

立法會
Legislative Council

LC Paper No. CP 451/08-09

(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, 9 December 2008, 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
Hon Fred LI Wah-ming, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEUNG Kwok-hung
Hon Ronny TONG Ka-wah, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Tanya CHAN
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Attendance by Invitation : Office of The Ombudsman

Ms Alice TAI Yuen-ying, JP
The Ombudsman

Mr MOK Yun-chuen
Chief Manager

Miss Kathleen CHAN Sik-ha
Senior Manager (External Relations)

Staff in Attendance : Mrs Sharon TONG
Principal Council Secretary (Complaints)

Miss Erin TSANG
Senior Council Secretary (Complaints)⁴

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The Chairman welcomed Ms Alice TAI, The Ombudsman, and her colleagues 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, and to exchange views with Members 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 Nos. CP 201/08-09)

Caseload

2. The Ombudsman briefed Members on the work of her Office in the previous year. She highlighted that the number of cases received by her Office in 2006-2007 was 5 606 whilst the number of cases received in 2007-2008 was 4 987. She pointed out that although there seemed to be a drop in the caseload in 2007-2008, it was actually not the case. This was because there were two issues of public concern in 2006-2007 which triggered a flood of "serial" complaints, namely Typhoon Prapiroon which brought about over 200 similar complaints against the Hong Kong Observatory and the Broadcasting Authority's criticism of a Radio Television Hong Kong programme which attracted over 1 300 complaints. Excluding complaints relating to these two issues, the number of complaints received in 2007-2008 was actually higher than that in 2006-2007. She remarked that, as always, the number of complaints would surge when there were specific issues attracting wide public attention. Generally speaking, the number of complaints lodged with her Office was on a rise in the past ten years.

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Direct investigations

3. Mr WONG Kwok-hing commended The Ombudsman for her work done in the past years. In this connection, he noted with concern that although The Ombudsman had completed a direct investigation on the handling of water seepage complaints and had made remarkable observations and recommendations, there was few improvement or progress, such as the Administration's inaction on The Ombudsman's recommendation for establishing a Building Affairs Tribunal. He considered that The Ombudsman should explore methods to ensure effective implementation of her recommendations. Mr IP Kwok-him expressed similar views that the public had high expectation of The Ombudsman's Office as a watchdog of the community to ensure that wrongs were righted, and that it would be desirable for The Ombudsman's recommendations to be implemented effectively.

4. The Ombudsman explained that pursuant to The Ombudsman Ordinance (Cap. 397), The Ombudsman's role was primarily that of a commentator. The Ombudsman would investigate complaints of maladministration, or, in the absence of complaints, initiate direct investigation into significant issues, and then in the light of investigation findings, make improvement recommendations for consideration by the concerned Government departments/organizations. She stressed that her recommendations were not binding. If the concerned Government departments/organizations did not take heed of her recommendations, she could only report it to the Chief Executive who would then table the report in the Legislative Council (LegCo) to bring it to the attention of Members and the public. As such, she considered that it would be appropriate for the respective LegCo Panels to follow up further with the concerned Government departments/organizations at the policy level. In this respect, she advised that recommendations made by her Office in the past year had mostly been accepted by Government departments/organizations. She was, in general, satisfied with the Administration's positive response towards and implementation of the recommendations made by her Office.

5. Concerning the direct investigation on the handling of water seepage complaints, The Ombudsman remarked that seepage was basically a matter of building management and maintenance responsibility for property owners. Only when

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it became a matter of public health nuisance, building safety risks or wastage of water would the Government become involved and had a statutory responsibility to intervene. A Joint Office of the Buildings Department and the Food and Environmental Hygiene Department was set up for better interdepartmental co-ordination in the handling of seepage complaints. Yet, notwithstanding the establishment of the Joint Office, complaints about the handling of seepage matters had continued. The Ombudsman's Office therefore decided to launch a direct investigation to examine the effectiveness of the Joint Office in the handling of seepage complaints. A report on the findings was published in April 2008, and the Joint Office had agreed to take on all the recommendations. The Ombudsman's Office would continue to keep in view the progress of implementation of the recommendations. In this respect, The Ombudsman undertook to provide for Members' reference a copy of the document distributed to the media at the press conference announcing the outcome of the direct investigation on the handling of water seepage complaints which had listed out in detail the recommendations made by The Ombudsman to the Joint Office.

(Post-meeting note: The information provided by The Ombudsman was circulated to Members vide LC Paper No. CP 239/08-09 on 12 December 2008.)

6. In further reply to Mr Fred LI, The Ombudsman advised that although The Ombudsman Ordinance did not require The Ombudsman to follow up on the recommendations tendered to complainee Government departments/organizations, pursuant to the internal guidelines of The Ombudsman's Office, the officers concerned would request the complainee Government departments/organizations to provide a report at a regular interval, such as three to six months' time, in order to keep track of the implementation progress.

7. Concerning the direct investigation on special examination arrangements for students with specific learning difficulties (SPLD), Mr Albert HO enquired about the reason for initiating such investigation, in particular how the line was drawn at initiating or not an investigation into a particular matter which might involve Government policies.

8. The Ombudsman replied that her Office had received many complaints about SPLD children not receiving timely diagnostic or remedial services. After ascertaining

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with the Equal Opportunities Commission that the Commission had no plans to look into the matter, The Ombudsman's Office had decided to initiate a direct investigation, partly as an exercise to ensure public awareness and public education that SPLD children could be helped to bypass their difficulties if there were sufficiently early detection and availability of professional support. For example, providing examination concessions for such students would "level the playing field" by removing the disadvantages brought about by their specific learning difficulties, otherwise there could be injustice as students with specific learning difficulties would be adversely affected and this could result from maladministration on the part of the education authorities. In April 2007, The Ombudsman's Office declared a direct investigation to examine, inter alia, the role of education authorities in providing reasonable accommodation (i.e. special arrangements) for these students, and the promotion of awareness of such special arrangements among parents, students, teachers and school authorities. Altogether, 19 recommendations were made. She stressed that the investigation was initiated from the angle that there might be maladministration if students with specific learning difficulties were deprived of reasonable accommodation as pledged by the Government. Mr Albert HO noted the information provided by The Ombudsman and praised her for conducting direct investigation to protect the welfare of the underprivileged.

9. Regarding the six direct investigations still in progress, Mr IP Kwok-him asked and The Ombudsman advised that although her tenure of office would end in March 2009, her Office would continue with the investigations and in fact the target was to endeavour to complete as many of these investigations as possible before the end of her term of office. Upon completion of direct investigations, The Ombudsman would normally hold press conferences to publicize the investigation findings. Apart from accountability and transparency considerations, public reaction to her publicized findings would allow her Office to keep track of public value and sentiments on many social issues.

10. Mr Fred LI noted that The Ombudsman had initiated a direct investigation on the handling of complaints involving damage to property or minor injuries caused by the Housing Department (HD) or its contractors, and the investigation was still in progress. Mr LI then asked and The Ombudsman explained that public housing tenants, from time to time, lodged complaints with her Office against HD for mishandling

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of such cases. She noted with concern that where the complaint included a claim for damages, HD would almost invariably leave the case with the loss adjuster of its insurer without itself examining the incident to identify the cause or the need for service or management improvement. She therefore decided to initiate the direct investigation which would cover HD's procedures for handling complaints involving property damage or minor injuries caused by HD or its contractors, as well as HD's mechanism for monitoring inquiries by the loss adjuster.

Areas of concern of The Ombudsman during her tenure

11. Miss Tanya CHAN noted that in the 2007-2008 Annual Report, The Ombudsman had outlined some areas of concern in The Ombudsman's review, and one of which was the access to information. She opined that the Government's Code on Access to Information (the Code), which had been in force since 2005, was very useful as the public could obtain Government-held information upon request. She then enquired about the recommendations made by The Ombudsman in this respect and the improvement, if any, made so far in this area.

12. The Ombudsman informed Members that in 2007-2008, her Office had received 15 complaints about non-compliance or misapplication of the Code. In several cases, the departments concerned refused requests for information, either without providing any reason or with reasons not in compliance with the Code. In one or two cases, even the Access to Information Officer showed ignorance about provisions of the Code. She noted with particular concern that even senior civil servants were not conversant with the provisions of the Code. This had resulted in unnecessary complaints from the public. She had, therefore, urged the Constitutional and Mainland Affairs Bureau (CMAB) to increase awareness of and organize Code-related training for civil servants. However, CMAB took the view that the Government was not performing that badly in this area as the number of complaints was not numerous.

13. Prof LAU Sau-shing shared The Ombudsman's concern about the lack of co-ordination on problems that involved more than one department. He said that despite setting up the Development Bureau, there was a lack of co-ordination among Government departments. He enquired as to the reasons attributing to such phenomenon.

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14. The Ombudsman responded that on issues involving several departments, departments would often only concern with doing its own job and had no wish to assume lead responsibility for such problems. Even though her Office had escalated the issues to the respective bureaux, it often made little difference. She said Government bureaux/departments should take a broader view of their roles, i.e. no matter how many bureaux/departments might be involved, the public still viewed them as one and the same Government. Buck-passing among bureaux/departments would give the public a poor impression of Government as a whole. Shirking responsibilities would ultimately undermine Government's credibility.

15. Mrs Regina IP shared The Ombudsman's view that Government officials sometimes failed to try their best to help redressing grievances from members of the public. She therefore asked The Ombudsman as to how she could help Government officials internalize her values as to serve the public with earnest endeavour.

16. The Ombudsman said that she had always tried to be impartial and objective in her investigations, the purpose of which was to identify redress for grievances and to improve administrative systems. The public had increasingly higher expectation of the Government. However, in some complaint cases, it would appear that senior management level was unaware of the wrongdoings at the frontline and the level of dissatisfaction from the public. Nevertheless, she was glad to note that in certain direct investigations by The Ombudsman, some Government departments took the initiative to improve their systems or procedures without waiting for the investigation to conclude. In sum, she remarked that her mission was to bring about improvement in the quality and standard of, as well as to promote fairness in, the public administration. She would continue to assist Government departments and officials in improving their services and support them in those endeavours.

17. Mrs Regina IP noted The Ombudsman's remarks, and opined that it would be desirable if The Ombudsman would consider organizing more seminars for civil servants to help them internalize her values.

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Jurisdictional review

18. The Ombudsman informed the meeting that she had completed the review of The Ombudsman's jurisdiction and forwarded proposals to the Administration for consideration. Part One of the review submitted in November 2006 examined the criteria for including public bodies in The Ombudsman's purview and recommended a few additions. Part Two submitted in November 2007 was devoted to surveying trends for development in ombudsmanship worldwide and the implications those could have on the ombudsman system in Hong Kong.

19. Mr Paul TSE expressed concern that there were, from time to time, public complaints on the licensing system of the Travel Industry Council of Hong Kong. As such, he considered that the Travel Industry Council of Hong Kong and the Hong Kong Tourism Board should be brought within The Ombudsman's jurisdiction.

20. The Ombudsman advised that she had recommended the inclusion of eight bodies (namely, Auxiliary Medical Service, Civil Aid Service, Board of Management of Chinese Permanent Cemeteries, Chinese Temples Committee, Consumer Council, Estate Agents Authority, Electoral Affairs Commission and District Councils) in Part I of Schedule I of The Ombudsman Ordinance after taking into account their executive powers, extensive interface with or impact on the public, and the main source(s) of funding. Since the Travel Industry Council of Hong Kong and the Hong Kong Tourism Board did not satisfy the abovementioned criteria for inclusion in The Ombudsman's purview, she had not recommended the inclusion of these two bodies. The Ombudsman added that as the LegCo Panel on Administration of Justice and Legal Services was following up with the Administration on the review of The Ombudsman's jurisdiction, Members might consider raising proposed additions or adjusting the criteria for inclusion at the Panel meeting for further deliberation with the Administration.

21. Mr WONG Kwok-hing noted with concern that the Administration's formal response to Part One of the review was still awaited despite the fact that The Ombudsman had put up her proposals two years ago (i.e. in November 2006). He considered that the Administration should provide a prompt response, in particular as incumbent Ombudsman's tenure would end in March 2009. The Ombudsman advised that the

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Administration had been deliberating her proposals and had undertaken to provide a formal response by the first quarter of 2009.

22. Ms Audrey EU expressed that at present, there were many channels for redressing grievances but few avenues for rendering assistance to complainants who sought compensation. She asked whether The Ombudsman thought the jurisdiction of her Office should be expanded to cover the handling of complaints relating to claims.

23. The Ombudsman advised that her stance had always been clear that The Ombudsman's statutory power was to investigate complaints of maladministration, and any complaints involving legal disputes or claims were outside the jurisdiction of her Office. Claims for compensation inevitably involved determination of questions of legal liability and should, therefore, be dealt with by courts. She added that in certain complaint cases, if the complainants had suffered financial losses directly as a result of the maladministration and they had not contributed towards such loss, she might recommend the Administration to provide redress which could take the form of monetary payment.

24. Mr Albert HO sought The Ombudsman's view that if Hong Kong was to establish an Office of Financial Ombudsman, whether it would be desirable for such Office to merge with the Office of The Ombudsman.

25. The Ombudsman said that all boiled down to a question of policy. Overseas experiences varied. For example, in the United Kingdom, the Parliamentary Ombudsman was also the Health Service Ombudsman, whereas in some countries, separate specialized ombudsmen were instituted to be responsible for different subject matters. Policy would dictate the mode of operation of the ombudsman system in Hong Kong.

26. Mr LEUNG Kwok-hung noted that both the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authorities (HKMA) were subject to investigation by The Ombudsman in the exercise of their administrative functions. Since there were lots of complaints filed against these two organizations by investors of Lehman Brothers-related minibonds and those complaints had not yet been resolved, he enquired whether The Ombudsman would exercise her jurisdiction to investigate the undue delay in

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responding to complainants by these two organizations. Also, Mr LEUNG was concerned whether The Ombudsman would conduct an investigation into the ineffective performance of the Mandatory Provident Funds Schemes Authority which was also included in Part I of Schedule 1 of The Ombudsman Ordinance.

27. The Ombudsman advised that she closely monitored current social issues which attracted wide public concern. Her investigation could only focus on complaints of maladministration. Complaints relating to the Lehman Brothers involved matters wider than administrative issues. She thought that LegCo would provide a more effective channel of investigation and also noted that a subcommittee had already been set up to look into issues arising from the matter. Where an investigation had already been launched by a competent authority, The Ombudsman was to avoid overlapping of investigations so as not to waste resources. However, she would closely monitor developments of the matter including LegCo's investigation. If at the end of the day, she considered that there were aspects which had not been addressed and fell within the jurisdiction of her Office, she might consider investigating those issues later on.

28. Mr LEUNG Kwok-hung then cited a case in which some Hong Kong people were left stranded in Thailand, and asked whether The Ombudsman would consider that it was maladministration on the part of the Government for its delay in sending chartered flights to evacuate those Hong Kong people. The Chairman reminded Members that the secrecy provision in The Ombudsman Ordinance precluded discussion of individual cases with third parties.

II. Any other business

29. There being no other business, the meeting ended at 12:20 pm. The Chairman thanked The Ombudsman for attending the meeting and wished her a happy retirement.