

**立法會**  
**Legislative Council**

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by the Administration)

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**Panel on Security**

**Minutes of special meeting  
held on Friday, 29 February 2008, at 10:00 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LAU Kong-wah, JP (Chairman)  
Hon James TO Kun-sun (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon Margaret NG  
Hon CHEUNG Man-kwong  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan, SBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Daniel LAM Wai-keung, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon LEUNG Kwok-hung
- Members attending** : Hon SIN Chung-kai, SBS, JP  
Hon Ronny TONG Ka-wah, SC
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP  
Hon CHIM Pui-chung
- Public Officers attending** : Item I  
Mrs Apollonia LIU  
Principal Assistant Secretary for Security

Miss Linda LEUNG  
Assistant Secretary for Security

Mr WONG Fook-chuen  
Assistant Commissioner of Police (Crime)

Mr LEUNG Wing-ki  
Chief Inspector of Police (HQ Group)(Crime Wing)

Item II

Mrs Jessie TING, JP  
Deputy Secretary for Security

Mrs Apollonia LIU  
Principal Assistant Secretary for Security

Mr Kevin CHOI  
Principal Assistant Secretary for Commerce and  
Economic Development

Mr WONG Fook-chuen  
Assistant Commissioner of Police (Crime)

Mr LAM Cheuk-ping  
Superintendent of Police (Technology Crime)  
(Commercial Crime Bureau)

Mr Ian MCWALTERS  
Deputy Director of Public Prosecutions

Mr Richard TURNBULL  
Senior Assistant Director of Public Prosecutions

Ms Anthea PANG  
Senior Assistant Director of Public Prosecutions

**Clerk in attendance** : Mrs Sharon TONG  
Chief Council Secretary (2)1

**Staff in attendance** : Mr LEE Yu-sung  
Senior Assistant Legal Adviser 1

Mr Raymond LAM  
Senior Council Secretary (2) 5

Miss Helen DIN  
Legislative Assistant (2) 1

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**I. Police's handling of reports or complaints about press articles**  
(LC Paper Nos. CB(2)1179/07-08(01), CB(2)706/07-08(03) and  
CB(2)706/07-08(04))

Principal Assistant Secretary for Security (PAS(S)) briefed Members on the supplementary information provided by the Administration on the Police's handling of reports or complaints about press articles.

2. Referring to paragraph 7 of the Administration's paper, Ms Emily LAU asked about the rank of the Police officer responsible for coordinating the handling of all reports and complaints about media organisations or press articles. She said that the Police should maintain clear records on how the reports and complaints were handled.

3. PAS(S) responded that the Assistant Commissioner of Police (Crime) (ACP(C)) would be responsible for the coordination work. ACP(C) added that under the new arrangements, the handling of such reports and complaints would be coordinated centrally. Upon the receipt of such a report or complaint, he would first check whether the case was already being handled by any unit in the Police and, if so, refer the report or complaint to the unit concerned. If the case was a new one, he would examine whether there was any crime element and consider how it should be followed up. He stressed that clear records were maintained on such cases and were constantly updated by the responsible unit.

4. Ms Emily LAU asked whether the Police would seek the assistance of the Information Services Department, which had close communication with the media, in the handling of such reports and complaints where necessary.

5. ACP(C) responded that depending on the circumstances of each case, the assistance of the Information Services Department or other government departments would be sought where necessary.

6. Referring to the Police's visit to a media organisation on 1 November 2007, Miss CHOY So-yuk asked whether the Police had handled the case impartially and whether there was any dereliction of duty on the part of any Police officer. She queried the Police's purpose of visit to the media organisation and whether any Police officer involved in the case had read the article concerned before the visit to the media organisation. She also asked

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whether similar cases would still be handled in the same manner in the future.

7. ACP(C) responded that the Police was impartial in handling the case. In this case, the Police received five electronic mails and one facsimile complaining that an article published in a newspaper on 9 August 2006 had the effect of instigating violence. After consideration, the Police visited the media organisation concerned to seek its cooperation in providing background information for an initial assessment of how the complaint should be followed up. He said that the Police had, after the case concerned, improved the mechanism for handling reports or complaints about media organisations.

8. Miss CHOY So-yuk asked whether there was any prima facie evidence constituting a case for follow-up by the Police.

9. ACP(C) responded that the Police officers responsible for handling the case had studied the article concerned and considered that the last part of the article might have the effect of instigating violence. The Police officers considered that before making a determination on that point, information should be sought on the media organisation's practice in handling complaints and hence a visit was made.

10. The Chairman asked whether the Police had contacted the complainant before deciding to visit the media organisation. He also asked whether the Police would follow up anonymous complaints where the complainant could not be contacted.

11. ACP(C) responded that in the case concerned, the Police had tried to contact the complainant but without success. He added that anonymous complaints and complaints sent by electronic mail were handled in accordance with established procedures.

12. The Deputy Chairman expressed support for the new measures referred to in paragraph 7 of the Administration's paper and commended ACP(C) for his capability. He asked whether Police officers would still be deployed to visit the media organisation concerned, if the case were handled under the new arrangements.

13. ACP(C) responded that the case concerned had been handled by Police officers at superintendent and senior superintendent levels of the Tai Po Police District. If the case were referred to him under the new arrangements, he would first examine whether the case was being handled by any unit in the Police. If the case were a new one, he would study various factors, including the source of complaint, and consult the Department of Justice (DoJ) where necessary before instructing Police officers of the appropriate unit to follow up. A visit to media organisation would not be made unless strictly necessary.

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14. Mr Ronny TONG said that although the search of a media organisation was a sensitive issue, he did not consider that media organisations had a special status that rendered them free from any search. However, the Police should exercise its power of search carefully so that the fundamental rights of the party being searched would not be affected. As a search by the Police on an organisation might have a negative impact on the organisation's goodwill, he queried whether it was necessary to search the media organisation in such a high profile. He said that a search should be conducted only under the following situations -

- (a) evidence might be destroyed if a search was not conducted;
- (b) further crime could not be prevented without the search; and
- (c) the investigation of crime would become very difficult without the search.

15. PAS(S) responded that there was a well established mechanism for handling the search of journalistic material, which was subject to stringent legal requirements. She stressed however that no search of journalistic material was involved in the case concerned. Plain clothed Police officers travelled in a civilian car instead of a Police vehicle to visit the media organisation for the purpose of seeking its cooperation in providing background information for an initial assessment of the five complaints received about an article published in a publication of the organisation. The Police officers concerned had indeed handled the case in a low profile and prudent manner. ACP(C) added that there were stringent requirements governing the search of journalistic material. In particular, the search of such an organisation required a search warrant issued by the court.

16. Mr Ronny TONG asked why the Police had not invited representatives of the media organisation concerned to go to a Police station and provide the requested information.

17. ACP(C) responded that after considering different options, the Police officer-in-charge considered it more sincere to deploy Police officers to visit the media organisation. Such a visit would also facilitate immediate answers to be obtained.

18. Referring to paragraph 7 of the Administration's paper, Ms Audrey EU asked whether all reports and complaints about media organisations or press articles would be handled centrally or just coordinated centrally under the new arrangements. She considered that all cases involving the search or prosecution of the media should be handled centrally instead of just being coordinated centrally.

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19. ACP(C) responded that under the new arrangements, the handling of all such reports would be coordinated centrally. After the implementation of the new measures, all reports and complaints about media organisations and press articles would be brought to his attention. The question of Police officers visiting a media organisation without the headquarters' knowledge should not arise. A new case would be submitted to ACP(C) for scrutiny, who would assign the case to the appropriate unit and advise on the direction along which the case should be handled.

20. Ms Audrey EU asked whether there was consistency in the handling of complaints about media organisations or press articles and whether there were objective criteria for the handling of such complaints, especially those about an article instigating violence.

21. ACP(C) responded that although the circumstances of each case differed, there were established procedures for the initial assessment of how a report or complaint should be handled. Where necessary, the advice of DoJ would be sought. PAS(S) added that as each Police officer would exercise his professional judgment to determine how a case should be followed up, there might be different approaches in the handling of such cases in the past. With the implementation of the new handling arrangements with all new cases first being submitted to ACP(C) for scrutiny, consistency should be achieved.

22. Mr CHEUNG Man-kwong welcomed the new measures referred to in paragraph 7 of the Administration's paper. Regarding the case concerned, he queried whether there was sufficient justification for the Police's visit to the media organisation, given that the Police could not obtain any information further to what was contained in the press article. He asked whether the decision to visit the media organisation concerned was a reckless one.

23. ACP(C) responded that the decision to visit the media organisation was not a reckless one. He stressed that the visit did not involve any search or collection of evidence. The Police officers involved in handling the case had gathered various background information before a decision was made by the Police officer-in-charge, who was at the rank of superintendent, to visit the media organisation for asking two questions. The questions intended to seek information to facilitate the officer-in-charge to make a decision on the case. In response to Mr CHEUNG Man-kwong, ACP(C) said that one of the two questions was about whether the media organisation concerned had a mechanism in place to deal with complaints about press articles published in its newspapers.

24. The Deputy Chairman and Mr CHEUNG Man-kwong considered that it should not be necessary for the Police to visit the media organisation concerned merely to ask such questions. Miss CHOY So-yuk queried why three Police officers had visited the media organisation merely to ask two questions. She

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asked why enquiries had not been made through a telephone call. She also asked whether there was any mistake on the part of the Police in the case concerned.

25. ACP(C) responded that the press article had been studied by Police officers of different ranks before a decision to visit the media organisation was made. Looking back, there might be room for improvement in the handling of the case concerned. However, it could not be concluded that any officer had made any mistake. He said that three Police officers were deployed in the visit because they had also been assigned some other tasks in addition to the visit in the same journey. He added that if the enquiries were made by telephone, the media organisation might have difficulty in verifying whether the person on the other side of the telephone line was really a Police officer.

26. Mr Ronny TONG said that the Police should treat all media organisations impartially. He considered that whether the press article had the effect of instigating violence should only be a legal issue and thus a visit to the media organisation concerned should not have been necessary. He asked whether any offence was suspected to have been committed that necessitated a visit by the Police to the media organisation.

27. ACP(C) stressed that all media organisations were treated impartially by the Police. He said that in determining whether the press article concerned had the effect of instigating violence, the Police officer-in-charge had decided that a visit should first be made to the media organisation. He pointed out that inciting others to commit crime was an offence under the common law.

28. Mr Ronny TONG considered that the Police officer-in-charge should have sought the views of DoJ as to whether the press article had the effect of instigating violence. He asked whether the Police officer-in-charge had handled the case in a reckless manner.

29. ACP(C) responded that although he shared the view that the Police officers concerned should have sought the views of DoJ on whether the press article had the effect of instigating violence, he disagreed that the Police officer-in-charge had handled the case recklessly. On the contrary, the Police officer-in-charge had handled the case in a prudent manner.

30. Mr CHEUNG Man-kwong said that the improvement of the mechanism for the Police's handling of reports or complaints about media organisations reflected that the Police officer-in-charge had not handled the case appropriately. He considered that the Police's visits to media organisations and matters relating to freedom of speech were sensitive and should be handled prudently.

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**II. Law enforcement against cyber crimes relating to obscene and indecent articles and Internet security issues**

(LC Paper No. CB(2)1179/07-08(02))

31. Deputy Secretary for Security (DS for S) briefed Members on law enforcement against cyber crimes relating to obscene and indecent articles and Internet security issues.

32. Mr SIN Chung-kai said that to his knowledge, it had been the Police's practice to institute prosecution before submitting a suspected "obscene" article to the Obscene Articles Tribunal (OAT) for classification. He asked whether the Police would, in view of the case of CHUNG Yik-tin, revise the mechanism in respect of the prosecution of similar cases.

33. Deputy Director of Public Prosecutions (DDPP) responded that under the Control of Obscene and Indecent Articles Ordinance (Cap. 390) (COIAO), the court would not submit a suspected article to OAT for adjudication until it was known that the nature of the article would be a live issue in those proceedings. A defendant who admitted the commission of an offence involving obscene articles might be convicted on the basis of his admission and the article which was the subject of the charge need not be referred to OAT for a determination on whether it was obscene. He added that when cases of similar nature were encountered in the future, the Police would assess whether they had any doubt about the nature of the article concerned. Where legal advice was sought and DoJ had any doubt about the nature of an article, the assistance of the Television and Entertainment Licensing Authority (TELA) would be sought.

34. ACP(C) said that when cases of similar nature were encountered, the Police would determine, in accordance with COIAO, whether the article concerned was obscene or indecent. He said that such determination was made by experienced Police officers of special duty squads who had received the relevant training. If the Police officer concerned had any doubt about whether an article was obscene or indecent, the Police officer would, with the approval of a Police officer at the rank of superintendent or above, submit the article to OAT for classification.

35. The Deputy Chairman said that the Administration's replies seemed to suggest that if the case of CHUNG Yik-tin occurred in the future, the Police would, as in the past, still determine whether the article concerned was obscene without consulting TELA and Mr CHUNG would still be prosecuted. The prosecution would still object to admitting Mr CHUNG to bail and Mr CHUNG would still be wrongly imprisoned for 10 days. He asked whether any improvement would be made to the mechanism for handling similar cases in the future.



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36. DS for S responded that whether prosecution was to be instituted would depend on the circumstances of a case. COIAO did not require pre-charge classification, but provided for an article to be submitted to OAT for determination where in any civil or criminal proceedings before a court or magistrate a question arose as to whether an article was obscene or indecent. She said that the case concerned had been handled in compliance with the requirements under COIAO and Mr CHUNG had admitted that the photograph concerned was an obscene article. Both the magistrate and the defendant's counsel had not raised any objection to the view that the article concerned was an obscene article. The withdrawal of charge was made in view of the subsequent developments. She stressed that where there was any doubt about the nature of an article, the Police would submit the article to OAT for classification before determining the way forward in handling the case. The Deputy Chairman considered that it should be an established procedure for the Police to consult TELA before determining whether an article was obscene or indecent.

37. Mr Ronny TONG asked whether there was any other offence, such as intimidation, involved in the case concerned besides the publishing of an obscene article. He also asked whether DoJ would apply for a review of whether a defendant remanded in custody should be granted bail, when it found that there was no longer a need to remand the defendant in custody.

38. ACP(C) responded that the Police's investigation in the case concerned was a comprehensive one, covering areas such as the identity of the persons who uploaded the article and the reason for uploading. Apart from the offence of possessing an obscene article for the purpose of publication and suspected fraudulent activities, no other offences had so far been found to be involved.

39. Mr Ronny TONG said that the prosecution should not make use of an offence to keep a defendant remanded in custody in order to facilitate the investigation of another offence.

40. DDPP stressed that there was no question of making use of an offence to keep a defendant remanded in custody in order to facilitate the investigation of another offence. He said that if the prosecution became aware of new developments which might impact upon the prosecution or the question of whether a defendant should be granted bail, DoJ would carry out a review and take appropriate steps, as in the case of CHUNG Yik-tin. Whether a defendant was to be admitted to bail was finally decided independently by the magistrate, having regard to the circumstances of the case concerned.

41. Referring to paragraph 5 of the Administration's paper, Mr CHEUNG Man-kwong expressed concern that the existing provisions in COIAO provided that in the circumstances where a person admitted before a court that an article was obscene or indecent, the court might accept that admission and so find

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against that person, and the arrangement for seeking OAT's determination of whether the article was obscene or indecent did not apply. He considered that there might be a wrong judgment in the event that a defendant admitted that an article was obscene when it was in fact not obscene. He said that there should not be a need for the mechanism provided under section 29(3) of COIAO. He queried why the question of whether an article was obscene or indecent was not determined solely by the court or OAT.

42. Principal Assistant Secretary for Commerce and Economic Development (PAS(CED)) responded that the existing provisions in COIAO provided the following alternatives -

- (a) where a question arose in any civil or criminal proceeding as to whether an article was obscene or indecent, that court or magistrate should refer the question to OAT for a determination; and
- (b) where a person admitted before a court or magistrate that an article was obscene or indecent, the court or magistrate might accept that admission and so find against that person, and the arrangement for referral to OAT for a determination did not apply.

43. PAS(CED) pointed out that the existing provisions in COIAO allowed law enforcement officers to submit an article to OAT for classification where necessary. The question of wrong judgment should not arise. He added that there were views about whether more articles should be referred to OAT for determination under the arrangements in section 29(2) of COIAO. In this connection, he informed Members that the Administration was conducting a review on COIAO and suggestions on the existing regulatory regime were welcome.

44. Ms Audrey EU said that section 29(3) of COIAO should not be applicable to the case of CHUNG Yik-tin, as Mr CHUNG had not admitted the charge laid against him. She queried why there was a need to detain Mr CHUNG for eight weeks and why the Police had disclosed Mr CHUNG's suspected involvement in fraudulent activities, although such activities were only under investigation.

45. ACP(C) responded that after the publishing of a nude photograph on the Internet on 17 January 2008, two complaints were received by the Police on 28 and 29 January 2008 respectively. The Police assigned its Technology Crime Division, which had in the past investigated cases involving obscene and indecent articles from time to time, for investigating the case concerned. After investigation, it was found that the photograph was uploaded from Hong Kong and stored at a website hosted in Thailand and that fact was made known through a local Internet newsgroup. When the Police arrested the person

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concerned, it was found that the person possessed some other nude photographs which had not yet been published. There was also evidence suggesting fraudulent activities. After preliminary investigation, the Police had discussed with DoJ the evidence in possession and the time needed for further investigation of other areas of criminal conduct. It was concluded that the person would be charged with the offence of publication of an obscene article and other charges were not laid for the time being. He said that in the course of the hearing, no one had questioned the description of the article concerned as obscene. The remand period of eight weeks was determined by the magistrate having regard to the circumstances of the case and the arguments put forward by the prosecution as well as the defence counsel.

46. Referring to paragraph 6 of the Administration's paper, Ms Audrey EU asked whether the Police had any priority in handling different types of cyber crime.

47. ACP(C) stressed that all reports and complaints were followed up by the Police. The Police's priority in respect of combating cyber crime was as follows -

- (a) combating malicious damage to vital information systems in Hong Kong;
- (b) combating organised crime;
- (c) combating activities from which triad societies derived their income;
- (d) combating fraudulent activities ;
- (e) combating child pornography; and
- (f) combating gambling activities and drug-related crime.

48. Mr LEUNG Kwok-hung asked whether the Police had suggested a remand period of eight weeks in the case of CHUNG Yik-tin. He also asked whether the Police had deployed officers for the investigation of the suspected fraudulent activities. He queried why the Police had disclosed Mr CHUNG's suspected involvement in fraudulent activities in a high profile manner.

49. ACP(C) responded that the remand period was suggested by the prosecuting counsel, after discussions with the Police on the circumstances of the case concerned and the time needed for further investigation, and agreed by the magistrate. Investigation of the suspected fraudulent offences in the case concerned was conducted by another Police division to ensure efficiency and professionalism. He added that as the media had focussed their reports on the

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offence of publication of an obscene article and the remand period of eight weeks, the Police's disclosure of the defendant's suspected involvement in fraudulent offences only sought to provide the magistrate with a full picture, and subsequent disclosure of the information was limited to those that had already been disclosed in court.

50. Referring to paragraph 13 of the Administration's paper, Mr LEUNG Kwok-hung asked whether the 171 complaints and reports concerning obscene and indecent articles on the Internet had all been handled by the Police in a high profile manner.

51. ACP(C) stressed that the Police adopted the same due process regardless of the background of the complainant or other persons involved in a complaint/report. 163 of the 171 complaints/reports had been handled by the Technology Crime Division and the arrested persons in some of the cases had been found guilty.

52. Mr SIN Chung-kai asked whether the internal procedures of the Police and DoJ would be revised to avoid the recurrence of cases similar to the case of CHUNG Yik-tin before the review on COIAO was completed.

53. ACP(C) responded that, after having sight of the photograph in question, Police officers who were very experienced in handling cases involving obscene articles had formed the judgment that the photograph was obscene, and this judgment remained until the photograph was submitted for classification by a local media and classified as indecent by OAT. He stressed that the Police would be more cautious in future and would consult TELA or seek classification from OAT whenever it had any doubt.

54. The Deputy Chairman said that the Police should examine in conjunction with TELA whether the photograph in question appeared to be obviously obscene. If it was not so, retraining might be needed for Police officers involved in handling obscene and indecent articles in the judgment of whether there was a need to consult TELA or submit the article to OAT for classification.

55. The Deputy Chairman said that as charges had not been laid against Mr CHUNG for fraudulent activities, Mr CHUNG's suspected involvement in such activities should not be disclosed.

56. DDPP responded that there was nothing unusual with the prosecution's objection to the defendant being admitted to bail on the basis that there were reasonable grounds to suspect that the defendant had committed not only the offence charged but also other offences. He pointed out that a judicial officer had broad discretion in adjudicating bail applications. The Criminal Procedure Ordinance (Cap. 221) set out the matters that a magistrate could take into

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account in exercising his discretion. Amongst the matters that a magistrate might consider was other conduct of the accused in respect of which he was not charged but might lead to further charges. This would impact upon the issue of whether the defendant would commit further offences on bail and comply with bail conditions.

57. Mr Ronny TONG said that if a person could be convicted on the basis of his admission of an offence, the Police should caution the person accordingly.

58. ACP(C) responded that Mr CHUNG had been properly cautioned in accordance with the established procedures when the admission statement was taken.

59. Mr Ronny TONG said that besides Mr CHUNG Yik-tin, there were also other persons arrested for publication of obscene articles but admitted to bail. In view of this, he considered that the Police and DoJ should have applied to the magistrate for a review of his previous decision of not granting bail.

60. ACP(C) responded that the prosecution of CHUNG Yik-tin had been handled in the same manner as the other persons arrested for publishing nude photographs on the Internet. He pointed out that whether a defendant should be admitted to bail was determined by the court having regard to a number of factors and the circumstances of the case concerned. The number of photographs involved was only one of the factors. He pointed out that in the case of CHUNG Yik-tin, the magistrate had asked the defence counsel whether Mr CHUNG would wish to exercise his right to be brought back to court every eight days to have his bail position reviewed. However, Mr CHUNG had waived such a right through his defence counsel.

61. Ms Audrey EU asked whether there was any difficulty in seeking classification from OAT in all cases before charges were laid.

62. ACP(C) responded that it was not a question of difficulty, but a question of whether it was required under the law. For illustration, he said that more than 1.5 million obscene compact discs were seized in Mong Kok District in the previous year. Seeking classification for every article seized would unnecessarily overburden OAT. He stressed that the Police would seek classification from OAT whenever there was any doubt.

63. Ms Audrey EU asked whether the Administration would apply for a review of the bail position, when it came across situations similar to those in the case of CHUNG Yik-tin and other persons in the future.

64. ACP(C) responded that each case had to be examined independently having regard to the facts, evidence and circumstances of the case concerned.

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65. Ms Audrey EU asked whether the scope of the review referred to in paragraph 7 of the Administration's paper covered the questions of -

- (a) whether the bail position of a defendant remanded in custody should be reviewed in the light of latest developments; and
- (b) whether all articles would be submitted to OAT for classification before charges were laid.

66. PAS(CED) responded that a comprehensive review would be conducted on COIAO, the current classification mechanism and the penalty levels. The review would cover, among others, the regulation of the distribution of obscene and indecent articles over the Internet. He said that COIAO was a complicated piece of legislation enacted in the 1980s when most publications were in printed form. The definition of obscene and indecent articles was linked to the prevailing moral standards of the community. The Administration had not underestimated the difficulty involved in the review. The Administration hoped to draw up proposals for discussion in the latter half of 2008. He added that DoJ had indicated that it would be vigilant to see if any review of the related prosecution procedure was necessary.

67. Mr CHEUNG Man-kwong said that he did not consider what Mr CHUNG had done to be right. However, there were flaws in the law enforcement and legal aspects of the case. He asked whether the Administration would review the law enforcement and legal aspects of the case and introduce improvement measures before the comprehensive review on COIAO was completed.

68. PAS(CED) responded that the Police had stated that classification from OAT would be sought whenever there was any doubt about the nature of an article. DoJ had also stated in its paper on the case of CHUNG Yik-tin that in connection with the Administration's review on COIAO, it would be vigilant to see if any review of the related prosecution procedure was necessary. ACP(C) added that if there was room for improvement, the Police would certainly do so. Police officers would also be reminded to consult TELA or seek classification from OAT whenever there was any doubt about the nature of an article.

69. Mr Albert HO said that if the Police encountered any article of which the nature fell within a grey area, classification should be sought from OAT and the defendant should be informed of his right to seek classification from OAT. He added that the prosecuting counsel should be fair to a defendant in that the defendant's suspected involvement in other offences should not be mentioned in court when charges had not been laid.

70. ACP(C) responded that the Police would seek classification from OAT whenever there was any doubt about the nature of an article.

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71. Mr Albert HO said that the Police had been too concerned about the reaction of the media in the case of CHUNG Yik-tin. He expressed concern that there were reports that the Police had not taken action in a case where pornographic photographs of a female complainant was uploaded onto the Internet by her former boy friend. He queried whether the Police was consistent in its enforcement of the law and had followed up the case concerned.

72. ACP(C) responded that the case of CHUNG Yik-tin was handled in accordance with the established procedures and the handling of each case was monitored by more senior Police officers. He requested Mr Albert HO to provide more information about the case referred to in paragraph 71 above to the Police for follow-up.

73. DDPP said that, as disclosed in court, Mr CHUNG was found to possess a number of credit cards and had admitted having committed fraudulent offences of a serious nature. The counsel was proper to draw the magistrate's attention to this fact, which constituted a bail risk. He stressed that there was an adversarial system in the legal system of Hong Kong and the defendant was represented by a barrister and a solicitor. The bail application was determined independently by a magistrate. The adjournment sought was for eight weeks because of the investigation of the defendant's involvement in fraudulent activities of a serious and complicated nature. The custodial period became eight weeks when the defendant, on his counsel's advice, waived his right to be brought back every eight days to have his bail position reviewed.

74. The Deputy Chairman considered that there might be many reasons for Mr CHUNG's decision to waive his right to be brought back every eight days to have his bail position reviewed. He said that DoJ should not disclose the investigation being conducted on the suspected fraudulent activities of Mr CHUNG, given that no charge had so far been laid in respect of such activities. He queried whether it was appropriate to disclose the statement given by a person in the absence of any charge having been laid. He requested DoJ to provide a record of this meeting to the Secretary for Justice for his opinion on whether it was fair to disclose the investigation on Mr CHUNG, given that there was so far no charge laid upon Mr CHUNG for the suspected fraudulent activities.

75. DDPP responded that when there was an application by the defendant for bail, a prosecuting counsel could oppose bail in compliance with the provisions in the Criminal Procedure Ordinance (Cap. 221). The prosecuting counsel had to satisfy the court that there were substantial grounds to believe that the defendant would commit an offence on bail, fail to meet the bail conditions or interfere with witnesses. This would inevitably involve revealing information supporting such grounds to the court. Such a practice had been

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adopted in the past and would continue in the future. DDPP stressed that he had not disclosed any information additional to what had been revealed in court.

76. Mr Albert HO stressed that although he had reservations about the procedures in handling the case concerned, he considered it absolutely wrong to upload the nude photographs of other persons onto the Internet. His view was shared by the Deputy Chairman.

77. The Chairman informed Members that the subject of prosecution policy and procedure arising from the case of CHUNG Yik-tin would be discussed at the meeting of the Panel on Administration of Justice and Legal Services on 19 March 2008.

78. The meeting ended at 12:40 pm.

Council Business Division 2  
Legislative Council Secretariat  
15 August 2008