

**Extract from minutes of meeting on
Panel on Administration of Justice and Legal Services on 26 June 2006**

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IV. Research Report on the Jurisdiction of Ombudsman Systems in Selected Places

(LC Paper No. CB(2)2458/05-06(01) – Letter dated 16 June 2006 from the Director of Administration concerning its attendance at the Panel meeting

RP05/05-06 – Research report on "Jurisdiction of Ombudsman Systems in Selected Places")

6. Referring to the letter dated 16 June 2006 from the Director of Administration, the Chairman informed members that the Administration would not be represented at the meeting for discussion of this item, as the Ombudsman was still conducting her internal review and the Administration did not consider it appropriate to intervene at this stage.

7. Head of Research and Library Services Division (H/RL) briefed the meeting on the Research Report on the Jurisdiction of Ombudsman Systems in Selected Places (the Research Report) by way of a power-point presentation. Members noted that the research had studied the jurisdiction of the ombudsman systems in the United Kingdom (UK), New Zealand, the Province of British Columbia in Canada (BC) and Australia, focusing on the arrangement of ombudsman services, the organisations covered, and the investigation powers and purview of the Ombudsmen.

(Post-meeting note: The Chinese version of the Research Report and the power-point presentation materials provided by the Research and Library Services Division were tabled at the meeting and issued to members vide LC paper No. CB(2) 2578/05-06 on 27 June 2006.)

8. In response to the Chairman's question, the Ombudsman said that ombudsmen would not normally conduct general policy reviews. She agreed to broaden the scope of her jurisdictional review partly in response to Members' suggestions. Hence her jurisdictional review would consist of two parts: the first would be an "operational" review of the Ombudsman Ordinance (Cap. 397) (the Ordinance), and the second a more generalised review of developments in ombudsmanship.

9. The Ombudsman further said that the review of the Ordinance would focus on some of the uncertainties or difficulties encountered in investigations by the Ombudsman's Office. In this regard, the Ordinance was last revised in 2001 when the Office was delinked from the Government. Hence, this exercise would likely be

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further fine-tuning, rather than a major overhaul. Some of the issues to be addressed would include –

- (a) whether some restrictions on the Ombudsman's investigative powers as set out in Schedule 2 to the Ordinance could be relaxed;
- (b) whether more, and if so, what organisations should be brought within the Ombudsman's jurisdiction under Schedule 1 to the Ordinance; and
- (c) whether there was conflict between the secrecy requirement in the Ombudsman Ordinance and similar provisions in other ordinances enacted after the Ombudsman Ordinance.

10. As regards Part II of the review, the Ombudsman said that the focus would be to consider new areas of development for ombudsman offices in other jurisdictions, as possibilities for extending the purview of the Ombudsman. One such area was the Ombudsman's involvement in human rights matters. In this regard, Hong Kong followed the classical ombudsman model. While the Ombudsman was not explicitly charged with human rights responsibilities, the essence of an ombudsman's work was to ensure the protection of individual rights by the public administration. In considering whether the Ombudsman should have a mandate for the advocacy of human rights, one must consider the implications this would have on the existing ombudsman system and its operation.

11. The Ombudsman further said that another area to examine was the principles for deciding what organisations should be subject to the Ombudsman's jurisdiction, and on the basis of such principles, whether its jurisdiction should be extended to include some other organisations. In this regard, she pointed out that in Hong Kong, while the Police and the Independent Commission against Corruption (ICAC) were excluded from the Ombudsman's jurisdiction, they had their own complaints handling mechanism. This was different from some other jurisdictions. Whether an organisation should be subject to the Ombudsman's jurisdiction would ultimately be a matter of policy decision.

12. In response to the Chairman on whether the Ombudsman could make recommendation in relation to the establishment of specialised ombudsmen, the Ombudsman advised that the development of specialised ombudsmen would be addressed in the second part of the review in response to Members' suggestion at an earlier meeting. However, she might not make specific recommendations which would ultimately be policy decision outside her area of responsibility.

13. Mr Philip DYKES of the Hong Kong Bar Association said that the existing scope of the Ombudsman's purview was too restrictive. Given that many public services, particularly those in the economic, social and cultural fields, were delivered by subvented agencies and such services would have to be provided by the Government if these agencies did not exist, Mr DYKES took the view that subvented

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agencies should be brought within the remit of the Ombudsman insofar as their public functions were concerned, as was the case in some other countries. He further said that as a general rule, agencies that were amenable to judicial review should also be amenable to the jurisdiction of the Ombudsman as regards maladministration.

14. Ms Emily LAU shared Mr DYKES's view. Ms LAU pointed out that the Ombudsmen in some places covered in the Research Report had been given jurisdiction to investigate organisations such as school boards, advisory groups and electoral bodies. Some Ombudsmen had been given new functions in investigating complaints caused by service failure, performing a supervisory role in the freedom of information and protected disclosure areas and ensuring the quality of service to the public by government contractors, in addition to their traditional role of investigating complaints of maladministration. Ms LAU asked whether the Ombudsman would take into account these research findings in considering the organisations and matters that should be brought within the remit of the Ombudsman in conducting her review.

15. The Ombudsman responded that to her knowledge, some public sector ombudsmen of some countries also doubled up as ombudsmen for specific services or industries. In cases where specialised ombudsmen were established to oversee the services of particular industries, it would be quite logical for such industry ombudsmen to act to ensure service quality. She added that she would make reference to the Research Report and other relevant information, and take into account the comments of Mr DYKES and Ms LAU in conducting the review.

16. The Ombudsman further advised that nearly half of the complaints received by her Office each year were found to be outside the Ombudsman's jurisdiction. Overall speaking, she agreed that the list of actions which were not subject to investigation of the Ombudsman as set out in Schedule 2 to the Ordinance was appropriate, such as actions taken in relation to personnel matters and commercial transactions. However, she considered that the present provisions of the Ordinance were too restrictive. Without encroaching onto the substantive decision itself, there could be maladministrative issues relating to the actions set out in Schedule 2 that could conceivably be opened to the Ombudsman's scrutiny. By way of illustration, she said that while a complaint relating to a disciplinary case was a personnel matter and should quite appropriately be excluded from the Ombudsman's jurisdiction, a complaint of inordinate delay (say, delay in terms of years) in handling a disciplinary case could well be a matter of procedural inefficiency leading to grievance for the complainant.

17. In response to Ms Audrey EU, the Ombudsman said that there were different types of outside-jurisdiction cases, such as those involving court/professional judgments or Government policies. She added that in the review report she would address the issue of whether there was room for relaxing some of the restrictions on the Ombudsman's investigation powers set down in Schedule 2 to the Ordinance.

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18. Responding to Ms Margaret NG’s enquiry, the Ombudsman confirmed that complaints concerning inter-departmental coordination were within her jurisdiction. She further said that the problem of inadequate inter-departmental coordination among government departments was featured in the annual report of the Ombudsman in the past few years. She was concerned that government departments were unwilling to assume responsibility or a coordinating role in addressing problems that cut across departmental responsibilities. Cases involving drying laundry in public places and the proliferation of cages on pavements had illustrated this inadequacy amply.

19. In response to the Chairman, the Ombudsman said that she expected to complete the review for submission to the Director of Administration in a few months’ time.

20. Ms Emily LAU said that as the jurisdiction of the Office of the Ombudsman was a matter of concern to the general public, the Administration should issue a consultation document to seek public views on the conclusions and recommendations made by the Ombudsman in her report. Ms LAU further said that the Ombudsman should also consult the public when conducting the review.

21. The Ombudsman responded that her Office was aware of public views and expectations from correspondence received daily from complainants. The nature of the outside-jurisdiction complaints received by the Office also threw light on what the public expected of the Ombudsman. She opined that it would not be appropriate for the Ombudsman to conduct a public consultation exercise. The appropriate channel was for her to submit her review report to the Government, and where her recommendations were accepted, for the Government to introduce legislative amendments to the Ordinance to give effect to the recommendations.

Clerk

22. The Chairman suggested and members agreed that the Panel should write to the Director of Administration requesting the Administration to –

- (a) provide a copy of the review report prepared by the Ombudsman to the Panel for information when it was available; and
- (b) issue a consultation document to seek public views on the report prepared by the Ombudsman before deciding the way forward.

(Post-meeting note: A letter was sent to the Director of Administration on 30 June 2006. Her reply dated 5 July 2006 was issued to members vide LC paper No. CB(2) 2688/05-06 on 10 July 2006.)

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