? This is basically a clause on a very simple issue. But the Government does not think that it should be so. Rather, it has refused to yield even an inch, and does not allow any negotiations at all. The Commissioner of Police is considered supreme. When he disagrees, nothing will be possible. If he disagrees, then he can use as much time as he wishes. This means that if he can make it within one month, or if it is convenient for him to do so, he may submit a list at intervals of one month. If he cannot make it, then, sorry, his administrative convenience must prevail. The needs of monitoring are not given any consideration at all. How can they formulate a clause like that?

Owing to the "royalist" support for the Government, my amendment will probably be voted down. But I still hope that if the IPCC really encounters the situation as described above, it will tell us all. Of course, I really doubt whether the IPCC will voluntarily ask the Commissioner of Police to submit a list more frequently. I once wanted to move an amendment, but the President ruled that this amendment was not quite in line with the Rules of Procedure. If I were the one responsible for drafting this clause, I would write down the requirement of daily submission, or weekly submission, if the former is not possible. And, I would also include a provision that both sides may reach an agreement if submission is to be made more frequently than once a week. Such a provision is necessary because at times, the public may be particularly concerned due to some special cases, some special reasons, or some special incidents. During such times, the IPCC may say, "We need to receive a list on a more frequent basis, or we will be unable to tell the public how we have sought to monitor your work on a more frequent basis, right?" Frankly speaking, this reminds me of what I heard Justice WOO say. He said that in case of any blunders and abuses or any violations of the Interception of Communications and Surveillance Ordinance, a list of these must be submitted to him. The Ordinance actually requires notification as promptly as possible. This means that a list must be submitted to him as soon as possible.

Honestly speaking, if some cases are truly of a more serious nature, things will be very different. We must bear in mind that we are discussing clause 8(1A), which is about "reportable complaints", and "reportable complaints" may

be of a very serious nature. In this connection, I do not know whether the IPCC will propose that the frequency of submitting a list should be increased in the case of more serious complaints, such as those complaints involving assaults, frame-ups and suspected criminal offences handled by the Serious Complaints Committee. I do not know whether the IPCC will propose that such complaints should be reported to it in the form of a list at intervals of two or three days. It is particularly worth mentioning that even if all the members of the IPCC cannot follow up these cases immediately, the Chairman and Vice-Chairman can at least be informed as soon as possible. In this way, appropriate measures can be taken, and the IPCC Secretariat may even be instructed to follow up the complaints more closely. This is a very important point.

However, if this clause is passed as it is written, then the situation will be very miserable. I frankly cannot be sure whether we can come across a good Commissioner. If yes, we can still hope that he can agree or disagree on the basis of sound justifications. But if we have a bigoted Commissioner of Police, or if the Commissioner of Police even belongs to the same camp as the Chief Executive or the Secretary, then we can only watch him do whatever he likes, right? Our Secretary for Security is not particularly keen on monitoring the Commissioner of Police, right? He only lets the Commissioner of Police do whatever he likes. Even when there are mistakes and abuses, he will not stop the Commissioner of Police and will simply allow him to do whatever he likes. In that case, we can only wish ourselves good luck.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr James TO proposes to amend the reference before paragraph 1(a). Under the original Bill, the police must submit to the Independent Police Complaints Council (IPCC) at such intervals, and in such manner, as the Commissioner of Police and the IPCC may agree, a list of reportable complaints and a list of notifiable complaints for the reference and monitoring of the IPCC. This provision can aptly reflect the time-honoured arrangement which has been in place. I can notice from Mr James TO's amendment and his remarks that he is basically skeptical of the Commissioner of Police, think that the Commissioner of Police will necessarily stand in the way of the IPCC and prevent it from investigating into complaints or from monitoring their handling. This is not the case in reality. All along, the police have respected the monitoring of the IPCC very highly, and both sides have co-operated very well over the years. The passage of Mr James TO's amendment will upset the present desirable practice of striking a balance between the respective operational needs of the IPCC and the police,

and inflexibility will result. We therefore cannot accept this amendment. I call upon Members to vote against Mr James TO's amendment.

If Mr James TO's amendment is negated, I shall move an amendment to the reference before subclause 1(a), replacing "警監會" by "監警會" in the Chinese version of the Bill. This proposed amendment has been accepted by a majority of members of the Bills Committee. I sincerely call upon Members to support and pass my proposed amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MRS SELINA CHOW (in Cantonese): Chairman, I can remember that during the resumption of Second Reading debate yesterday, I raised the point that the relationship between the Independent Police Complaints Council (IPCC) and the Commissioner of Police or the police should be complementary in nature. I said that there was no relationship of subordination, and that neither side was supposed to be above the other.

Mr James TO's remarks just now did not take account of the fact that both sides are in fact independent of each other, that is, the fact that there is no relationship of subordination. He thinks that such an arrangement and the clause as it is worded will lead to problems in co-operation. But I think the opposite will be the case. I think this clause can ensure the co-operation of both sides. Very often, it is just like a fifty-fifty partnership. This means that in the course of co-operation, two equal partners must reach a proper agreement on the framework of getting things done. If one's intention is to set up some traps at the very beginning, then no matter how the clause is worded, one may still think that one is being fooled. But we do not wish to see such a working relationship because this should not be the working relationship between the two.

However, I do not think that if such a situation really arises, the IPCC will simply swallow all its grievances and accept everything silently. The reason is that the two sides must deal with each other continuously. As a result, they simply cannot stop all discussions. I believe that in case of any dissatisfaction, both sides can always come up with many different ways to voice their views. If such a clause is absent, there will be no certainty. The reason is that if such a clause is not enacted and problems frequently arise between the two sides in the

course of work, they may need to argue over this issue again and again. Rather than allowing this situation to happen, both sides should really hold thorough discussions and establish an acceptable framework once and for all, a framework that is feasible to police operation and also deemed reasonable by the IPCC. I therefore think that it is totally necessary to enact such a clause.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary of Security shook his head to indicate that he did not need to speak again)

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, I am puzzled. Some Members said that co-ordination was needed to get all things done. Please be note that I am not against co-ordination. I am not against co-operation. It will be perfect if this can be achieved. Our ideal is to go in this direction, in the hope that they can really co-operate with each other, for without co-operation, nothing can be done.

But Members must bear in mind that we are now dealing with the law. What the law says shall determine to whom powers will go in the end. If the decision of the law represents the consensus of all, the arrangement should be considered final. If we fail to agree on whether one side should be given the powers in the end, there will emerge a situation like the present one, under which one side is the organization to be monitored and the other is the monitoring body. One side claims that it is the monitoring body, so everything must be made convenient to it. What is under discussion is precisely such a situation. We are the monitoring body, and they are the organization to be monitored. Some Members says that there is no relationship of subordination here. They are

right. Both sides are on a par with each other. In that case, the side being monitored may just conduct some sort of investigation; it may allow the other side to do something only when it feels like it; it may say that there should be investigation and monitoring only when it feels like it; and, it may give information to the other side only when it feels like it. The relationship here is of course not one of subordination. The Commissioner of Police may think, "I am the Commissioner of Police and the licence number of my car is No. 1. Who do you think you are? You are appointed by the Chief Executive, but does this make you any better?" This is what the present situation is like.

When we talk about institutionalization, our aim is precisely to discuss who should be given the powers in the end. It is impossible for us to evade this issue. We must not be high-sounding and must not speak only of co-operation. Sometimes, there are bound to be disputes. Sometimes, such disputes are caused by resource allocation. Sometimes, they may be the result of subjective good wishes. Sometimes, there may not be any malignant motives, and the only problem is that while one side faces difficulties, the other side also has its demands. It is naturally wonderful if both sides can co-operate well. But when this is not possible, we must rely on the system to tell us how the matter can be settled. This means that the system must tell us who should be given the powers. This must be the case, whether we like it or not. If the monitoring body is not vested with any powers, it will be nothing but a "toothless tiger". The only thing it can do is just to implore others. The matter is so very simple.

I am not saying that the IPCC must behave like a bully all the time. Rather, I only want to make sure that it can get the co-operation of the other side. If the other side refuses to co-operate and differences in opinions based on good and genuine intentions still exist in the end, what can be done? The outcome is bound to be that there is simply no agreement. In other words, both sides in the present case will simply fail to agree, says, on the intervals of report submission. When they fail to agree, what will be the outcome? When they fail to agree on this, no report can be submitted. One side says the interval should be two weeks. But the other side wants it to be four weeks, and it also refuses to yield despite all the good intentions of both sides. For this reason, we must establish a mechanism to determine who should be given the powers. If the monitoring body is forever unable to get the agreement of the other side, if what it says is invariably denied by the other side under the guise of various excuses, then how can the side which is suppose to monitor have any real powers to do its work?

Such a mentality is not unique to the issue under discussions. All other issues in this Bill are handled with the same mentality. In all cases, every effort is made to ensure that the Commissioner can always prevail. Admittedly, one can apply for a judicial review on the ground that the Commissioner of Police fails to reasonably agree. However, in this clause, even the word "reasonably" is absent, for it does not mention anything like "as the Commissioner and the Council may reasonably agree". One may, of course, argue that even though the word is not used, people should still assume that both sides will be reasonable.

Speaking of judicial reviews in general, unless the case concerned is an extreme one and something unlawful is involved, the Judge will not normally override the decision of the drafter of the law concerned and make a contrary judgment. It is therefore very, very difficult, or almost impossible, to win in a judicial review. This is not to speak of the fact that the budget for the IPCC is only some \$10 million a year. So, how can it still have any more money for any judicial reviews? If the IPCC keeps applying for judicial reviews, it may even be unable to pay the salaries of its Secretary-General. Therefore, the fact is that whenever the Commissioner of Police thinks that he cannot do it or make it, he will have the *de facto* power of turning down the IPCC's request, and he can always tell the IPCC not to ask for such short intervals. The current situation is like this. Whenever there cannot be any agreement under the system, the Commissioner of Police will have the *de facto* power of turning down the IPCC's request. We are caught precisely in such a situation now.

Honestly, like other Members, I can also say that we need to work together with one heart and strive for social harmony and co-operation. I can also say that most importantly, this is the only way to ensure that there can be social stability and harmony and effective and efficient monitoring. But all these words are useless, pure nonsense, for at the end of the day, we must decide who should be given the powers. This clause is phrased in this way. And, it is not unique because all clauses in the Bill are written in this way.

I can only say that this Bill can aptly reflect the Government's mentality. The Government wants to ensure that all the time, whenever there are any problems, the Commissioner of Police can have the power of veto. You think it is a real monitoring body? As rightly pointed out by Mr Ronny WONG, a former IPCC Chairman, the IPCC is only meant to protect the police from

monitoring and complaints. It is only meant to protect the police, so the law must be written that way. The law must establish a system, and the system must protect the police and give them ultimate powers. The current situation is like this. All legislative provisions are written that way, right? It is actually nothing strange by now. Having talked about this so many times, I am frankly fed up.

But seeing that the public have been suffering so much in the absence of a sound system, I cannot allow myself to do nothing. Mr SIN Chung-kai has advised me repeatedly, "James, please do not raise your voice all the time. Please do not be so angry all the time." However, when a Member is burdened by the miseries of so many ordinary people, he must tell himself that he must not give up. When I meet with members of the public Very often, on the basis of my experience and the statements given by the two sides, I can tell that the complainant is telling the truth. But I cannot help him. I cannot make the IPCC do a good job in monitoring. I cannot make it conduct independent investigations. If Members do not give vent to their outrage, how can they survive? And, if I do not do so, how can I manage to stay in this capacity for more than a decade?

Some people have asked me, "Why are you still so angry all the time after serving as a Member for more than a decade?" I must be angry because I have witnessed so many cases of injustice. I cannot control my temper when the Government's approach to law drafting is all the time meant to make the Commissioner of Police supreme. If I am not upset, I will disappoint all those members of the public who have approached me. When members of the public meet with me, they are 10 times angrier than I am, with the result that I must speak like other Members such as Mr LAU Kong-wah, explaining everything to them in a calm, gentle, sensible and rational manner, "Nothing much can be done. Yes, the CAPO is the only organization of its kind. Yes, it does have such a power, and the Commissioner of Police will usually have all the say. Nothing much can be done. But I will still follow up your case, alright? I have been making efforts in the area for more than a decade. I will continue with my fight." I will be very sensible when speaking to them because I am not supposed to yell and shout like them. However, my heart will always ache whenever I speak to any complainants in this way. Why? Members, including "royalist" Members, are you saying that all of you, and even the masses that support you, have never been involved in any police abuses?

Chairman, I only hope that Members can realize that this is just a very straightforward and modest amendment. It only specifies that the IPCC should be allowed to decide the intervals at which such a vital list is to be submitted to it. The list only contains all the complaints received previously (I have forgotten how many days before). In this way, the IPCC can take early follow-up actions. Would Members please support such a humble and modest request?

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the amendment to the reference before clause 8(1)(a).

Proposed amendment

Clause 8 (See Annex V)

CHAIRMAN (in Cantonese): Before I put a question to you on Mr James TO's amendment, I wish to remind Members that if this amendment is passed, the Secretary for Security will not be permitted to move his amendment to the reference before clause 8(1)(a).

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG and Mr SIN Chung-kai voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr CHIM Pui-chung voted against the amendment.

Ms LI Fung-ying abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr LI Kwok-ying voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, two were in favour of the amendment, 16 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, 10 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to the reference before clause 8(1)(a).

Proposed amendment

Clause 8 (See Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendments to paragraphs (a) and (b) of subclause (1), and subclauses (2) and (3) of clause 8 as set out in the paper circularized to Members.

The amendments to subclauses (1) to (3) aim to replace "non-reportable complaints (無須具報投訴)" by "notifiable complaints (須知會投訴)", and to replace "須具報投訴" by "須匯報投訴".

As for the amendment to paragraph (c) of subclause 3, it is a consequential technical amendment arising from the addition of clause 11(3). The purpose is to specify that if a belated complaint is classified as a "notifiable complaint", the police must explain to the Independent Police Complaints Council the reasons for not determining the complaint as a complaint of a serious nature.

The Bills Committee supports these amendments. I sincerely call upon Members to support and pass the amendments.

Proposed amendment

Clause 8 (See Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Clause 8 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 10

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given separate notices to move amendments to clause 10.

Members may now debate the original clause, the amendments of the Secretary for Security and the amendments of Mr James TO jointly. I will now call upon the Secretary for Security to speak, to be followed by Mr James TO, but no amendments can be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I propose to amend clause 10 as set out in the paper circularized to Members.

Clause 10 sets out the definition of "reportable complaints", the handling and investigation of which shall be fully monitored by the Independent Police Complaints Council (IPCC). Clause 10(a) provides that a complaint must be categorized as a reportable complaint if the complaint relates to the conduct of a member of the Police Force while on duty or in the execution or purported execution of his duties. The Bills Committee proposes to specify that a complaint involving such conduct must still be categorized as a "reportable complaint", whether the member of the Police Force concerned identified himself as such a member. Since we have no objection to this proposal, we propose to amend clause 10(a) accordingly.

Clause 10(b) provides that a "reportable complaint" must be a complaint which, in the opinion of the Commissioner of Police, is not vexatious or frivolous and is made in good faith. The Bills Committee is of the view that since the IPCC may provide advice on whether a complaint is vexatious and frivolous, the expression "in the opinion of the Commissioner" should be deleted. We agree to the Bills Committee's view, so we propose to amend clause 10(b) by deleting the expression "in the opinion of the Commissioner". Later on, we will also move a similar amendment to clause 11.

The rest of our amendment proposals are related to replacing "須具報投訴" by "須匯報投訴" in the Chinese version of the Bill.

The amendment is supported by the majority of the Bills Committee. I implore Members to endorse it.

Mr James TO proposes to amend clause 10(a)(ii), so as to cover the conduct of a member of the Police Force who directly or indirectly identified himself as such a member. He also proposes to add clause 10(a)(iv) and clause 10(a)(v) to the Bill, so as to cover the conduct of an agent commissioned by the police and the abuse of information by a member of the Police Force while off duty. We are of the view that such amendments are unnecessary. To begin with, the conduct of a member of the Police Force who directly or indirectly identified himself as such a member is already covered in the existing clause 10(a)(ii). Clause 10(a)(ii) can also cover the off-duty conduct of members of the Police Force, including the abuse of information obtained in the course executing their duties. Besides, Mr TO's amendment does not contain any definition of "abuse of information". Owing to this lack of clarity, the scope of "reportable complaints" will be blurred. Lastly, as I explained to the Bills

Committee, the conduct of an agent who discharges certain police duties as instructed by a member of the Police Force shall also constitute a "reportable complaint" under clause 10(a)(i) or (iii). With the new paragraph proposed by Mr TO, the IPCC's scope of monitoring will be extended to also cover those complaints which should be handled by an agent, such as those against the attitude of the agent's employees while in the execution of duties. I do not think that this is appropriate.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

Mr TO also proposes to replace "the Commissioner" by "the Council" in clause 10(b). This means that the IPCC is to be empowered to determine whether a complaint is vexatious and frivolous. This will retain subjective criteria and create operational problems. The reason is that most complaints are made by members of the public directly to the police. If the IPCC is empowered to determine whether a complaint is vexatious and frivolous, all complaints must first be routed to the IPCC for scrutiny and decisions. This is an impractical arrangement. We are of the view that the amendment proposed by the Government, which introduces objective criteria to replace subjective criteria, can already take account of divergent views. It is therefore the most appropriate arrangement.

Mr TO once proposed that a complaint made by a non-affected person without the affected-person's authorization and also an anonymous complaint must also be categorized as a "reportable complaint". But this has been ruled by the President as having a charging effect. As I repeatedly explained to the Bills Committee, clause 14 of the Bill provides that in various cases, a complainant may make a complaint against a member of the Police Force through a representative. Specifically, under clause 14(1)(c), if the representative of a complainant has got a written authorization of the complainant, he may make a complaint on the complainant's behalf. We are of the view that this can already allow sufficient flexibility and enable a third party to make a complaint on behalf of the aggrieved. In practical terms, the proposal of allowing a third party (including a third party without authorization from the directly affected person) to make a complaint may not take account of the wishes and privacy of directly affected persons. The latter may thus be subject to the pressure of disclosing the information they do not want to disclose. If directly affected persons do not co-operate fully and provide accurate and comprehensive

information for police investigation, the police will find it very difficult to prepare an exhaustive and impartial report. The IPCC will also be unable to check whether the police have handled the complaint impartially. The same consideration also applies to anonymous complaints.

I wish to add that subject to clause 9 of the Bill, complaints made by persons other than affected persons or by persons other than the representatives specified in clause 14 will be classified as "notifiable complaints". Although such complaints are classified as "notifiable complaints", the police will still examine the relevant facts and refer them to the relevant police units for further actions if necessary. In brief, all complaints received by the police will be given proper treatment through different channels. Channels of complaints will not be blocked, and complaints made to the police will not be cast aside.

For all these reasons, we are of the view that Mr TO's amendment will lead to operational problems and cannot help perfect the existing complaints handling mechanism. I sincerely call upon Members to vote against Mr TO's amendment. Thank you, Deputy Chairman.

MR JAMES TO (in Cantonese): Deputy Chairman, as I have mentioned, our system is actually designed to prevent the Independent Police Complaints Council (IPCC) from following up certain issues. Such is the mentality of the Government and the police. The clause under discussion now is clause 10, which is a fine example which can show that the police are not prepared to yield even an inch. This clause is phrased meticulously and with great care, so as to make sure that the IPCC cannot take any follow-up actions under some circumstances.

Let me cite an example here by first talking about clause 10(c). I wanted to move an amendment to this, but was refused by the President. What is this particular provision all about? It provides that a complaint against the police must be made by a complainant directly affected by the police conduct in question. Just now, the Secretary argued that this should naturally be so specified because if a person is not directly affected, he should not meddle in others' affairs (he was in effect saying so). And, he continued, the directly affected person may not want to make a complaint, so if the above-mentioned condition is not specified, the person may well be forced to make a complaint.

Hearing this, I immediately think of several hypothetical scenarios. For example, the directly affected person may have died already. How can a dead person make a complaint? Or, the directly affected person may be in a coma as a result of grievous injuries. How can he still make a complaint? Or, maybe, the directly affected person is mentally incapacitated. We must bear in mind that as currently proposed, the complainant must be the directly affected person. I do not know whether the following arguments can be accepted. A person's son was beaten to death and he thus loses all support, so he should be regarded as a directly affected person. I do not know whether a person in such circumstances can be considered as being directly affected. But I guess he can only be regarded as being indirectly affected. Or, if a person's son was beaten up and is in a state of coma as result of grievous injuries, should the person be regarded as being directly affected? The person may claim that he cries a lot and suffers from a trauma as a result. Will he be regarded as being directly affected?

I once also cited another example. Suppose somebody is found dead on a road in very cold weather, and the first police officer who arrived at the scene tried to steal his belongings. A member of the public saw all this and found his conduct extremely outrageous. So, he reported to the police. Why should we criticize the member of the public for meddling in others' affairs? Why should such complaints be excluded from the IPCC's monitoring? I find it very hard to understand the rationale. I hope that instead of talking about whether a person is directly affected, we can allow all people who are directly or indirectly affected by any police conduct to tell how they are affected if they are really aggrieved.

Clause 10(b) is even more ridiculous. It provides that vexatious or frivolous complaints shall not be accepted. As for the meaning of "vexatious" and "frivolous", the original Bill provides that once the Commissioner of Police considers a complaint as vexatious and frivolous, it shall be considered as such, and it shall not be necessary to report this complaint. This is just another example. We can thus notice that all complaints that are vexatious and frivolous in the opinion of the Commissioner of Police are considered irrelevant to the IPCC. Following the Bills Committee's disagreement, the Administration finally agreed that the wording was not too good. It thus decided to use some "objective" expressions and delete "in the opinion of the Commissioner". It thinks that this can make it possible to decide objectively whether a complaint was vexatious and frivolous. But the fact remains that in case a complaint is not vexatious and frivolous in the opinion of the IPCC but the

Commissioner of Police thinks the otherwise, the latter may still cling to his own decision. Unless he is persuaded to change his mind, he will not report the complaint to the IPCC. In that case, what is the IPCC going to do? To apply for a judicial review again? I have discussed this possibility already, and I do not want to make any repetition now. But still, I must repeat that the IPCC will not have so much money for judicial reviews. In simple terms, even though the clause is written in "objective" language, it is, in the final analysis, meant to give the Commissioner the power of saying "no". The amended clause is just as ridiculous as the original clause.

My amendment aims to empower the IPCC to determine whether a complaint is vexatious and frivolous. How did the Secretary reply? According to him, if the IPCC is empowered to do so, it will in effect mean that all complaints must first be screened by the IPCC. This will not be the case, of course. The Secretary is not supposed to design the system in this way.

Under the system designed by the Government, a person wishing to make a complaint must first approach the CAPO. If the Commissioner of Police thinks that his complaint is vexatious and frivolous according objective standards, he will not report the complaint to the IPCC. Then, the complainant will naturally complain to the IPCC or seek assistance from Members. The IPCC will then be made aware of this complaint. It will then know that the complainant has already made a complaint to the CAPO, but his complaint has been classified as vexatious and frivolous. If the IPCC does not agree to the CAPO's view, it may issue a directive and open a case file on the complaint. Therefore, the situation will not be like the description of the Secretary, who claims that if the IPCC is empowered to determine whether a complaint is vexatious and frivolous, all complaints will first be directed to the IPCC. It is not necessary to design the system in this way. Should this not be very clear to the Government? Do I need to tell in once again?

Clause 10(a) describes the circumstances under which the conduct of a police officer while on duty and the conduct of a police officer while off duty shall be subject to the monitoring of the IPCC. One scenario is that the police officer concerned identified himself as a member of the Police Force. Naturally, if a police officer showed his warrant card, he should be considered as identifying himself as a member of the Police Force. In the case of a uniformed police constable, his uniform was already a way of identifying himself, if it was clear from the circumstances that he was not a thief, was not impersonating and was not an actor. Or, even though a police officer in plain clothes did not

identify himself, his act of nabbing a suspect swiftly should also be considered as a way of identifying himself. Or, if a member of the Special Duties Unit opened fire at a person, he should also be considered as identifying himself. But what do we see most often in actual life? Some police officers (the black sheep, of course) may be lured by some sort of benefits It may be very complicated. But it may be as minor as the benefit of not having to wait for a table in a restaurant. For example, when a receptionist notices that a person is carrying a revolver, she will know he is a criminal investigation detective (CID). In that case, he really does need to say anything. He does not need to say, "I am a CID. Please allocate a table to me first." He does not need to say so, as long as the receptionist knows that he is carrying a revolver. Of course, things will be different if she thinks that he is a robber. In that case, she will probably report to the police. But if she does not think that he is a robber, she will have to believe that he is a CID. In that case, she will of course allocate a table to him first. This also happens in the case of other waiting queues or benefits. I am not saying that this must always be the case. But the point is that when a CID lets his revolver be seen by others, he will no longer have to tell others explicitly that he is a CID. And, others will immediately know what to do, right? Such conduct should also be regarded as abuse of police power.

I understand the Government's argument that if a police officer does not identify himself while he is off duty, he should be treated as an ordinary citizen. But it must be noted that I am now talking about both direct identification and indirect identification. Indirect identification is also a form of identification. If a police officer does not identify himself intentionally Suppose, very unfortunately, a police officer lost his revolver in the toilet of a restaurant without realizing it, and the revolver simply dropped into a toilet bowl. He certainly did not want that to happen, right? So, he hastened back to the restaurant to ask whether anyone had seen the revolver that had dropped into the toilet bowl. Frankly speaking, in this particular case, he did not identify himself directly. But at the very moment when he asked the question, he had already identified himself. But he did not intentionally show his revolver or deliberately identify himself, he must not be accused of any abuses and brought under monitoring, right? Therefore, it is necessary to distinguish between direct identification and indirect identification.

There is another issue which is not covered by this Bill. Sometimes (There was indeed one actual case), a police officer may obtain some information

in the course of executing his duties. One day, maybe, a police officer was assigned to take a statement from a woman. The woman must of course tell him her name, address and other relevant personal particulars. He found the woman quite beautiful and learned that she was single. (In the actual case mentioned above, the press used the word "pretty", and very ridiculously, the case was given extensive coverage by newspapers interested in the extra-marital affairs of police officers). He wanted to court her. What did he do then? He committed her name and telephone number to memory. And, when he was off duty, he used the information he had committed to memory (He thought that he was off duty, and the woman was an ordinary citizen, so even though he was a member of the Police Force, he should not be barred from dating the woman. But he must remember that the woman did not voluntarily give him the information, and she had done so only as a person who reported a crime or as a witness. He must also remember that he was just the police officer responsible for taking a statement from her). If the police officer committed all the information to memory and then rang her up when he was off duty, in an attempt to date her, should his act be treated as abuse of power?

The Secretary gave a very ludicrous reply to this question. He said, "I do not rule out the possibility of such incidents. But your amendment is not satisfactory enough, and it cannot define abuse of information clearly." "Abuse of information" is mentioned in this clause only for the purpose of determining whether investigation should continue and whether a complaint should be monitored by the IPCC. It is not the definition of a criminal offence. If it is viewed as the definition of a criminal offence, it may indeed be a bit loose. However, it is just meant for determining whether a complaint is reportable and whether it should be followed up by the IPCC.

In that sense, I think using "abuse of information" can sufficiently serve the purpose. This does not affect the right of anyone, and it only concerns whether the CAPO will classify complaints involving such acts as "reportable complaints" and let the IPCC monitor it in this regard. Therefore, unlike the definitions of other people's rights (especially those relating to criminal offences), this kind of conduct does not require a very precise definition. Only one level will suffice. What is more, this expression will not lead to any abuse of power.

Another problem is about agents. At present, many duties of the police are discharged through agents. We can imagine that if the police do not

discharge any of its duties, such as towing, through agents, then they must make use of police vehicles to do the job of towing under lawful and reasonable circumstances. However, if the police hire an agent to tow vehicles away under the instruction of a police officer and if it is not provided clearly that the scope of "reportable complaints" shall cover the conduct of the police officer while discharging his duty through an agent, we will be unable to know the situation clearly. According to the Secretary, such matters can currently be covered in complaints, and such complaints are treated as reportable cases. But I must point out that this is only a current practice, and nothing is written in the law on it. We are now working on including various issues in the law, so if we do not write down clearly in the law that such complaints are reportable complaints, we will be omitting something very important.

The whole of clause 10 is about the scope of "reportable complaints. Actually, the scope of "reportable complaints" must be broadened as much as possible. For instance, if I were to draft the Some of my proposals were rejected, so I could not write up any amendments. I think all serious allegations I do not know whether an anonymous complaint will be accepted. But under the original Bill, a complaint must be made by a person who has properly identified himself and provided a means of contacting him. As a matter of fact, some complainants are currently unwilling to identify themselves due to various reasons. Some of these complainants are law-abiding while others are not. They may have various reasons that cannot be divulged. They may even be people who are disliked by members of the Police Force. I can tell the Secretary that Members have all received many such "deep throat" complaints. If not, it would not have been possible to detect many of these big crimes. But then, for the reasons explained above, the Commissioner does not need to report such complaints.

DEPUTY CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that he did not wish to speak again)

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO shook his head to indicate that he did not wish to speak again)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I move the amendment to the heading and paragraph (a)(i) of clause 10, and the deletion of "須具報" by substituting "須匯報" in the Chinese text of the clause.

Proposed amendment

Clause 10 (see Annex V)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

DEPUTY CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

DEPUTY CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the amendment to clause 10(a)(ii). Its purpose is to cover in this provision any situation in which a certain member of the Police Force directly or indirectly identifies himself as such a member.

Proposed amendment

Clause 10 (see Annex V)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

DEPUTY CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

(THE CHAIRMAN resumed the Chair)

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr LUI Ming-wah, Ms Margaret NG and Mr SIN Chung-kai voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr LI Kwok-ying voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, three were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 17 were present, nine were in favour of the amendment and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, have we come to page 31?

CHAIRMAN (in Cantonese): Yes.

MR JAMES TO (in Cantonese): Chairman, I move the addition of sub-paragraph (iv) to paragraph (a) of clause 10. Its purpose is to cover in clause 10 the conduct of an agent instructed by a member of the Police Force.

Proposed amendment

Clause 10 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG and Mr SIN Chung-kai voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr CHIM Pui-chung voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr LI Kwok-ying voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, two were in favour of the amendment and 18 against it; while among the Members returned by geographical constituencies through direct elections, 19 were present, 11 were in favour of the amendment and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the addition of sub-paragraph (v) to paragraph (a) of clause 10. Its purpose is to cover in clause 10 any abuse of information (obtained through his status as a member of the Police Force) by a member of the Police Force while off duty.

Proposed amendment

Clause 10 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG and Mr SIN Chung-kai voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming, voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, two were in favour of the amendment and 18 against it; while among the Members returned by geographical constituencies through direct elections, 20 were present, 11 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to clause 10(b).

Proposed amendment

Clause 10 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendment to clause 10(b).

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming and Mr WONG Ting-kwong voted for the amendment.

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 40 Members present, 27 were in favour of the amendment and 12 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, Mr James TO may not move his amendment to clause 10(b), which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 10 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 14.

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given notice separately to move amendments to clause 14.

Members may now debate the original provision, the Secretary for Security's and Mr James TO's amendments to the clause jointly. I now call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendments to clause 14, the contents of which have been set out in the paper circularized to Members.

Clause 14 provides that if a complainant is below the age of 16 at the time when a complaint or a request for review is made, his parent or guardian may make a complaint or a request for review on behalf of the complainant; if a complainant is a mentally incapacitated person, apart from his parent or guardian, other relatives of the complainant may also make a complaint or a request for review on behalf of the complainant. Mr TO has proposed to allow a relative, step parent or *de facto* guardian to make a complaint or a request for

review on behalf of a complainant who is below the age of 16. After careful consideration, we propose to bring the arrangement in relation to complainants below the age of 16 on par with the arrangement applicable to mentally incapacitated complainants by deleting "parent" and substituting "relative" in subsection (1)(a) and making the interpretative provision deducing any relationship for the purpose of subsections (2) and (3) applicable to subsection (1)(a). After making these amendments, a complainant's step parent or relatives other than his parents can make a complaint or a request for review on behalf of a complainant who is below the age of 16.

Mr TO has proposed to add "*de facto* guardian" to subsection (1)(a). However, there is no interpretation in law for that term and the present reference to "guardian" in subclause (1)(a) has already comprehensively covered the wide range of guardians taking care of or supervising persons below the age of 16. Therefore, we consider Mr TO's amendment inappropriate and unnecessary.

I implore Members to support these amendments from the Government and vote against Mr James TO's amendment.

Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, in fact, I can say that a great majority of the amendments proposed by the Secretary were suggested by me in the meetings of the Bills Committee or afterwards. The Secretary also found them tenable, so he finally adopted them. However, all of them are technical amendments and this amendment is one of the examples.

After our Bills Committee had finished the scrutiny, I proposed this amendment because I can see the problems facing young people below 16 years old in great detail. In fact, among the cases handled by the IPCC, there are quite a number of such cases. Why? Because as I have said, sometimes, some youths at risk are involved in certain offences and sometimes, they are intercepted and have their identity cards checked by the police or they come into contact with the police because they hang around at such places as entertainment venues or are involved in some rather irresponsible behaviour which, however, does not amount to breaches of the law. As a result, this gives rise to allegations of abuse of power.

However, since many of these youths at risk — I do not mean that their parents are definitely lax in supervising them — come from broken families, it may not necessarily be the case that their parents are taking good care of them. In fact, it may not be their parents who take care of and supervise them. Well, who can it be? It may be their step parents because there may be marital problems in their families. Sometimes, the relationship between their parents may be very complex and their guardian may be a distant relative of some sort. Moreover, they may have been adopted by such a relative, who subsequently became their guardian.

After I had proposed this amendment, the Government adopted the greater part of my amendment because I included guardians, relatives, step-parents, and so on, in this piece of legislation, so the difference is now quite small. In other words, this amendment is different from the other amendments in that the differences of the other amendments with the Bill may be very great but here, the difference with the Bill is only very small and this has been pointed out by the Secretary earlier. I believe that in fact, it is necessary to include guardians. Why did I draft the amendment in this way?

At that time, I also considered this for a long time and sought the opinion of a social worker who deals with youths at risk. His reply was that of course, a guardian is someone who takes care of a young person legitimately after completing the relevant legal procedures, so he is someone with the legal right. Although the relationship of a "relative" as described in clause 14(2) can already be considered quite broad, sometimes, we really cannot find the person who usually lives together with a young person or a person who is related to him according to the broader definition of subsection (3). It is not possible to find such a person. However, in fact, this young person may really have someone much older than he is and related to him in some ways who lives with or takes care of him.

Of course, at that time, I also considered the questions such as whether this person is someone decent or not. Is he someone whom the young person concerned calls "big brother"? He can be a triad member, can he not? Is this person trying to stand up for this young person by lodging a complaint for him? However, I think that ultimately, the young person will have to come forward to confirm the facts. If a case of abuse of power has really occurred and the guardian helping him knows about the facts, we do not mind if he tells them. If we find that someone is a young person below the age of 16 and he does not have

anyone whose relationship with him is his guardian, relative or step parent as we have specified but he actually has someone older than he is who lives with and takes care of him, nevertheless, we do not allow this so-called guardian to take up the case for him, in that case, are we acting according to the principle of protecting people who have been subjected to oppression? Or is it the case that since we cannot find words with a sufficiently broad meaning to cover all possibilities, we think that the less the number of cases that have to be handled, the better? Is this the thinking of the Government?

Therefore, when considering this issue, I would rather adopt a word with a broader meaning because firstly, the number of people covered will not be very large and secondly, this may give rise to both positive and negative effects and on balance, in fact, should any power abuse occur, the likelihood of guardians coming to lodge complaints is not that great. After weighing the two sides, I would rather adopt a definition that is broader and involves a third party, so that this person can help a young person under the age of 16 lodge a complaint. It is in any event better if people who claim to have been subjected to power abuse by the police can lodge complaints and request for reviews through this system by invoking clause 14 than not putting in place such a provision due to the inability to cover such a broad meaning.

Here, I hope that I have explained in greater detail why I want to do this. As regards the provisions that the Government has already taken on board, there is no need for me to elaborate further. In fact, there are really a lot of people whose families are broken or who have rather complex family backgrounds and they need the help of their parents or relatives.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 14.

Proposed amendment

Clause 14 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendment to clause 14.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, Mr James TO may not move his amendment to clause 14, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 14 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 15.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendments to clause 15(1) and (2), the contents of which have been set out in the paper circularized to Members.

The amendments seek to substitute "警監會" with "監警會", "須具報投訴" with "須匯報投訴" and "須知會投訴" with "無須具報投訴" in the Chinese text of the clause.

The amendments are supported by a majority of Members in the Bills Committee. I implore Members to support and pass these amendments.

Proposed amendment

Clause 15 (see Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CHAIRMAN (in Cantonese): Mr James TO has given notice to move amendments to clauses 15(2) and (3); and the Secretary for Security has also given notice to move an amendment to clause 15(3).

Members may now debate the original provisions, Mr James TO's and the Secretary for Security's amendments jointly. I now call upon Mr James TO to speak first, to be followed by the Secretary for Security; but no amendments are to be moved at this stage.

MR JAMES TO (in Cantonese): Chairman, concerning the provisions in clause 15, in fact, under the existing system, there are two ways of handling complaints, the first being the so-called "reportable complaints" that must be reported in detail and fully to the IPCC, the second being complaints that the CAPO must be notified of, that is, cases which can be reported in a simpler way. Perhaps let us classify them in this way.

However, after the IPCC has received the lists of these two types of complaints, some of its members may think that it seems some of the cases should be classified as reportable complaints and more details should be provided for them. Of course, I do not know whether any members of the IPCC would say that there is no need to report a certain case and it can simply be classified as a non-reportable complaint. I believe that unless the member concerned is extremely reluctant to deal with a particular complaint, such instances probably will not occur. If the police believe that a case should be reported in greater detail, I believe the IPCC will also prefer to examine it in detail. In most instances, it will only be a matter of the Commissioner of Police classifying complaints that the IPCC considers to be reportable as non-reportable.

When the IPCC thinks that the Commissioner should consider reclassifying these two types of complaints as reportable complaints, it will make the requests to the Commissioner in accordance with this provision, that is, clause 15(1), and state why the IPCC holds such a view and request that the Commissioner reconsider these cases. My amendment can be found in subclause (2). The original provision stipulates that after consideration, the Commissioner will inform the IPCC of the outcome (and purely of the outcome). The word used is "outcome". This means that the Commissioner may consider it unnecessary to recategorize a complaint. In my amendment, I add that the Commissioner, apart from informing the IPCC of the outcome that no recategorization is necessary, he must also provide an explanation of the outcome of reconsideration and justifications. In other words, not only is it necessary for him to state the outcome of upholding the original decision, he must also give an explanation on the grounds. If there is information to support this conclusion, he also has to provide such information. I think it is only in this way that the reply can be more complete. He cannot merely say that consideration has been given and there is no change. I think it is not enough just to state the outcome.

The other amendment is related to clause 15(3). In the end, after consideration, of course, the Commissioner will uphold the original decision, that is, the view of the IPCC is not heeded. However, can we say that the decision of the Commissioner of Police is final? In fact, I have been raising this point all the time. At present, the police receive a lot of complaints all the time and they will refer these complaints to the CAPO for categorization. In the end, it may think that some of the complaints cases can be categorized as non-reportable and there is no need to report them. I think that if the Commissioner has the say on which cases among the numerous complaints are

reportable and which are not, basically, not only is this a flaw in the system, this is absolutely a fault in the system. It is unjustified for the Commissioner to decide which cases are reportable because since the IPCC is responsible for monitoring and the law has also prescribed that it is responsible for monitoring, how can the law prescribe that the Commissioner has the say on which cases are reportable? In other words, it is up to the Commissioner to decide which cases are reportable and which cases are not. I think this arrangement is very absurd and we cannot possibly accept such a system.

If the design of the system is like this, then the intention is very simple, that is, we do not want the IPCC to have any power to carry out monitoring. Rather, we hope that the Commissioner of Police will bestow favours on it and let some cases slip through his hands, so that the IPCC can monitor them. If the Commissioner does not pass a case to the IPCC, it cannot deal with it. We cannot possibly design such a system. If this is the design of the system, in fact, we are saying that the Commissioner of Police can either let the IPCC carry out monitoring or he can do otherwise. This is because if some complaints cases are categorized as non-reportable, the IPCC will only be notified of them and the requirements on such matters as the information to be provided in relation to these cases will be much less stringent. In addition, the power that it can exercise in this regard will also be much less.

For this reason, I think that on this issue, if we still design the system in this way and the IPCC can only monitor whatever cases the Commissioner of Police likes to refer to it, I think the IPCC is truly very miserable. It seems we are deliberately designing a system to create a body that has no power. In saying it has no power, I mean that it has no investigation power, no power to reach any verdict and no punitive power and now, it does not even have the autonomy to decide what cases it can monitor, that is, it can only monitor whatever the Commissioner of Police lets it monitor but not what the Commissioner of Police does not allow it to monitor. If such decisions are made by the Chief Executive or the Secretary, one can still say that the decisions have been considered by some higher authorities. But this is not the reality. This is supposed to be an independent council for monitoring complaints against the police but it is only a council that can monitor whatever complaints cases the police want to give it. There is no reason for us to design the system in such a way.

For this reason, Chairman, I hope Honourable colleagues can consider this matter seriously. We should not confer such a power on the Commissioner,

rather, it should be given to the IPCC. Moreover, from the President's ruling on what can be proposed, it can be seen that had this proposal evidently and specifically required the use of a lot of public funds, the President would have ruled against it. For this reason, this amendment designed to carry out some technical fine-tuning is very significant because we cannot let the Commissioner control the scope of what the IPCC can monitor. For this reason, I hope Honourable colleagues can support my amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 15(3), the contents of which have been set out in the paper circularized to Members.

As I said earlier on, one of the functions of the IPCC is to monitor all "notifiable complaints" to see if their categorization is correct. Clause 15 empowers the IPCC to give the police its observations on the categorization of these complaints. The police must reconsider the categorization of these complaints with regard to the IPCC's opinion and the IPCC should be informed of the outcome of the reconsideration as soon as possible. Moreover, clause 15 empowers the IPCC to require the police to provide explanations to support the categorization of a complaint as a notifiable complaint. For a belated complaint, the IPCC can require the police to explain why the complaint is regarded as not of a serious nature and therefore should not be categorized as a reportable complaint in accordance with clause 11. We proposed to further improve the mechanism by adding clause 3(c) to empower the IPCC to require the Commissioner to provide the relevant information or material when giving an explanation on the categorization of a complaint as a notifiable complaint. Subsequent to our amendment, Mr James TO's proposal to amend subclause (2), that is, to request the police to provide explanation, information and material, is unnecessary.

The amendment is supported by a majority of the members of the Bills Committee. I implore Members to support its passage.

Mr James TO proposes to delete the present subclause (3) and substitute it with another provision to empower the IPCC to decide the category of a complaint and require the police to abide by such a decision. We oppose this arrangement. As I have stressed in giving my response in the debate on the resumption of the Second Reading, the functions of the IPCC are to monitor the

police in handling and investigating complaints of the public against members of the Police Force. Under the existing system, the categorization, investigation and classification of complaints are all within the purview of the police. The IPCC can request the police to explain, clarify and reply to any question and provide information or material on every part of the entire process. The police highly respect the role of the IPCC and also attach great importance to the opinions and recommendations of the IPCC. The police are committed to taking appropriate follow-up actions to ensure that all complaints are properly and impartially handled and they will also draw on the experience of handling complaints, with a view to achieving excellence in its service.

In fact, with their operational experience over the years, the IPCC and the police have all along regarded each other as partners in improving the service quality of the Police Force. Whenever they have different views, both parties would try to reach a consensus through detailed discussions in order to ensure that complaints would be handled in an objective and impartial manner. This mode of co-operation is proven. Therefore, we think that we should allow the present system to continue to perform its functions. Mr James TO's proposal is at odds with the arrangements under the present system and I implore Members to vote against his amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, the Secretary said just now that the discussion at present represents a departure from the existing system and as it turns out, under the existing system, the position of the Commissioner is paramount. All along, we hope that the IPCC and the Commissioner can have a pleasant relationship of co-operation but ultimately, we still have to make a decision because we are now formulating a piece of legislation and what is prescribed in the legislation is really pleasant. However, it is the Commissioner who will be pleased because ultimately, the Commissioner can decide not to report some complaints to the IPCC and those complaints are called "notifiable

complaints" instead of "reportable complaints". In view of this, it would surely be very pleasant but it is the Commissioner who would be very pleased.

Chairman, if a system is prescribed stringently by law and under this system, it is specified that the Commissioner can decide everything, including in the categorization of all the complaints received, what complaints are to be reported to the IPCC in detail and what complaints can be reported in brief to the IPCC according to the Commissioner's whim, why does the Government still say that this is an appropriate system? If even such a piece of legislation can be passed and confirmed, from this very second, whenever I mention the IPCC, I will call it "the so-called IPCC that is constrained by the Commissioner in all sorts of manners". Such a name may make the debate more protracted but I think I have to keep reminding Members that in fact, even the decision on which cases among the numerous complaints cases have to be reported is made by the Commissioner. In that case, it sounds rather hypocritical if we still call this body the IPCC, so I can only call it "the so-called IPCC that is constrained by the Commissioner in all sorts of manners ". This is quite a torment to me because I have to refer to it by such a lengthy name but still, I wish to tell the public repeatedly this is how the situation is like at present.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the amendment to clause 15(2).

Proposed amendment

Clause 15 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr SIN Chung-kai voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Prof Patrick LAU voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, one was in favour of the amendment and 16 against it; while among the Members returned by geographical constituencies through direct elections, 19 were present, nine were in favour of the amendment and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): As Mr James TO's amendment has been negatived, I now give leave for him to revise the terms of his amendment to clause 15(3) correspondingly.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, we have come to page 40.

Chairman, I move the revised amendment to clause 15(3). Its purpose is to allow the IPCC rather than the Commissioner to have the final say on the categorization of a complaint.

Proposed amendment

Clause 15 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on Mr James TO's amendment, I wish to remind Members that if the amendment is passed, the Secretary for Security may not move his amendment to clause 15(3).

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr SIN Chung-kai voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Prof Patrick LAU voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, one was in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, 11 were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 15(3).

Proposed amendment

Clause 15 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Clause 15 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 16.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to the heading and subclause (1) of clause 16, the contents of which have been set out in the paper circularized to Members.

The amendment is to substitute "須具報投訴" with "須匯報投訴" and to substitute "警監會" with "監警會" in the Chinese text of the clause.

The amendment has been agreed to by the Bills Committee. I implore Members to support its passage.

Proposed amendment

Clause 16 (see Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CHAIRMAN (in Cantonese): The Secretary for Security has given notice to move amendments to clauses 16(2) and (3); and Mr James TO has also given

notice to move amendments to clause 16, in order to amend subclauses (2) and (3) and to add subclause (4).

Members may now debate the original provisions, the Secretary for Security's and Mr James TO's amendments to the provisions jointly. I now call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to subclauses (2) and (3) of clause 16.

Clause 16 provides that the police must, as soon as practicable after completing the investigation on a "reportable complaint", submit to the IPCC an investigation report. Subsection (2) sets out the contents of the investigation report, including a summary of the investigation; a finding of facts in relation to the complaint and the evidence in support of the finding; the classification of the complaint, and the reasons for the classification; an account of the action taken or to be taken by the police in connection with the complaint; and such other information as the police may think necessary. These items of information are the standard contents of an investigation report. Generally speaking, all the necessary information to facilitate the monitoring of the police's handling and investigation of reportable complaints by the IPCC is included. After discussion with members of the Bills Committee, we propose to add a new provision in subsection (2), so that in future, when the Commissioner for Police and the IPCC think that other new standard items of information are to be added to the investigation report, this can be done without having to make amendments to the legislation.

Moreover, as I have mentioned earlier on when moving an amendment to clause 12, one category in the "classification" of a "reportable complaint" is "informal resolution", that is, with the consent of the complainant, the police can resolve minor complaints through conciliation without having to conduct a full investigation. The police will be required to submit an investigation report on the complaint to the IPCC in accordance with clause 16. In order to better reflect the contents of an investigation report on an "informally resolved" complaint and to reflect the existing practice, after discussion with the Bills Committee, we propose to add a new subsection (3) in connection with the investigation report on a complaint classified as belonging to this category. It

provides that a report on a complaint of this category must contain a summary of the process of informal resolution; a description of the incident by the complainant and the complaine; an account of the action taken or to be taken by the police in connection with the complaint; such other information as the police may think necessary or as agreed with the IPCC and the reasons for resolving the complaint by "informal resolution".

The IPCC has indicated that according to the current practice, when a complainant requests for a review of the categorization of a case as a reportable complaint, the police must treat the review as a reportable complaint and submit to the IPCC a supplementary report after investigation. The IPCC is concerned that at present, the Bill does not specify the requirements for a "supplementary report". In fact, clause 12 provides that a request for review is to be treated as a reportable complaint and clause 16 also provides that the police must submit an investigation report on the "reportable complaint" — that is, including the request for a review — to the IPCC. Therefore, although the term "supplementary report" is not set down in clause 16, in fact, it already covers investigation reports on requests for reviews. To address the IPCC's concern, we now propose to add subsection (4) to specify that investigation reports should include "supplementary reports".

The amendment has been agreed to by the majority of the members of the Bills Committee. I implore Members to support its passage.

Mr James TO opposes the provision to add in an investigation report other information as agreed between the Commission of Police and the IPCC. He proposes that instead, only such other information as the IPCC thinks necessary should be included. We do not agree with this proposed amendment. As I have mentioned just now, clause 16 mainly sets out the standard items of information to be included in an investigation report. According to the actual operation at present, this is all basic information that the IPCC and the police consider necessary in an investigation report. If it is provided in the legislation that an investigation report must contain information that the IPCC considers necessary and the IPCC does not have to discuss with the police beforehand, it would be tantamount to destroying the established foundation of co-operation between the two parties. If the IPCC requests the police to provide information not generally obtainable during an investigation process, this may also pose actual difficulties to the police. Moreover, clause 20 of the Bill already empowers the IPCC to require the police to provide any information or material

relating to a reportable complaint. If the IPCC requires the police to provide extra information on any individual complaint, it can invoke clause 20 and there is no need to list the relevant information as a standard item in an investigation report under clause 16.

Mr TO also proposes to add in an investigation report information or material on criminal or civil proceedings relating to a complaint. In fact, if a complaint involves any legal proceedings, generally speaking, the police will not conduct an investigation on the complaint until the legal proceedings have concluded, so that the handling of the complaint will not affect the proceedings. Since such cases will normally take a very long time to resolve, the police will submit to the IPCC an interim report to give an account of the matter. Upon the completion of the investigation on the complaint, the police will submit to the IPCC a comprehensive investigation report and in the summary of investigation, the police will give an account of the facts relating to the legal proceedings in the finding of facts in relation to the complaint. When necessary, the IPCC can also require the police to provide further information pursuant to clause 20. Therefore, there is no real need for Mr TO's amendment.

Based on the above points, I implore Members to vote against Mr James TO's amendment.

Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, clause 16 that we are now discussing now says that since "the IPCC that is constrained by the Commissioner in all sorts of manners" has no power of investigation, it can only rely on the CAPO to carry out investigations and after the CAPO has done so, at any rate, it will still receive the reports. Clause 16(2) specifies the information that must be included in the reports. If this is not done, how does one know what the reports must contain? One of the points in this clause is rather strange, that is, it states that a report must contain such other information as the Commissioner thinks necessary. Since the Commissioner is in charge of the investigations, of course, he will include in the reports any information he considers necessary. In view of this, this provision is, as the Cantonese saying goes, just like "giving a fart with the pants down" — since it is the Commissioner who prepares the reports, does it mean that he will not put down information that he considers necessary? Therefore, this provision is meaningless. What we should put down is the information that people other

than the Commissioner thinks the Commissioner must be required to give an account of and investigate into.

Since we have pointed out that the IPCC may be constrained by the Commissioner in all sorts of manners, I think the information required by the IPCC should be included in each report. In my opinion, I think the information of any civil and criminal proceedings relating to each case should be mentioned first. In fact, our concept in this regard is what is called "relevance". Moreover, my request is that such information has to be relevant to each and every case before it can be included in the list under clause 16(2). This is called information that must be included.

If Members have some experience of dealing with such complaints, they will understand that in these complaints cases, no matter which party is involved in a case or in civil proceedings, all the information is relevant. If the IPCC has to ask its Secretary-General to request information on the people involved in the civil or criminal proceedings relating to the case in each report, the IPCC will have to ask itself whether it wants to hire some more people to undertake such work when preparing its annual budget. This is because in order to ask for such information, it has to write letters each time and the Commissioner will also have to give replies each time to state whether or not he has the relevant information.

It would great that Ms Emily LAU is now present. I remember that in the past, in the Finance Committee headed by her, the Government was asked to include several items in all its papers because the information was highly relevant and essential. To take public works as an example, if demolition is to be carried out, since there is great awareness of environmental protection nowadays, the Government has to explain how the debris would be disposed of or how the waste would be reduced. If it is about proposals, for example, in Legislative Council Briefs, it is necessary to state whether or not there are implications on human rights. In the process of monitoring, when the IPCC thinks that something is essential, naturally, it will request that such information be included in each report. Would it request each report to say whether the person involved has got a boy friend?

Would Members think that the IPCC will be so frivolous as to require that certain information on each case must be included? Were it to do so, the Commissioner would also think that the people in the IPCC are stupid and insane. Otherwise, they will not request that he should include such

information in each report. What can be seen easily is that the Secretary, in making those remarks, has exposed himself as not even having any basic trust in the IPCC. The Government thinks that after appointing this group of people, they will at any time the Government once said in a meeting that if enquiries had to be made each time, for example, about how many hours had been spent investigating each case, in that event, of course, they would find this very tedious.

Concerning this area, I can tell a hundred jokes that are like the silly talks in stand-up comedies. As I have said just now, for example, of course, it is possible to request that such matters as whether the complainant has grey hair be included in the reports but Members can consider if the IPCC will be so dumb, so silly, so frivolous and vexatious? We can only say that it is indeed amazing for someone to advance such an argument.

We can thus see how concerned our Secretary is about the possibility that our IPCC will be foolhardy. In the first draft of the provisions, he would rather set down in the provisions that the Commissioner must include such other information as he thinks necessary. However, this is just stating the obvious, whereas the requirement to include information that the IPCC considers to be essential to all cases is not stated in black and white. In addition, after we had voiced our views, he said that in order to stop our pestering, he suggested that instead, it could be specified that only information that both sides agree to include in the reports would be included. I have discussed this formula a number of times and I am not going to comment on this again here.

If it is necessary for both sides to agree, that means the Commissioner will have the power to rule against something. Moreover, he will also have the final say because the reports are prepared by him. Regarding the information that the IPCC says should be included each time, the Commissioner can say that it is not essential and he does not agree with the IPCC, so it will not be included, as it can be included only if both sides agree. Therefore, it can be seen that this so-called IPCC, which is constrained by the Commissioner in all sorts of manners, is again being constrained in terms of the information it can get by means of the reports. Each time it asks the Commissioner for certain information, the Commissioner can say, "I am sorry but if it is not too much trouble, please ask your Secretary-General to make a request to me on each and every occasion." What kind of attitude is this?

Of course, if the IPCC is resolute and tough enough and it really asks the Secretary-General to obtain information from the Commissioner on each and every occasion, after it does so in connection with several dozen cases and perhaps several hundred cases, the Commissioner may say, "I have had enough. You have shown such great determination, so from now on, I will agree with you and specify in clause 16(2) that such information will be provided to you on each occasion, so please do not write to make the requests again.". However, the Commissioner can also see that the budget of the IPCC is limited and it only amounts to some \$10 million. If the IPCC focuses on one thing, it will lose sight of other matters. It is possible for the IPCC to write to make a request on each occasion, but it has to hire one or two additional employees to handle such letters. As a result, the Commissioner will be subjected to less oversight and the IPCC will have to carry out monitoring less frequently and closely.

As a result, I can get away with it again and there will be more opportunities. There will be less likelihood of you finding fault with me. The IPCC will probably be constrained by the Commissioner in all sorts of manners. Therefore, in view of this, it does not know if it should write to raise such requests on each occasion. As a result, its requests will be handled inconclusively and it will be impossible to get information which is evidently much needed. How can this sort of situation be described? This is to see how long you can drag on, how long you can stand it and whether or not you have the determination. What sort of drafting is this? What sort of government position is this?

Chairman, why do I find it necessary to mention information relating to civil and criminal proceedings in the information to be included? Just now, the Secretary responded that often, complaints cases involving ongoing civil or criminal proceedings would not be dealt with. Indeed, there are such instances and the Secretary was very honest. The latest development in this regard is that, since members of the public find that they cannot see justice done through the CAPO, they ask themselves why they should waste their time in dillydallying with it. Therefore, some members of the public now say that if they can get legal aid, they will sue it. The standard for civil cases is the balance of possibilities. That is to say, if more than 50% of the facts alleged by a complainant are related to the abuse of power by the police, such as assault without grounds or detention, he can sue the police for assault and demand compensation for the medical treatment he has received. If he sues the police for false imprisonment, he can claim financial compensation for his loss of

liberty. In these circumstances, the public can see justice done through civil action. Of course, the latest response from the Government is very simple. It says that since he (the complainant) knows such a trick and knows how to apply for legal aid, all right, it will give him some hush money, then impose a confidentiality clause on him to prohibit him from disclosing anything. In that way, no one will know how the matter has been settled.

Concerning how these cases of civil claims are dealt with, the IPCC has made enquiries for several years but the Government has refused to say anything. However, Members must remember the fact that the IPCC directly oversees the CAPO. Before we established the Bills Committee, we had also made enquiries about this for two years and the Government simply refused to tell us. It was not until we asked again when scrutinizing this Bill that it said several cases had been dealt with in such a manner. I know many members of the IPCC feel very angry about this and are choking with anger. This piece of information is relevant and now, the whole society is asking if our Government is solving complaints against the police by paying hush money, so that cases of abuse of power by the police are swept under the carpet and the complainants are treated like beggars, in that they are sent off after given some money, whereas other people are all kept in the dark? Such is the approach adopted by our Government. However, when the IPCC wants to obtain this kind of information to assess the extent of power abuse by the police and to classify the cases, it cannot do so.

Why did the Secretary say that complaints cases involving ongoing civil and criminal proceedings would not be investigated? I have said that cases involving criminal proceedings would not be investigated and I am not going to repeat this. In fact, this is attributable to the fact that the CAPO is not independent of the Police Force and the investigation of such complaints will put the defendants in criminal cases or the complainants in complaints against the police in an unfavourable legal position, so no investigation can be carried out. Ha ha! The authorities are now really formidable. Once a complaint is received, the CAPO will ask the complainant, "Lady, do you intend to take civil action against the police?" If the complainant says that she will take or is taking legal action, the officer in the CAPO will say immediately, "In that case, we will not carry out any investigation."

What sort of logic is this? For criminal cases, the complainant may find herself in an unfavourable position and her legal counsel will probably give her

the advice that she should not give any statement to the CAPO first. However, with regard to civil cases, it is the CAPO that takes the initiative and says that it has to impose constraints on itself and refrain from carrying out an investigation on learning about such information.

Who can tell the CAPO not to carry out an investigation? If the guidelines are issued by the IPCC, it has to be held responsible and if it is the CAPO that makes the decision but the IPCC does not issue new guidelines to point out what is wrong therein, it is the IPCC that has neglected its duties. If the IPCC has pointed this out but the Commissioner still instructs the CAPO not to carry out an investigation after learning that a case is involved in civil or criminal proceedings, it is the Commissioner who has neglected his duties, abused his power and acted improperly. However, this is how the present arrangement is like.

Of course, the Commissioner may think that if the CAPO carries out an investigation on receiving a complaint and as a result, finds some evidence or prepares a report that is favourable to making civil claims, he may ask himself why he should help the complainant uncover such information. Maybe the complainant does not even know which police officer has abused his power when dealing with her and it is even likely that the complainant is incapable of putting down the relevant details in her deposition. In these circumstances, the Commissioner can even bully the complainant. In that event, the Commissioner may think, "Why should I assist the complainant? Why should I be so stupid as to help the complainant find out some facts that will enable her to seek compensation from the Commissioner or the police?" My conjecture is that the Commissioner probably thinks in this way.

However, I think that the information required by the IPCC in accordance with clause 16 will surely be some sort of relevant information and for the time being, what I can put down is only information relating to civil and criminal proceedings. Members of the IPCC consider that from the experience they have gained in dealing with various cases, such information is essential for almost every case, so why is it still necessary to talk about discussions with the Commissioner of Police in order to obtain such information? If any discussion is out of the question and no agreement can be reached, does it mean that the information cannot be obtained? Chairman, I think the mentality of the Government is very clear, that is, it will avoid prescribing anything as far as possible; it will try not to state anything as far as possible and it will try to

disclose as little information as possible and cause as little discussion as far as possible. Such is the mentality of the Government, so it is keeping as tight a grip on everything as possible. The Government says that if you are tenacious and determined enough, write to me on each occasion but I will not provide the information to you as regular information. It would be best to spare oneself any trouble and provide less information. Now, this is how it takes advantage of you.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): Secretary for Security, you may now move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 16(2).

Proposed amendment

Clause 16 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendment to paragraphs (d) and (e) of subclause (2) of clause 16.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted for the amendment.

Mr Martin LEE, Mr Fred LI, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG,

Mr LEUNG Kwok-hung, Dr Fernando CHEUNG, Mr Ronny TONG, Miss TAM Heung-man and Mrs Anson CHAN voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 42 Members present, 27 were in favour of the amendment and 14 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, Mr James TO may not move his amendment to paragraphs (d) and (e) of subclause (2) of clause 16, which are inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): Mr James TO, you can move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the addition of paragraph (f) to subclause (2) of clause 16, meaning that the report must comprise information or judgment (if any) on the criminal or civil proceedings relating to the subject matter of the complaint.

Proposed amendment

Clause 16 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr SIN Chung-kai, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr

LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, three were in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, 12 were in favour of the amendment and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to subclause (3) of clause 16.

Proposed amendment

Clause 16 (see Annex V)

CHAIRMAN (in Cantonese): Before I put the question to you on the Secretary for Security's amendment, I would like to remind Members that, if the amendment is passed, Mr James TO may not move his amendment to clause 16, in order to amend subclause (3) and to add subclause (4).

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, Mr James TO may not move his amendment to clause 16, in order to amend subclause (3) and to add subclause (4), which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 16 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 17.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to the heading before clause 17, subclauses (1) and (2) in the Chinese text, and subclause (4) of the clause as set out in the paper circularized to Members.

Clause 17 provides that if the investigation of a reportable complaint is not completed within six months from the date of receipt of the complaint or such shorter period as the Independent Police Complaints Council (IPCC) may agree, the Commissioner of Police must submit to the IPCC an interim investigation report, and as soon as practicable after the expiry of those six months or that shorter period agreed with the IPCC, submit to the IPCC another interim investigation report until the investigation is completed. Under subclause (3), an explanation should be given in an interim investigation report on the progress of investigation and the reasons for the police's not being able to complete the investigation within a specified period.

After discussions with the Bills Committee, we propose a technical amendment to subclause (3) to provide that an interim investigation report should set out the progress of investigation and the reasons for not being able to complete the investigation within a specified period. And, it should be specified in subclause (4) that the IPCC may advise the police of its opinion on the interim investigation reports.

As for other amendments, the Administration proposes to replace the Chinese term of "reportable complaint" ("須具報投訴") by "須匯報投訴", and that the Chinese version of "Council" ("警監會") should be changed to "監警會".

The above amendments have the support of the majority of the members of the Bills Committee, I implore Members to endorse them.

Proposed amendment

Clause 17 (see Annex V)

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR JAMES TO (in Cantonese): Chairman, I originally wanted to speak about the next page but now that the Secretary has chosen to speak at this juncture, I will speak earlier in order to give Honourable colleagues a clear idea about our arguments. I am also speaking in connection with clause 17.

Chairman, clause 17 is actually related to the interim report: at what intervals should interim reports be submitted? Of course, if a report is completed soon, it is basically unnecessary to publish an interim report, right? It does not make sense to submit an interim report once a week. If so, it will only be a report but not an investigation report, right? Therefore, the Government has proposed a demarcation line of six months in clause 17, that is, if a report cannot be finished within six months, then a report should at least be submitted after the expiry of six months. My amendment changes six months to four months. Some have questions about why I always place the figures six and four together. That is not the undertone of my amendment.

In fact, there is a reason for my amendment about a pledged period of four months. Since the Governor Chris PATTEN era, every government department has been required to make a performance pledge. For example, the Immigration Department may set out the number of minutes or seconds needed to handle each immigration case; the Police Force and the Fire Services Department may set out the number of minutes taken to arrive at a scene. Similarly, the Complaints Against Police Office (CAPO) has a pledged period of four months. Actually, the investigation of 94% of the complaints is completed within four months. In other words, the performance is quite good — in this connection — they have a pledged period of four months and the investigation of 94% of the cases is completed within the pledged period.

If the four-month pledged period is exceeded, based upon a more objective and scientific demarcation line should "the IPCC constrained by the Commissioner in all sorts of manners" ask for a report? That should definitely be done as the investigation of 94% of the cases can be completed within four months, and the investigation of only 6% of the cases has not been completed. Does it sound reasonable to ask for a report after the expiry of four months? Nevertheless, the Government has proposed a six-month period. I certainly do

not understand why it has to change four months to six months but if it has pledged a period of four months, it should stick to four months, right?

Let us take a look at the context of clause 17. Clause 17 provides that if the investigation is not completed within six months, the reasons for not being able to complete the investigation within six months should be given under clause 17(3)(b). As a matter of fact, its performance pledge is to complete an investigation within four months, so it is a consistent and highly appropriate practice for it to explain why it is not able to complete the investigation within the four-month pledged period; the reason is very explicit and simple, right?

The Police Force usually fails to submit reports according to its performance pledge with respect to the Fight Crime Committee. The Police Force attended the meetings of the District Fight Crime Committees once every two months; many Honourable colleagues are District Fight Crime Committee members or members of the Fight Crime Committee. Those who have attended the meetings of the District Fight Crime Committees would know that, for example, when a person called the Emergency Hotline 999, the police would I remember that they will arrive at the scene within nine minutes, right? The firemen will come more quickly, and they will take six minutes to do so in the urban areas; in fact, it is already fast enough if nine minutes are taken, right? As compared to the large cities in the world, a pledged period of nine minutes is already quite short.

But if the pledged period of nine minutes is exceeded, an explanation has to be given to the District Fight Crime Committee about the number of cases in which the pledged period of nine minutes is exceeded within two months. Certainly, the reasons given may include traffic congestion or a particularly large number of calls under certain circumstances, but the performance pledge should be complied with. In the present case, it should be very reasonable for an interim report to be submitted within a four-month period. Therefore, I do not understand why the Government would oppose this amendment for it should be very thankful and grateful to me for raising the issue for the Government to make it logical. Yet, it opposes the amendment.

The second amendment is about clause 17(1)(b). According to the Government, clause 17(1)(b) provides that if the investigation is not completed within six months, an interim investigation report must be submitted.

However, if the Commissioner of Police and "the IPCC constrained by the Commissioner in all sorts of manners" can talk things over, the time period would probably be shortened to four months. I am not sure if that is the case; it may be three months, and a report can be submitted within three months. In other words, a report can be submitted within an agreed period.

But, if the agreement of the Commissioner is required, the former practice would be reverted to, and the Commissioner of Police can reject it in a disguised form. If the period can be shortened when the Commissioner of Police thinks that it can, and it cannot be shortened when the Commissioner of Police does not think it can, why does the IPCC think that the period should be shortened in certain cases? I can imagine that these cases must have aroused considerable public concern, and they are very serious cases that have evoked heated discussions in the community. As a front-line monitoring body, the IPCC has pointed out that, as the cases have drawn intense concern, reports should be submitted early. According to our understanding, there is a Serious Complaints Committee under the IPCC. The reports on some serious cases cannot be submitted after six months, and they may have to be submitted after two to three months. For very significant cases, reports may be required to be submitted within one month or two weeks because it may have already caused an uproar in the community.

Nonetheless, our drafting needs the Commissioner's consent, that is, the Commissioner of Police can reject it. We have another piece of evidence that the Commissioner of Police can decide on his own whether information will be provided. In addition, there is another piece of evidence to prove that the IPCC is constrained by the Commissioner of Police in all sorts of manners.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Madam Chairman, having listened to the remarks made by Mr James TO, I am reminded of ROUSSEAU's saying: "Man is born free, and everywhere he is in shackles". In fact, we also discussed the issue at the Bills Committee, that is, can the Commissioner of Police exercise his power and influence the Independent Police Complaints Council (IPCC)? The provision of information requires the consent of the Commissioner, and more information can only be collected when the Commissioner of Police allows it. This actually restricts the monitoring of the Police Force by the IPCC.

I think it must have been a tiring task for Mr James TO. He has spoken continuously but this is normally not quite justified. I do not know what the Secretary for Security has to say, and he has not attended the meetings of the Bills Committee very often; I am not sure what things he bases on perhaps someone has reported our deliberations to him.

The Government has appointed a body empowered to monitor another government body, that is, the Police Force. The Commissioner represents the whole Police Force but he can conversely restrain the IPCC under this legislation in areas such as when it should made public the complaints it handles and whether information can be collected. I think this is really unfair.

Actually, some cases are really serious. I recall that when I was young, there was a case in which a CID shot and killed a young person at Argyle Street. The youngster only touched the officer lightly — his name seemed to be AU Pui-kuen, but I have already forgotten it — there was naturally a public outcry at the time. The IPCC did not exist at that time, but since the public were discontented, an investigation was conducted into the police officer who killed a person in an outburst of anger, and the officer was finally sentenced to five years' imprisonment. Let us think about that: there was a public commotion and it caused an outcry from the newspapers — known as the media and public opinion today; an investigation had to be made because the case involved human life and it should be treated with utmost care.

Let us consider the case, it happened so long ago, and the newspapers and the media today are even more powerful and effective. The Bill was originally introduced to give the IPCC more powers so as to enable it to better monitor the Police Force under the Commissioner of Police; however, it is conversely constrained by the Commissioner of Police, which is unfair. I do not know if Secretary Stephen LAM as the Secretary's replacement can answer the question, but it would be preferable for him to give a response.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR MARTIN LEE (in Cantonese): Madam Chairman, I do not know why but I would like to speak whenever I see Secretary Stephen LAM.

I have heard James TO make his remarks again and again, and I really think that it is a tough job for him; it seems that he is tackling the issue alone. About this Bill, the more I listen, the more ridiculous it appears. I would like the Secretary to tell us, as the Government has many complaint-handling bodies, does the head of a department being complained against have that much power so as to influence the department conducting an investigation on his department? If he does, a precedent would easily be set such that all investigations in the future will be conducted that way. Regardless of the nature of the investigations, they can only be conducted with the consent of the heads of the departments being investigated. What should be done?

Hence, now that the Secretary has just arrived, he must be refreshed and he can answer questions raised by Members on this.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (represented by Secretary for Constitutional and Mainland Affairs) (in Cantonese): Madam Chairman, I do not have anything to add. (*Laughter*)

MR MARTIN LEE (in Cantonese): He is not asked to add anything but he has not given an answer to the questions we have asked when he has spoken. It would be all right if he tells us that he is not giving an answer for he does not know how, but there is a problem if he says that he does not have anything to add.

CHAIRMAN (in Cantonese): Secretary, do you wish to speak again?

(Secretary for Security (represented by Secretary for Constitutional and Mainland Affairs) shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Howard YOUNG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Howard YOUNG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Mr LEUNG Kwok-hung, Prof Patrick LAU and Mrs Anson CHAN voted against the amendment.

Mr Martin LEE, Mr Fred LI, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Dr Fernando CHEUNG and Mr Ronny TONG abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 42 Members present, 28 were in favour of the amendments, three against them and 10 abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendments were carried.

MR JAMES TO (in Cantonese): Madam Chairman, I am sorry because I was answering the call of nature just now. It is out of my expectation that Secretary Stephen LAM would not answer Mr Martin LEE's question.

Madam Chairman, I move the amendment to clause 17(1)(a) to specify that the interim report should be completed within four months rather than six months.

Proposed amendment

Clause 17 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendment together in a joint debate. Does any Member wish to speak?

MR MARTIN LEE (in Cantonese): I would like to ask Secretary Stephen LAM for some information. If the investigation of 94% of the complaints can be completed within four months, how much difference would a period of six months make?

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MS EMILY LAU (in Cantonese): I have no idea what Secretary Stephen LAM is doing here because he has just said he does not have anything to add and he does not answer any questions. Frankly speaking, if it is already too much for Secretary Ambrose LEE, then the meeting might as well be adjourned. However, that is not what he wants and he has asked Secretary Stephen LAM to attend the meeting on his behalf. But, Secretary Stephen LAM does not answer any questions. I think he should answer our questions; otherwise, the Administration would have acted very oddly. Although we have spent so much money on hiring of these so-called accountability officials, it turns out that they are not accountable. I think Mr James TO's remarks are absolutely correct; if the Government's information also shows that the investigation of an absolute majority of the cases can be completed within four months, it should be correct for this provision to be added to the Bill on the basis of the Government's criterion. I hope that the Administration's representative would give a response instead of saying that he does not have anything to add. Chairman, if that is not feasible, the meeting might as well be adjourned.

CHAIRMAN (in Cantonese): To adjourn the meeting or not is a decision to be made by the Chairman. *(Laughter)* Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security

(Mr James TO raised his hand to indicate a wish to speak)

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, I am just wondering whether we have raised the question asked by Mr Martin LEE at a meeting of the Bills Committee. I have an impression that the question was asked but the

Administration did not answer it. The Government did not explain why a six-month period was fixed. According to the Government, the investigation of 94% of the cases can be completed within four months, which is its performance pledge. As its performance pledge must be complied with, the Administration must have statistics to be used as indicators of accountability and monitoring. Nevertheless, if the period is fixed at six months, what would the rate be? Why has the Government chosen six months? Is there any magic in it? For instance, if the period is set at six months, the relevant rate may reach 99%; in other words, only 1% of the cases would not yet been investigated. Is that why the Administration has chosen six months but not four months? We have no idea at all. Why has it chosen six months rather than five months? There should be certain grounds for the Government's choice and the views expressed by the Government should make some sense. Even if the Administration has done so for its convenience, it should at least come up with some more accurate and justified reasons and figures. I remember that we have not got such figures at Bills Committee meetings. If the Government has the figures, I hope that it would provide the relevant information to convince us that it is right for it to propose a six-month period.

MR MARTIN LEE (in Cantonese): Chairman, it is because people are usually lazy. For instance, if the period for investigation is four months, the investigation would be completed quickly; if six months are given, the investigation of 94% of the cases would not be completed within four months. Perhaps, the investigation of only 60% of the cases would be completed within four months, and that of the rest would be completed two months later. Therefore, these are very important figures. Given that the Government has also said that the investigation of 94% of the cases can be completed, there may be much hassle if the period is extended by two months. Anyway, the Secretary has not given these figures. Mr James TO has said a while ago that the Administration may think that a rate of 100% or 99% can be achieved if the period is extended by two months. If the Administration wants to take the opportunity to flaunt its superiority, we do not think it should do so because it would only slow down the investigation progress.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR JAMES TO (in Cantonese): Chairman, I am sorry but I have left out one paragraph just now. Actually, I hope the Government would refute or clarify another point. Regarding the reasons why the period is set at six months, I can only think of one reason, that is, the magic in four months and six months. Clause 19 provides that IPCC may interview witnesses, and the interviews are certainly linked to clause 16. It is because the Government has made express legal provisions that casually interviewing witnesses is not allowed for fear of a conflict of roles lest the IPCC should conduct the investigation. The IPCC can only interview witnesses after the submission of an investigation report to the IPCC under clause 16 or the submission of an interim report, regardless of whether the relevant period is six months or four months later.

I guess the Government may not want the IPCC to interview witnesses at all. Notwithstanding the fact that the investigation of 94% of the cases can be completed within four months, the investigation of 6% of the cases has theoretically not been completed, and the Administration should submit an interim report for these 6% of the cases; and the IPCC can interview witnesses after that. Nevertheless, the Government has now fixed the period at six months, theoretically speaking, there would be less than 6% of the cases for which witnesses can be interviewed by the IPCC. I am not sure about the extent to which the rate would be reduced — that may be why the Administration has not provided the figures — the opportunities and numbers of cases for which the IPCC interview witnesses would be reduced as far as possible; that is one of the reasons why the Administration has fixed the period at six months.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (represented by Secretary for Constitutional and Mainland Affairs) (in Cantonese): Madam Chairman, Mr James TO proposes shortening the period for the submission of an interim report from every six months to every four months; if a report needs to be submitted within a shorter period, it is the IPCC's prerogative to make such a decision. I wish to say that the six-month interval for the submission of interim reports has the consent of the IPCC and the police. Even though the performance pledge of the police is to complete an investigation within four months, the provision on the

submission of an interim report within six months can give the police operational flexibility. For example, the police can have enough time to draft the reports to be submitted to the IPCC, and the investigation progress can certainly not be slowed down as a result. All in all, the police can already complete the investigation of 94% of the cases within four months according to its performance pledge at present, so the statutory provision on six months will leave much room for smooth operation in the future. I can also tell Mr Martin LEE in response that the police's performance pledge in this connection will not be changed.

Thus, there is no practical need for Mr James TO's amendments, and the amendments will not help expedite the investigation progress. I implore Members to vote against the amendments to paragraph (a) of subclause (1) and paragraph (b) of subclause (3) proposed by Mr James TO.

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, I am speaking to refute the two arguments made by the Secretary. First, he said it would not help expedite the investigation progress. It is a hypocritical remark. Why? For instance, the Complaints Against Police Office (CAPO) may have Team A and Team B, or there may be Team 1 and Team 2 in a division; if the responsible officers know that an interim report has to be submitted if the investigation is not completed within six months, it is naturally different from requiring an interim report to be submitted if the investigation is not completed within four months. Everybody feels the same about that, and Mr Martin LEE has just made this point. As they know that the cases would alert the IPCC and their head, they will handle the cases more carefully and conduct investigations as soon as possible because the whole IPCC would hold discussions. Also, under clause 17(3), a report must be submitted to explain the reasons for not being able to complete the investigation. In that case, if they can complete the investigation, they will definitely do so as quickly as possible. Hence, fixing the period at four months rather than six months will really help expedite the investigation of the remaining 6% of the cases. The reason is very simple, and anyone who has worked in a monitoring body or handled large-scale personnel transfers will know that this state of mind is very common.

Second, the Secretary has said that an agreement has already been reached with the IPCC about the six-month period. However, we should bear in mind that it is an administrative arrangement while we are now talking about a statutory period, which means that the period must be specified in the ordinance. So, in using the word "six", "date" or "complain", we have to ask why the word is used, and why this practice is taken. In this connection, we need an objective reason but the fact that the six-month period already has the consent of the two parties is not an objective reason. An objective reason is that this is a performance pledge and the period has been fixed at four months long ago. Given that a four-month period is a performance pledge made to the public — please remember that this is not a pledge within the Government but a pledge to the public — now that it is the Government's pledge to the public, if the Government fails to comply with it, it evidently needs to give the monitoring body which represents the public an explanation about why the job cannot be done within the pledged period of four months. In view of the consistency with the performance pledges of many related monitoring bodies, I wonder why this can be an exception.

In my opinion, this does not give flexibility to the executive but the executive — I do not think it is the executive but the Commissioner is after all a cut above the rest. The Commissioner of Police is a cut above the rest and the others do not need the flexibility; the Agriculture, Fisheries and Conservation Department and the Buildings Department have to explain to the departments concerned why the performance pledge is not complied with. When these departments give explanations to the relevant monitoring committees, they must use the performance pledge as the benchmark. Only the Commissioner of Police is a cut above the rest and laxer criteria can only be adopted in respect of the complaints against members of the Police Force.

CHAIRMAN (in Cantonese): Mr Martin LEE speaking for the third time.

MR MARTIN LEE (in Cantonese): It should be the second time. Chairman, the Secretary has just talked about flexibility, and I am really frightened because it means that a reason cannot be given. To be frank, let us take paying the Secretary his salary as an example, if he has to wait 10 more days before getting

his salary for flexibility's sake, would he consider that acceptable? Does it mean that the Administration needs to be given flexibility in respect of all things to be done within certain periods so that it can do them later? When the Panels of this Council ask the Government to provide information, it is agreed that this will be done two weeks later but it would then ask for two more weeks for flexibility's sake.

The Administration can always get by under the pretext of "flexibility" but the Secretary must give a better reason to explain why it has not specified a four-month period when it can complete the investigation within four months, and it has specified a six-month period instead. It cannot just solve the problem by saying that it needs flexibility. Chairman, we have seen this Secretary too often and I am really frightened. For flexibility's sake, the timetable for universal suffrage has been changed from 2007 or 2008 to 2017 and then 2020. I am not sure when we would have universal suffrage if there are further changes for the sake of flexibility. So, I am really frightened when I hear the word "flexibility", especially when it comes out of this Secretary's mouth.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (represented by Secretary for Constitutional and Mainland Affairs) (in Cantonese): Chairman, I do not wish to speak again.

CHAIRMAN (in Cantonese): Before I put the question to you on Mr James TO's amendment, I would like to remind Members that, if the amendment is negated, Mr James TO may not move his amendment to clause 17(3)(b).

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, two were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 21 were present, 10 were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): As Mr James TO's amendment has been negatived, Mr James TO may not move his amendment to clause 17(3)(b), which is inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the amendment to clause 17(2)(a). This amendment is similarly asking for each subsequent report to be submitted within four months instead of six months. However, Chairman, I will not claim a division.

*Proposed amendment***Clause 17 (see Annex V)**

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendment together in a joint debate. Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (represented by Secretary for Constitutional and Mainland Affairs) (in Cantonese): Madam Chairman, the point of departure of Mr James TO's amendment to clause 17(2)(a) is consistent with the point of departure of his amendment to clause 17(1)(a), that is, shortening the period for an interim report to be submitted by the police from six months to four months. Based on the factors for consideration that I have just mentioned, we do not agree with Mr James TO's amendment, and as Mr James TO's amendment to clause 17(1)(a) has been negated, I implore Members to oppose this amendment.

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, after further consideration, I think that the period should not be changed from six months to four months. It is because, simply in terms of logic, if the period exceeds six months, the subsequent interim reports would have to be submitted within shorter intervals. Actually, the investigation of a vast majority of the cases can be completed within four months, and only 3% to 4% of the cases may need six months for the completion of investigation. How can a report be made on these cases every six months? A report should basically be submitted every two or three months.

Thus, my amendment asks for the period to be changed to four months and that is already too lax.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment negated.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (represented by Secretary for Constitutional and Mainland Affairs) (in Cantonese): Madam Chairman, I move that clause 17(3) be amended as set out in the paper circularized to Members.

When I proposed a while ago an amendment to clause 17(4), I had already explained that we would propose making a technical amendment to subclause (3) to specify that an interim investigation report should set out the investigation progress and explain the reasons why the investigation cannot be completed within the specified period; and specifying in subclause (4) that the IPCC can provide the police with its opinion on the interim investigation report.

This amendment has the support of the majority of the members of the Bills Committee, and I implore Members to endorse the amendment.

Proposed amendment

Clause 17 (see Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

MR JAMES TO (in Cantonese): Chairman, my objective in proposing an amendment to clause 17(1)(b) is that, if an investigation cannot be completed within a certain period, it should — of course, as the amendment I proposed earlier to change the period to four months has not been passed, a six-month period is still provided under the Bill. Nevertheless, for some relatively serious cases or cases that caused widespread concern or considered by IPCC members as requiring special treatment, it is unreasonable for the consent of the Commissioner of Police and the IPCC to be obtained before specifying that a report should be submitted within a shorter period. I have just explained the reasons for that, so the amendment I propose to clause 17(1)(b) is about the point

that the IPCC may decide upon a shorter period without obtaining the consent of the two parties concerned. That is my amendment.

Proposed amendment

Clause 17 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendment together in a joint debate. Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr James TO proposes an amendment to clause 17(1)(a) so that it is the IPCC's prerogative to decide that the police should submit an interim report within a period of six months. The proposed arrangement does not allow the police to negotiate with the IPCC over the period for the submission of an interim report, which has completely negated the current practice of mutual co-operation between the IPCC and the police. For the IPCC to make a decision unilaterally, the practical difficulties that may be encountered by the police in specific operation can hardly be catered for. Therefore, we do not agree with the amendment. I implore Members to oppose the amendment.

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, the Secretary has referred to the difficulties of the police again, however, has he considered the situation of the public? When the IPCC makes the request in respect of some special cases, it has to look after the difficulties of the police in all respects. The police do not necessarily disagree because of their difficulties; they may have other reasons, for example, they may disagree to submit a report within a shorter period in

order to pose an obstacle to the IPCC's monitoring. In connection with some reports and cases, it is indeed necessary for reports to be submitted at shorter intervals.

This system indicates once again that the Commissioner of Police is a cut above the rest while the opinions of the IPCC are not essential, and that the IPCC is subjected to control in all respects.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, two were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 19 were present, eight were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MR JAMES TO (in Cantonese): We have reached page 58, Chairman, I move an amendment to clause 17(2)(b); this is also similar to the amendment I just moved to clause 17(1)(b), that is, the IPCC can specify a shorter period for the submission of a further report without the Commissioner of Police's consent. Also, I will not claim a division.

*Proposed amendment***Clause 17 (see Annex V)**

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendment together in a joint debate. Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

(Secretary for Security shook his head to indicate that he did not wish to speak)

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment negatived.

CLERK (in Cantonese): Clause 17 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed the amendment to clause 17, I now put the question to you and that is: That the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 18.

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have separately given notices to move amendments to clause 18.

Members may now debate the original clause and the amendments proposed by the Secretary for Security and Mr James TO to the clause together in a joint debate. I will call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 18 be amended.

Clause 18 empowers the Independent Police Complaints Council (IPCC), in relation to an investigation report submitted by the police, to advise the police of its recommendation on the report; its recommendation on the classification of the complaint; its recommendation on the handling or investigation of the

complaint by the police; its recommendation on any fault or deficiency identified in any practice or procedure adopted by the Police Force; or its opinion on the disciplinary action taken or to be taken in respect of a member of the Police Force by the police. Some Members of the Bills Committee consider that the representation of the clause will be more fluent and logical by putting subclause (1)(a) after the original subclause (1)(e). We have accepted the proposal and will make technical amendments to the clause.

(THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

Besides, as mentioned earlier by the IPCC, if the police accept the IPCC's recommendation in relation to an investigation report, an "amended investigation report" will be submitted to it. The IPCC therefore recommends that this current practice be expressly provided for under the Bill. We have no objection to this and recommend that subclause (1A) be added accordingly.

The remaining amendments include substituting "監警會" for "警監會" in the Chinese text.

I implore Members to support and endorse our proposed amendments, which have been approved by the majority of the members of the Bills Committee.

Mr James TO proposes that the IPCC be empowered to make "recommendations" instead of providing "opinion" in respect of the disciplinary actions taken by the police. I would like to point out that clause 7(1)(b) of the Bill empowers the IPCC to monitor the disciplinary actions taken by the police and give its opinion on such actions, and clause 18(1)(e) reflects the provisions of clause 7(1)(b) to facilitate the IPCC's discharge of the functions prescribed under clause 7(1)(b).

Disciplinary matters concerning members of the Police Force fall within the purview of the Commissioner of Police, who handles such matters in accordance with the Police (Discipline) Regulations and the Public Service (Administration) Order (PS(A)O). There is already a consensus between the IPCC and the police that the IPCC will not make recommendations on disciplinary matters and will only give its opinion to the police for reference.

I would like to add one point. Under the Public Service Commission Ordinance (PSCO), advice of the Public Service Commission (PSC) has to be sought on certain disciplinary matters involving civilian staff in the civil service (including police civilian officers). The PSC is a major statutory advisory body set up to advise the Government on civil service appointment, promotion and disciplinary matters. For example, if punishment such as reprimand, severe reprimand, compulsory retirement or dismissal is proposed to be meted out under the PS(A)O to a civilian staff member in the civil service, the PSC has to be consulted beforehand in accordance with the PS(A)O. In case the IPCC and PSC hold different views on disciplinary matters involving a police civilian officer against whom a complaint is lodged, the relevant disciplinary authority in the Government will, as provided for under the PSCO and PS(A)O, adhere to the view of the PSC. As the amendment proposed by Mr James TO falls outside the existing functions of the IPCC, we implore Members to oppose it.

Mr James TO's proposal to add subclause (1A) to empower the IPCC to determine the "classification" of "reportable complaints" has been ruled as not admissible by the President. As I have mentioned repeatedly earlier that the role of the IPCC is to monitor the police's handling and investigation of complaints against members of the Police Force. It is the usual practice that the IPCC will work together with the police and make them "classify" complaints appropriately through extensive and thorough discussions. Under the existing system, Members are assured that complaints will be handled impartially.

Mr James TO proposes to add subclause (3) to require the Chief Executive to respond to the recommendations submitted under subclause (2) by the IPCC. In practice, upon receiving any recommendations from the IPCC, the Chief Executive will consider in detail whether they should be accepted and whether any other follow-up actions are required. It is an established practice that the Chief Executive or his authorized officer will respond to papers or recommendations of different nature submitted by statutory bodies. Therefore, we consider that it is not necessary to add an express provision requiring the Chief Executive to respond to the IPCC's report in the Bill. I call upon Members to oppose Mr James TO's amendment.

Thank you, Madam Deputy.

MR JAMES TO (in Cantonese): Deputy Chairman, after such lengthy discussions on the topic, we all know that the Chinese name of the Independent Police Complaints Council (IPCC) is "警監會" or "監警會" — it may be better for it to be called "警監會" — it should actually be called "警監會" in Chinese because "this IPCC which is constrained by the Commissioner of Police in all sorts of manners" is monitored by the Commissioner. As the Bill is like that, we should call it "警監會" for it does not match up to the name of "監警會". As to the technical amendments to be proposed later, I have to vote against them for record purpose because "if names are not correct, language will not be in accordance with the truth of things". Now that it does not have any power and the decision is to be made by the Commissioner, how can it monitor the police? How can it do so? What power does it have to monitor the police? It is just monitored by the Commissioner of Police on the contrary.

Deputy Chairman, when we discuss clause 18, the IPCC — I am not sure what it is — the IPCC in the Bill to be passed not only lacks investigation power but also the power to make a decision on a case or to mete out punishment. Leaving aside its lacking the power to mete out punishment, it does not even have the power of discussing or recommending the punishment to be imposed. For example, in a very extreme case, the Complaints Against Police Office (CAPO) may have already agreed with the decision made by the IPCC and considered that the complaint is established and involves a very serious problem. Based upon the experience of the IPCC and the large number of cases involving disciplinary actions that they handled, the IPCC may suggest that the Commissioner of Police should take more serious kind of punishment. However, the Secretary is now saying that the IPCC can only provide its opinion but cannot make a recommendation.

Frankly speaking, I am unable to make head or tail of it. The IPCC's idea about the punishment to be imposed and the recommendation it made to the Commissioner of Police about the punishment to be imposed in any case, its recommendation would not be accepted. What kind of an organization is the IPCC? How dare it make recommendations to the Commissioner of Police? The Commissioner of Police is the topmost person. How can the IPCC suggest what the Commissioner of Police should do? It should be more humble. That is our situation at present.

There is only a very small difference between an opinion and a recommendation, but we find that recommendations are set out in clauses 18(1)(a) to (d), but the disciplinary action to be taken mentioned in paragraph (e) only states that the IPCC may advise the Commissioner of Police of its opinion.

As we all know, that is not just a matter of the wording used; the Government thinks that it has the power while others do not even have the power of discussion or making a recommendation.

In other words, after this debate, if the IPCC really makes a recommendation about punishment, it will have violated the law and overstepped its powers. Originally we did not have the legislation and it was purely an administrative appointment; the making of recommendations by the IPCC did not involve the violation of the law or overstepping its powers. It is because there is no clear-cut and established checks and balances between the IPCC and the Government in black and white, and there are only practices. If the last IPCC Chairman did not have the habit of making recommendations, it does not mean that he would violate the law or overstep his power when he makes recommendations. Nonetheless, when the IPCC has become a statutory body, even this straitjacket will be included. After solemn debates and deliberations, Members agree that even discussions and recommendations should not be made and they even ask in reply, "what does it think it is?" It may be very vulgar for me to say so but we actually have to tell the IPCC that it should even not make recommendations about punishments. Should that be the case?

We may not be able to change the existing system and we may even not be able to make the members appointed to the IPCC agree with my views and just make recommendations about punishment to be imposed. Nevertheless, if it is specified in the law that even recommendations cannot be made, it would be too terrible indeed. I am not sure what adjective should be used but I really think that it should not be called "監警會" in Chinese because it is not monitoring the police but being monitored by the Commissioner.

Yesterday, Mr Albert CHAN said that it should be called "警姦會" in Chinese, meaning it defiles public opinion. When I heard his remarks, I did not quite understand why he said so. But now, I am aware if Mr Albert CHAN is present and has listened to me expounding the legislation in detail, he would not find it excessive. He will certainly think that the police have defiled public opinion — that is what I think. I think he would say so because even discussions and making recommendations are not allowed.

Deputy Chairman, I have considered one point very carefully: in making a recommendation, will the IPCC violate the legal procedures? Will it give those subjected to disciplinary actions a leeway like a judicial review, claiming that the

Commissioner is unfair or the procedures are improper? After thinking a lot about this and having much careful consideration, I trust that it will not be the case for it is simply a recommendation. The Commissioner of Police can choose to adopt or not to adopt the recommendation; he only needs to set out clearly in the final judgment about the disciplinary action to be taken that he has independently exercised the power given by law and considered all those factors that should be considered.

I also believe that the appointed members of the IPCC will not arbitrarily make recommendations on the kind of punishment to be imposed in each case. I trust that they will only make recommendations in respect of very serious cases or when they have considered that the recommendations should really be made based on past cases in which disciplinary actions was taken. Also, the recommendations do not necessarily need to belong to explicit categories. For example, a recommendation may be about very strict disciplinary actions to be taken by the Commissioner of Police, or that the Commissioner of Police should not take excessive disciplinary actions against the police officers being complained about. They can absolutely do so because they can make recommendations in various ways. They do not necessarily need to recommend dismissal, and they can make different recommendations under different situations.

We have gone through the previous annual reports of the IPCC and found that in connection with some cases, the CAPO considered that very severe procedures should be adopted because the cases were very serious, but the IPCC had opposing views. I have seen one or two cases like that. So, the IPCC will not necessarily advise "additional" punishment when the punishment meted out by the CAPO is inadequate. The IPCC will only give its opinion on punishment.

Deputy Chairman, there is another thing about clause 18; why do I want to add "the Chief Executive shall respond to the recommendations of the IPCC"? The reason is very simple. First, according to my understanding, many groups and even the IPCC itself think that the Chief Executive should respond. Of course, the Chief Executive does not necessarily have to agree with the analysis or recommendation made by the IPCC. However, we can imagine that, in this connection, the Chief Executive is actually playing the role of a sort of arbitrator under certain circumstances. This is because the IPCC may have an opinion

and a recommendation but since its opinion differs from that of the CAPO, so the Chief Executive should resolve the difference in the end. Thus, it is specified in clause 18(2) that "the Council may, if it considers appropriate, submit any part of its opinion or recommendation to the Chief Executive for consideration". Given thousands of cases each year, we can imagine that the IPCC will not submit its opinion or recommendation on each report to the Chief Executive for consideration. That is not what has actually happened. Under the present administrative arrangements, it can do so and it will definitely only submit its opinion or recommendation on some very important and serious cases to the Chief Executive. Nonetheless, if it complies with the legal provisions and submits its opinions or recommendations on very important and serious cases to the Chief Executive while the Chief Executive is not legally obliged to respond, that is not justified and is unfair to the IPCC.

As the Secretary said a short while ago, they could find an administrative solution because the Chief Executive or the officials concerned would actually respond. If we are going to resort to the administrative arrangements, do we still need to talk about making statutory provisions? If statutory provisions are to be made, we should discuss what arrangements (for example, accountability) are suitable and appropriate, and the responsibilities to be borne by different persons. All things should be specified in the law. The Chief Executive should respond according to the statutory system. If all along the Chief Executive has been responding, we should act in the manner described by the Secretary and make the measures currently taken but, only the Chief Executive is exempted, why? If there is an administrative arrangement for the Chief Executive to respond, why is it not specified in the law? According to the Government, a statutory provision will now be made on a well-established practice. That is the Government's comment, though I may not agree with it. Yet, if we apply the Government's logic, it seems that the Government should agree with my analysis and amendment. But the Government thinks that this amendment about the Chief Executive comes before a statutory provision. The Chief Executive has the privilege and the law specifies that he does not need to respond in line with the current practice.

Deputy Chairman, I have finished my remarks.

DEPUTY CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR HOWARD YOUNG (in Cantonese): Deputy Chairman, although Mr Albert CHAN is not here to listen to James TO's remarks, I have listened very carefully to the remarks Mr TO just made, especially the first part.

In the course of the Bills Committee's deliberations, all of us spent a lot of time discussing various issues. According to my understanding, regardless of whether the Chinese name of the IPCC is "警監會" or "監警會", the idea is that it will be independent of the Police Force and will make response to complaints. As far as I understand it, whether or not any punishment will be imposed on police officers may not be based on complaints. Even if complaints have not been made, should the police find that a police officer has made a mistake, I believe they will punish the officer.

I am working in a commercial organization; commercial organizations very often have auditors audit their corporate accounts. If a company's accounts are in a mess, only the company will be notified and it is seldom asked to dismiss or take disciplinary action against certain employees. Mr James TO has just spent quite a lot of time discussing an opinion and a recommendation, and he has said that there may just be a tiny difference between the two. However, I think they are different in degree. If it is necessary to decide upon the disciplinary action to be taken against a police officer, I think the Police Force should make the decision. The IPCC will only respond to the public's complaints and determine whether the Police Force has abused power as Mr James TO has just said. Such is its only role. Since I find the views expressed by the Secretary more acceptable, I do not support Mr James TO's views.

DEPUTY CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO shook his head to indicate that he did not wish to speak again)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that he did not wish to speak again)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendments.

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I move the amendments to the heading of clause 18, subclauses (1) and (2), and the addition of subclause (1A) to that clause.

Proposed amendment

Clause 18 (see Annex V)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

DEPUTY CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

DEPUTY CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, you may move your amendments.

MR JAMES TO (in Cantonese): Deputy Chairman, we have come to page 61. I move the amendments to the heading, paragraph (e) of subclause (1) and subclause (2) of clause 18. The amendments concern the IPCC's ability to propose some disciplinary actions, rather than merely give advice on disciplinary actions.

Proposed amendment

Clause 18 (see Annex V)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

DEPUTY CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

(THE CHAIRMAN resumed the Chair)

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mr LI Kwok-ying voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, two were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 15 were present, eight were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move the addition of subclause (3) to clause 18 to the effect that the Chief Executive must respond to the proposals made to him by the IPCC.

Proposed amendment

Clause 18 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mr LI Kwok-ying voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, two were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 15 were present, eight were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CLERK (in Cantonese): Clause 18 as amended.

CHAIRMAN (in Cantonese): As the committee has earlier on passed the amendments to clause 18, I now put the question to you and that is: That the clause as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 19.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to the heading and subclauses (1), (2), (5), (6) and (7) of clause 19 in the Chinese text, as printed on the paper circularized to Members.

The amendments seek to replace "警監會" with "監警會".

As the amendments have gained the support of Members of the Bills Committee, I implore Members to endorse the amendments.

Proposed amendment

Clause 19 (see Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendments passed.

MR JAMES TO (in Cantonese): Chairman, we will now discuss page 64. I move the amendment to clause 19(1), in order to delete "information" and to substitute it with "information or material".

(THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

Deputy Chairman, despite the fact that the IPCC can conduct interviews, or interview witnesses, under clause 19, it is actually being constrained in every way. Why? First of all, interviews can only be conducted after an investigation has been conducted by the police or an interim report has been submitted. Basically, the time it would take is uncertain if an interview can be conducted only upon the completion of the relevant investigation. In the event of an interim report — it has to be submitted within six months as its submission within a four-month period has been vetoed by Members earlier. In other words, interviews can only be conducted at a very late stage, which would mean that the IPCC would not be given a chance to meet the witnesses until several months later. Now we are talking about whether the information provided by witnesses during the meetings should include material. The difference between "information" and "material" is that "material" could refer to things. As some exhibits, including photographs or other things, might be produced by the witnesses, a mere reference to "information" might not cover everything. As the IPCC might need to interview the witnesses, we hope that the scope of things obtained from the witnesses during the interviews can be widened as far as possible, in order to substantiate the basis or arguments for monitoring the CAPO or requiring the CAPO to conduct review. This is why I think that the wording must be widened as far as possible to enable the IPCC to obtain maximum information or material and help it fulfil its monitoring responsibility.

*Proposed amendment***Clause 19 (see Annex V)**

DEPUTY CHAIRMAN (in Cantonese): Members may now debate the motion and the amendment together in a joint debate. Does any Member wish to speak?

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, Mr TO proposes an addition to subclause (1) to provide for the IPCC to interview any person who is able to provide "material" to the IPCC. This amendment is unnecessary because the provision has already expressly provided for the IPCC to interview any person who is able to provide information or "other assistance". The scope of "other assistance" is very extensive, and "material" is included as well. Furthermore, despite this amendment proposed by Mr TO to subclause (1), he has failed to propose an identical amendment to subclause (2), which is similar in nature. As the inconsistency of the two provisions will easily cause confusion and misunderstanding, I implore Members to oppose Mr James TO's amendment.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Deputy Chairman, I do not necessarily have to propose this term had the Government not taken such a stance of fighting for every inch of ground. There is indeed some difference between "material" and "information", as is evident in many other legal provisions. While

"information" can refer to written or verbal stuff for the interpretation or understanding of facts, "material" can be an object, probably a pen, a knife or a photograph. A photograph is certainly regarded as "information" if it is a photograph of a document. However, if the photograph affirms the actual existence of a document, the photograph might be regarded as "material" rather than "information".

As regards "other assistance" mentioned by the Secretary just now, I would rather have it defined in clearer terms to demonstrate that, in addition to "information" and "material", "other assistance" may also be provided. If we refer purely to "other assistance", will "other assistance" similar to the provision of information be included? It is indeed doubtful as to whether "material" can be included in concrete terms.

Deputy Chairman, owing to time constraint, I have forgotten about clause 19(2), but this will not affect the amendment to clause 19(1). Should it be decided that clause 19(1) must be amended, then clause 19(2) should be taken as involving matters of yet another level and step, and that is, the interim report. Actually, the interim report will not be made available until some time later, and yet 94% of the investigation work can be completed within four months. In other words, clause 19(1) only applies to witnesses who can be interviewed within the period from the fourth to the fifth or sixth month for the purpose of obtaining more material. So, can material be obtained after the sixth month? If the Government really considers that subclause (1) is not consistent with subclause (2), it should respect the views of the majority of Members and introduce amendments in the coming Session instead of using the absence of an amendment to clause 19(2) as an excuse to oppose the amendment to clause 19(1), for the Government would appear to be too narrow-minded to say something like this.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

DEPUTY CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

(THE CHAIRMAN resumed the Chair)

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU and Mr Alan LEONG voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mr LI Kwok-ying voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, two were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 13 were present, six were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Mr James TO has given notice to move the deletion of subclause (3) from clause 19; and the Secretary for Security has also given notice to move an amendment to that subclause.

Members may now debate the original provision and the amendments proposed by Mr James TO and the Secretary for Security together in a joint debate. I will call upon Mr James TO to speak first, to be followed by the Secretary for Security; but no amendments are to be moved at this stage.

MR JAMES TO (in Cantonese): Chairman, we now come to page 65. I propose the deletion of subclause (3) from clause 19.

Chairman, under the present circumstances, clause 19 provides for the IPCC to interview witnesses. However, Chairman, when we reflect on the entire process, we will find that there are certain circumstances under which it is impossible for the IPCC to be constrained by these provisions. Let me suggest some possible scenarios. According to normal practice, should the CAPO be found, right at the beginning of an investigation, to be acting in a slapdash manner — of course, the Government would say that complaints could be lodged to the CAPO, and another team in the CAPO would be assigned to investigate the team in question. Should the second team be found to be behaving in a similar fashion, assistance could be sought from another team. So, the complaint

should originally be directed at team A for its slapdash actions. Such being the case, team B would be assigned to investigate team A, or team C be assigned to investigate team B.

However, even if the IPCC is eager to interview complainants to find out how slapdash the CAPO has behaved, it can only do so when all the investigations have been completed. Even in some serious or extreme cases, the IPCC can still not conduct any interview even though it might then be able to find out how the complainants has been treated by the CAPO or any investigation officers should it be allowed to perform its monitoring role promptly by, for instance, installing some covert equipment under certain circumstances, because the IPCC is not allowed to do anything before the CAPO has completed the entire investigation report.

Chairman, the interim reports mentioned in clause 19(2) actually refer to reports required to be made for uncompleted cases, that is, 6% of the cases. Members should know what this 6% refers to. It means that the investigations of 94% of the cases can be completed within four months, while an interim report has to be submitted before the completion of 6% of the cases — certainly, the figure might turn out to be lower than 6% because we are now talking about six months excuse me, Chairman, I have often got it wrong. It should be four months because the investigation of 94% of the cases should be completed within four months. Although we have no idea of the exact percentage for six months, I believe it will definitely be lower than 6%. For discussion's sake, even if the IPCC is allowed to interview the witnesses of the remaining 4% of the cases — because the duration of the investigation is simply too long. But the existing amendment implies that the consent of the Commissioner of Police would be required. We consider this requirement extremely harsh and unreasonable. So, should clause 19(2) be retained? Or should the "consent of the Commissioner", as stipulated in clause 19(2), be retained? This is open to question.

Chairman, I only hope that the Commissioner of Police can give careful consideration because clause 19(3) set out any impact on the investigation of any crime — Mr Alan LEONG has already pointed out earlier the enormous and extensive power to investigate into any crime. In other words, the power to conduct interviews after the submission of an interim report exists in name only because any crime could cover all crimes, major or minor. Therefore, I hope

Honourable colleagues can understand that the scope of this provision is simply too wide, and the power to conduct interviews exists in name only.

On the contrary, the removal of subclause (3) can ensure that the consent of the Commissioner of Police is based on "reasonable consideration", as found in common law. On the basis of "reasonable consideration", the Commissioner of Police cannot give consideration to trivial crime under clause 19(3), as it is now stipulated in the provision. With the removal of this provision, coupled with the interpretation by common law, the power to give consent under clause 19(2) must be reasonable, and on this basis, I believe trivial crime would be unable to counterbalance the power reasonably exercised by the IPCC to interview witnesses after an interim report has been submitted.

Therefore, I propose to abolish clause 19(3) in the hope of reversing to the reasonable and balanced principle under common law to prevent the Commissioner of Police from, under clause 19(3), indiscreetly withholding his consent to the interview conducted in respect of any crime after an interim report has been submitted.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, subclause (3) provides that if the IPCC wishes to conduct an interview for the sake of considering an interim investigation report, the Commissioner of Police must give consent to the relevant interview, unless he is of the opinion that the interview would be likely to prejudice the investigation of any crime or any complaint made to him. Mr TO's proposed deletion of subclause (3) would therefore mean that the Commissioner of Police would be allowed to decide on giving consent or otherwise to an interview conducted by the IPCC solely on the basis of subclause (2), and the existing constraint imposed by subclause (3) on the decision made by the Commissioner to withhold consent to the relevant interview would then be removed. I suppose the IPCC will probably not be pleased to accept such an arrangement.

Furthermore, the Bills Committee proposes that "reasonably" should be added before the reference to "the Commissioner is of the opinion" in subclause (3). Having no objection to this proposal, we will add "reasonably" to subclause (3). Actually, the police will act reasonably in considering and

dealing with any matters. All of the remaining amendments are merely technical in nature.

As the majority of the Members of the Bills Committee have already expressed support for the Government's amendments, I implore Members to endorse them.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, the addition of "the Commissioner is reasonably of the opinion" to clause 19(3) can do nothing to help achieve a balance because the provision, in which "would be likely to prejudice the investigation of any crime" is expressly stated, can reasonably lead to this conclusion, though the crime referred to therein can be any crime. In other words, even if the crime committed is trivial, "the Commissioner is reasonably of the opinion" still holds so long as the crime would have an impact. The reasonableness *per se* has nothing to do with any crime or its gravity, such that the IPCC can be stripped of the power to interview a witness after an interim report has been submitted. These two points are not used to achieve a balancing effect in the provision. Instead, the reasonableness applies to the reasonableness of the opinion, which is concerned about the impact on the investigation of any crime. This will not help narrow the Commissioner's power to give reasonable consideration to whether consent should be granted.

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): I have nothing to add.

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, we come to page 66. Chairman, I move the deletion of subclause (3) from clause 19.

Proposed amendment

Clause 19 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on Mr James TO's amendment, I wish to remind Members that if the amendment is agreed, the Secretary for Security may not move his amendment to clause 19(3).

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment negatived.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 19(3).

Proposed amendment

Clause 19 (see Annex V)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Clause 37.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 37 in order to amend paragraph (b) of subclause (2).

Subclause (1) of clause 7 provides that persons defined in clause 36 as specified persons, namely the IPCC and its members, employees and observers, have a general duty to keep confidence in relation to any matters pertaining to complaints that come to their knowledge in the performance of their statutory functions (that is, protected information under clause 36).

Subclause (2) permits a specified person to disclose protected information only if the disclosure is necessary and for the purpose of serving the following purposes: for the performance of his functions under the Bill; for the purpose of

reporting evidence of any crime to such authority as he considers appropriate; for the purpose of complying with an order of a Court or a requirement in law in relation to any criminal, civil or disciplinary proceedings; or for the purpose of complying with a data access request made under section 18 of the Personal Data (Privacy) Ordinance.

The Bills Committee has noted with concern that paragraph (b) of subclause (2) might not cover merely suspected crime. In order to address this concern, we propose to introduce an amendment to allow specified persons to, for the purpose of reporting suspected crime and when the disclosure is necessary, make the disclosure to the authorities. I implore Members to endorse the amendment.

Proposed amendment

Clause 37 (see Annex V)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(Mr James TO raised his hand to indicate his wish to speak)

MR JAMES TO (in Cantonese): Chairman, the amendment proposed by the Secretary for Security just now, that is, clause 37(2)(b), was originally concerned about the reporting of any crime, but now the Secretary insists that the reporting covers any suspected crime.

Chairman, this is a relatively typical case. I would like to cite this case to demonstrate to Members some of the technical amendments the Secretary would be willing to make. However, the Secretary will not make any concession in regard to anything involving any major provisions. Regarding the reporting of crime and suspected crime, I suppose all crime is suspected crime before conviction. Therefore, such an addition is nothing but a small favour. In other words, it serves more of an ornamental purpose than the purpose of improving the actual substance. However, when Members propose amendments that serve more than an ornamental purpose, as it is currently the case, and for the avoidance of doubt, such as the material and information issue discussed earlier, the Secretary would make such comments as other things are covered or there is some difference between "crime" and "suspected crime".

I would say that the intention of the Secretary in proposing small favours like these is to tell Members when making the report afterwards that the Government has heeded a lot of the opinions expressed by the Bills Committee. He would even thank me, saying that a lot of the opinions were put up by me. I think the Secretary is only paying lip service. I once witnessed how he behaved during the scrutiny of the legislation on wiretapping. I know he will say something like this. I can say in advance that the Secretary will say that he is very thankful to me for the enormous contributions I have made. However, I hope every member of the public can see with a sharp eye that these are the only tiny favours we can obtain from the executive authority. There is nothing we can do to touch or slightly increase any of our monitoring powers or benefits in concrete terms.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that there was no need for him to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

MR JAMES TO (in Cantonese): Chairman, page 69 will now be debated.

Chairman, I move the amendments to clause 37(2)(c) to point out that the IPCC or relevant persons must discharge their duty to keep confidence. Actually, I feel a bit uneasy about the entire confidentiality provision because, under the existing administrative procedure, IPCC members or persons having access to the relevant information are constrained by the official secret legislation or other provisions or legislation requiring confidentiality. In comparison, we can see that clause 37 is unclear about this. In other words, according to the provision, there will be much less constraint if the disclosure is considered appropriate and necessary. While clause 37(1) provides for confidentiality; subclause (2) provides for the exceptions, or appropriate circumstances. In the event of any omissions, the possibility of making disclosure by the IPCC or relevant persons under reasonable circumstances will be constrained by clause 37(1). So, are all reasonable circumstances covered by clause 37(2)? We should actually study and refine this provision very carefully.

Chairman, although a court order and a requirement made under law have been spelt out under clause 37(2)(c), the most serious shortcoming of the provision is that the order or requirement thus made must be related to criminal, civil or disciplinary proceedings. In other words, the disclosure of information under some circumstances is not included, even though it is perfectly reasonable for a relevant organization to obtain such information. Let me cite two examples. The first one is the Legislative Council. Under the Legislative Council (Powers and Privileges) Ordinance, that is, under the requirement under clause 37(2)(c)(ii) — but sorry, this has nothing to do with civil, criminal or disciplinary proceedings. Very often, the investigations we carry out are related to public interest, not matters about civil, criminal or disciplinary proceedings.

Frankly speaking, being a Legislative Council Member for the past 16 or 17 years, I had joined countless select committees, and summoned relevant persons and requested for documents for a countless number of times. Have I

ever done this for the sake of handling civil or criminal cases? The cases I am talking about were all related to public interest and the right to know, such as short piling, the inauguration of the new airport, and so on. They had absolutely nothing to do with civil, criminal or disciplinary proceedings. Certainly, these matters, which fall into a special category, are not our principal task. However, we were told by the Government that, should a select committee under the Legislative Council summon IPCC members, contractors or the Secretary-General of the IPCC, their duty to keep confidence cannot be exempted under clause 37. Then there might be disputes over whether the legal status of the Legislative Council (Powers and Privileges) Ordinance or that of clause 37(1) is higher, and litigations might even result.

Apparently, the Legislative Council (Powers and Privileges) Ordinance involves high-level issues about public interest, but it is even less effective than a summons made for a disciplinary hearing to be conducted. What sort of organization does the Government consider the Legislative Council to be? How does it view public interest? Under the existing clause 37(2)(c), exemption can be granted to a disciplinary tribunal to summon, vet the required documents or make an order for disclosure provided that some legal requirements are met. However, the Legislative Council might need to fight a legal battle should it wish to do so. What is the matter? Does it involve consideration for the impact of different organizations on public interest?

Second, commissions of inquiries under the Commissions of Inquiry Ordinance may sometimes be set up by the Chief Executive, and these commissions would possess statutory summoning power. There were plenty of such examples in the past that, when the Chief Executive decided to set up a statutory commission of inquiry and made a request to do so under clause 37(2)(c)(ii), he might receive a response like this: Sorry, is public interest a high-level matter? Should all matters required to be investigated upon the Chief Executive's request considered to be very serious matters? Can exemptions be granted to discharge the duty to keep confident so long as the matters are not related to civil, criminal or disciplinary proceedings? There are no clear answers to all these questions. Therefore, I only need to cite two examples to demonstrate adequately to Members that actually, we only need to delete the reference in the provision to the civil, criminal or disciplinary proceedings. In other words, disclosure would be required provided that there is a court order or a statutory requirement to do so.

I have once raised this point at a meeting of the Bills Committee, but much to my regret, the Government, after learning the examples I cited, considered that the Legislative Council was unimportant. In other words, the Legislative Council was not considered to be superior to, more serious than, or having a status more important than, a disciplinary hearing or certain summonses. Although I do not consider this provision something of an insult to any of the Members expressing such views, I see this as the Secretary's affirmation that the statutory investigative powers possessed by the entire Legislative Council and the commissions of inquiries appointed by the Chief Executive in relation to major issues of public interest cannot even compare to a disciplinary hearing or a very simple civil litigation. Chairman, this is very disappointing.

Proposed amendment

Clause 37 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original provision and the amendments together in a joint debate. Does any Member wish to speak?

MR MARTIN LEE (in Cantonese): Madam Chairman, I would like to put this question to the Secretary through you: It is evident that the Bill seeks to protect police officers in every way, why? I raise this question because, instead of protecting the good police officers, why is the Bill protecting police officers who are at fault and whose number may just be a handful?

Actually, I once said during the resumed Second Reading that the Department of Justice cited morale as the reason during a discussion with me over this issue years ago. Now, with the passage of so many years, our Police Force should have made a lot of progress. I only wish to ask the Secretary this question: Is it the case that we still need to protect police officers in every way or else their morale will be affected? If this is not the case, are there any other reasons, such as public interest consideration, that make it necessary for this Council to pass this piece of legislation in such an unusual manner to enable police officers under investigation enjoy such a high degree of protection? I hope the Secretary can expeditiously give me a reply to this question before we can continue with the discussion because I really do not understand. Having

listened to Mr James TO's speeches time after time, I can just find time after time that the arrangements made are simply unreasonable.

Madam Chairman, I have known the Secretary for years, and he impresses me that he is not this type of persons. This is why I am surprised by the Government in insisting on acting in this manner.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I think Mr Martin LEE, Members who are present here and I would definitely not tolerate the wrongdoers. Over the years, both the Commissioner of Police and I have been working towards the goal of improving our Police Force. It is evident to everyone that, over the past years, the Police Force has seen constant progress under the existing arrangement, and members of the public in Hong Kong have an exceptionally high level of trust in our Police Force. This is a point I raised when I delivered my speech during the resumption of the Second Reading. It is definitely not the intention of this IPCC Bill to protect the wrongdoers in the Police Force who are found to have breached the discipline, abused their power or damaged the reputation of the Police Force. We want to catch them, too. The main purpose of this Ordinance is to codify the existing proven systems of the CAPO and the IPCC. This is my response to Mr Martin LEE's question.

Second, regarding the comments made by Mr James TO just now, I would like to reiterate here that we have great respect for the role played by the Legislative Council in performing its duty of monitoring the Government and the Police Force. We understand Mr TO hopes that the specified persons referred to in law will be permitted to disclose to the Legislative Council the so-called "protected information" should they be summoned by the Legislative Council under the relevant legislation.

We would anticipate that when the Legislative Council deems it necessary to summon a certain specified person to disclose some "protected information", it must be dealing with something deliberated by the Legislative Council in relation to a complaint made against the police, and that specified person must be, for the sake of discharging his statutory duty, in the process of examining, or have examined, the complaint before he can learn of the relevant "protected information". In this connection, the IPCC is empowered, under clause 7(2), to do all things that are reasonably necessary for, or incidental or conducive to, the performance of its functions under the Bill. As a specified person is permitted under clause 37(2)(a) to disclose "protected information" if the disclosure is necessary for the performance of his duty under the Bill, he will have complied with the summons made by the Legislative Council under the same provision.

We are therefore of the view that clause 37(2)(a) has taken into account the hypothesis formulated by Mr James TO, and his amendment is therefore unnecessary. Thank you, Chairman.

MR MARTIN LEE (in Cantonese): Chairman, I am very grateful to the Secretary for giving me some response. Given such a small number of wrongdoers, I really want to know the reason why police officers seem to give us an impression that they need special protection. Let me quote a line from *Animal Farm* and revise it a bit — "All animals are 'protected', but some are more 'protected' than others". This means that even though all animals are protected, some are given special protection, but they are police officers, not members of the public. How can this be justified?

On this issue, may I ask the Secretary whether he has, over the years, conducted a questionnaire survey on police officers without requiring them to disclose their identities? I am convinced that the number of wrongdoers would be very small, and the vast majority of police officers are just and upright persons who would definitely prefer a fair investigation should they be wrongly accused of, or wronged, by the public that they had once assaulted the public. To make the public feel comfortable, fairness is required in every aspect. Furthermore, this will do justice to police officers should it is confirmed after the investigation that they have done nothing wrong. Has such a survey been conducted by the Secretary over the years? Thank you, Chairman.

MR JAMES TO (in Cantonese): Chairman, there are two points to which I wish to respond. First, in response to Mr Martin LEE's earlier comments that he believed that the Secretary had the intention of perfecting the existing system, the Secretary said earlier that he actually had no intention to tolerate any wrongdoers. I feel strongly about it. I have always given other people the benefit of doubt. In particular, I am aware that there was a severe storm when the Secretary took over the post of the Secretary for Security, and he was not duty-bound to handle such politically controversial matters as the enactment of legislation on Article 23 of the Basic Law. Instead, he was only required to maintain law and order and enable the disciplinary forces to fulfil their roles properly. This was what was required of him, and he had definitely achieved good results.

When the Secretary made such remarks as he found the existing system very good and thorough investigations could be carried out, he should also have heard a number of Members saying that they have actually received a lot of complaints at the front line. Members are no fools, and we have indeed received a lot of complaints from many people. With our rich experience, we would certainly not believe in what they say easily and think that all cases made against police officers are genuine, and all the allegations are founded. We understand that people might be exaggerating. People involved in cases might also tell lies, and we, as lawyers, should be absolutely clear about this. But after years of observation, we have also witnessed many unsuccessful cases subsequently vanishing into obscurity under the existing system. Not only will the complainants feel discouraged, but they will also not be able to get justice. Many complainants have to resort to civil action before they can make successful claims for compensation. It has even been commented by Judges that cases involving assault stand a higher chance than cases not involving assault, and cases involving false imprisonment stand a higher chance than cases not involving false imprisonment.

I wonder how the Secretary feels about this. Does he really believe that our system is really perfect — I mean investigations involving police officers who have done something wrong would definitely get results, police officers involving abuse of power would definitely be found out, and those who have not done anything would definitely have their names cleared? If the Secretary genuinely believes that the existing system can achieve all these, I can only apologize to him and tell him that he might really not understand the real world.

In retrospect, I cannot, and should not, believe in what he has said because the Secretary was once the Commissioner of the Independent Commission Against Corruption (ICAC). The ICAC is familiar with many cases, "cunning" things and has obtained a lot of intelligence. Unless the Secretary was sidelined by the enforcement division when he was the Commissioner of the ICAC, he should have an in-depth understanding of such cases, particularly as he already has years of experience in the disciplinary forces. After he took office in the ICAC, he could just take a look at the files, and he would definitely find out the state of the police officers. There are indeed some cases which are "cunning", as no results can be obtained. Under the existing system, these cases have been suppressed. So, can we make any improvements? Under the existing system, even if improvements are introduced slowly, can we be allowed by the authorities to act with the possibility that considerable progress can be made? The IPCC Bill now being tabled obviously seeks to identify all areas of administrative constraint and have them drafted as legislation for consolidation purposes. However, after debating our amendments, the authorities chose to vote in opposition to all of them. So, how can we believe that the authorities are sincere in reforming the existing system?

Chairman, let me say a few words about clause 37. Just now, the Secretary responded by saying, "No, there is no need to invoke clause 37(2)(c) (because the Secretary has deleted the part concerning the criminal, civil and disciplinary hearings), and only clause 37(2)(a) needs to be invoked — this actually refers to the functions of the IPCC under clause 7. I can tell the Secretary that I am sorry for I really find it impossible to agree to his legal analysis. Even if I have reasons to believe that his legal analysis has little possibility or can barely stand, what we are talking about is not just the handling of a complaint case by the police when it comes to summoning somebody by such an important organ as the Legislative Council or a commission of inquiry which possesses statutory investigative powers and is appointed by the Chief Executive. I hope the Secretary can broaden his vision. If the Legislative Council really decides to set up a commission of inquiry, will the commission investigate only one case? It will definitely review the entire complaints against police system, the present state of the police officers, or the number of cases involving abuse of power. Instead of investigating into a single case, consideration will be given to public interest from a more macroscopic point of view. Therefore, clause 37(2)(a) (the functions provided for in clause 7 or clause 7(b)) mentioned by the Secretary is not only unhelpful, it is also absolutely dubious. It is even

uncertain as to whether the matters investigated by the Legislative Council, which are associated with public interest, can be touched because the scope of the related commission of inquiry can be much wider than the scope of investigation at present.

I hope the Secretary will realize that the passage of this piece of legislation does not mark the end of the matter. If possible, I would like to ask his colleagues who are working in the legal division perhaps he cannot heed anything because time is running out, and what he wants to do is to pass the Bill before contemplating the next step. I can still forgive and understand him should this be his last resort. But if this is said to be the end — right, this means that clause 37(2)(c), which will be spelt out clearly, prevails over a summons made by the Legislative Council. For the Legislative Council, this is particularly as this point has been raised by Members if it has not been raised, Members may overlook this and nothing can then be done. However, if this point has been raised, but still the authorities insist that there is no need to do anything about it, then the authorities are actually looking down upon the Legislative Council and the statutory power possessed by the commissions of inquiry appointed by the Chief Executive. This is absolutely unacceptable to me.

CHAIRMAN (in Cantonese): Does any other Member or public officer wish to speak?

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr LI Kwok-ying voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, three were in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections, 18 were present, nine were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MR JAMES TO (in Cantonese): Honourable colleagues, we have come to page 70 of the Script.

CHAIRMAN (in Cantonese): It should be page 71.

MR JAMES TO (in Cantonese): Yes, page 71. Sorry, there is one more page. Chairman, I move the amendments to clause 37(2)(d) and the addition of sub-paragraph (i) of paragraph (e) to that subclause.

Chairman, more often than not, we have to balance the interest of two conflicting parties. In this connection, it is generally agreed that, if it is really decided that the IPCC is to be set up, its members or relevant persons might be required, under certain circumstances, to keep confidentiality and refrain from disclosing certain information casually. Meanwhile, we are also aware of the complexity of this world. Sometimes, these persons may be required to disclose the information they obtain by virtue of their statutory function because of more important or even conflicting public interest. Well, regarding these circumstances, there are a lot of examples we can borrow. Now, let me read out the newly-added sub-paragraph (i) of paragraph (e): "revealing any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by members of the Police Force". This is sub-paragraph (i). Actually, about this provision, section 30 of the Prevention of Bribery Ordinance can be treated as a precedent.

During the period between 1994 and 1995, the ICAC kept saying that the Prevention of Bribery Ordinance, that is, the legislation governing the spirit of the ICAC in performing its duties, had to be reviewed, because strict confidentiality must be observed by the ICAC when investigations were carried out. The Secretary should have known it even better that information must not be disclosed casually because he was once the Commissioner of the ICAC. Otherwise, how can investigations be carried out by the ICAC, right? Because confidentiality is taken very seriously by the ICAC. Furthermore, it would be unfair to the party involved should the case be made open as a result of the disclosure of information, but the party involved was eventually found to be innocent upon the completion of the investigation. Therefore, confidentiality is equally important to the ICAC and the persons being investigated.

However, if we are really required, under certain circumstances, to disclose some serious unlawful activities, abuse of power, dereliction of duty, and misconduct, we would have to strike a balance in keeping confidentiality, as with the case of the ICAC. In this regard, my respectable mentor, Mr ALLCOCK, came up with a good solution years ago when he had served in the Department of Justice as a senior official for quite some time. He was so smart that, despite the fierce dispute, he managed to come up with a middle-of-the-road proposal which can balance the views of the two sides, and that is, section 30 of the Prevention of Bribery Ordinance, also hailed by me as the "golden formula". This formula will also be adopted by us as we are bound to encounter other activities related to enforcement of law, the keeping of confidentiality, and the prohibition of disclosure, and so on. Therefore, the revelation of any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by members of the Police Force should indeed be treated as exception to the scope of information required to be kept confidential by the ICAC. This is really a good method. Even if we take confidentiality very seriously, as with the case of the ICAC, we can still accept, as a balanced consideration, that some information can be disclosed. Therefore, I consider the addition to clause 37 as an exception is to be absolutely appropriate. On the contrary, the scope of clause 37(2)(d) is too restricted, despite the Secretary's proposed addition of some window-dressing amendments to turn reporting "crime" into "suspected crime". Compared to the abuse of power, serious neglect of duty, or other serious misconduct, the present amendments will truly be more appropriate. Given that

even the ICAC finds this acceptable, I can hardly convince myself that exception to confidentiality should not be allowed when investigations are to be carried out by the IPCC in cases involving abuse of power by police officers.

Proposed amendment

Clause 37 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate original provision and the amendment together in a joint debate. Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr TO proposed that a specified person should be allowed to disclose protected information for the sake of revealing any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by members of the Police Force.

As I have pointed out in my response to Mr TO's amendments to clause 37(2)(c), clause 37(2)(a) is already adequate in enabling the IPCC to disclose any matters related to "reportable complaints", so long as the relevant disclosure is necessary for the performance of the functions of the IPCC. The provision allows the disclosure of any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by members of the Police Force so long as the disclosure has something to do with reportable complaints. Therefore, I consider Mr TO's amendments totally unwarranted.

CHAIRMAN (in Cantonese): Mr TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Even the Secretary has invoked clause 37(2)(a) or, in other words, the functions of the IPCC as provided for in clause 7. Chairman, when we studied in detail the functions provided for in clause 7, we would find something like monitoring the investigation of complaints, as provided for in paragraph (a). However, we cannot invoke clause 7(1)(a) even if we want to reveal the abuse of power or misconduct by members of the Police Force because these do not fall into the scope of the complaints to be investigated by the CAPO or the monitoring of the handling of complaints by the CAPO.

Clause 7(1)(b), which deals with the monitoring of disciplinary actions, cannot be invoked because the disciplinary actions referred herein are probably not known disciplinary actions. Clause 7(1)(c) deals with the procedure and system rather than individual cases, as this provision seeks to examine the presence of any fault in the procedure. Paragraphs (d), (e) and (f) are irrelevant, too. According to the Secretary, under clause 7(2), the IPCC may do such things that are reasonably necessary for the performance of its duties, that is, the duties specified in the paragraphs under clause 7(1). The Secretary may now regret that the provision has been narrowed to such an extent. But, no, he will not feel regret because he did it deliberately to ensure that the provision cannot be amended. Such a deliberate attempt is aimed at preventing the IPCC from doing anything. But now, he is seeking to make remedies, saying that reports can be made under clause 7(2), for the purpose of, for instance, making disclosure for the revelation of misconduct, serious neglect of duty, and so on. But as he went on, he found that clause 7(1) is too narrow and cannot be invoked. He is therefore caught in a dilemma.

Actually, Chairman, it is impossible for the functions provided for in clause 7(1) — mainly paragraphs (a), (b) and (c) — to cover the issues I have raised just now. Actually, I have a very interesting amendment, concerning "being excluded for being necessarily inconsistent", which has been negatived earlier. Members should recall that my original purpose of proposing an amendment to clause 7(1) was to "prevent abuse of power by police officers", and if this is stated therein, the exceptions we are talking about might still be compatible with clause 7(1), that is, also compatible with clause 37, but there is nothing we can do now to remedy the situation since the amendment has been negatived.

Therefore, the Secretary is trying to do the impossible by suggesting that, under clauses 7(1) and (2), the contents of my amendment can be lawfully revealed. I am sorry.

CHAIRMAN (in Cantonese): Does any Member or public officer wish to speak?

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, two were in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections, 19 were present, eight were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MR JAMES TO (in Cantonese): Chairman, I move the addition of sub-paragraph (ii) of clause 37(2)(e).

Chairman, I will not repeat the history which I said earlier. However, I think that "a serious threat to public order or to the security of Hong Kong or to the health or safety of the public" can be taken as an exception for exemption from the duty to keep confidence under clause 37.

Chairman, this represents another formula laid down in section 30 of the Prevention of Bribery Ordinance. Compared with the investigation into the abuse of power by police officers, the application of this formula apparently involves greater public interest because this means a serious threat will be posed to public order and security of Hong Kong and to the health of the public. My mentor, Mr ALLCOCK, a former senior government official, contemplated this point very clearly when considering the whole issue, that is, it may not be enough to compel the ICAC to reveal its investigation operations if there is only a threat to security and health. But if the threat has come to such a serious stage, the point of equilibrium would become visible.

Proposed amendment

Clause 37 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate original provision and the amendment together in a joint debate. Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr TO proposed that a specified person should be allowed to disclose protected information for the sake of revealing a serious threat to public order or to the security of Hong Kong or to the health or safety of the public.

Section 10 of the Police Force Ordinance provides for the duties of the Police Force, which include, *inter alia*, preserving the public peace, preventing and detecting crimes and offences, and preventing injury to life and property.

If the IPCC is of the view that a "reportable complaint" demonstrates the presence of a serious threat to public order or the security of Hong Kong or the safety of the public, it may report to the police for follow-up actions. As there is simply no need to make another disclosure, we do not agree to this amendment.

MR JAMES TO (in Cantonese): Chairman, under normal circumstances, for example, when there are really terrorists or when security is seriously threatened, I cannot imagine the Independent Police Complaints Council (IPCC) saying that the individuals concerned will not disclose the relevant information to the police because police officers are the people they are most familiar with. However, when even members of the IPCC think that the relevant information should not be disclosed to the police, we can imagine that the problem must be so serious that they may choose to disclose it to the public or the media. Why is it so strange? People appointed by the Chief Executive will definitely not take these considerations too simplistically or too lightly. If even they think that the information should not be disclosed to the police, then why? Perhaps it is because it is the police who have caused serious threat to public order, safety and health. Perhaps they think the police have intentionally covered up indications of public threats, and so they think they cannot trust the police anymore, or they cannot rely on this regime anymore. Rather, they have to blow the whistle to alert people outside the Police Force.

Regarding this duty to keep confidence, I think the decision should be left with those members. Under normal circumstances, I cannot imagine that they will keep confidence to avoid involving the police. However, now that even investigations conducted by the Privacy Commissioner are included in clause 37 as currently drafted, I cannot imagine why they should be subject to this confidentiality provision even under these serious circumstances. This point is evident to all.

Similarly, I can also imagine that under many circumstances, if the so-called golden formula has been applied to other provisions, it is actually necessary to strike a balance. As a matter of fact, this golden formula cannot be stated expressly in so many provisions. If I remember correctly, such a golden formula is also stipulated in the anti-terrorist legislation and other relevant legislation. If such is the case, the public or the party required to keep confidence, should be given the right to make his own choice.

CHAIRMAN (in Cantonese): Does any Member or public officer wish to speak?

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Mr

Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, two were in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections, 19 were present, eight were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MR JAMES TO (in Cantonese): We have now come to page 75.

Chairman, I move the addition of sub-paragraph (iii) of paragraph (e) to clause 37(2). Chairman, this is the final item in a series of amendments which seeks to expressly state that the duty to keep confidence should be exempted, and such exemption should be granted on the ground of public interest.

I had hesitations about whether this subject should be drafted so broadly. But actually I think it should. Why? It is because in the dispute arising from legislating for Article 23 of the Basic Law, even the Government ultimately

considered that, on the one hand, due regard should be given to public interest, and on the other, acts relating to national security should not be disclosed. Sometimes, even acts relating to national security should be disclosed in the interest of the public. I think national security should definitely override the interest involved in complaints about the abuse of power by the Police Force. When even the request for confidentiality of acts relating to national security may be exempted on the ground of public interest, I do not see any problem in including public interest as a ground for exemption.

Besides, public interest cannot be used casually as the ground for exemption. Under clause 37(1), a person must not disclose any information except under the circumstances provided for in subclause (2). In other words, a person may only disclose the relevant information when the disclosure is provided for in the exemption provisions and the information to be disclosed must be information which is considered to be necessary. The word "necessary" is included, so it is information which is considered to be necessary not subjectively but objectively. The individual has to prove that the information is necessary in public interest. If he is unable to do so (the burden of proof is on the party who discloses), he may be accused of committing an offence under clause 37(1). Therefore, the individual has to prove for himself. In other words, it is not the party prohibiting the disclosure or the prosecution which has to prove that the party who discloses has failed to disclose the information on the ground of public interest. Therefore, a proper balance has been struck.

Proposed amendment

Clause 37 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original provisions and the amendments jointly. Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, in my response to Mr James TO's amendments to other subclauses to clause 37(2), I have already explained that the scope of clause 37(2) is broad enough to allow the Independent Police Complaints Council (IPCC) to discharge its duties effectively and monitor the police's handling of "reportable complaints" to ensure that the relevant investigation is conducted in a fair and impartial manner. As for the legislative proposal relating to national security mentioned by Mr James TO, it is of a totally different nature from the IPCC's monitoring of public complaints against the police. I think the two should not be confused with each other. Therefore, I regard Mr James TO's amendment superfluous, and we oppose this amendment.

MR JAMES TO (in Cantonese): Chairman, this is like a golden formula. Why? Whenever they are unable to provide detailed justification to substantiate their argument, they will claim that the issue raised by the others is totally different from the proposal in the Bill and that the two should not be confused with each other. This is actually not a reply but an excuse for being shoddy and indolent, or it is even a "fig leaf to cover nakedness". When they are unable to provide any justification, they can only say that the two are totally different issues and that we are referring to a different situation which is totally irrelevant to national security.

However, we are engaging in a rational debate. While national security should definitely be protected, even the Government admits that exemption may be granted on the ground of public interest, and public interest can be used as a defence. Then, when a complaint is lodged with the Complaints Against Police Office (CAPO) against the Police Force or a police officer for abuse of power, and when the IPCC has already got hold of some confidential information obtained during the process of investigation it should be protected information instead of confidential information, that is, information which has to be kept confidential, because such information may not necessarily be confidential in nature, just that it falls within the definition of "protected information" in clause 36 as people come across it in the investigation process. This definition simply means that all information that comes to a person's knowledge in the handling process is protected information. Therefore, although the information obtained during the handling process is insignificant information, it has to be protected just because it is only obtained during the handling process. Actually, this scope is too wide because the relevant

information may not necessarily be confidential information which warrants protection. However, as for example, at present, some information is on complaints and another team of staff of the CAPO is investigating, and two oral statements are taken from the people involved. May I ask how the IPCC should know that another team of staff is investigating these cases if it is not allowed to inspect the investigation reports in discharging its duties? There is no way that a third party can tell which team is undertaking the investigation, and we will never know that the team has taken two oral statements from the people involved. These two oral statements I am not talking about the content of the oral statements, which may involve confidential information, but the fact that two oral statements have been taken is in itself protected information.

The scope proposed by the Secretary is so wide that it covers all information that is come across in the handling process. For example, if only half a page is written on, there is paper wastage. The IPCC will know that there is paper wastage as half a page is left unused or even the reverse side of the paper is not written on. But sorry, it must not disclose this because it has a duty to keep confidence. Unless the Legislative Council summons but no, it does not work this way either because the relevant amendment has already been withdrawn. Originally, I thought there might be an example, that is, the Legislative Council may find out whether or not government departments, including the CAPO, have wasted paper or whether they write on the reverse side of the paper. Actually, it is possible that the oral statements for many cases are not written on the reverse side of the paper, causing paper wastage. However, this cannot be disclosed. Assuming that the Legislative Council Panel on Environmental Affairs summons various government departments to a meeting, but all of them are unable to disclose such information. Do Members consider this ridiculous? Therefore, the scope of protected information is in itself so wide that there is not any so-called "qualification" or restriction stating that protected information must be of a serious nature and require protection. The current scope is too wide.

The situation is exactly the same as our previous debate on the official secrets law what I mean is of course the old piece of law. What was not allowed to be disclosed could not be disclosed, including our phenomenal criticism concerning whether Lipton tea bags or Rickshaw tea bags are used in the Government Headquarters. Under the old law, this cannot be disclosed. This was the harshness of the previous official secrets law, but we are still adopting this. In any case, all information which comes to a person's

knowledge during the handling process, irrespective of whether it is confidential in nature or whether it involves the operational procedures, cannot be disclosed. All circumstances under which exemptions will be granted are provided for in clause 37(2). If a particular case is covered by the circumstances stated therein, it will be exempted, if not, no exemption will be granted. The condition of must be in "public interest" which I am talking about now it actually not easy to meet. When a person is brought under litigation, be it civil or criminal, he has to prove for himself that the disclosure is necessary in public interest. One has to have the courage to provide proofs to convince the Judge. Under normal circumstances, members of the IPCC or the individuals concerned have to keep the relevant information confidential, but on the ground of public interest, they must disclose such information.

Frankly speaking, some people criticize that my present amendment or other amendments which involve using public interest as a defence can hardly be passed. They said that if I really want to move these amendments, I should endeavour to put them in the previous provisions — that is, those provisions which have already been negated — and spell them out one by one. It is because this approach is better than proposing a catch-all provision, that is, a provision which covers all, and so this present amendment can hardly be passed. They said that the Judge is not easy to convince, and he has to strike a balance because the duty to keep confidence is very important under the law. As the circumstances under discussion are only exceptions instead of normal circumstances, the individual concerned must prove for himself that the disclosure is necessary in the public's interest.

Therefore, I think as there are exceptions even for national security information which is to be protected although the discussion then was on national security information, which has implication on the security of a nation, the Government could still regard public interest as a defence for disclosure. Of course, I do not know whether the Secretary has any other justification now. Originally, when I prepared my speaking notes, I thought he would say so. However, I would not have thought that he is not even up to that level. I thought he would say that at that time as it was about legislating for Article 23 of the Basic Law however, the Secretary may think that he should not talk too much about Article 23 any more to avoid the decline of his popularity ratings. He may think that as the issue of legislating for Article 23 apparently has nothing to do with him and it is someone else's business, he would be better off staying out of trouble.

Originally, I thought he would say that the Bill introduced in response to Article 23 of the Basic Law was only a compromised option and a political compromise as a few hundred thousand people took to the street at that time and Mr James TIEN also resigned from his position as member of the Executive Council. Losing control of the situation at that time, the Government could only make concession in three aspects as it hoped that the Bill could be passed at that final stage. I also thought he would say that it was only a political compromise made under the unique political atmosphere at that time and is in no way a regular practice. I thought he would say so, and I have also prepared my counter-arguments. But now there is no need to argue, right? Because the Government actually does not consider it only says that it is already covered, and the answer it has provided is that clause 37(2)(a) is already covered by clause 7.

After careful examination, — he has talked about it just now, and I am not going to repeat what he has said — I still cannot figure out how it is covered. It is impossible that clause 37(2)(a) is covered in clause 7(1)(a), (b) and (c), and it is even more impossible that paragraphs (a), (b), (c), (d) and (e) are covered in subclause (2) of clause 7, right? It is because clause 37(2)(a) is related to subclause (1) of clause 7, which are about the functions that the IPCC are required to perform. What do they have to do with public interest public interest is very wide, and it is not only related to the monitoring against possible abuse of power and the monitoring of its imposition of proper penalties referred to in paragraphs (b) and (c) to subclause (1) of clause 7. It is broader than these. How can we say that the public interest which our Secretary has in mind turns out to be so narrow that it is all covered in subclause (1) of clause 7? If this is really the case, I am really disappointed.

CHAIRMAN (in Cantonese): Does any Member or public officer wish to speak?

MR MARTIN LEE (in Cantonese): My apology, Chairman, I was a bit slow in raising my hand.

What we are talking about is actually not the Government's argument is that as disclosure is already allowed, hence there is no need to make it mandatory. However, what we are discussing now is that, under certain circumstances, the Independent Police Complaints Council (IPCC) has the duty

to disclose the relevant information to society. These two are different. The reason is that when disclosure is allowed, it implies that disclosure is not required. The question is if society considers that disclosure is necessary on the ground of public interest, it should be stated clearly in the law so that the IPCC will have the duty to disclose such information to society when these circumstances arise.

Actually, when it comes to this point, we have to go back to an issue. The Police Force is part of the general public, in the same way as the legal sector is part of the general public. We always talk about the need to protect certain groups in the community, but why? Should we protect the disadvantaged groups, such as people with physical disabilities? We should protect them, and every one agrees that we need to do so. We also have to protect the children because they are young. However, why do we have to give special protection to the Police Force?

Just now I said that all animals are protected, while only police officers enjoy special protection. I think both the male and female members of the police do not like to hear people say this because they are upright individuals responsible for protecting the citizens. Why does the interest of the Police Force have to override that of the public when it comes to such a serious subject as public interest? This is not acceptable in any way. Therefore, I hope the Secretary can make a further response, explaining why our Police Force perhaps all the Police Forces in the world may not need this. The Police Force may dislike this remark of mine, but I do not intend to insult them. The question is the Government wants to give them special protection. Therefore, we Members have to ask such a question. I hope the Secretary will give a satisfactory response.

CHAIRMAN (in Cantonese): Does any other Member or public officer wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Regarding Mr Martin LEE's argument he thinks this provision is introduced to give special protection to the Police Force. I disagree with this argument.

DR YEUNG SUM (in Cantonese): I think both society and public interest are very important. This is a "cardinal principle", that is, a principle of a higher order. Why then is the Government not required to take up any responsibility? When information may be disclosed, it also means that it may not be disclosed. Therefore, why do we not state it clearly in the law? The authorities should take Mr James TO's amendment into consideration. Actually, the relevant parties have a duty to disclose information relating to public interest so as to enable the public to enjoy the right to know and to put themselves under public scrutiny so as to make themselves accountable.

Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): The Secretary sat down after just indicating his disagreement with my argument. However, why did he disagree? I was very specific. If the Secretary just rises and says he disagrees every time, refusing to admit the case as it is, and then sits down, no matter how many reasons are put forward by Members, how can he be accountable to the public?

If some police officers are watching the television broadcast now and hear Martin LEE ask such a question, they may ask why the Secretary does not provide some justification. They may think that it seems the public does not require protection while the Police Force does. However, it is not the scenario they want. They should be the ones to protect the public. Why does the public have to protect them in return? The Secretary cannot just stand up, say that he disagrees and then sits down.

CHAIRMAN (in Cantonese): Does any Member or public officer wish to speak?

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, two were in favour of the amendment and 16 against it; while among the Members returned by geographical constituencies through direct elections, 19 were present, eight were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): As Mr James TO's amendment has been negatived, I have given permission for Mr TO to revise the terms of his amendment to clause 19(8) correspondingly, in order to delete reference to clause 37(2)(e).

CHAIRMAN (in Cantonese): The Secretary for Security has given notice to move the addition of clause (2A) to clause 37. Mr James TO has also given notice to amend subclause (3) of clause 37 and delete subclause (4) therefrom. The Secretary for Security and Mr LEE Wing-tat (to be represented by Dr YEUNG Sum), have separately given notice to move amendments to clause 37(4).

Members may debate the original clause and the amendments moved by the Secretary for Security, Mr James TO and Dr YEUNG Sum respectively together in a joint debate. I now call upon the Secretary for Security to speak first, to be followed by Mr James TO and Dr YEUNG Sum, but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, the Independent Police Complaints Council (IPCC) and the Bills Committee indicated that the Bill should state clearly that the IPCC may disclose to the public any disagreement between the IPCC and the police on the findings or classification of a "reportable complaint" or on the disciplinary actions taken or to be taken by the police, so as to allow the IPCC to effectively perform its function of monitoring the police's handling and investigation of complaints and be accountable to the public for its performance of duties.

As I have mentioned in my response to Mr James TO's amendment to clause 37(2), the scope of the requirement regarding the permission to disclose protected information under 37(2)(a) is already very broad. Disclosure is permitted as long as it is necessary for the IPCC's performance of its statutory functions. That provision will already allow the IPCC to make public the explanation provided by the police for not accepting the IPCC's opinion and the reasons for any disagreement between the IPCC and the police on the disciplinary actions taken or to be taken, provided that the disclosure of such information is necessary for the performance of the IPCC's functions.

However, in the light of the concerns raised by the IPCC and the Bills Committee, we suggest providing for an additional clause (2A), stipulating that for the avoidance of doubt, in making a disclosure under subclause (2)(a), the IPCC may disclose to the public the facts of any disagreement between the IPCC and the police on the findings or classification of a "reportable complaint"; or its opinion on the disciplinary action taken or to be taken by the police in connection with a reportable complaint.

Mr James TO suggests allowing the IPCC to disclose all facts relating to such disagreement and regard such disclosure as necessary for the performance of the IPCC's statutory functions. I would like to point out once again that the IPCC and the police have already reached a consensus that the decision of whether or not to take any disciplinary action and what kind of disciplinary action should be taken against any member of the Police Force should rest with the Commissioner of Police. The IPCC may give advice to the police and may also require the police to provide it with an explanation on these disciplinary actions. This consensus is manifested in clause 7(1)(b), clause 18(1)(e) and clause 24 of the Bill. The new 37(2A) we propose can already state clearly that

for the performance of its functions, the IPCC may disclose any disagreement it has with the police on the disciplinary actions taken or to be taken by the police.

Mr James TO's amendment stipulates that as long as the IPCC makes a disclosure, such disclosure shall automatically be regarded as a disclosure necessary for the IPCC's performance of its functions. This amounts to disregarding whether or not such disclosure is supported by objective facts or circumstances to be actually necessary for the performance of the IPCC's functions. We do not consider this reasonable.

Besides, Mr James TO also suggests completely deleting subclauses (3) and (4).

In order to protect privacy, clause 37(3) of the Bill clearly provides that disclosure made under subclause (2)(a) should not include the disclosure of the identity of any complainant, the subject of a complaint and any person who assists or has assisted the police in the handling or investigation of a complaint. To facilitate the operation and internal discussion of the IPCC, subclause (4) allows specified persons to disclose to each other the identity of these persons, or to make disclosure to the complainant, the police and so on. Therefore, subclauses (3) and (4) are necessary. As a matter of fact, the IPCC also provides in its annual report details of the cases examined and its recommendation and opinion on such cases over the previous year in order to give an account its work to the public. The identity of the relevant individuals will not be disclosed with these details. We think that this practice is necessary for respecting and protecting personal data and should be retained.

We propose simplifying the drafting of subclause (4)(a) and, in response to the request made by the IPCC and the Bills Committee, extending the scope of subclause (4) to cover a person who has written authorization to make or handle a complaint on behalf of the complainant, a person whom the IPCC invites to an interview or any person who is present at an interview, and the Chief Executive, in order to further facilitate the operation of the IPCC.

Mr LEE Wing-tat proposes that subclause (4) should be extended to cover the Legislative Council, the Secretary for Justice and the Commissioner of the Independent Commission Against Corruption (ICAC).

Regarding making disclosure to the Secretary for Justice and the ICAC Commissioner, we expect that subclause (2)(b) is already applicable: that is, for the purpose of reporting evidence of any crime or suspected crime. The IPCC may disclose the identity of the relevant person to the Secretary for Justice and the ICAC Commissioner under clause (2)(b). As subclause (3) only regulates the disclosure made under subclause (2)(a) and does not apply to subclause (2)(b), we consider the addition of the Secretary for Justice or the ICAC Commissioner to subclause (4) unnecessary.

As for making disclosure to the Legislative Council, as I have said just now in my response to Mr James TO's amendment to subclause (2), subclause (2)(a) has already given due regard to the need to disclose information to the Legislative Council. Given the need to protect personal data, we consider it unnecessary to make disclosure involving sensitive personal data as far as helping the Legislative Council understand a certain complaint is concerned.

The Government's amendment has received the support of the majority of Members. I urge Members to pass this amendment and oppose the amendments proposed by Mr TO, Mr LEE and Dr YEUNG Sum.

MR JAMES TO (in Cantonese): Chairman, the more careful I listened to the Secretary's elucidation, the more I find it strange because what is stated in clause 37(2) is "necessary". That is to say, all exemptions to the prevention of making disclosure under clause 37(2) should be covered by the circumstances specified in clause 37(2), that is, for the performance of functions, the reporting of crimes, complying with a court order or a request by the Privacy Commissioner of Personal Data in an investigation and so on. All such disclosure, including disclosure of different degrees and details, is "necessary".

As such, I propose deleting the original subclause (3) as it is stated that the disclosure of the identity of any complainant or the subject of a complaint should not be made even if it is necessary for the performance of the functions of the Independent Police Complaints Council (IPCC). I am extremely perplexed by it. Just now the Secretary used the cases included in the IPCC's annual report as examples to illustrate that the identity of the complainants does not necessarily have to be disclosed even for the purpose of enabling the public to understand the

work of the IPCC. Yes, he is right, but these examples are not necessary for the performance of the IPCC's functions.

Nevertheless, if there are circumstances in which the disclosure is necessary for the performance of the IPCC's functions but such disclosure is still disallowed under clause 37(3), it will be rather perplexing, unless the Secretary can analyze very thoroughly the IPCC's functions specified in clause 7 to ensure that they have exhausted all circumstances in which the disclosure should definitely not be made and is unnecessary. I do not know whether the Secretary will consider this a very heavy responsibility. Can he use the few remarks made just now to provide a clear explanation? If he cannot explain it, will there be any omission, thereby causing the IPCC to be unable to make disclosure of identity which is necessary for the performance of its function? I agree that under many circumstances, the disclosure of identity may not be necessary. Judging from the wording of the provision, it is not that colleagues responsible for drafting the Bill have not considered this point because clause 37(3) makes reference to subclause (2)(a) only. In other words, the IPCC should not disclose identity in the course of performing its functions, but there is no mentioning that such disclosure is not allowed in reporting a crime. Should this be the case, contradiction will exist because in reporting a crime, the relevant person must tell who has committed the offence instead of just saying that a police officer has committed an offence according to the investigation report of the IPCC. This does not make sense, right? This is very stupid and such an amendment should not be made.

Complying with a court order is another example. Very often, the Court may require that a certain case and a certain person be specified. Therefore, we cannot say that disclosure may be made to the Court but the disclosure of the name of the relevant person may not be necessary. Therefore, it seems that colleagues responsible for the drafting have considered whether there is really not any circumstance under which it is necessary for the IPCC to disclose the relevant names in exercising its functions as provided for in clause 7(1). I can only say that the threshold of the word "necessary" is rather high. If the disclosure of the relevant names is not necessary, they should not be disclosed at all, and this is exactly the duty to keep confidence referred to in clause 37(1). In that case, we should not be talking about names only why should there be any special reference to the disclosure of names? Disclosure of any unnecessary information should not be made. Besides names, there should be

other information as well. Is sexual orientation not important? There may be certain other information which is more personal, what should we do? There may even be related private personal data which can be used to prove the identity of a certain person, right?

Therefore, as it is already provided in clause 37(2) that the disclosure of such information may only be made when it is necessary for the performance of the IPCC's functions, and since the IPCC, which is appointed by the Government, has its own legal advisers, clause 37(3) seems to reflect that the Government is over worried. This drafting should not be adopted unless the Government has a serious distrust of the IPCC. Therefore, I propose deleting clause 37(3), and when it is deleted, clause 37(4) will become redundant because clause 37(4) is about the exceptions of the exceptions found in clause 37(3), okay? Therefore, this is my explanation.

The second part is Chairman, I do not have the courage to steal credits from the others. Actually, my amendment to clause 37(3) comes from the views previously expressed by Mr Ronny WONG SC on behalf of the IPCC. They think this formula meets their requirement because when they have come to a conclusion different from that of the police, in particular the Complaints Against Police Office (CAPO), thereby causing disputes, they will be able to put this before the public and subject it to the judgment of society as a final resort. Therefore, they think when there is divergence of opinion, the disclosure of all facts should be allowed. Thus, the wording he adopted is "all facts".

However, the Government secretly came up with a water-downed version and listed out some items following the direction of their idea, the disclosure of which seems to be allowed. Nevertheless, when we compare the two, frankly speaking, I think disclosing all facts, when compared with the disclosure of only the facts which they disagree, as provided for in clause 37(2)(a) proposed by the Government, or the disclosure of the IPCC's opinion on some disciplinary matters as stated in subclause (2)(a) and (b), is of course this is definitely opinion, as I said just now, the amendment on "recommendation" was not passed, and the Government would definitely adopt a consistent wording, and that is "opinion". Therefore, it is narrowed to "facts and opinion", while the wording used in my amendment, the idea of which is adopted from Chairman Ronny WONG, is "all facts". As the wording suggests, when disputes arise, comparing "all facts" and "facts and opinion", the scope of the former is definitely wider.

Therefore, unless the Government can point out that the drafting of subclause (2)(a) if every one shares the same view, that is, if every one respects the concern of the IPCC and adopts such a drafting because of its concern, then may I ask whether the Government can explain whether the scope of subclause (2)(a) it proposes is wider than that of subclause (3) which I propose?

The second possibility is that the Government can point out the circumstances under which they think the formula — actually Chairman Ronny WONG's formula — for drafting subclause (3) is objectionable. That is, can it point out why the scope of subclause (2)(a) is just appropriate while the wording of "all facts" adopted in subclause (3) is too wide? Can the Government point this out specifically? If it cannot, I call on the Government and all Members to take on board the recommendation made by the former IPCC Chairman who is a senior counsel — this view expressed by him. The view he has expressed on behalf of the IPCC upon discussion is that subclause (3) meets their requirement. Against this background, can we just respect their view once?

Perhaps, I would like to call on the Government to allow all Members of the pro-government camp to think freely whether subclause (2)(a) proposed by the Government, when compared with subclause (3), is really flawless and that its scope is not in any way too wide, so that they can cast their votes freely instead of being obliged to follow the Government's fuzzy justification or even its justification provided for the sake of face-saving. If our discussion is based on the same principle, can we do that?

Of course, if the Government can tell where the problems lie or even point out that the scope of the provision proposed by it is wider than that of ours, or that my provision is inferior and narrower in scope, I am eager to listen. I may even agree or be willing to withdraw my amendment, and I hope this will be the case.

Finally, it is the deletion sorry, Chairman, I have already spoken on the justification for deleting subclause (4), and I will just stop here.

DR YEUNG SUM (in Cantonese): Madam Chairman, my amendment seeks to allow individuals such as the Secretary-General to and the Legal Adviser of the Independent Police Complaints Council (IPCC) to disclose the identity of the

complainant and the subject of the complaint to the Legislative Council, the Secretary for Justice and the Commissioner of the Independent Commission Against Corruption (ICAC). To my knowledge, many complaints against the police involve corruption or criminal offences committed by police officers. Cases which do not involve corruption or criminal offences may involve public interest. Therefore, when the IPCC identifies these cases, it has the duty to follow them up with the relevant organizations. However, under the existing legislation, even if the IPCC reports the complaints to the Legislative Council, the Secretary for Justice and the ICAC Commissioner, it is not allowed to disclose the identity of the complainant and the subject of the complaint as it is subject to the provision in clause 37(3).

Madam Chairman, we have actually discussed this provision in great detail in the discussion of the application of the Prevention of Bribery Ordinance to the election of the Chief Executive. In other words, when the IPCC reports a complaint against a police officer for corruption to the ICAC Commissioner, it is even not allowed to disclose the number of the relevant police officer. I regard this practice highly problematic. Madam Chairman, for this reason, I would like to propose an amendment to extend the scope of the IPCC's disclosure of the identity of the complainant and the subject of the complaint, so that the IPCC can disclose the identity of the complainant and the subject of the complaint when appropriate in accordance with the law.

With these remarks, I propose the amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): I have already stated my position when I spoke earlier.

MR JAMES TO (in Cantonese): Chairman, I do not know whether the Secretary is tired of combat or what. My question is very clear. On the desk are two formulas, both of which seem to seek to avoid doubt because they have adopted the same style of drafting. Then, which formula is better? What I have proposed is actually proposed by Mr Ronny WONG, Chairman of the Independent Police Complaints Council (IPCC). He thinks this is what they need. I think the most important wording in his proposal is "all facts", which has a wider scope.

Subclause (2)(a) proposed by the Government is not like this, although both of the two levels are present in concept. As we have already reached the committee stage, instead of discussing the broad policy, may I ask whether the Government can explain this in greater detail? As all of us are trying to achieve the best result, may I ask whether the Government can advise whether its subclause (2)(a) or my subclause (3) is better, or whether they are equally desirable? If they are equally desirable, can the Secretary tell Honourable colleagues about it? Please do not just say that you oppose Mr TO's amendment. What exactly do you oppose? Which formula is problematic? Is it because the Government does not accept a certain part of it? Or does the Government's formula have a wider scope? I am eager to listen to your views.

It seems that both the Government and the Secretary are reluctant to say anything, thinking that it will suffice as long as enough votes can be secured for the passage of the Bill. Even if the provisions are equally reasonable, he is reluctant to debate with us. May I ask the Secretary to bear in mind that I would have nothing to say if this had been discussed by the Bills Committee. However, this provision was only proposed recently. Subclause (2)(a) was proposed by the Government only very recently and we have not debated on its technical aspects in detail. That being the case, this is a very good opportunity and I wish to listen to what the Secretary would say. As there are a few hundred lawyers in the Department of Justice, I would not accept it if the Secretary tells me that his colleagues cannot make any analysis to find out which is desirable and which is not, and whether or not they are problematic and whether or not there is anything unacceptable. If the Secretary is unable to tell, what kind of a Government is this? If the Government only cares about whether it can secure enough votes for the passage of the Bill, while ignoring the amendment even if it is justified, can we accept such a Government?

I do not wish to drag the debate on and all I wish is to make this humble request again. If our Government is so unreasonable that it only aims at securing enough votes, there is nothing I can say. All we know is that four years ago — it is really pathetic that the same situation happens every time — such a situation, which emerges once every four years, brought our Secretary into serious disgrace and made him speechless, being unable to answer any question. Neither was he able to provide any justification during the debate. All he could say was that "they are two different things". This is exactly the typical empty reply, which has made me feel so very disappointed.

DR YEUNG SUM (in Cantonese): I do not know whether Mr James TO is "too persistent" or whether the Secretary is too tired. As I have this opportunity to speak again, and Secretary, you will also have such an opportunity, may I ask the Secretary whether he can provide a serious response? It is because every single word we say will be put in record.

I would like to say to Mr James TO that we have worked together in this Council for years, and there is no need for us to worry about the lack of talents in the Government as it has abundant talents within its establishment. The Secretary is actually very confident of his success, but perhaps he is too tired or perhaps Mr TO is "too persistent". However, let us give the Secretary another opportunity so that he can try to enlighten us.

Thank you, Madam Chairman.

SECRETARY FOR SECURITY (in Cantonese): Actually, if Mr James TO had listened to my speech earlier on, he would have known that I have answered his question. Mr TO's amendment states that any act of disclosure made by the Independent Police Complaints Council (IPCC) shall automatically be regarded as the IPCC's disclosure which is necessary for the performance of its functions. We are of the view that this amounts to disregarding whether or not there are adequate objective facts or circumstances to support that the relevant disclosure made by the IPCC is actually necessary for the performance of its functions. We consider this very unreasonable and thus we do not support it.

Regarding Dr YEUNG Sum's amendment, we expect that the circumstances provided for in subclause (2)(b) should apply, that is, for the

purpose of reporting the evidence of any crime or suspected crime. The IPCC may disclose to the Secretary for Justice and the Commissioner of the Independent Commission Against Corruption (ICAC) the identity of the relevant persons under subclause (2)(b). As subclause (3) only regulates the disclosure made under subclause (2)(a) and does not apply to subclause (2)(b), we consider the addition of the Secretary for Justice and the ICAC Commissioner into subclause (4) unnecessary.

MR JAMES TO (in Cantonese): Chairman, after listening to this answer, I find it even more ridiculous. It is because the Secretary said that my proposal actually it is an amendment proposed by Chairman Ronny WONG — the most important point is that it covers all facts, while the Secretary's amendment in subclause (2)(a) covers less than all facts. However, it should be borne in mind that the Secretary's amendment has nothing to do at all with the functions provided for in clause 7. In other words, if we have to make disclosure under subclause (2)(a) proposed by the Secretary, only those facts which is subject to the restriction provided for in subclause (2)(a) may be disclosed. However, we should not forget that the word "necessary" is the precondition of subclause (2) of clause 37. It has the word "necessary" and the disclosure should be "necessary" for the performance of functions.

Well then, may I ask whether the Secretary is trying to tell me his subclause (2)(a) suggests that under many circumstances, the disclosure of the relevant facts is actually unnecessary? If this is the case, it will be even worse as many disputes will arise and the truth can hardly be made clear. For example, if the former IPCC Chairman thinks that he has to put the case before the public and the media and appeal to public judgment, the Secretary may ask: "Why do you have to appeal to public judgment? This is unnecessary. Only if you could beg me a couple of times more, perhaps I might agree with your opinions or even change my mind, and so it is unnecessary for you to do this."

After examining subclause (2)(a) proposed by the Secretary, some clues are unveiled. I just hope that this provision will let the cat out of the bag. The Secretary actually has plenty of hidden plots and intrigues in mind. What does it mean? Actually, he would like to make a fall-back plan. When the IPCC indicates that it really has to appeal to public judgment on the disagreement, he will issue a warning. He will say: "You should think about it twice. You and I have not wrestled and argued enough about it. You would like to disclose and

disseminate the information to the public, but it is unnecessary. You should think about it clearly as I can sue you and issue a notice of prohibition against you because I can make use of the criterion of "necessity" under clause 37(2) as a magical inhibition to inhibit you from doing so." If this is really what the Secretary thinks, he is no longer able to hide his tail. That is, subclause (2)(a) proposed by the Secretary is totally different from my subclause (3). What is the difference? The difference is the Secretary thinks that public judgment is not necessarily required in all instances, and not all disclosure of facts is "necessary", and he would like to have a fall-back plan. In that case, all I can say is that the Secretary feigns compliance or is even very cunning because actually he does not agree with the IPCC's recommendation. Of course, this is a recommendation made by the former IPCC, and the new Chairman may accept whatever is offered. I was not aware of this, but the fact is the Secretary has made a fall-back plan with subclause (2)(a). Now it is evident to us, and it has been put to record.

Therefore, every one knows the truth now because the truth behind has been revealed. Even if subclause (2)(a) is passed, the IPCC and the public should not be glad because the IPCC will be subject to the control of the Secretary all the time. As long as he considers that the disclosure is not "necessary", he can argue with it. Therefore, the Secretary's amendment is actually different from ours. Instead of making the amendment from his heart, he just pulled the wool over our eyes and made the amendment false-heartedly, and all he wishes to do is to confuse the public. With this, I appeal to the public's incisive judgment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, the Chairman once said that "We should support whatever the enemy opposes and oppose whatever the enemy supports.". Of course, it is not you, Chairman, but Chairman MAO who said this. This saying applies most aptly to the situation here in our Chamber. I do not know why Members still adhere to this philosophy that "we should oppose whatever our enemy upholds and uphold whatever our enemy opposes" when Chairman MAO has passed away for so long. I considered this the best sentence when studying Chairman MAO's *Quotations from Chairman*

Mao Tse-tung when I was young because it was easy to memorize and one would never get it wrong as it can be read reversely as well.

Members, of course, we can really adopt this approach if we disregard whether or not it is reasonable and whether it is in public interest. For example, after dividing ourselves into two teams in a football game, we will become opponents. Our present discussion is on the word "independent" in the Independent Police Complaints Council Bill. Of course, we are not talking about the independence of Tibet, but what is it independent of? Is it independent of the public? This does not sound reasonable. Is it independent of the Legislative Council? It does not seem to be relevant. Actually, it must be independent of the police or the Government. Just now, Mr James TO spoke till his voice was hoarse and to the point of exhaustion because of the fact that the Commissioner of Police can actually make a fuss out of situations by using the Secretary's amendment concerning what is "necessary". When the Independent Police Complaints Council (IPCC) is appointed by the Government to conduct an independent investigation, sometimes it may consider itself unable to monitor the situation and compromise cannot be made, and so it has to bring the situation to the knowledge of the public or other organizations, such as the Legislative Council — I would just talk about the Legislative Council but not the other organizations. When it does so, it will be subject to restrictions if the Commissioner of Police considers that there is no need for it to do so or that it is unnecessary. I do not know what kind of restrictions will be imposed on it as I am not too familiar with legal matters. Will a prosecution be instituted against it or what? Members, obviously, this will make its independence impossible, and at least, it is unable to put the case before the Legislative Council, the public or the media independently. Therefore, how can it be said to be independent?

Notwithstanding its great effort to introduce the legislation, the Government intends to pass it based on the principle of "opposing whatever the enemy upholds" in the end. This has obviously made the independence of the IPCC impossible under the circumstances mentioned just now, not to mention the others. This approach is not different from patriarchal politics. Parents usually tell their children that they have the freedom of dating as long as the persons they date can win the parents' favour. The present situation is exactly the same. If what Mr James TO has said is true, then after the voting, the Secretary will tell the reporters, "It is really wonderful that the Government has finally enacted a law to help the IPCC obtain the power to operate independently

and have more extensive powers to facilitate the public and all the people to monitor the Commissioner of Police."

May I ask the Secretary the following: first, if this provision is not relied on, is this Bill necessary and what purpose will it serve; if this provision is relied on, it will lead to restrictions, right? If the Secretary advises that this provision will not be relied on and is only introduced for application as and when necessary, then what is the use of enacting any legislation? If someone is sharpening his knife in the middle of the night, how can we not suspect that he may kill the others? When I am sleeping next to him, and I cannot think of any other reason why he is sharpening his knife, can I assume that he is simply admiring a treasured sword? If he unexpectedly takes out a knife and keeps sharpening it this is exactly the problem at present. When the Secretary unexpectedly advised Members in this Council that according to Mr James TO, the Secretary proposed this amendment unexpectedly in order to revise the power and duties of the IPCC. I regard this approach inappropriate. Chairman, can I help you?

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, I do not quite understand what you are talking about. *(Laughter)*

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, usually I am a bit dumb and slow in thinking. *(Laughter)*

If Members do not understand, it does not matter, and I believe there must be someone who does. I have almost come to the end of my speech. Chairman, why did you not tell me earlier that you did not understand, I really find it very strange. *(Laughter)*

CHAIRMAN (in Cantonese): Does any Member or public officer wish to speak?

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, Secretary for Security

(Mr Alan LEONG raised his hand to indicate his wish to speak)

CHAIRMAN (in Cantonese): Mr Alan LEONG, you may speak now.

MR ALAN LEONG (in Cantonese): Chairman, I have already pressed the button just now to indicate my wish to speak.

CHAIRMAN (in Cantonese): Very well.

MR ALAN LEONG (in Cantonese): I have already pressed the button. Thank you, Chairman. Should I say that I have pressed the light button? I am not sure how I should phrase it, anyway I have pressed this button.

Chairman, during the resumption of the Second Reading debate, I have actually stressed one point, that is, the Independent Police Complaints Council (IPCC) or the IPCC upon the passage of this Bill should have the final "resort" of appealing to public judgment when necessary, given its lack of investigative power, power to reach any verdict and punitive power and its various constraints such as the shortage of resources and the lack of or the failure to obtain the necessary information. This should be a very effective approach within the scope of the IPCC's authority and will also help maintain public confidence in the IPCC. The duty to keep confidence referred to in clause 37 is probably a provision introduced precisely against this power to appeal to public judgment.

After listening to Mr James TO's eloquent speech just now, I think he has already made it very clear, and Chairman, you should also know that Mr TO's amendment to clause 37(3) has actually adopted the drafting made by former IPCC Chairman, Mr Ronny WONG. Chairman, the fundamental difference between clause 37(2)(a) currently agreed by the Secretary and the new clause 37(3) proposed by Mr TO actually lies in whether the IPCC will be in control. Disclosure which is considered to be appropriate by the IPCC, according to the drafting adopted by Mr TO from former IPCC Chairman, Ronny WONG, falls within the definition that "such disclosure shall be regarded as being necessary

for the performance of the Council's functions under this Ordinance". This can free the IPCC members from any psychological burden because if they think they are still unable to obtain things which they consider to be reasonable after trying their best in performing their duties, they may appeal to public judgment. However, they are actually worried that they may be challenged.

Chairman, I heard officials representing the authorities say at a meeting of the Bills Committee that it was unreasonable to give the IPCC or the future IPCC such control, and so they suggested adopting some objective criteria. Chairman, objective criteria may sound appealing as people may think that everything will be fair and just because the decisions will neither be made by the Commissioner of Police nor the IPCC, while judgment will be made by reasonable individuals. Looking at it from another perspective, however, the authorities actually do not have any trust in the IPCC which they have appointed.

Of course, at this juncture of the debate, I have to point out that this issue is nothing new as the authorities are still holding onto the crux of the entire Bill. This is an objective analysis. Of course, the Police Force has its unique culture and its convictions and persistence, which is understandable in the light of my past experience. However, the question is it has probably not reached the point when it is willing to forsake its persistence. Nevertheless, whatever the reason may be, the objective reality is that this is where the difference between subclause (2)(a) proposed and agreed by the Secretary and subclause (3) to be proposed by Mr TO lies, which shows that the authorities are still imposing various restrictions on the IPCC and still having no trust in it.

Even subclause (3) currently proposed by Mr TO is about the IPCC's collective decision. Chairman, he is not talking about the decision made by the future IPCC Chairman or a few members but the collective decision made by the IPCC to appeal to public judgment as a last resort. For the IPCC, in order to exercise the most effective gatekeeping for the public, disclosure has to be made to enable the public to make a judgment. I believe if the authorities can put more trust in the IPCC members to be appointed by them, they would definitely not stubbornly hold onto this issue. However, Chairman, I must say that if the authorities, that is, the executive, guard against this group of people who will monitor the entire police complaints system for the public and impose on them various restrictions, the public will not have any confidence in this monitoring regime.

Therefore, perhaps let me give an account of my analysis so that it will be recorded for future reference. I think at the present stage, subclause (2)(a) is indeed unable to achieve the state required by Chairman Ronny WONG and the others.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MS MARGARET NG (in Cantonese): Chairman, perhaps let me explain this point. I really consider subclause (3) proposed in Mr James TO's amendment necessary.

Chairman, during the resumption of the Second Reading debate, I also spoke on the concerns arising from allowing the Independent Police Complaints Council (IPCC) to become an independent statutory body. Upon its establishment as an independent statutory body, it will have the statutory duty to adjudicate public complaints against the police for unfair handling of such complaints to determine whether it is the public or the police which is in the right. In order to perform this statutory duty, it has to obtain all information into which investigation can be conducted so as to arrive at a correct conclusion. If it has drawn a deviant conclusion because of the lack of the necessary facts, the public may complain against it. When the public files such a complaint, what can it do? It can provide an explanation to the Court to explain, for example, why it is unable to draw a correct conclusion. What else can it do? It can do nothing but make all facts public so that the others will know the factual basis on which its judgment is made, thereby doing it justice.

Therefore, Members are right in that the distrust between the Government and the IPCC is becoming increasingly deep. That is why it is required to give an explanation Chairman, as I had to attend a meeting which could not be rescheduled, please accept my apology for not being able to listen to the debate on the IPCC's request for the disclosure of information involving legal professional privilege by the Commissioner of Police. If the IPCC is unable to make him provide such information, it will be unable to perform its duties effectively. Nothing can be done about it, but at least the IPCC should have the power to explain why it is unable to perform its duties effectively.

I think in order to do the IPCC justice, adding subclause (3) is already the last resort. Hence, this approach is not unwarranted as it only requires the IPCC to reveal the truth. Therefore, Chairman, if the IPCC is of the view that it has to have power to reveal the truth in order to perform its statutory duties, why do we not allow it to do so?

Chairman, I think subclause (3) is justifiable in itself. Thank you, Chairman.

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): It is now two minutes past Ten o'clock in the evening. I am aware that Mr James TO wishes to speak again, and a number of Members may also wish to speak. As such, I now suspend the meeting. Mr James TO may speak first tomorrow morning.

Members please come back at 9 am sharp tomorrow morning.

Suspended accordingly at three minutes past Ten o'clock.

Annex V

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGEAmendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	<p>(a) By deleting "of observing and" and substituting "in".</p> <p>(b) In the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".</p>
1	In the Chinese text, by deleting "投訴警方獨立監察" and substituting "獨立監察警方處理投訴".
New	<p>By adding -</p> <p style="padding-left: 40px;">"1A. Commencement</p> <p style="padding-left: 80px;">This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette."</p>
2(1)	<p>(a) In the definition of "categorization" -</p> <p style="padding-left: 40px;">(i) in the Chinese text, in paragraph (a), by deleting "須具報" and substituting "須匯報";</p>

- (ii) in paragraph (b), by deleting "non-reportable" and substituting "notifiable".
- (b) In the definition of "classification" -
 - (i) by deleting paragraphs (a) to (e) and substituting -
 - "(a) substantiated;
 - (b) substantiated other than reported;
 - (c) not fully substantiated;
 - (d) unsubstantiated;
 - (e) false;
 - (f) no fault;
 - (g) withdrawn;
 - (h) not pursuable;
 - (i) curtailed;
 - (j) informally resolved; or
 - (k) of such other description as agreed between the Council and the Commissioner;"
 - (ii) in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (c) In the definition of "Council", by deleting everything after "'Council'" and substituting "(監警會) means the body corporate established by section 3;"
- (d) By deleting the definition of "non-reportable complaint" and substituting -

- "notifiable complaint" (須知會投訴) means a complaint categorized as a notifiable complaint in accordance with section 13;".
- (e) By deleting the definition of "reportable complaint" and substituting -
- "reportable complaint" (須匯報投訴) means -
- (a) a complaint categorized as a reportable complaint in accordance with section 10; or
 - (b) a request for review treated as a reportable complaint in accordance with section 12;".
- (f) In the definition of "Secretary" -
- (i) by deleting "Secretary" where it twice appears and substituting "Secretary-General";
 - (ii) by deleting "(秘書)" and substituting "(秘書長)";
 - (iii) in the Chinese text, by deleting "警監會" and substituting "監警會".
- (g) In the Chinese text, in the definition of "主席", by deleting "警監會" and substituting "監警會".
- (h) In the Chinese text, in the definition of "委任成員", by deleting "警監會" and substituting "監警會".

- (i) In the Chinese text, in the definition of "委員會", by deleting "警監會" and substituting "監警會".
- (j) In the Chinese text, in the definition of "法律顧問", by deleting "警監會" and substituting "監警會".
- (k) In the Chinese text, in the definition of "副主席", by deleting "警監會" and substituting "監警會".
- (l) In the Chinese text, in the definition of "覆核要求", by deleting "須具報" and substituting "須匯報".
- (m) By adding -
"material" (材料) includes any document or record
in any form and any article or substance;".

2

By adding -

"(3) In sections 7(1)(b), 18(1)(e), 24 and 37(2A)(b), a reference to any action taken or to be taken in respect of a member of the police force includes a decision that no action be taken against that member."

Part 2

In the heading, in the Chinese text, by deleting "投訴警方獨立監察" and substituting "獨立監察警方處理投訴".

- 3 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 3 By deleting subclause (1) and substituting -
- "(1) There is hereby established a body corporate known as -
- (a) "Independent Police Complaints Council" in English; and
- (b) "獨立監察警方處理投訴委員會" in Chinese."
- 3(2) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 3(3) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 4 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 4(1) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 4 By deleting subclause (2) and substituting -

"(2) The following persons are not eligible for appointment under subsection (1) -

(a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department; and

(b) a person who was a member of the police force."

5 In the heading, by deleting "**Secretary**" and substituting "**Secretary-General**".

5(1) (a) By deleting "Secretary" and substituting "Secretary-General".

(b) By adding "of employment" after "terms".

(c) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".

5(2) (a) By adding "of employment" after "terms".

(b) In the Chinese text, by deleting "警監會" and substituting "監警會".

5(3) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 6 (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- Part 3 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 7 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 7(1) (a) In paragraph (a), by deleting "manner in which reportable complaints are handled or investigated" and substituting "handling and investigation of reportable complaints".
- (b) In paragraph (b), in the Chinese text -
- (i) by deleting "須具報" and substituting "須匯報";
- (ii) by deleting "警監會" and substituting "監警會".
- (c) In paragraph (c), in the Chinese text -
- (i) by deleting "須具報" and substituting "須匯報";

- (ii) by deleting "警監會" and substituting "監警會".
 - (d) In paragraph (e), in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (e) In the Chinese text, by deleting "警監會的職能" and substituting "監警會的職能".
- 7(2) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 8(1)
- (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
 - (b) In paragraph (b), by deleting "non-reportable" and substituting "notifiable".
 - (c) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- 8(2) In the Chinese text, by deleting "須具報" and substituting "須匯報".
- 8(3)
- (a) In paragraph (a), by deleting "non-reportable" and substituting "notifiable".
 - (b) In paragraph (b), by deleting "non-reportable" and substituting "notifiable".

(c) By deleting paragraph (c) and substituting -
"(c) in relation to a belated complaint (as defined in section 11(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, the reasons supporting that ground."

9 (a) By deleting everything before paragraph (a) and substituting -

"9. Certain complaints not to be included in lists under section 8(1)

A list under section 8(1)(a) or (b) must not include a complaint that -".

(b) In paragraph (b), by deleting "and does not relate to police conduct" and substituting "and solely relates to the question of whether the summons is validly issued".

(c) In paragraph (c), by deleting "and does not relate to police conduct" and substituting "and solely relates to the question of whether the notice is validly issued".

10 (a) In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

(b) In paragraph (a)(i), by adding ", whether or not

he identified himself as such a member" after "duties".

(c) In paragraph (b), by deleting "in the opinion of the Commissioner,".

(d) In the Chinese text, by deleting "須具報" and substituting "須匯報".

11 By deleting the clause and substituting -

"11. Categorization of belated complaints

(1) Except as provided in subsection (2), a belated complaint must not be categorized as a reportable complaint.

(2) A belated complaint must be categorized as a reportable complaint if -

- (a) it is serious in nature; and
- (b) but for subsection (1), it would be categorized as a reportable complaint in accordance with section 10.

(3) In this section, "belated complaint" (逾期投訴) means a complaint that is made to the Commissioner after the expiration of -

- (a) 24 months from the date of the incident giving rise to the complaint; or

(b) (where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within the period referred to in paragraph (a)) 12 months from the date of the final determination of such proceedings,

whichever is later."

12 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

12(1) (a) By deleting "A request" and substituting "Subject to subsection (1A), a request".

(b) By deleting "the Commissioner is of the opinion that".

(c) In the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".

12 By adding -

"(1A) A request for review must not seek for the review of a reportable complaint that is classified as "informally resolved"."

13 By deleting the clause and substituting -

**"13. Complaints categorized
as notifiable complaints**

A complaint received by the Commissioner must be categorized as a notifiable complaint if it is neither a reportable complaint nor a complaint referred to in section 9."

14(1)(a) By deleting "parent" and substituting "relative".

14(2) By deleting "(1)(b)" and substituting "(1)".

14(3) By deleting "(1)(b)" and substituting "(1)".

15(1) (a) By deleting "the list of non-reportable" and substituting "a list of notifiable".

(b) In the Chinese text, by deleting "警監會" and substituting "監警會".

(c) In the Chinese text, by deleting "為須具報" and substituting "為須匯報".

15(2) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 15(3) By deleting everything after "the Commissioner to provide" and substituting -
- "-
- (a) explanations to support the categorization of a complaint as a notifiable complaint;
 - (b) in relation to a belated complaint (as defined in section 11(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, explanations to support that ground; and
 - (c) information or material in support of the explanations."
- Part 3,
Division 2 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".
- 16 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".
- 16(1) (a) In the Chinese text, by deleting "須具報" and substituting "須匯報".

(b) In the Chinese text, by deleting "警監會" and substituting "監警會".

16(2)

(a) In paragraph (d), by deleting "and".

(b) In paragraph (e) -

(i) by deleting "other";

(ii) by deleting the full stop and substituting "; and".

(c) By adding -

"(f) such other information as the Commissioner and the Council may agree.".

16

By deleting subclause (3) and substituting -

"(3) An investigation report on a reportable complaint classified as informally resolved must -

(a) contain -

(i) a summary of the process of informal resolution of the complaint;

(ii) an account of the incident giving rise to the complaint as described by the complainant;

- (iii) (if the complainee is identified) an account of the incident giving rise to the complaint as described by the complainee;
 - (iv) an account of the action taken or to be taken by the Commissioner in connection with the complaint;
 - (v) such information as the Commissioner thinks necessary; and
 - (vi) such other information as the Commissioner and the Council may agree; and
- (b) explain the reasons for resolving the complaint by informal resolution.

(4) In subsections (1) and (2), a reference to an investigation report includes an investigation report supplementary to a previous investigation report."

- 17 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".
- 17(1) (a) In the Chinese text, by deleting "須具報" and substituting "須匯報".
- (b) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- 17(2) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- 17(3) (a) By deleting "explain".
- (b) In paragraph (a), by adding "contain a summary of" before "the progress".
- (c) In paragraph (b), by adding "explain" before "the reasons".
- 17(4) (a) By deleting "the explanation given under subsection (3)" and substituting "an interim investigation report".
- (b) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 18 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 18(1) (a) By deleting paragraph (a).
(b) In paragraph (d), by deleting "or" at the end.
(c) In paragraph (e), by deleting the full stop and substituting "; or".
(d) By adding -
 "(f) its recommendation on the report other than those mentioned in paragraphs (b), (c) and (d).".
(e) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 18 By adding -
 "(1A) If an investigation report is amended in response to the Council's recommendations referred to in subsection (1), the Commissioner must submit the report as amended to the Council as soon as practicable.".
- 18(2) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 19 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 19(1) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- 19(2) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- 19(3) (a) By adding "reasonably" before "of the opinion".
(b) In the Chinese text, by deleting "有可能" and substituting "相當可能會".
- 19(5) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 19(6) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 19(7) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".

19 By deleting subclause (8) and substituting -

"(8) Despite subsections (5) and (7)(c) but without prejudice to subsection (6), a person interviewed by the Council has the right to be accompanied by his solicitor or counsel at an interview under this section."

19 By deleting subclause (9).

New By adding immediately after clause 19 -

"19A. Record of interview

(1) The Council must make a record of every interview under section 19, and the record is to be kept for such period as may be necessary for the performance of its functions under this Ordinance.

(2) The record may be used in the circumstances provided for in section 37(2) but not otherwise."

Part 3,
Division 3

In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

- 20 In the heading, in the Chinese text, by deleting "警監會可要求處長提供關乎須具報" and substituting "監警會可要求處長提供關乎須匯報".
- 20(1) (a) In paragraph (a), by deleting everything after "relating to a reportable complaint," and before "video" and substituting -
"including but not limited to -
(i) any written statement taken from a person interviewed by a member of the police force in respect of a reportable complaint; and
(ii) any".
- (b) In paragraph (b), by deleting "or discrepancy" and substituting ", discrepancy or findings".
- (c) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 21 In the heading, in the Chinese text, by deleting "警監會可要求處長調查須具報" and substituting "監警會可要求處長調查須匯報".

- 21(1) In the Chinese text, by deleting "警監會可要求處長調查某須具報" and substituting "監警會可要求處長調查某須匯報".
- 21(2)
- (a) By adding "subject to section 12(2)," after "then,".
 - (b) In the Chinese text, by deleting "如有關須具報" and substituting "如有關須匯報".
 - (c) In the Chinese text, by deleting "警監會方" and substituting "監警會方".
 - (d) In paragraph (a), in the Chinese text, by deleting "須具報" wherever it appears and substituting "須匯報".
 - (e) In paragraph (b), in the Chinese text -
 - (i) by deleting "須具報" where it twice appears and substituting "須匯報";
 - (ii) by deleting "警監會" and substituting "監警會".
 - (f) In paragraph (c), in the Chinese text, by deleting "警監會" and substituting "監警會".
- 21(3) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 22 (a) By deleting the heading and substituting -
- "22. Notification of classification of reportable complaint and result of review".**
- (b) By renumbering the clause as clause 22(1).
- 22(1) (a) By deleting "The Council may require the Commissioner to inform" and substituting "In the case of a reportable complaint that is not a request for review, the Commissioner must notify".
- (b) In the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".
- 22 By adding -
- "(2) In the case of a reportable complaint that is a request for review, the Council must notify -
- (a) the complainant; or
- (b) (where the reportable complaint was made by a person on behalf of the complainant) the person who made the complaint,
- of the result of the review and the reasons for the result.
- (3) Subsections (1) and (2) do not apply where the complainant or the person has indicated

to the Commissioner or the Council that he does not wish to be so notified.

(4) In determining the time at which the complainant or the person is notified of such matters as required under subsection (1) or (2), the following provisions apply -

- (a) if the notification is left at his address, the notification is effected when it is so left;
- (b) if the notification is sent by post to his address, the notification is effected when it would in the ordinary course of post be delivered to that address;
- (c) if the notification is sent by facsimile transmission to his facsimile number, the notification is effected when it would in the ordinary course of such transmission be received at that number; or
- (d) if the notification is sent by electronic mail transmission to his electronic mail address, the notification is effected when it

would in the ordinary course of such transmission be received at that address.

(5) In subsection (4), references to his address, his facsimile number or his electronic mail address mean the address, facsimile number or electronic mail address (as the case may be) provided by the complainant or the person to the Commissioner or the Council as a means of contacting him in relation to the reportable complaint."

23 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".

23(1) (a) In the Chinese text, by deleting "警監會" and substituting "監警會".

(b) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".

(c) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

23(2) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 24
- (a) In the heading, in the Chinese text, by deleting "警監會可就已經在與須具報" and substituting "監警會可就已經在與須匯報".
 - (b) In the Chinese text, by deleting "警監會" and substituting "監警會".
 - (c) In the Chinese text, by deleting "須具報" and substituting "須匯報".
- 25
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
 - (c) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- 26
- In the heading, by deleting "**Council may require**".
- 26(1)
- (a) By deleting everything before "consult the Council" and substituting -
 "(1) The Commissioner must".
 - (b) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
 - (c) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

27 (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".

(b) By renumbering the clause as clause 27(1).

27(1) By deleting everything after "unless" and substituting -

"the Secretary for Security certifies that compliance with the requirement would be likely to prejudice -

(a) the security of Hong Kong; or

(b) the investigation of any crime.".

27 By adding -

"(2) A certificate signed by the Secretary for Security certifying the matter referred to in subsection (1)(a) or (b) is conclusive evidence as to the matter so certified.".

28 By deleting "from time to time".

Part 3,
Division 4 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".

29 (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".

- (b) By adding "reasonable" before "fees".
- (c) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- (d) In the Chinese text, by adding "複製本或" before "文本".
- 30 (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 31 By deleting subclause (2) and substituting -
- "(2) The following persons are not eligible for appointment as observers -
- (a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department;
- (b) the Secretary-General, the Legal Adviser or any other employee of the Council; and
- (c) a person who was a member of the police force."
- 32 In the Chinese text, by deleting "警監會按照本部的條文觀察

處長處理或調查須具報" and substituting "監警會按照本部的條文觀察處長處理或調查須匯報".

New

By adding -

**"33A. Prior notification of
interview and collection
of evidence**

(1) In so far as practicable, the Commissioner must, before he conducts -

- (a) an interview in respect of a reportable complaint; or
- (b) any collection of evidence in the investigation of a reportable complaint,

notify the Council of the interview or collection of evidence.

(2) The notification must set out -

- (a) the nature of the allegations contained in the reportable complaint;
- (b) the date, time and place of the interview or collection of evidence and the form in which it will be conducted; and
- (c) the particulars of the interviewee and the interviewer.

(3) If the Commissioner has conducted an

interview or any collection of evidence referred to in subsection (1) ("the incident") without prior notice to the Council, the Commissioner must, as soon as practicable after the incident and in writing -

- (a) notify the Council of the incident;
- (b) explain to the Council the reasons why such prior notice has not been given; and
- (c) provide to the Council information that would have been required to be set out, under subsection (2), in a notification in respect of the interview or collection of evidence if such prior notice had been given."

- 34(1)
- (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
 - (b) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

- 34(2)
- In the Chinese text, by deleting "警監會" and substituting "監警會".

34

By adding -

"(2A) If an observer has an interest (whether directly or indirectly) in a reportable complaint in respect of which an interview or collection of evidence is conducted by the Commissioner, the observer must not attend the interview or observe the collection of evidence."

34(3)

- (a) By adding "(whether directly or indirectly)" after "has an interest".
- (b) In the Chinese text, by deleting "須具報" and substituting "須匯報".
- (c) In paragraph (d), in the Chinese text, by deleting "警監會" and substituting "監警會".

35

- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) By renumbering the clause as clause 35(1).

35(1)

- (a) In the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (c) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

35

By adding -

"(2) For the avoidance of doubt, a duty roster under subsection (1)(c) does not affect an observer's right under section 34(1) to attend an interview or observe the collection of evidence at any time."

Part 5

In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".

36

In the definition of "specified person" -

- (a) in the Chinese text, in paragraph (a), by deleting "警監會" and substituting "監警會";
- (b) in the Chinese text, in paragraph (b), by deleting "警監會" and substituting "監警會";
- (c) in paragraph (c), by deleting "Secretary" and substituting "Secretary-General";
- (d) in the Chinese text, in paragraph (d), by deleting "警監會" and substituting "監警會";
- (e) in the Chinese text, in paragraph (f), by adding "任何" before "身分".

37(2) (b)

By adding "or any suspected crime" after "crime".

37

By adding -

"(2A) For the avoidance of doubt, in making a disclosure under subsection (2)(a), the Council may disclose to the public -

(a) the facts of any disagreement between the Council and the Commissioner on the findings or classification of a reportable complaint; or

(b) its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with a reportable complaint."

37(4)

(a) In paragraph (a), by deleting everything after "a specified person" and substituting "as defined in section 36 (other than paragraph (f) of that definition);".

(b) By adding -

"(ba) a person who has written authorization from the complainant -

(i) to make a complaint or request for review on behalf of the complainant (as provided in section 14); or

(ii) to handle in the complainant's stead

the complaint or request for review
made by the complainant;".

(c) In paragraph (d), by deleting "or" at the end.

(d) By deleting paragraph (e) and substituting -

"(e) a person whom the Council invites to an
interview pursuant to section 19 or any
person who is present at an interview in
accordance with that section; or".

(e) By adding -

"(f) the Chief Executive.".

38 In the heading, in the Chinese text, by deleting "警監
會" and substituting "監警會".

40(2) In the Chinese text, by deleting "由警監會" and
substituting "由監警會".

40(3) (a) By deleting "is required to be done and".

(b) In the Chinese text, by deleting "由警監會" and
substituting "由監警會".

New By adding -

"40A. Pre-existing legal claims

Without limiting section 40, a legal claim
(including any judicial and administrative

proceedings) -

(a) by or against the former
Council; and

(b) existing immediately before the
commencement date,

does not abate by reason of the commencement of
this Ordinance."

41(1) In the Chinese text, by deleting "任警監會" and
substituting "任監警會".

41(2) By adding "1A(b) or" after "under section".

41 By adding -

"(2A) A person who, immediately before the
commencement date, is the Secretary or the Legal
Adviser of the former Council continues to be, as
from that date until the Secretary-General or the
Legal Adviser (as the case may be) has been
appointed under section 5(1), the Secretary-
General or the Legal Adviser (as the case may be)
of the Council on the same terms and conditions
as those applicable to that person immediately
before that date."

41(3) (a) By deleting "including" and substituting "other

- than".
- (b) By adding "until such time as the Council and the Government may agree" after "as from that date".
- 42 (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (b) In paragraph (b), by deleting "non-reportable" and substituting "notifiable".
- (c) In paragraph (c), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (d) In paragraph (d), by deleting "non-reportable" and substituting "notifiable".
- 43 In the Chinese text, by deleting "投訴警方獨立監察" and substituting "獨立監察警方處理投訴".
- Schedule 1 (a) In the heading, in the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- (b) In the cross-heading immediately after the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- Schedule 1 By adding immediately before section 1 -
- "1A. Term of office of Chairman**

The Chairman (other than a person appointed under section 4) -

- (a) is to be appointed for a term not exceeding 3 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 3 years each."

Schedule 1,
section 1

- (a) In the heading, by deleting "**Chairman**".
- (b) By deleting "The Chairman, a" and substituting "A".

Schedule 1,
section 5

In the Chinese text, by deleting "警監會" and substituting "監警會".

Schedule 1,
section 6

- (a) In the cross-heading immediately before the section, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (c) In subsection (1), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (d) In subsection (2), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (e) In subsection (3), in the Chinese text, by

deleting "警監會" where it twice appears and substituting "監警會".

- (f) In subsection (5) -
- (i) by deleting "Secretary" and substituting "Secretary-General";
 - (ii) in the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".

Schedule 1,
section 7

- (a) In the cross-heading immediately before the section, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (c) In subsection (1), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (d) In subsection (2), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (e) By adding -
- "(3) The Council may, by its procedure determined under section 12, make provisions for a Vice-Chairman to appoint, in the absence of the Chairman, the time and place for the Council to meet."

- Schedule 1,
section 8
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- Schedule 1,
section 9
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In subsection (1), in the Chinese text, by deleting "警監會" and substituting "監警會".
- Schedule 1
- By deleting section 10.
- Schedule 1,
section 11
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In subsection (1), in the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
 - (c) In subsection (3), in the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
 - (d) In subsection (4), in the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
 - (e) In subsection (5) -

- (i) by deleting "Secretary" and substituting "Secretary-General";
 - (ii) in the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- (f) By deleting subsection (6).

Schedule 1 By adding -

"11A. Disclosure of interest in reportable complaints and notifiable complaints

(1) If a member of the Council has an interest (whether directly or indirectly) in a reportable complaint or a notifiable complaint being discussed or to be discussed at a meeting of the Council, the member -

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting during the discussion of the complaint;
- (c) must not vote on a resolution concerning the complaint; and
- (d) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must vacate

the chair during the discussion of the complaint.

(3) When the member vacates his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

(4) In this section, a reference to a reportable complaint or a notifiable complaint includes any matter that is related to the complaint.

**11B. Disclosure of interest
in matters other than
reportable complaints
and notifiable
complaints**

(1) If a member of the Council has an interest (whether directly or indirectly) in a matter ("the Matter") being discussed or to be discussed at a meeting of the Council and the Matter is neither a reportable complaint (including related matter) nor a notifiable complaint (including related matter), then the member -

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting during the discussion of the

- Matter if so required by a majority of the other members present at the meeting; and
- (c) except as otherwise determined by a majority of the other members present at the meeting -
- (i) must not vote on a resolution concerning the Matter; and
 - (ii) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must, if so required by a majority of the other members present at the meeting, vacate the chair during the discussion of the Matter.

(3) If the member is required to vacate his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

11C. Disclosure of interest in cases of written resolutions

In the case of a written resolution on a matter in which a member of the Council has an interest (whether directly or indirectly) -

- (a) the member -
 - (i) must state the nature of his interest in the papers being circulated; and
 - (ii) must return the papers with his interest so stated to the Secretary-General; and
- (b) the member -
 - (i) must not vote on the written resolution; and
 - (ii) must not be counted in calculating a majority for the approval of the written resolution.

**11D. Disclosure of interest
be recorded**

A disclosure made under section 11A(1) (a), 11B(1) (a) or 11C(a) must be recorded by the Council."

- Schedule 1,
section 12
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) By deleting everything after "own procedure" and substituting a full stop.
 - (c) In the Chinese text, by deleting "警監會可" and substituting "監警會可".

- Schedule 1, section 13
- (a) In the cross-heading immediately before the section, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) By adding "from amongst its members" before "establish".
 - (c) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".

Schedule 1 By deleting section 14.

- Schedule 1, section 16
- (a) In subsection (5), by deleting "Secretary" and substituting "Secretary-General".
 - (b) By deleting subsection (6).

Schedule 1 By adding -

"16A. Disclosure of interest in reportable complaints and notifiable complaints

(1) If a member of a committee has an interest (whether directly or indirectly) in a reportable complaint or a notifiable complaint being discussed or to be discussed at a meeting of the committee, the member -

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting

during the discussion of the complaint;

(c) must not vote on a resolution concerning the complaint; and

(d) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must vacate the chair during the discussion of the complaint.

(3) When the member vacates his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

(4) In this section, a reference to a reportable complaint or a notifiable complaint includes any matter that is related to the complaint.

**16B. Disclosure of interest
in matters other than
reportable complaints
and notifiable
complaints**

(1) If a member of a committee has an interest (whether directly or indirectly) in a matter ("the Matter") being discussed or to be discussed at a meeting of the committee and the

Matter is neither a reportable complaint (including related matter) nor a notifiable complaint (including related matter), then the member -

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting during the discussion of the Matter if so required by a majority of the other members present at the meeting; and
- (c) except as otherwise determined by a majority of the other members present at the meeting -
 - (i) must not vote on a resolution concerning the Matter; and
 - (ii) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must, if so required by a majority of the other members present at the meeting, vacate the chair during the discussion of the Matter.

(3) If the member is required to vacate his chair under subsection (2), the other members

present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

**16C. Disclosure of interest
in cases of written
resolutions**

In the case of a written resolution on a matter in which a member of a committee has an interest (whether directly or indirectly) -

(a) the member -

(i) must state the nature of his interest in the papers being circulated; and

(ii) must return the papers with his interest so stated to the Secretary-General; and

(b) the member -

(i) must not vote on the written resolution; and

(ii) must not be counted in calculating a majority for the approval of the written resolution.

**16D. Disclosure of interest
be recorded**

A disclosure made under section 16A(1) (a),

16B(1) (a) or 16C(a) must be recorded by the committee."

- Schedule 1,
section 18
- (a) In the cross-heading immediately before the section, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (c) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- Schedule 1,
section 19
- In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- Schedule 1,
section 20
- In the Chinese text, by deleting "警監會" and substituting "監警會".
- Schedule 1,
section 21
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- Schedule 1,
section 22
- In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".

Schedule 1,
section 23

- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In subsection (1) -
- (i) by adding "(as may be reasonable in the circumstances)" after "period";
- (ii) in the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- (c) In subsection (2), in the Chinese text, by deleting "警監會" and substituting "監警會".

Schedule 1,
section 24

In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".

Schedule 1,
section 25

- (a) In subsection (1) -
- (i) by deleting "Secretary" and substituting "Secretary-General";
- (ii) in the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- (b) In subsection (3), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (c) In subsection (4), in the Chinese text, by

deleting "警監會" and substituting "監警會".

(d) In subsection (5), in the Chinese text, by deleting "警監會" and substituting "監警會".

(e) In subsection (6), in the Chinese text, by deleting "警監會" and substituting "監警會".

Schedule 1,
section 26

In the Chinese text, by deleting "警監會" and substituting "監警會".

Schedule 2,
section 4

In the Chinese text, by deleting "警監會" and substituting "監警會".

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
Long title [NOT PROCEEDED WITH]	By deleting “Incorporate the existing Independent Police Complaints Council” and substituting “With the objective of preventing abuse of power by the police force, establish an Independent Police Complaints Council as a statutory body”.
4(1) [NEGATIVED]	(a) In paragraph (a), by adding after “the Chief Executive” “upon approval by the Legislative Council”. (b) By deleting paragraph (b) and substituting – “(b) (i) 2 Vice-Chairmen who shall be elected by the Legislative Council from among its members;”. (c) In paragraph (b), by adding – “(ii) one Vice-Chairman appointed by the Chief Executive;”. (d) In paragraph (c), by deleting the full stop and substituting a semicolon. (e) By adding – “(d) the Commissioner for the Independent Commission Against Corruption appointed in accordance with the Basic Law, or a person nominated by him as his representative; and”. (f) By adding – “(e) the person appointed to be the Ombudsman under The Ombudsman Ordinance (Cap. 397), or a person nominated by him as his representative.”.

4
 NOT PROCEEDED
 WITH

By deleting subclause (2) and substituting –

"(2) The following persons are not eligible for appointment under subsection (1) –

- (a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department;
- (b) a person who was a member of the police force; and
- (c) a person who is an immediate family member of a member of the police force."

4
 NOT PROCEEDED
 WITH

By adding –

"(3) For the purposes of subsection (2)(c), "immediate family member" (直系家庭成員) means a spouse, child, parent, brother or sister.

NEGATIVED

(4) At least 5 members appointed by the Chief Executive under subsection (1)(c) shall, in the opinion of the Chief Executive, have knowledge of, or experience in, or exposure to, criminal investigation, criminal litigation, social work, and affairs of ethnic minority."

5(1)
 NOT PROCEEDED
 WITH

By deleting "the Chief Executive on the advice of".

Part 3
 NOT PROCEEDED
 WITH

By deleting the heading and substituting –

"OBJECTIVES, FUNCTIONS AND POWERS OF COUNCIL".

7
 NOT PROCEEDED
 WITH

In the heading, by deleting "**Functions of Council**" and substituting "**Objectives, functions and powers of Council**".

7(1)
 NOT PROCEEDED
 WITH

By deleting "The" and substituting "With the objective of preventing abuse of power by the police force, the".

8(1)
 NEGATIVED

By deleting ", as the Commissioner and the Council may agree –" and substituting "as the Council may decide –".

10

[NEGATIVED]

(a) In paragraph (a)(ii), by deleting everything after “who” and substituting “, directly or indirectly, identified himself as such a member while off duty;”.

[NEGATIVED]

(b) In paragraph (a), by adding –

“(iv) the conduct of an agent instructed by a member of the police force while on duty or in the execution or purported execution of his duties; or”.

[NEGATIVED]

(c) In paragraph (a), by adding –

“(v) abuse of information (obtained through his status as a member of the police force) by a member of the police force while off duty;”.

[NOT PROCEEDED
WITH]

(d) In paragraph (b), by deleting “Commissioner” and substituting “Council”.

11

[NOT PROCEEDED
WITH]

(a) In paragraph (b), by deleting “in the opinion of the Commissioner, the complaint is of a serious nature.” and substituting “in the opinion of the Council, the complaint is of a serious nature;”.

(b) By adding –

“(c) the complaint is made by a person who is below the age of 16 at the time of the incident giving rise to the complaint;”.

(c) By adding –

“(d) the complaint is made by a person with mental incapacity or is unable to make the complaint due to illness at the time of the incident giving rise to the complaint;”.

(d) By adding –

“(e) though made to the Commissioner after the expiry of the period applicable to it under paragraph (a)(i) or (ii), in the opinion of the Council, the complaint is justified by good cause.”.

- 14(1)(a)
[NOT PROCEEDED
WITH]
- By deleting “or guardian” and substituting “, guardian, de facto guardian, relative or step parent”.
- 14(2)
[NOT PROCEEDED
WITH]
- By deleting “subsection (1)(b)” and substituting “subsection (1)(a) and (b)”.
- 14(3)
[NOT PROCEEDED
WITH]
- By deleting “subsections (1)(b) and (2)” and substituting “subsections (1)(a), (b) and (2)”.
- 15(2)
[NEGATIVED]
- By deleting the full stop and substituting “and provide explanation, information and material relating to such reconsideration.”.
- 15
[NEGATIVED]
- By deleting subclause (3) and substituting –
- “(3) Having considered the explanation, information and material by the Commissioner under subsection (2), the Council may decide the category of that complaint, and the Commissioner must handle and investigate the complaint according to such decision.”.
- 16(2)
[NOT PROCEEDED
WITH]
[NOT PROCEEDED
WITH]
- (a) In paragraph (d), by deleting “and”.
- (b) In paragraph (e), by deleting everything after “as” and substituting “the Commissioner or the Council thinks necessary; and”.
- [NEGATIVED]
- (c) By adding –
- “(f) if any, information or material of any criminal or civil proceedings in relation to the complaint.”.
- 16
[NOT PROCEEDED
WITH]
- By deleting subclause (3) and substituting –
- “(3) In the case of a classification of informal resolution, an investigation report submitted under subsection (1) must –
- (a) contain –
- (i) a summary of the process of informal resolution of the complaint;

- (ii) an account of the incident giving rise to the complaint as described by the complainant;
- (iii) (if the complainee is identified) an account of the incident giving rise to the complaint as described by the complainee;
- (iv) an account of the action taken or to be taken by the Commissioner in connection with the complaint; and
- (v) such information as the Commissioner or the Council thinks necessary; and

(b) explain the reasons for resolving the complaint by informal resolution.”.

16

NOT PROCEEDED
WITH

By adding –

“(4) In subsections (1) and (2), a reference to an investigation report includes an investigation report supplementary to a previous investigation report.”.

17(1)

NEGATIVED

(a) In paragraph (a), by deleting “6” and substituting “4”.

(b) In paragraph (b), by deleting “Commissioner and the Council may agree” and substituting “Council may decide”.

17(2)

NEGATIVED

(a) In paragraph (a), by deleting “6” and substituting “4”.

(b) In paragraph (b), by deleting “Commissioner and the Council may agree” and substituting “Council may decide”.

17(3)(b)

NOT PROCEEDED
WITH

By deleting “6” and substituting “4”.

18

NEGATIVED

In the heading, by deleting “**opinion or**”.

18(1)(e)

NEGATIVED

By deleting “opinion” and substituting “recommendation”.

18(2)

NEGATIVED

By deleting “opinion or”.

18

NEGATIVED

By adding –

“(3) The Chief Executive shall respond to the recommendations submitted to him under subsection (2).”.

New

NEGATIVED

By adding immediately after clause 18 –

“18A. Council’s endorsement of investigation report

(1) Subject to subsection (2), the Council shall endorse an investigation report submitted under section 16 or 18 and notify the Commissioner the endorsement.”.

(2) The Council shall not endorse an investigation report submitted by virtue of subsection (1) unless it is satisfied with –

- (a) the content of the report; and
- (b) the manner in which the interview or collection of evidence in relation to the complaint has been conducted.”.

19(1)

NEGATIVED

By deleting “information” and substituting “information or material”.

19

NEGATIVED

By deleting subclause (3).

19(8)

NOT PROCEEDED
WITH

By deleting everything after “such record” and substituting “may be used only under circumstances under section 37(2)(a), (b), (c), (d) and (e).”.

19

NOT PROCEEDED
WITH

By deleting subclause (9) substituting –

“(9) Despite subsections (5) and (7)(c) but without prejudice to subsection (6), a person interviewed by the Council has the right to be accompanied by his solicitor or counsel or a person specified by him at an interview under this section.”.

20(1)

NOT PROCEEDED
WITH

In paragraph (b), by deleting “or discrepancy” and substituting “, discrepancy, allegation, ambiguity, doubts or points”.

20

NEGATIVED

By adding –

“(3) Notwithstanding any claim of legal professional privilege, the Commissioner shall provide the Council for the purposes of performing the Council’s functions under section 7(1)(a), (b), (c) or (d) with all documents between the Commissioner and his professional adviser in so far as the same are relevant to the handling or investigation of any reportable complaint.”.

22

NOT PROCEEDED
WITH

By deleting the clause and substituting –

“22. Notification of result of complaint and result of review

(1) In the case of a reportable complaint that is not a request for review, the Commissioner must, within the time limit which the Council may specify after the Council has endorsed the investigation report of the complaint under section 18A, notify the complainant of –

- (a) the summary of the investigation;
- (b) the finding of facts in relation to the complaint and the evidence in support of the finding;
- (c) the classification of the complaint, and the reasons for the classification;
- (d) the account of the action taken or to be taken by the Commissioner in connection with the complaint; and
- (e) such other information as the Commissioner or the Council thinks necessary.

(2) In the case of a reportable complaint that is a request for review, the Commissioner must notify the complainant of the result of the review and the reasons for the result.”.

23(1)

NEGATIVED

(a) In paragraph (a), by deleting “and”.

(b) In paragraph (b), by deleting the full stop and substituting “; and”.

(c) By adding –

“(c) attend to any part of an investigation conducted by the Commissioner in respect of a complaint.”.

24

NEGATIVED

By deleting “explanation” and substituting “explanation and justification”.

25(a)

NEGATIVED

By deleting everything after “statistics of” and substituting “conduct relating to members of the police force; and”.

26

WITHDRAWN

In the heading, by deleting “**Council may require Commissioner to**” and substituting “**Commissioner must**”.

26(1)

WITHDRAWN

By deleting “the Council may require the Commissioner to” and substituting “the Commissioner must”.

27

NOT PROCEEDED
WITH

By renumbering the clause as clause 27(1).

27(1)

NOT PROCEEDED
WITH

By deleting everything after “unless” and substituting –

“the Chief Executive certifies that compliance with the requirement would be likely to prejudice –

- (a) the security of Hong Kong; or
- (b) the investigation of any indictable crime.”.

27

NOT PROCEEDED
WITH

By adding –

“(2) The Chief Executive shall not sign the certificate by virtue of subsection (1) unless he is satisfied that the certificate is necessary upon balancing public interest involved in compliance with the requirement against the prejudice made under subsection (1)(a) and (b).”.

28

NEGATIVED

By renumbering the clause as clause 28(1).

28

NEGATIVED

By adding –

“(2) The Chief Executive shall respond to the report made to him under subsection (1).”.

31(1)

NEGATIVED

By deleting “Secretary for Securiry” and substituting “Council”.

31(2)

NOT PROCEEDED
WITH

By deleting subclause (2) and substituting –

"(2) The following persons are not eligible for appointment as observers –

- (a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department;
- (b) the Secretary-General, the Legal Adviser or any other employee of the Council;
- (c) a person who was a member of the police force; and
- (d) an immediate family member of a member of the police force."

31

{ NOT PROCEEDED
WITH }

By adding –

“(3) For the purposes of subsection (2)(d), “immediate family member” (直系家庭成員) means a spouse, child, parent, brother or sister.”

32

{ NOT PROCEEDED
WITH }

By deleting “observe” and substituting “monitor through observation”.

34(2)

{ NEGATIVED }

By deleting paragraph (a) and substituting –

“(a) where applicable, in his opinion, the manner in which the interview or collection of evidence has been conducted in an unfair and partial manner; and”.

37(2)

{ NEGATIVED }

(a) In paragraph (c), by deleting everything after “law” and substituting a semicolon.

(b) In paragraph (d), by deleting the full stop at the end and substituting “; or”.

(c) By adding –

“(e) for –

- (i) revealing any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by members of the police force;

- (ii) revealing a serious threat to public order or to the security of Hong Kong or to the health or safety of the public; or
- (iii) public interest.”.

37

NOT PROCEEDED
WITH

By deleting subclause (3) and substituting –

“(3) For the avoidance of doubt, where there is disagreement between the Council and the Commissioner regarding –

- (a) the findings and classifications of any reportable complaint; or
- (b) the actions taken or to be taken by the Commissioner against any member of the police force,

the Council may disclose all facts relating to such disagreement to such persons as it considers appropriate, and such disclosure shall be regarded as being necessary for the performance of the Council’s functions under this Ordinance.”.

37

NOT PROCEEDED
WITH

By deleting subclause (4).

38(1)

NEGATIVED

By adding “without gross negligence,” after “to be done,”.

Schedule 1,

section 1
NEGATIVED

In paragraph (a) and (b), by deleting “2” and substituting “3”.

Schedule 1,

section 11(3)
NEGATIVED

By deleting “subsection (5)” and substituting “subsections (5) and (5A)”.

Schedule 1,

section 11
NEGATIVED

By adding –

“(5A) Notwithstanding subsection (3), a matter for determination relating to a complaint involving –

- (a) an allegation of –
 - (i) criminal offences committed by members

- of the police force;
- (ii) assault by members of the police force;
- (iii) fabrication of evidence by members of the police force;
- (iv) threat by members of the police force; and
- (v) abusive or illegal exercise of police powers by members of the police force;

- (b) a complaint with a total of 5 or more counts of allegations either listed or not listed in paragraph (a), either raised by the complainant or registered in the course of police investigation,

must be decided at a meeting.”.

Schedule 1, section 23(1) [NEGATIVED]	By deleting “or such further period as the Chief Executive may allow,”.
Schedule 1, section 23(2) [NEGATIVED]	By deleting “after receiving the Chief Executive’s approval for tabling”.
Schedule 1, section 25(1) [NOT PROCEEDED WITH]	By deleting “, a member of the Council, the Secretary, the Legal Adviser or any other employee of the Council,” and substituting “or a member of the Council,”.
Schedule 2, section 3 [NEGATIVED]	By deleting “Secretary for Security” where it twice appears and substituting “Council” .
Schedule 2, section 4 [NEGATIVED]	By deleting “as the Secretary for Security approves”.