

For discussion

Legislative Council Panel on Security

**Subcommittee on Police's Handling of Sex Workers
and Searches of Detainees**

**Information on Anti-vice Operations Conducted by Law
Enforcement Agencies in Overseas Jurisdictions**

Purpose

At a Legislative Council case conference held in July 2007 related to anti-vice operations conducted by the Police, some Members suggested that the Police should review the need for undercover agencies to receive sexual service during undercover anti-vice operations having regard to overseas experience. This paper reports on available information on the practice of law enforcement agencies (LEAs) in overseas jurisdictions in the investigation of offences relating to vice activities.

Overseas experience and the relevance to Hong Kong

2. The Police approached their overseas counterparts for information on their practice in the investigation of offences relating to vice activities. Relevant information, to varying degrees of detail, was provided by police authorities in six overseas countries / cities. Details are set out at the **Annex**.

3. There are considerable differences across jurisdictions in their anti-vice legislation, the modus operandi of vice establishments and sex workers, and the enforcement practices and strategies. Due to differences in circumstances, the enforcement approach and priorities of LEAs in different jurisdictions in relation to vice activities are not directly comparable.

4. For example, both prostitution and the use of prostitution services are illegal in Japan, Korea and Chicago. Given the fundamental principle that LEA officers should not contravene the law in the course of their investigation into unlawful activities, it is understandable why undercover operations are not conducted in Japan to combat vice

activities and why sexual contact with sex workers is not allowed in undercover anti-vice operations in Korea and Chicago.

5. In Montreal and British Columbia, Canada, as well as South Australia, prostitution is legal. In the case of Montreal, having regard to the elements of crime that need to be proved by the prosecution before the court (e.g. organized and large-scale prostitution activities), there could be an operational need for an undercover agent to pose as a customer until he has collected sufficient evidence to secure successful prosecution against the suspected offender(s). For South Australia, due to the relatively low level of seriousness of vice-related offences normally tackled by undercover operations, physical contact with sex workers is not allowed during such operations. Similarly, in the case of British Columbia, Canada, the vice-related offences normally tackled by undercover operations are only summary conviction offences and bodily contact is not allowed in anti-vice undercover operations.

6. By comparison, in the case of Hong Kong, police anti-vice operations are targetted at persons controlling sex workers and operating vice establishments, which often involve more serious offences related to organized crime groups or triads. As pointed out in our previous submission to the Security Panel of 8 December 2008, there is practical need to conduct undercover operations in order to bring these criminals engaged in vice activities to justice. On the rare occasions where it is anticipated that some form of bodily contact is genuinely necessary to achieve the objective of an anti-vice operation and to maintain the cover of the operation, the extent and form of sexual service are restricted to that as required by operational need, and are determined by the officer-in-charge of the operation. In particular, sexual intercourse and oral sex are strictly prohibited and bodily contact is allowed only when it is genuinely necessary for achieving the objective of the operation, and once the objective is achieved the bodily contact should cease. Where it is anticipated that the undercover officer may have to receive masturbation service in order to achieve the objective of the operation, prior approval must be obtained from an officer at Senior Superintendent rank.

7. The stringent approval procedures ensure that only on very few but justified occasions where the particular circumstances of the case so justify would approval be given for a police officer to have sexual contact during an undercover operation. Indeed, as pointed out in our submission to the Security Panel mentioned above, during the three months from July to September 2008, there was only one occasion on

which a police officer was given approval by his senior to receive masturbation service, as a form of limited sexual service, for the purpose of an undercover operation against vice activities¹.

8. In addition, there is already an effective mechanism within the Hong Kong Police Force for monitoring undercover officers engaged in anti-vice undercover operations. The officer-in-charge of an operation will brief the undercover officers in detail before each operation, including specific instructions regarding the permitted extent of bodily contact, if any. The undercover officer must keep a detailed record of the operation for inspection by their supervisory officers. If prosecution is eventually instituted following the operation, the undercover officer will be cross-examined in court. There is also further supervisory control at the more senior levels of the Police. We believe that this arrangement strikes an appropriate balance between law enforcement considerations and the prevention of possible abuse by undercover officers.

Security Bureau
Hong Kong Police Force
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¹ In the event, the police officer completed the operation without actually receiving any masturbation service.

**Anti-vice Operations conducted by
Law Enforcement Agencies in Overseas Jurisdictions**

Canada (Montreal)

Prostitution is generally allowed in Canada (Montreal and British Columbia), but activities that exploit other persons are illegal. The Montreal Police may conduct undercover operations, in addition to the use of other investigation techniques (e.g. interception and covert surveillance operations), to combat illegal vice activities, but public officers are required to refrain from physical contact. On a small number of occasions, e.g. investigations into controllers of prostitution activities who are part of a criminal group, the Montreal Police have a practical need to engage agents to establish longer-term contacts with the sex workers in order to obtain evidence for further investigations, obtaining search warrants or arrest of individuals. For this purpose, the Montreal Police engage external “special agents”¹ to patronize the sex worker(s) concerned.

Canada (British Columbia)

2. According to the Police of British Columbia, Canada, for undercover anti-vice operation concerning a summary conviction offence, the undercover agent will avoid bodily contact with the sex worker. He would cease the operation if its objective could only be achieved with such contact. The Police of British Columbia, Canada have not provided further information on how they handle vice cases requiring the mounting of long-term undercover operations. We understand that Canadian case law accepts the practice of physical contact with sex workers in certain situations for investigation purpose.

South Australia

3. Undercover operations mounted by the South Australia Police are subject to strict policies and approval. Since the vice-related offences normally tackled by undercover operations are of a relatively low level of seriousness, physical contact with sex workers is not allowed during such

¹ According to the Montreal Police, these agents are non-public officers who regularly patronise sex workers. They do not have a criminal record, nor do they have any other links to the police (e.g. not an informant). The Montreal Police pay the costs for the sexual services received by the agent, but the agents themselves are not paid for undertaking the undercover activities.

operations. Undercover officers are also strictly prohibited from removing the clothing of sex workers in such operations.

Japan, Korea and Chicago

4. Prostitution as well as the use of prostitution services are illegal in Japan, Korea and Chicago. The Japanese Police reveal in general terms that they do not mount undercover operations at all in their investigation of vice-related offences. In Korea, undercover operations are mounted mainly to target on-street prostitution, and undercover officers are not allowed to receive sexual services during such operations. The operations of the Chicago Police target both on-street and on-premise prostitution activities. Undercover officers are not allowed to receive sexual service during operations, and other investigation techniques (e.g. interception and covert surveillance) are adopted to collect evidence instead.