

立法會
Legislative Council

LC Paper No. CP 286/07-08

(These minutes have been seen by The Ombudsman)

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**Legislative Council Members' meeting
with Ms Alice TAI Yuen-ying, JP, The Ombudsman,
held on Tuesday, 11 December 2007, at 11:00 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Albert HO Chun-yan
Dr Hon YEUNG Sum, JP
Hon Emily LAU Wai-hing, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS

Attendance by Invitation : Office of The Ombudsman

Ms Alice TAI Yuen-ying, JP
The Ombudsman

Mr MOK Yun-chuen
Chief Manager

Staff in Attendance : Mrs Constance LI
Principal Council Secretary (Complaints)

Ms Shirley CHAN
Senior Council Secretary (Complaints)3

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The Chairman welcomed Ms Alice TAI, The Ombudsman, and Mr MOK Yun-chuen, Chief Manager of The Ombudsman's Office, to the meeting. She said that the purposes of the meeting were for The Ombudsman to brief Members on the work of The Ombudsman's Office (the Office), and for both parties to exchange views on issues of mutual concern. The Chairman reminded Members that the meeting was not covered by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and that individual cases would not be discussed.

I. The work of The Ombudsman's Office in the previous year

(LC Paper No. CP 131/07-08(01) - (04))

2. At the request of Ms Emily LAU, the Chairman agreed that Ms Emily LAU and Dr Fernando CHEUNG could raise their questions after The Ombudsman had briefed Members on the work of her Office in the past year.

Briefing by The Ombudsman

3. The Ombudsman briefed Members on the work of her Office for the year 2006-2007 and for the first seven months of 2007-2008 (LC Paper No. CP 131/07-08(01)). In order to cope with the continual workload increase, she advised that her Office had recruited three more investigation officers and increased the number of investigation teams from four to five.

Review of The Ombudsman's jurisdiction

4. The Ombudsman said that the review covered both operational issues relating to The Ombudsman Ordinance (Cap. 397) (the Ordinance) and other more philosophical issues relating to recent developments in ombudsman institutions in other parts of the world. Part 1 of the review was presented to the Administration in November 2006. It covered the following three aspects:-

(a) Extension of The Ombudsman's jurisdiction

5. The Ombudsman briefed Members on the criteria for bringing organizations within The Ombudsman's jurisdiction and possible additions to the list of organizations

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in Part I of Schedule 1 to the Ordinance. She had recommended the inclusion of eight more public bodies, having considered their main source(s) of funding, executive powers and extensive interface with or impact on the public.

6. The Ombudsman said that she noted from the Administration's paper for the Panel on Administration of Justice and Legal Services that the Administration had reservations about including District Councils (DCs) and Electoral Affairs Commission (EAC) in Schedule 1 to the Ordinance. The Ombudsman explained the reasons for recommending inclusion of DCs and EAC. She said that as the role of DCs would be expanded to cover management of some district facilities such as leisure and sports facilities, DCs would be transformed into an entity with real executive powers similar to those of the former Municipal Councils. Since the former Municipal Councils were also under The Ombudsman's jurisdiction in the past, she had recommended that DCs should be brought under The Ombudsman's jurisdiction. Regarding the proposed inclusion of EAC, she said that the intention was to investigate complaints about the administrative arrangements for elections, and The Ombudsman would not deal with election-related matters.

(b) Relaxation of restrictions on The Ombudsman's investigative powers

7. The Ombudsman said that there was scope for relaxing some of the restrictions on The Ombudsman's investigative powers set out in Schedule 2 to the Ordinance. Concerning items (4) and (8) of Schedule 2, there had been contention by the Government on her inquiries over the application or otherwise of item (4) of Schedule 2 to complaints concerning land administration, and also the interpretation of "condition" of land grant in item (8) of Schedule 2. So far, The Ombudsman had completed the investigations into all such complaints with the co-operation of the relevant government departments. Since there were dispute over these issues from time to time, she had recommended that the Administration should clarify its stance on the interpretation of items (4) and (8) of Schedule 2.

8. Regarding item (5) of Schedule 2 concerning exclusion of personnel matters such as appointment, removal and pay from The Ombudsman's jurisdiction, The Ombudsman agreed that she should not investigate personnel matters within the realm of staff management. However, she

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considered that there were good grounds to relax the restriction in item (5) to empower her to investigate complaints about the administrative aspects surrounding personnel matters.

(c) Conflict between the secrecy requirements in The Ombudsman Ordinance and other ordinances

9. The Ombudsman drew Members' attention to the possible conflicts among the Privacy Commission for Personal Data (PCPD), the Equal Opportunities Commission (EOC) and her Office which were subject to each others' jurisdiction on matters under their respective purview. Under the law, each of these organizations had the power to obtain information concerning complaints lodged with them, but at the same time was prohibited from disclosing such information upon being inquired or investigated by another party. This would inevitably lead to conflict when a complaint was filed with one of them against another. In so far as The Ombudsman was concerned, her legal obligation to maintain secrecy on complaint and investigation related information was not an excuse for exemption for disclosure under the ordinances of the other two organizations. The Ombudsman considered that such conflict should be resolved in the long term.

10. As regards Part 2 of the review, The Ombudsman said that it had just been completed and was submitted to the Administration on 23 November 2007. This part of the review gave a snapshot impression of recent developments in areas of promotion and protection of human rights and some pointers to possible implications for the ombudsman system if such developments were to be pursued in Hong Kong. The Ombudsman further said that she was mindful that these areas were essentially policy matters for the Administration to consider. Nevertheless, she had, at Members' request, canvassed the recent trends and developments with ombudsman offices in other parts of the world in the course of the review.

The Ombudsman's follow-up with the Administration on the implementation of her recommendations

11. Referring to her paper for the meeting (LC Paper No. CP 131/07-08(01)), The Ombudsman said that whilst The Ombudsman's recommendations were not legally binding, the acceptance rate had always been high. She explained that

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The Ombudsman had no power to interfere with the work of Government or scheduled organizations. Where a head of organization, in the absence of acceptable reasons, refused to act on The Ombudsman's recommendations within a reasonable period of time, The Ombudsman could ultimately submit a report to the Chief Executive, together with such further observations as he thought fit to make. Under section 16(6) of the Ordinance, such report should be laid before the Legislative Council (LegCo) within a month of receipt. Through alerting LegCo and the media, the matter would be exposed to public scrutiny and judgment.

Discussion

Work of The Ombudsman

12. Members commended The Ombudsman for her work in the past years. Dr Fernando CHEUNG said that direct investigations initiated by The Ombudsman were very effective to help identify areas where public administration would need improvement. Referring to the decrease in the number of recommendations made by The Ombudsman in recent years, he asked whether The Ombudsman would need to increase the resources of her Office to cope with the increasing workload.

13. The Ombudsman thanked Members for their support to the work of her Office. She said that in 2006-2007, a total of 134 recommendations had been made to improve various aspects of public administration; 97% of these recommendations had been accepted for implementation, while those relating to policies and legislation would take time to be implemented. The Ombudsman said that as far as she could recall, the Administration had only on one occasion issued a press release to defend its position in response to the findings in a direct investigation report, and that happened in relation to the Administration of the Mid-Levels Moratorium. She further said that the Ombudsman system had been in operation for almost 20 years and Government bureaux/departments had made improvements in various aspects. In some cases, improvements had already been made at the initiatives of relevant bureaux/departments in the course of The Ombudsman's investigations. As such, the decrease in the number of recommendations could be seen as a sign of improvement in public administration and effectiveness of the Ombudsman system.

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14. The Ombudsman advised that recommendations were made to provide remedy in specific cases or instigate improvements to the administrative systems, procedures and practices of organizations concerned. Her Office would follow up on the recommendations made by seeking periodic progress reports from the organization concerned on the implementation of the recommendations or acceptable alternative solutions. In response to Mr Albert HO, The Ombudsman said that she did not have information on the disciplinary actions taken by the Administration against individual officials arising from The Ombudsman's investigations.

15. On the need for additional resources, The Ombudsman said that since delinking from the Administration in 2001, her Office had been funded under the "one-line" vote arrangement. For long term planning and also effective management of her resources under this arrangement, she introduced a new remuneration package for her contract staff since then. This had enabled her Office to sustain and where necessary, adjust its work momentum to cope with increasing service demand without the need for additional resources. In the past year, resources had been earmarked for recruiting six more contract staff for setting up one additional investigation team.

16. Mr Albert HO noted that out of the 5 340 complaints handled and concluded by The Ombudsman in 2006-2007, only 71 were concluded by means of full investigation. Of the 71 investigations, 31 allegations (which represented 40% of all investigations) were substantiated or partially substantiated after full investigation. He enquired about the selection criteria for determining the mode of investigation, and whether adequate resources were put in place for conducting full investigations which were proved to be very effective.

17. On investigation procedures and practices, The Ombudsman advised that the Office conducted preliminary inquiries under the Ordinance to determine whether a full investigation was necessary. Preliminary inquiries were undertaken normally for cases which were less complicated. Such inquiries generally took less time as they were not subject to the statutory formalities of full investigation. For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or

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procedural deficiencies, The Ombudsman would order a full investigation. This involved extensive and intensive probing for evidence. When the draft report of a full investigation was ready, the organization(s) concerned and any individual(s) criticised or adversely affected would be invited to comment. The final report would be given to the head(s) of the organisation(s) for information and implementation of The Ombudsman's recommendations.

18. Mr Albert HO remarked that despite the fact that full investigations might take longer time and greater effort to complete, they were proved to be more effective in identifying areas of maladministration. He therefore called on The Ombudsman to deploy adequate resources for carrying out full investigation and seek additional provisions where necessary. He also asked whether The Ombudsman had conducted any customer satisfaction survey in respect of the work of her Office.

19. The Ombudsman replied that her Office conducted in-house quality control from time to time. Her Office had also introduced a number of measures to facilitate members of the public to access its services. At present, if a person could not properly express his complaint in writing, he could lodge his complaint by telephone. A complaint summary recording the complaint in point form would be posted to the complainant for confirmation. Regarding cases which were outside the purview of The Ombudsman, complainants would be advised of the appropriate channels to pursue their cases.

Review of the jurisdiction of The Ombudsman

20. Dr YEUNG Sum said that he supported The Ombudsman's recommendation to include DCs and EAC in the jurisdiction of The Ombudsman, as the 18 DCs would be empowered to manage some of the district facilities and approve the budget of minor works programme in the districts. Given the expansion of role of the DCs, they were no longer simply advisory bodies. Dr YEUNG also pointed out that the arrangements of the recent 2007 District Council election in the Hong Kong districts also warranted review, and such arrangements should also come under the purview of The Ombudsman. Ms Emily LAU and Dr Fernando CHEUNG shared similar views.

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21. The Ombudsman said that it was not the intention of The Ombudsman to interfere with elections or any statutory functions performed by DCs and EAC. The power and functions of The Ombudsman were clearly defined in the Ordinance, and The Ombudsman could only investigate, inter alia, action taken by an organization in the exercise of its administrative functions. It was on this basis that she recommended for consideration of the LegCo and the Government inclusion of DCs and EAC within the jurisdiction of The Ombudsman.

22. Dr YEUNG Sum remarked that the Ordinance had been enacted years ago. With rising expectation from the public, the Administration and the LegCo should carry out a comprehensive review of the Ordinance. The Chairman said that the Panel on Administration of Justice and Legal Services would discuss matters relating to the review at its forthcoming meeting to be held on 13 December 2007. Members could follow up these issues at the Panel meeting.

23. Ms Emily LAU expressed regret that the Administration had taken more than a year to examine The Ombudsman's recommendations for expanding the jurisdiction of The Ombudsman. As she was much concerned about the arrangements and mechanisms for protection of human rights in Hong Kong, she had hoped that Part 2 of the review could be completed earlier. She also considered it undesirable for issues relating to the review of the jurisdiction of The Ombudsman and human rights protection to be taken up by different committees of the LegCo, as it would be difficult for Members to follow up the related issues.

24. The Ombudsman explained the rationale for splitting the review into two parts. She said that Part 1 of the review was directly related to The Ombudsman's jurisdiction. In this respect, she had re-examined the criteria for including public bodies under the purview of The Ombudsman and had recommended some additions. The review had also revisited the legislative intent for some of the restrictions on its investigative power, and sought to resolve the difficulties or uncertainties encountered in inquiries. Part 2 of the review covered developments in overseas ombudsman jurisdictions and their implications on Hong Kong's ombudsman system, and these issues were not directly within her jurisdiction. However, at the request of Members, she had collated information regarding recent developments in ombudsman

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institutions in other parts of the world, but did not come up with any specific recommendations. She had also provided her review findings to the Administration for consideration.

25. Dr Fernando CHEUNG enquired why the findings of Part 2 of the review could not be released. The Ombudsman advised that as the review would involve amending The Ombudsman Ordinance, she considered it more appropriate for her to provide the review findings to the Administration for consideration first. She would also expect the Administration to provide a response to her before putting it to Members for discussion.

26. At Members' request, The Ombudsman provided information on the recent trends and developments of the Ombudsman offices in other parts of the world. For the newly established Ombudsman institutions, the scope of the Ombudsman's activities had been expanded beyond the traditional Ombudsman functions to cover human rights protection. As for the existing ombudsman system in Hong Kong, it basically followed the British system in that The Ombudsman appointed by the Chief Executive was responsible for investigating complaints concerning maladministration in the public service, and that the traditional Ombudsman did not have the responsibilities of overseeing human rights protection.

27. Regarding the existing mechanism for protection of human rights in Hong Kong, The Ombudsman said that various statutory bodies and institutions, including The Ombudsman, Equal Opportunities Commission (EOC), the Privacy Commissioner's Office (PCO) and other local bodies had a role to play as provided for under the respective ordinances. The question of whether one single institution should be set up to oversee all issues on human rights protection in Hong Kong was a policy issue to be examined by the Administration. In her review, she had highlighted the implications for putting in place such a system for the Administration's consideration. The Ombudsman further said that the Administration had held a view that there was already an extensive mechanism for the protection of human rights in Hong Kong, and the Administration did not see an obvious need for establishing another human rights institution to duplicate or supersede existing mechanisms.

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28. Ms Emily LAU asked The Ombudsman whether, in her view, the role of The Ombudsman should be expanded to cover human rights protection, having regard to overseas experience. The Ombudsman said that she did not consider it appropriate for her to comment on this as it should be a policy decision to be made by the Administration. However, she had provided some basic factual information in Part 2 of her review regarding access to official information and protection of whistleblowers.

29. Regarding access to public information, The Ombudsman informed Members that Government had issued a Code on Access to Information which specified the scope of information to be provided to the public. It was observed that Government officials did not have sufficient knowledge about the application of the Code, and members of the public were also not sufficiently aware of their rights for access to public information.

30. On protection of whistleblowers, The Ombudsman said that the concern was focused on the perceived need to allow "whistleblowers" to disclose wrongdoing or illegal acts in the public interest. The issue had been discussed a few years ago, and the Administration considered that there was no need to introduce legislation in this regard, given the existence of other safeguards.

31. Ms Emily LAU enquired whether any overseas ombudsmen included Police under their jurisdiction. The Ombudsman said that some overseas ombudsmen institutions also handled complaints about Police. She undertook to provide her research findings in this respect for Members' information.

The
Ombudsman

(Post-meeting note: The Ombudsman has subsequently provided information on the practice of some overseas ombudsmen in respect of their handling of complaints against Police. The information was circulated to Members and copied to the Clerk to the Panel on Administration of Justice and Legal Services for reference.)

Other issues

32. Dr YEUNG Sum expressed concern about the present position of the administrative moratorium to restrict building development in Mid-Levels to ease traffic congestion.

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He said that the High Court recently ruled that the Town Planning Board had been wrong to impose restrictions on a site in Mid-Levels, which was proposed to be developed into a high-rise residential complex by a private developer. He hoped the Ombudsman's Office would follow up on its investigation on administration of the Mid-Levels Moratorium.

33. Members noted that the MTR Corporation Limited (MTRCL) was deleted from Part I of Schedule 1 to the Ordinance upon its transformation from a statutory public corporation to a private company in 2000. Nevertheless, with the rail merger, MTRCL would become the legal entity of the post-merger corporation (MergeCo), and Part I of Schedule 1 to the Ordinance would not cover MergeCo.

II. Any other business

34. There being no other businesses, the meeting ended at 12:35 pm.

Legislative Council Secretariat
6 February 2008