

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 1 May 1985****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR EDWARD YOUDE, G.C.M.G., M.B.E.

THE HONOURABLE THE CHIEF SECRETARY
SIR CHARLES PHILIP HADDON-CAVE, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN HENRY BREMRIDGE, K.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL
MR. MICHAEL DAVID THOMAS, C.M.G., Q.C.

THE HONOURABLE SIR ROGERIO HYNDMAN LOBO, C.B.E., J.P.

DR. THE HONOURABLE HARRY FANG SIN-YANG, C.B.E., J.P.

THE HONOURABLE FRANCIS YUAN-HAO TIEN, O.B.E., J.P.

THE HONOURABLE CHEN SHOU-LUM, C.B.E., J.P.

THE HONOURABLE LYDIA DUNN, C.B.E., J.P.

THE HONOURABLE PETER C. WONG, O.B.E., J.P.

THE HONOURABLE WONG LAM, O.B.E., J.P.

DR. THE HONOURABLE THONG KAH-LEONG, C.B.E., J.P.
DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.
SECRETARY FOR TRADE AND INDUSTRY

DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, O.B.E., J.P.

THE HONOURABLE ANDREW SO KWOK-WING, O.B.E., J.P.

THE HONOURABLE HU FA-KUANG, O.B.E., J.P.

THE HONOURABLE WONG PO-YAN, O.B.E., J.P.

THE HONOURABLE DONALD LIAO POON-HUAI, C.B.E., J.P.
SECRETARY FOR DISTRICT ADMINISTRATION

THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE JOHN JOSEPH SWAINE, O.B.E., Q.C., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE CHEUNG YAN-LUNG, M.B.E., J.P.

THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, J.P.

THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING

THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE CHAN NAI-KEONG, C.B.E., J.P.
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, J.P.
COMMISSIONER FOR LABOUR

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.

THE HONOURABLE YEUNG PO-KWAN, C.P.M.

THE HONOURABLE JAMES NEIL HENDERSON, O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE KIM CHAM YAU-SUM, J.P.

THE HONOURABLE CARL TONG KA-WING

THE HONOURABLE JOHN WALTER CHAMBERS, J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.

DIRECTOR OF EDUCATION

THE HONOURABLE PETER TSAO KWANG-YUNG, C.P.M., J.P.
SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION

THE HONOURABLE DAVID ROBERT FORD, L.V.O., O.B.E., J.P.
SECRETARY FOR HOUSING

THE HONOURABLE IAN FRANCIS CLUNY MACPHERSON, O.B.E., J.P.
SECRETARY FOR TRANSPORT

THE HONOURABLE GERALD AIDIAN HIGGINSON, A.E., J.P.
SECRETARY FOR ECONOMIC SERVICES (*Acting*)

ABSENT

THE HONOURABLE ALEX WU SHU-CHIH, C.B.E., J.P.

THE HONOURABLE WILLIAM CHARLES LANGDON BROWN, O.B.E., J.P.

THE HONOURABLE KEITH LAM HON-KEUNG, J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR. LI WING

Oath

Mr. G. A. HIGGINSON took the Oath of Allegiance and assumed his seat as a Member of the Council.

HIS EXCELLENCY THE PRESIDENT:—I should like to welcome Mr. HIGGINSON this Council.

Papers

The following papers were laid pursuant to Standing Order 14(2):—

<i>Subject</i>	<i>L.N. No.</i>
Subsidiary Legislation:	
Insurance Companies Ordinance. Insurance Companies Ordinance (Amendment of Section 13) Regulations 1985.....	91
Insurance Companies Ordinance. Insurance Companies (Register of Insurers) (Prescribed Fee) (Amendment) Regulations 1985.....	92
Protection of Wages on Insolvency Ordinance 1985. Protection of Wages on Insolvency Regulations 1985	93
Road Traffic Ordinance. Road Traffic Ordinance (Amendment of Third Schedule) Order 1985	94
Road Traffic Ordinance. Road Traffic (Driving Licences) (Amendment) Regulations 1985.....	95
Road Traffic Ordinance. Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulations 1985.....	96
Legal Practitioners Ordinance. Barristers (Qualification) (Amendment) Rules 1985.....	97
Factories and Industrial Undertakings (Cartridge-Operated Fixing Tools) Regulations. Factories and Industrial Undertakings (Cartridge-Operated Fixing Tools) (Amendment of Schedule) Notice 1985	98
Public Health and Urban Services Ordinance. Public Health and Urban Services (Designation of Libraries) Order 1985.....	99

Protection of Wages on Insolvency Ordinance 1985.	
Protection of Wages on Insolvency Ordinance 1985 (Commencement)	
Notice 1985	100
Inland Revenue Ordinance.	
Inland Revenue (Interest Tax) (Exemption) (Amendment) (No. 4) Notice	
1985.....	101
Tax Reserve Certificates (Fourth Series) Rules.	
Tax Reserve Certificates (Rate of Interest) (No. 4) Notice 1985.....	102
Midwives Registration Ordinance.	
Midwives (Registration and Disciplinary Procedure) (Amendment)	
Regulations 1985.....	103
Pilotage Ordinance.	
Pilotage (Dues) (Amendment) Order 1985.....	104
Registration of Persons Ordinance.	
Registration of Persons (Invalidation of Old Identity Cards) Order 1985	105

Sessional Papers 1984-85:

No. 55—Kowloon-Canton Railway Corporation Annual Report 1984.

No. 56—The Jubilee Sports Centre Hong Kong—Annual Report 1983-84.

Oral answers to questions

Meat brought in from China by individual shoppers

1. MRS. CHOW asked:—*Will Government inform this Council whether meat that is brought in by individual shoppers who do regular marketing in neighbouring Chinese towns is subject to health inspection at the respective entry points?*

THE CHIEF SECRETARY:—No, Sir, it has not been found necessary to do so as the meat bought by individual shoppers in China and then brought into Hong Kong—and this kind of shopping has been going on for a long time—is generally of a good quality, and the quantities are small, being for consumption by the individuals themselves and their families.

MRS. CHOW:—*Is the Government aware that in fact a large proportion of these shoppers that we referred to are in fact shopping on behalf of restaurants and also wholesale operations and is the Chief Secretary aware that the trade and current activities seem to indicate a growing trend and is the situation being monitored?*

THE CHIEF SECRETARY:—Yes Sir, there have been rumours that this trade is developing but so far it has not been thought necessary to do more than keep a very sharp eye out. If it is found that such meat is finding its way into the marketplace or directly to restaurants and, therefore, posing a possible health hazard, action will be taken against such practices.

MISS DUNN:—*In what way is this monitoring process being done?*

THE CHIEF SECRETARY:—As part of our public health and hygiene services, locally killed meat is, of course, subject to inspection at the abattoir on killing and again there is an army of health inspectors inspecting meat on sale and it is at the retail end of the monitoring process that action is concentrated at the moment.

MISS DUNN:—*I'm sorry, Sir, but I'm not sure whether the Chief Secretary has answered the question. I think he referred to the meat being brought in by individuals that this is being monitored, and I wanted to know in what way is this being monitored?*

THE CHIEF SECRETARY:—It is simply a fairly ancient trade and it is not believed—there is no substantial evidence at the moment—that this meat is being brought in on a commercial basis. It is being brought in by individuals for individual consumption but there are rumours that the trade is developing and acquiring a sort of commercial dimension. If and when that is proved then the Customs and Excise Service of the border particularly will be involved.

MRS. CHOW:—*According to sources that the Consumer Council has in fact meat is being brought in on a commercial basis. I'm just wondering whether the Government has any plans to verify that this is true or untrue?*

THE CHIEF SECRETARY:—All I can say, Sir, is that the Customs and Excise Service do not have any evidence that such meat is being brought in in commercial quantities at this time.

Revenue from offshore interest

2. MRS. FAN asked:—*In his 1984-85 Budget speech, the Financial Secretary estimated that Government could obtain an additional revenue yield of \$350million per year from offshore interest; could Government inform this Council how much profits tax has been demanded or collected from this source up to now?*

THE FINANCIAL SECRETARY:—Sir, the simple answer is none. I am sure that Mrs. FAN will welcome the explanation. In my 1984 Budget speech I said:

‘140. As it is intended that this proposal shall apply only to interest accruing on or after 1 April 1984 it will have effect for the first time in respect of final assessments for 1984-85, which of course are generally not due for payment until 31 March 1985. There will, therefore, be no immediate addition to revenue.’

In accordance with Current Departmental routines, 1984-85 (Final) and 1985-86 (Provisional) Profits Tax Returns were issued on 1 April 1985 and will begin to flow back to the Inland Revenue Department and be assessed during the forthcoming months. Yields from this source will not, therefore, begin to come in until the latter part of the 1985-86 fiscal year. After consulting the Commissioner of Inland Revenue I stick to my original estimate of a significant total yield of \$350 million this year.

MRS. FAN:—*Can the Financial Secretary give us a date on which the Government will be in a position to give a more accurate figure, vis-a-vis estimate, based on the assessment of 1984-85?*

THE FINANCIAL SECRETARY:—Yes, Sir, towards the end of this financial year, Sir.

MRS. FAN:—*As I understand it, the Financial Secretary accepted some of the arguments forwarded which are against the introduction of offshore interests and in his Budget speech he in fact referred to this and that he will be thinking of making some adjustments according to these representations. Could the Financial Secretary inform us what effect it will have on this estimate of \$350 million?*

THE FINANCIAL SECRETARY:—None, Sir.

Cross-infection in hospitals

3. DR. HO asked:—*What measures will Government take to reduce the incidence of cross-infection in hospitals, particularly in paediatric wards?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, the control and prevention of cross infection has always been an important aspect of hospital practice and administration. Thus, measures to identify, prevent and control hospital acquired infections are normally undertaken by all hospital administrations within their hospitals. These measures include:—

(a) *Surveillance*

This is for the purpose of reporting, collecting and compiling relevant data on hospital infections. Such data provides useful information on the incidence, trend and pattern of infection and assist the hospital administrations in assessing the effectiveness of the regular preventive measures. It also enables the administrations to recognise early any potential serious

outbreaks that may occur within the hospital so that the necessary preventive measures could be taken in time.

(b) *Education and protection for staff*

As part of their training, the health care staff have all been educated on the principles and practice of infection control and the importance of scrupulous adherence to aseptic and antiseptic techniques. Where necessary, special lectures are organised and special guidelines on precautionary measures are issued for the health care staff in respect of certain diseases of special interest such as the Hepatitis B and the Acquired Immune Deficiency Syndrome.

(c) *Policies and guidelines for prevention and control of cross infection*

These are useful for the hospital staff in the course of their duties to follow so as to keep cross infection to a minimum. These include procedures for isolation of patients, barrier nursing, disinfection, sterilisation, proper care of equipment, surgical procedures and special infection control measures in special areas such as the Intensive Care Units and Renal Dialysis Units. Sterilised dressings and equipment for use in the wards are available from the Central Sterilised Supply Department so as to eliminate the risk of cross infection.

(d) Aside from the above, additional provisions are made for the care of paediatric patients. These include establishment of milk kitchens, Neonatal Intensive Care Units for premature babies and infants who need special care and also facilities for isolation of cases. These special measures all help to control and reduce the chances of hospital infection among paediatric patients.

(e) All the above measures are being monitored by special infection control committees in the major hospitals and such functions are also part of the activities of the management committees of all other hospitals.

The infection control committees or the management committees of the hospitals constantly and regularly monitor the measures as mentioned for the prevention and control of hospital acquired infections and is responsible for overseeing the normal medical, nursing and administrative procedures for such purposes. It also considers and implements any measures which are considered necessary for improvement from time to time.

DR. HO:—*Sir, is the Director of Medical and Health Services satisfied with the adequacies of isolation facilities for paediatric patients especially in the old hospitals which were built some 20 or 30 years ago?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—*Sir, special facilities for babies who are in need of isolation are provided in all hospitals and these include isolation wards, side wards and isolation rooms and when necessary, infectious cases can also be treated at the Prince Margaret Hospital's Infectious Diseases Unit. In all these areas the strictest isolation techniques are practised and I am satisfied generally that there are adequate provisions for the isolation of babies*

who are in need of these facilities. As for the old hospitals, for example in the Queen Mary, there are certain facilities already for isolation. Of course in this case since the hospital was built as long ago as 1937, there must be room for improvement and more of these facilities will become available once the extension project in regard to Queen Mary is completed by 1987-88.

DR. HO:—*Sir, what is the rate of occurrence of cross infection in Hong Kong and how does that rate compare with other countries, for example the UK or the USA?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—*Sir, as we all know by nature of the functions of hospitals, cross infection is always a potential risk in any hospital and in fact occurs usually at a certain low level in most if not all hospitals. Now according to our available data from our surveillance system there is only an average incidence of 2 to 3 per cent which compares very favourably with similar studies, for example in the USA, where the Centre for Disease Control reported 5-6 per cent infection of all hospitalised patients.*

DR. IP:—*Sir, how do Government define the phrase 'an outbreak of infection' in hospital wards; for example, would an outbreak of infection be considered to have occurred when two persons in a ward were cross-infected with the same bacteria?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—*Sir, the word 'outbreak' is subject to a wide spectrum of interpretation. To some people even one case is an outbreak; to others cases may well run into tens or thousands. I would define it thus: if for a long time there were no cases and suddenly one or two cases were to occur then that is an 'outbreak'.*

DR. IP:—*Based on the definition by the Director of Medical and Health Services, how many outbreaks of infection occurred in government, government subvented and private hospitals respectively last year?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—*Sir, I'm afraid I haven't got the exact figures but so far as I'm aware there have been some outbreaks but in a rather isolated fashion.*

Compensation for properties damaged during fire fighting operations

4. MR. WONG LAM asked in Cantonese:—

政府可否告知本局，對於消防事務處在滅火行動中損壞的私人財物，是否作出賠償？

(The following is the interpretation of what Mr. WONG Lam asked.)

Can Government inform this Council whether compensation is provided for private properties damaged by the Fire Services Department during fire-fighting operations?

SECRETARY FOR SECURITY:—No, Sir, the Government is not liable to pay compensation for any damage the Fire Services Department does during fire fighting operations or in the course of carrying out its other duties under the Fire Services Ordinance, unless it can be shown that the department or its personnel have been negligent.

Members of the department would also not be liable to any action for damages as long as they were bona fide acting in the course of their duties under powers conferred by the Fire Services Ordinance.

But the Fire Services Ordinance does specifically provide that any damage done by the department or its personnel in the course of carrying out their legitimate duties on the occasion of a fire would be deemed to be damage by fire within the meaning of any policy of insurance against fire.

MR. WONG LAM asked in Cantonese:—

閣下，在過去兩年間，消防事務處，有沒有接獲因滅火行動中，遭受損失而向當局要求賠償的個案呢？

(The following is the interpretation of what Mr. WONG LAM asked.)

Sir, during the past two years has the Fire Services Department received any requests for compensation due to the damages?

SECRETARY FOR SECURITY:—Sir, I have statistics for the past 12 months and if my honourable friend will bear with me I can give him in writing statistics for the previous 12 months. In the past 12 months we have had ten claims of which five were settled. The other five cases are still being processed.

MR. WONG LAM asked in Cantonese:—

閣下，消防事務處知否消防人員在滅火行動中，應儘量避免損壞私人財物呢？

(The following is the interpretation of what Mr. WONG Lam asked.)

Sir, does the Fire Services Department know that the firemen should try their best not to bring about any damages to private properties during their operations?

SECRETARY FOR SECURITY:—Yes, Sir, indeed they do. But we must bear in mind, Sir, that their object in fighting a fire is to put the fire out and reduce the risk to human life and that inevitably must be their first priority.

Prosecution of contractors of illegal building works

5. DR. IP asked:—*Would Government consider introducing legislative measures to allow the prosecution of contractors who install illegal extensions and structures?*

SECRETARY FOR LANDS AND WORKS:—Sir, the Buildings Ordinance provides for the prosecution of any person, including a contractor, who carries out illegal building works.

DR. IP:—*Sir, how many of such contractors have been prosecuted last year as compared to the number of owners of properties prosecuted as compared to contractors and owners jointly prosecuted?*

SECRETARY FOR LANDS AND WORKS:—The answer to the first question is nil; the answer to the second question is that I don't have statistics for the last year; but for the three years 1982, 83, and 84, 20 persons were prosecuted.

DR. IP:—*Sir, would Government consider prosecuting contractors carrying out illegal building works more effective in deterring the construction of illegal work rather than prosecuting the owners as it is the contractors who give the advice?*

SECRETARY FOR LANDS AND WORKS:—The idea of prosecuting contractors as a deterrent has been considered but the main difficulty lies in the identification of the contractors who actually carry out the illegal building work. The Building Authority could prosecute contractors in cases where they can be identified. However contractors who install illegal extensions and structures are not always registered under the Buildings Ordinance. Many unauthorised building works are of a minor nature and do not require established contractors, rather, they are executed by part-time jobbers, many of whom may be will-o'-the-wisps. Work could also be carried out by the occupier himself. There are so many of them and prosecution means catching them red-handed. Even then, the Buildings Ordinance Office staff have to determine there and then whether the work which is in progress, and therefore by definition unfinished, is illegal. Proof would be difficult if not impossible. On the other hand it could be argued on equity ground that enforcement action should be taken against the one who instructs the contractor and who benefits from the illegal building works.

Institutional care for the mentally handicapped

6. MR. CHEUNG YAN-LUNG:—*Sir, in accordance with Standing Order 19(6) and with the consent of my absent colleague, Mr. Keith LAM, may I with your permission, Sir, ask Question No. 6 on his behalf. The question is:—*

Can Government inform this Council of:

- (a) the number of mentally handicapped people in Hong Kong requiring institutional attention;*
- (b) the number of places for these people in residential centres, special schools and work activity centres or sheltered workshops, and*
- (c) what steps is Government taking to reduce the shortfall, if any, in these provisions?*

SECRETARY FOR EDUCATION AND MANPOWER:—*Sir, in answer to parts (a) and (b) of the question, the updated 1984 Rehabilitation Programme Plan figures for demand, provision and shortfall are as follows:*

- (a) *Special schools.* 5 287 places are required. In 1985-86 4 290 places will be available. The planning shortfall is 997. There are 621 students on Education Department's waiting list.
- (b) *Work activity centres.* 4 190 places are required. In 1985-86 1 145 places will be available, giving a shortfall of 3 045.
- (c) *Sheltered workshops.* The calculation of demand is being reviewed. The current known demand for mentally handicapped persons is 2 283. There will be 1 834 such places available in 1985-86, giving a shortfall of 449.
- (d) *Residential centres.* 3 930 places are required. 1 591 places are available in 1985-86, giving a shortfall of 2 339.

In answer to part (c) of the question, the action that Government aims to take to reduce the shortfalls is:

- (a) *For special schools.* Very active consideration is being given to a programme of converting some ordinary schools to special schools and to using others as temporary premises whilst new schools are being built; to standardising building plans for all types of schools for the mentally handicapped to reduce the time taken for individual plans to secure approval; and to securing more boarding places.
- (b) *Work activity centres* are to be increased by an annual average of 300 places.
- (c) *Sheltered workshop* places are to be increased by an annual average of 550 places. At least 70 per cent of these places are earmarked for the mentally handicapped.
- (d) *For residential centres.* It is planned to increase the number of places for severely mentally handicapped adults by 100 annually, and for moderately mentally handicapped adults by 200 annually.

Obscene Publications Tribunal

7. MRS. FAN asked:—*As the Attorney General has indicated that a permanent and broadly-based tribunal will be set up to monitor and control objectionable publications, could Government inform this Council what progress has been made towards the establishment of such a tribunal in Hong Kong?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—*Sir, following the Attorney General's speech in this Chamber on 8 November 1984, an interdepartmental working group chaired by the Assistant to the Attorney General was formed, with members drawn from the Administrative Services and*

Information Branch, the police and the Customs and Excise Department, to consider in detail the setting up of an Obscene Publications Tribunal.

The working group has met regularly on average at fortnightly intervals; the latest meeting having been held this morning.

The working group has already concluded that such a tribunal would serve at least four main purposes. That is to say—

- (a) by virtue of its composition, it would be better placed to reflect the views of the community;
- (b) voluntary pre-publication and pre-distribution submission to the tribunal for a ruling would help distributors and publishers avoid transgressing the law;
- (c) a degree of consistency in standards could be attained; and
- (d) definitive and speedier rulings could be obtained.

The working group has also deliberated on a wide number of issues, including the tribunal's scope of work, composition, procedure for hearing and appeal, its interaction with the court system and provisions for more effective seizure actions once a ruling is passed. The working group will press on with the remaining issues, such as enforcement of the tribunal's ruling, control of sales outlets, and servicing of a tribunal which is likely to have fluctuating workloads.

I am happy to report that there has been widespread public support for the establishment of a tribunal to deal with obscene publications, and the Hong Kong Magistrates' Association has given support, in principle, to such a system. Government is well aware of the recent clamour for an early establishment of the tribunal. Our intention is to develop an action plan, together with a realistic package of proposals, for the Executive Council's consideration before the end of this summer.

I submit, Sir, that the tribunal concept, worthy as it is for consideration, will *not* in itself solve our immediate problems. I have therefore taken up the matter personally with the Commissioner of Police and we have agreed that Government should look into ways and means of achieving speedier and more effective action on the ground. Consideration is therefore being given to taking action *not only* against publishers, as we have done hitherto, *but also* printers, distributors and vendors who are *equally* liable under existing laws. I have been assured that action, aiming particularly at both offending publishers and vendors, will be taken. I trust that these measures will give the Administration time to implement a definitive solution, i.e. the tribunal concept.

Having said that, Sir, there remains the question as to how far such controls should go, as a line will need to be drawn between infringing on the personal freedom of an adult who reads for his private pleasure and protecting the juveniles from indiscriminate exposure to indecent material. Pornography, by and large, is a social issue, which, like many others with a moral import, cannot and will not be 'solved' by the iron hands of the law alone.

MRS. FAN:—*Sir, one of the most frequently raised complaints by members of the public is that the existing legislation and procedures are not sufficiently effective and efficient in preventing the wide circulation of objectionable publications. Does the Secretary feel that such criticism has some validity and does he believe that the action he proposed to take together with the Commissioner of Police will be adequate in speeding up matters under existing legislation?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—The purposes of establishing a tribunal is precisely to speed up the process of prosecution, and fine or imprisonment. I do agree with Mrs. FAN that the present procedure is far too slow and unsatisfactory. The measures we are proposing to take together with the police will have a short term effect but the long term solution must lie in the formation of more effective control system, a tribunal being a part.

MR. STEPHEN CHEONG:—*Sir, is the action planned by the police going to be taken fairly rapidly or is it going to be taken as and when the police decided they should be taken?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—The initial action will be taken by my branch in the sense that a case will have to be referred to the police after the case has been considered by the Attorney General's Chambers that a particular publication is objectionable. Following that I understand from the Commissioner of Police that very speedy action will be possible and will be taken.

MRS. FAN:—*In the Secretary's answer he referred to one of the four main purposes and that is, voluntary pre-publication and pre-distribution submission to the tribunal. I wonder whether Government will consider that, in the case of a publication which has in the past shown little discretion as far as their standard goes, they should be required to submit their publication before it is distributed to the tribunal?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—Sir, I used the word 'voluntary' very carefully in an attempt to assure the public that Government does not intend to pre-censor publications as opposed to films and television programmes. I think, Sir, the pre-censoring of publications in itself has enormous implications and that is not being considered.

MRS. CHOW:—*Sir, in his answer the Secretary referred to the composition and the consistency of the tribunal. Could I ask him how these are to be formulated?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—Sir, almost by definition, if any body were to be established to study different publications that body would have a consistent view as opposed to different magistrates being required to look at particular magazines or publications, they having their own subjective and therefore different views.

Vacant commercial premises in public housing estates

8. MR. CHEUNG YAN-LUNG:—*Sir, in accordance with Standing Order 19(6) and with the consent of my absent colleague, Mr. Keith LAM, may I with your permission, Sir, ask Question No. 8 on his behalf. The question is:—*

Can Government inform this Council of:

- (a) the number of vacant stores or shopspaces in public housing estates on Hong Kong Island and in the New Territories; and*
- (b) whether Government will consider lowering rents as a means of reducing the vacancy rate?*

SECRETARY FOR HOUSING:—*Sir, the total number of commercial properties managed by the Housing Authority is 15 897. Of these the total number of vacant premises on 31 March 1985 was 577, or 3.6 per cent. As a matter of interest, this figure is about one third of the vacancy rate of commercial premises in the private sector.*

The Housing Authority will certainly consider lowering rents in order to reduce vacancies. Indeed it is being done already.

As far as initial lettings of commercial tenancies are concerned, the Housing Authority adopts a tendered rent system. The upset rent is set at not more than 90 per cent of the full market value as assessed by the Commissioner of Rating and Valuation. If no tenders are attracted above this upset rent, the premises are put out to tender again, very often without any upset rent. In the past six months some 32 premises were let with tendered rents well below 90 per cent of the assessed full market value.

Once an agreement is signed the Housing Authority does not think it is reasonable to lower a tendered rent during the period of the tenancy, because to do so would be unfair to unsuccessful tenderers. While we do not like to see tenants run their business at a loss, we do not feel that the Authority can be expected to ensure that all its shop tenants can make a profit.

On the other side of the coin, the Authority does not increase rent during an agreed tenancy term even if the enterprise is making very good profits.

When tenancies are due for renewal, the advice of the Rating and Valuation Department is sought on the current market rent for particular premises. But consideration is given not only to this figure but also to the viability of tenant's business. In many cases the rent eventually agreed with commercial tenants on renewal is lower than the current market rent.

MRS. CHOW:—*Can the Secretary for Housing please give us an indication as to the number of cases where the tenant and the authority failed to agree on a rent renewal, say in the last six months, and how many of these are subsequently rented out to new tenants at a rent level lower than that offered by the Authority to the old*

tenant and will there be a review on this practice which appears to be unfair to the original tenant?

SECRETARY FOR HOUSING:—Sir, over the last period of six months, that is, during the period running up to the present day, 112 commercial tenancies gave notice to quit, 90 of these were during the initial tenancy and ten only were on renewal and 32 during subsequent tenancies. As far as the rental procedures are concerned new rents are tendered on a basis of a tendered rental and therefore the rental which is set will depend upon the tender which is received. This will very rarely be less than the figure which was offered to outgoing the tenant.

Parking facilities in Eastern District

9. DR. IP asked:—*Would Government make a statement on the availability of on-street and off-street parking facilities in Eastern District?*

SECRETARY FOR TRANSPORT:—Sir, Eastern District has approximately 10 000 offstreet spaces. Most of these are in housing estates and are reserved for residents. However, many estates with commercial centres also make spaces available to the general public. There are 721 metered on-street spaces of which 486 are in Causeway Bay and North Point, 79 in Shau Kei Wan and 156 in Chai Wan. A further 100 on-street spaces had to be suspended because of the construction of the M.T.R. Island Line, but reinstatement of these will soon begin.

DR. IP:—*Sir, may I have a breakdown of this 486 between Causeway Bay and North Point?*

SECRETARY FOR TRANSPORT:—I am sorry, Sir, I couldn't hear.

DR. IP:—*Sir, could I have a breakdown of this 486 which are said to be between Causeway Bay and North Point, a breakdown meaning that how many are in Causeway Bay and how many are in North Point?*

SECRETARY FOR TRANSPORT:—That figure I don't have, Sir. I suppose there is rather more in Causeway Bay. I would guess it was about 60 to 40 per cent, Sir.

Physiotherapists

10. DR. IP:—*Does the law require a physiotherapist in private practice to be properly qualified and, if so, will those not so qualified and carrying on business be prosecuted?*

11. DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, at present, there are no regulations in force setting out qualifications in respect of physiotherapists for registration and practice. However, the statutory body for this profession, i.e., the Physiotherapists Board, is completing an exercise to draw up a set of draft regulations for the registration of suitable and qualified persons as well as for control and discipline of this profession.

It is envisaged that these regulations will be submitted to you, Sir, in Council, for consideration and approval later this year.

If approved and when these regulations come into force, any person not qualified to be placed on the register but proven to be practising as a physiotherapist will be dealt with in accordance with the provisions of the law.

Manning of new immigration facilities at Man Kam To

11. MR. YEUNG PO-KWAN asked:—*In view of the increase in the number of travellers passing through the immigration control point at Man Kam To, would Government consider employing additional staff to man the new facilities there when they become operational in December this year?*

SECRETARY FOR SECURITY:—Sir, as I said in this Council during the debate on the second reading of the Appropriation Bill 1985, no provision for additional posts for the Immigration Department has been included in the 1985-86 Estimates.

One answer is redeployment of existing staff. The Director of Immigration is acutely conscious of the need to deploy the department's staff in the most effective way in the short term to meet temporary changes in the flow of passengers and in the long term as the habits of the travelling public change. But there are limits to the extent to which staff can be deployed in any particular direction. These limits, dictated by the consequences of depleting staff at other control points, may well now have been reached. Over the last two years (1982 to 1984) the number of vehicles going through the control point at Man Kam To has been increased from 591 000 to 1.3 million and the number of passengers from 248 000 to 310 000 a year. At the same time, the number of travellers going through the control points at, say, Kai Tak has increased from 7.5 million to 8.5 million a year.

But the fact of the matter is that there are problems at Man Kam To and new facilities are now being built to meet them. They will have to be manned somehow, perhaps even by the redeployment of posts from other heads of expenditure.

MR. YEUNG PO-KWAN:—*Sir, why have provisions not been made in the 1985-86 Draft Estimates for additional staff to man the new facilities at Man Kam To?*

SECRETARY FOR SECURITY:—I don't think that is a question I can answer.

MR. YEUNG PO-KWAN:—*Sir, in order that most of the kiosks and counters will not remain empty, could temporary staff be recruited to relieve the foreseeable congestion at Man Kam To especially during the peak periods of the year?*

SECRETARY FOR SECURITY:—Yes, Sir, temporary staff could be recruited provided that posts for these staff can be included under the Director of Immigration's Head of Expenditure.

MRS. FAN:—*Sir, if the reason for not being able to employ these additional staff is one of revenue, would the Government consider charging a small fee at Man Kam To and thereby making full use of the facilities and thereby reducing the waiting time of all the passengers and vehicles going through that control point?*

SECRETARY FOR SECURITY:—Yes, Sir, during the Budget debate my honourable friend made the same point and I said then this is the possibility we would be considering and indeed we are now giving thought to it.

Clearance of illegal structures in multi-storey buildings

12. MR. YEUNG PO-KWAN asked:—*Could Government make a statement on the clearance of illegal extensions and structures in multi-storey buildings?*

SECRETARY FOR LANDS AND WORKS:—Sir, statistically, an average of 500 cases involving clearance of illegal extensions and structures in multi-storey buildings are dealt with per month by a complement of 55 professional and technical staff in the Control and Enforcement Section of the Buildings Ordinance Office. Of this number, about 10 per cent relates to cases where there is a hazard to life and limb which warrant absolute priority.

The problem of illegal extensions, alterations and structures in multi-storey buildings has been with us for some 20 years and has become a fact of life in urban Hong Kong. Its proliferation over time has resulted in a current backlog of 23 000 cases which continues to grow at the rate of some 800 new cases each month. Unless we can match man-power resources with the workload, to tackle the problem, it not only calls for a determined and concerted effort to contain the problem, but also for a radical examination of our basic policy objectives of control over illegal building works, including redefining our priorities in this area e.g. we should ask ourselves what do we seek to achieve by controlling illegal works which are structurally safe. Additionally, public attitudes and their understanding of the problem and the Government's determination to tackle the problem will go some way towards reducing it to manageable proportions (although it must be admitted at the same time enforcement action is never popular with those whose action is being enforced).

To this end, an exercise has been underway in the Administration for more than a year now to review existing legislation and methods of operation and a three-pronged programme of administrative, organisation and legislative review is being formulated. Without commitment at this stage to its definitive policy intentions, one concept which has developed is the introduction of a system of annual certification or declaration regarding the existence of illegal structures in newly completed residential buildings. This concept envisages the participation of private building owners who are closer to the causes and effects in environmental, health and safety matters. This concept has been floated and has attracted not only public awareness of the problem but also a wide range of comments which would assist in our search for a solution to the problem. We are still in the process of consultation. All comments will be carefully analysed with a view to arriving at a workable proposal on this issue.

MR. YEUNG PO-KWAN:—*Sir, what measures has the Government taken to educate the public on the hazards of illegal extensions?*

SECRETARY FOR LANDS AND WORKS:—We have produced posters which we put up at new buildings which vividly illustrate the dangers of illegal structures. On the occupation of a new building the staff of the Buildings Ordinance Office would contact the management office of the multi-storey building with a view to having these posters put up and also of course we send individual letters to the flat owner explaining what work are illegal and what are not.

MR. YEUNG PO-KWAN:—*Sir, what actions would Government take if the flat owner refuses to pay the clearance charges after Government has cleared the illegal extensions for them?*

SECRETARY FOR LANDS AND WORKS:—Well, we will sue them in the ordinary way. *(laughter)*

MR. YEUNG PO-KWAN:—*Sir, how long will the process of consultation take to complete prior to the introduction of the proposed system of annual certification?*

SECRETARY FOR LANDS AND WORKS:—Sir, as I said, this annual certification is really a concept at this stage. There will be a round of consultation with the District Boards which is being arranged with my colleague, the Secretary for District Administration within the next month. We will take all the comments on board and we will refine our proposal and of course I must emphasise that that would only be a part of a package of proposals to deal with this problem. When definitive proposals are drawn up we will go to the District Boards again to consult them, and seek the benefit of their advice, before we process the proposals further with a view to translating them into policy and law.

Display of sexual artefacts

13. MR. YEUNG PO-KWAN: asked—*What measures does Government propose to take to prevent shopkeepers from displaying explicit sexual paraphernalia?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—Sir, action against the *indecent* display of sexual artefacts can be taken under section 4(1) of the Objectionable Publications Ordinance, Cap. 150, and the police in the past have successfully prosecuted shopowners for such displays.

However, legal advice is that unless the articles on display *are* visually obscene, indecent or revolting, the mere display or sale of functional articles would not in itself give rise to successful prosecutions.

MR. YEUNG PO-KWAN:—*Sir, how many prosecutions have been made against shopowners under section 4(1) of the Objectionable Publications Ordinance (Chapter 150), and how many have been successful?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—Sir, in the past six months the police have conducted four raids on these shops of which three were videotape shops and one was a gift shop. The shops were prosecuted and fined between two to three thousand dollars. Two of the videotape shops have since closed down and the gift shop has stop displaying such articles.

MR. YEUNG PO-KWAN:—*Sir, is present legislation effective in controlling the sale of sexual paraphernalia to youngsters under the age of 18?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—Sir, there is adequate provision under section 4, sub-section 1 of the Ordinance I just referred to for controlling the display of sexual paraphernalia but there is no provision which would bar children from entering these shops or buying sexual artefacts. The only deterrent, I suppose, is the price. *(laughter)*

MR. STEPHEN CHEONG:—*Sir, in the light of the Secretary's reply in the second paragraph, does he consider that the Ordinance itself will need to be looked at more carefully in order that the success rate of prosecution could be more meaningful?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—Sir, I shall certainly look at the problem again but most of these shops in fact sell these articles only as a sideline and in a minor sort of way and all these articles invariably are really quite discreetly displayed *(laughter)*. The problem really is not a serious one, Sir.

Statements

Kowloon-Canton Railway Corporation Annual Report 1984

THE FINANCIAL SECRETARY:—Sir, in accordance with section 14(5) of the Kowloon-Canton Railway Corporation Ordinance (Chapter 372), the annual report and accounts of the Kowloon-Canton Railway Corporation for the year ended 31 December 1984 are tabled today.

The year 1984 was one of rapid growth for the Kowloon-Canton Railway. It carried a total of 78.7 million passengers, an increase of 63.6 per cent over 1983. Cross border travel through Lo Wu increased by 57 per cent to 13.2 million passenger movements, whilst freight carried to and from China in terms of weight increased by 50 per cent and 9.8 per cent respectively. The total revenue was \$410 million. The resultant operating profit before depreciation and interest was \$148 million. After depreciation and interest charges, the corporation suffered a loss of \$65 million, which is 58 per cent less than the period from February to December in 1983. The debt outstanding to the Government has been reduced to \$1 billion, following the repayment of interest accrued through 1983.

Despite a number of disruptions which occurred towards the end of 1984, the railway achieved a good overall punctuality rate of 96.6 per cent. The reliability of the system will be further improved after certain short and long term remedial measures have been implemented.

In July 1984, after a study on the feasibility of the project by its consultants, the managing board approved in principle the construction and operation of a new Light Rail Transit System in the western New Territories. Tenders for the project have been invited and the contract will be awarded in mid-1985. The first phase of the network is scheduled for service in mid-1988.

The corporation has made a successful start in operating the newly electrified and modernised railway. By taking on the Light Rail Transit System, the corporation is expanding its role in the provision of public transport services to serve the community. I am sure Members will join me in thanking Board, management and staff for their competence and hard work.

Jubilee Sports Centre Annual Report 1983-84

MR. F. K. HU:—Sir, among the various papers laid on the table of this Council today is the Annual Report of the Jubilee Sports Centre for the year ending 30 June 1984.

I am pleased to report that steady progress has been made in all the sports included in the Jubilee Sports Centre's programme, and the working relationship with the governing bodies of sport have improved considerably, largely as a result of a series of informal and formal discussions between the centre's management and officials of each association. Under the training of

J.S.C. coaches, Hong Kong athletes have achieved outstanding performances in the past year. Hong Kong swimmers secured three gold medals in the 1984 Asian Championships held in South Korea. The Hong Kong Lady Squash Team is the current Asian champion. In the field of table tennis, a Hong Kong player, Mr. Lo Chuen-tsung, ranked third in the individual event in the 28th World Championship.

During the year, the J.S.C. Board agreed to suspend full-time coaching services to the Hong Kong Amateur Athletic Association and the Hong Kong Amateur Basketball Association, and is presently considering whether to include new sports in the programme.

The centre has accommodated many major international events during the past year and is fast developing as a focal point for the development of Asian sports.

The first Asian Youth Badminton Training Camp was held at the J.S.C. in August 1983. The Amateur Sports Federation and Olympic Committee has utilised the J.S.C. for its Solidarity Course programme which included seminars in hockey, archery, and swimming.

Progress has been made for the establishment of a sports science laboratory and clinic for the treatment of injuries. An agreement is expected to be reached shortly on the operational policy and funding of this facility.

Furthermore, the board is now considering recommendations from the centre's management for enhancements to the sports facilities to cater for the changing demands which are being placed on them. These proposals are estimated to cost in the region of \$16 million, and discussions will be held with the Government and the Royal Hong Kong Jockey Club on how this sum can be funded.

These proposals do not take into account any future works required, as a result of settlement of the land, which will require financial support to renovate the playing fields, the tennis courts, the athletic track and the artificial grass training ground.

J.S.C. is now working closely with similar institutes in different parts of the world. It is encouraging to see that many athletes, coaches, and administrators from China have spent time at the J.S.C. in both training and competition.

Government Business

Motion

CRIMINAL PROCEDURE ORDINANCE

THE SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION moved the following motion:—That the Legal Aid in Criminal Cases (Amendment) Rules 1985, made by the Chief Justice on 16 April 1985, be approved.

He said:—Sir, I move the resolution to approve the Legal Aid in Criminal Cases (Amendment) Rules 1985. These rules are made by the Chief Justice under the provisions of the Criminal Procedure Ordinance.

The purpose of the amendments is to improve the administration of legal aid in criminal cases.

Rule 2 relates to those cases in which a solicitor is assigned by the Director of Legal Aid to represent a legally aided person but another solicitor in the same firm conducts the case in place of the solicitor originally assigned. In order to exercise a measure of control over the conduct of criminal cases, and to protect the interests of the aided person, the amendment seeks to restrict the right of the solicitor originally assigned to pass the case to another solicitor in the same firm. Cases in which the solicitor is not assigned as an advocate will remain unaffected but in respect of those in which the solicitor is assigned to conduct the case in court, an alternate solicitor from the same firm will only be permitted to appear with the prior approval of the Director of Legal Aid.

The opportunity has been taken in rule 3 to extend the availability of legal aid to proceedings in High Court or District Court to those offenders who may be referred back to the court for sentence as a result of breach of a Community Service Order and to clarify doubts as to the availability of legal aid for those who are to be sentenced by a District Court judge for contempt and for summary punishment for perjury. The rationale behind such extensions is to ensure that those who are to be punished by the courts are not, through lack of means, deprived of legal representation to plead mitigation.

A further amendment provided by rule 3 ensures that the limits of disposable capital and income that govern eligibility for legal aid in criminal cases are automatically maintained at the same level as those that apply under the Legal Aid Ordinance in respect of civil cases.

The amendment contained in rule 6 removes the statutory limit on fees payable to solicitors for preparatory work and daily attendances in cases which the court has certified are of exceptional length or complexity and empowers the Director to pay such fees as are proper in the circumstances of the case. This is the existing practice under the rules for the fees payable to counsel once such a certificate has been given by the court.

The need for the amendment has arisen as a result of the increase in lengthy cases involving substantial preparatory work by solicitors prior to trial. The Legal Aid Department has insufficient manpower resources to conduct such cases and the existing fees payable to solicitors are such that private practitioners assigned would be required to carry out the work at grossly uneconomic rates and are not unnaturally reluctant to do so despite their record of selfless service to the legal aid scheme.

Amendments are made to the form of application for legal aid in criminal cases to achieve consistency with that used for civil cases and cross references to previous regulations as to assessment of resources and contributions are corrected to reflect recent changes effected by those regulations.

Sir, I beg to move.

Question put and agreed to.

First reading of bills

DUTIABLE COMMODITIES (AMENDMENT) BILL 1985

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1985

ROAD TRAFFIC (DRIVING LICENCES REGULATIONS AND REGISTRATION AND LICENSING OF VEHICLES REGULATIONS) (AMENDMENT) BILL 1985

OATHS AND DECLARATIONS (AMENDMENT) BILL 1985

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order 41(3).

Second reading of bills

DUTIABLE COMMODITIES (AMENDMENT) BILL 1985

THE FINANCIAL SECRETARY moved the second reading of:— ‘A bill to amend the Dutiable Commodities Ordinance and the Dutiable Commodities Regulations’.

He said:—Sir, I move that the Dutiable Commodities (Amendment) Bill 1985 be read the second time.

The object of the Bill is to amend the Dutiable Commodities Ordinance and Dutiable Commodities Regulations. Following my 1985 Budget speech proposals this will provide for the introduction of duty on non-alcoholic beverages and cosmetics and bring concentrates under the control of the Ordinance. Clause 5 amends section 26A, which at present is applicable only to imported dutiable goods. The amendment will extend the method of assessing the value of goods to goods manufactured in Hong Kong. The calculation of the normal price of such dutiable goods will be determined on the assumptions that the goods have been delivered to the buyer at his premises and that the seller bears all charges and expenses, including transport, incidental to the sale and

the delivery of the goods to the buyer. As is the case for imported goods the buyer will bear any duty payable in Hong Kong.

The amendments to clauses 2, 3, 4, 8 and 9 are consequential upon the main aim of the Bill. Clause 6 enacts section 27A to enable the Commissioner to require an importer or manufacturer of juice to make a declaration as to the fruit or vegetable from which the juice was extracted. Clause 7 is consequential upon this. Clause 12 amends the Schedule to the Dutiable Commodities Regulations to provide fees for licences in connection with non-alcoholic beverages and cosmetics.

Sir, I give notice that at the committee stage of this Bill I will move two amendments. The first of these will propose the deletion of 'essential oil' from section 76(d) as set out in clause 9 of the Bill. This follows a representation from the trade. The second amendment which I will propose is a minor amendment to clause 12 of the Bill to extend the heading to Part VI of the Schedule in the Dutiable Commodities Regulations to include concentrate. This amendment is consequential to other provisions in the Bill.

Sir, I move that the debate on the motion be adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1985

THE FINANCIAL SECRETARY moved the second reading of:—'A bill to amend the Inland Revenue Ordinance'.

He said:— Sir, the purpose of the Inland Revenue (Amendment) (No. 3) Bill 1985 is to give legislative effect to the various concessions on personal taxation mentioned in this year's Budget speech.

Members will recall that four concessions were proposed.

Firstly: to increase the married persons's additional allowance from \$15,000 to \$17,000, thereby increasing the total personal allowance of a married couple to \$58,000.

Secondly: to increase the child allowance for a first child from \$8,000 to \$9,000 and for a second child from \$5,500 to \$6,000, thereby increasing the maximum child allowance to \$27,000.

Thirdly: to increase the additional allowance for a dependent parent residing with the taxpayer from \$2,000 to \$3,000 thus bringing the total allowance for each dependent parent to \$11,000.

Fourthly: deferring the point at which the 25 per cent tax rate takes effect by widening the 20 per cent band from \$10,000 to \$20,000.

These proposals are generous given our present budgetary position, but I believe that they have been seen as fair by Members and the public. As foreshadowed in my 1984 Budget speech they are intended to benefit the less well-off salaries tax-payer. In fact I now estimate that they should benefit over 280 000 people either by removing or reducing their liability to salaries tax.

Clause 4 of the Bill is a transitional provision to ensure that provisional tax assessed after 1 April 1985 is based upon the new allowances. They will not, however, as was the practice in the past, be applicable to the final tax liability for the previous year, i.e. the new scale of allowances will not be applicable to 1984-85. Even so, these measures are expected to cost the Government \$150 million in 1985-86 and \$200 million per annum thereafter.

Sir, I move that the debate on this motion be adjourned.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE FINANCIAL SECRETARY.

Question put and agreed to.

ROAD TRAFFIC (DRIVING LICENCES REGULATIONS AND REGISTRATION AND LICENSING OF VEHICLES REGULATIONS) (AMENDMENT) BILL 1985

THE FINANCIAL SECRETARY moved the second reading of:—‘A bill to amend the Road Traffic (Driving Licences) Regulations and the Road Traffic (Registration and Licensing of Vehicles) Regulations’.

He said:—Sir, I move the second reading of the Road Traffic (Driving Licences Regulations and Registration and Licensing of Vehicles Regulations) (Amendment) Bill 1985.

This Bill provides for the increases in the fees for the annual registration of motor vehicles, provisional and full driving licences and driving tests as described in paragraphs 105 to 107 of my Budget speech.

The revised rates are set out in clauses 2 and 3 of the Bill which amend the Second Schedule to the Road Traffic (Driving Licences) Regulations and the Second Schedule to the Road Traffic (Registration and Licensing of Vehicles) Regulations.

They came into effect at 2.30 p.m. on 27 February 1985 as a result of an Order signed by Your Excellency under the Public Revenue Protection Ordinance. The additional revenue yield from the increased fees for 1985-86 is estimated to be \$67 million.

Sir, I moved that the debate be adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned— THE FINANCIAL SECRETARY.

Question put and agreed to.

OATHS AND DECLARATIONS (AMENDMENT) BILL 1985

THE SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION moved the second reading of:—‘A bill to amend the Oaths and Declarations Ordinance’.

He said:—Sir, I move that the Oaths and Declarations (Amendment) Bill 1985 be read the second time.

On appointment a Member of the Legislative Council, whether Official or Unofficial, takes an Oath of Allegiance under which he swears that he ‘will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her Heirs and Successors, according to law’.

In the context of moving towards more representative government, retention of the mandatory requirement to take this oath in its present form may be undesirable.

It is therefore necessary to have an alternative oath which could be taken by any Member of the Legislative Council who does not wish to take the Oath of Allegiance. This alternative oath would need to be a public affirmation of duty to show that the Member accepts the responsibility which he or she has incurred by appointment or election.

The new alternative oath will be known as the Legislative Council Oath, the form of which is set out in *clause 5* of the Bill as a new Part IV A in the Second Schedule to the principal Ordinance.

Clause 2 of the Bill adds the new oath to the list of oaths dealt with in the Ordinance. *Clause 3* amends the Ordinance so that a member of the Legislative Council will have a choice to take either the Oath of Allegiance or the Legislative Council Oath. *Clause 4* has the effect of relieving a member of the Legislative Council from the requirement to take either the Oath of Allegiance or the Legislative Council Oath if he has taken either oath on previous appointment to the Council.

It is proposed that a member of the Executive Council, however, should continue to be required to take the Oath of Allegiance on first appointment to the Executive Council if he has not taken it before, even though he may have taken the Legislative Council Oath.

No change is proposed to that part of the principal Ordinance which provides that an affirmation is permitted in lieu of an oath.

Subject to the Bill being passed, consequential changes to the Standing Orders of the Legislative Council will be made before the end of this session.

Sir, I move that the debate on this motion be adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION.

Question put and agreed to.

PUBLIC FINANCE (AMENDMENT) BILL 1985

Resumption of debate on second reading (18 April 1985)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

AUDIT (AMENDMENT) BILL 1985

Resumption of debate on second reading (18 April 1985)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

PRIVILEGES AND IMMUNITIES (JOINT LIAISON GROUP) BILL 1985

Resumption of debate on second reading (18 April 1985)

Question proposed.

MR. CHEUNG YAN-LUNG delivered his speech in Cantonese:—

督憲閣下:根據中英聯合聲明附件二所載,中英聯合聯絡小組的成員在北京、敦及香港三地均享有外交特權和豁免權。目前本局正通過一項新法例,使該小組的成員可在本港享有上述特權及豁免權。因此,本法案意味着,目前距離聯合聲明生效的日子將為期不遠。

正常我們為組織中英聯合聯絡小組奠下基礎時,我從報章得悉,該小組的成員問題仍未獲得解決。閣下,我知道盡信報章的報導並不是明智之舉,不過,一直以來,香港人如要獲悉中英兩國政府就本港前途及其他有關問題展開談判的進展,唯一的途徑便是閱讀報章,因此我亦只好根據報章的報導談論上述問題。

最近報章曾透露,英國有意委任香港政府一位本地官員為聯合聯絡小組英方成員之一,但由於中國方面反對而放棄原意。我希望這些報導是不確實的,因為我信中國政府會明白,為本港人士的利益及為順利實施聯合聲明起見,應有香港人參與聯合聯絡小組所進行的磋商。我們辯論應否有「三腳橙」的階段早已成為過去。香港人都已經接納中英協議是一份好的協議,而中國也清楚知道,可以信賴香港人使協議得以貫徹施行。因此我深信中國不會反對香港人直接參與聯合聯絡小組的工作,以確保香港能順利過渡至二〇〇〇年。無論如何,上述報導使人覺得,經常說「中國反對」這事或那事,說得太多了,便會失去可信性。

過去,當英國政府頒佈英國國籍法及就香港前途問題與中國進行會談時,已有人懷疑英國政府是否有誠意或已盡力照顧香港人的利益。如果今次沒有香港人參加聯合聯絡小組,一定會引起同樣的懷疑,結果將會嚴重打擊香港人剛開始恢復的信心。最近,嘉道理勳爵在上議院提出警告,提醒英國政府切勿忽視香港人的感受——一個被父母遺棄的孩子的感受。為了確政府在過渡期間繼續有效治理香港,我必須再次提出這項警告。

閣下,本局議員有權通過本法案,使聯合聯絡小組得以成立,但卻完全無權決定,在專責討論香港事務的聯合聯絡小組中,由那些人照顧香港的利益,實在是一大諷刺。我沒有放棄投票,只因為我想表明承擔責任,盡力使聯合聲明得以貫徹施行的決心。

閣下,本人謹此陳辭,支持動議。

(The following is the interpretation of what Mr. CHEUNG Yan-lung said.)

Sir, in accordance with Annex II of the Sino-British Joint Declaration, members of the Sino-British Joint Liaison Group shall enjoy diplomatic privileges and immunities in Beijing, London and Hong Kong. We are now passing a new legislation to provide such privileges and immunities in Hong Kong. The Bill therefore signifies that the beginning of the implementation of the Joint Declaration will not be far away.

While we are laying the groundwork for the formation of the Joint Liaison Group, I understand from press reports that the question of the composition of the group has not been settled. Sir, I know it is unwise to listen to press reports, but as they have been the only channel through which the people of Hong Kong came to know about developments in the Sino-British negotiations on their future and related issues, therefore I have no alternative but to base my assessment of the issue on such reports.

Recent press reports indicated that Britain wished to appoint a local Hong Kong Government officer as a member of the British side of the Joint Liaison

Group but could not do so because of objections from China. I hope that the reports were untrue because I envisage that China would understand that it is in the interest of the people of Hong Kong and in the interest of implementing the Joint Declaration that local people should take part in the consultations within the Joint Liaison Group. We have long passed the stage of the debate on the 'three-legged stool'. The agreement has been accepted by the people of Hong Kong as a good one. China knows very well also that she can count on the people of Hong Kong to make the agreement work. I am sure that she will not object to the people of Hong Kong contributing directly in the Joint Liaison Group to ensure a smooth transition up to the year 2000. In any case, one has a feeling that 'objections from China' have been used too frequently that it has lost its credibility.

There were suspicion in the past of H.M.G.'s intention or efforts in looking after the interests of Hong Kong in enacting the British Nationality Act and during the negotiations on Hong Kong's future. The same suspicion will arise again if there is no local participation in the Joint Liaison Group. The result will be serious damage to the confidence which has just returned. Lord Kadoorie has given a warning in the House of Lords recently reminding H.M.G. that it must not neglect the feelings in Hong Kong—a feeling of a child who is abandoned by his parents. I must repeat that warning again for the sake of effective government during the transition period.

Sir, it is an irony that Members of this Council have the power to allow this Bill to pass to enable the formation of the Joint Liaison Group but have no say at all on the persons who shall represent the interest of Hong Kong when the affairs of Hong Kong alone will be discussed in the group. I would have abstained from voting if not for the sake of showing my commitment to make the Joint Declaration work.

Sir, with these remarks, I support the motion.

MRS. FAN:—Sir, the introduction of the Privileges and Immunities (Joint Liaison Group) Bill into this Council is a direct consequence of the Sino-British Joint Declaration. Anyone who wishes to see the faithful implementation of the Joint Declaration should recognise the need for this Bill and support it. I am no exception.

Having stated my support for the Bill, I would like to make some observations on the composition of the Joint Liaison Group. Mr. Richard LUCE, Minister with special responsibility for Hong Kong, had said in the House of Commons on 5 December 1984 that he expected the U.K. side of Joint Liaison Group to include appropriate Hong Kong Government officials. The question still remains whether these Hong Kong Government officials would include a local officer.

There had been considerable speculations and comments in the local press during the past few weeks, concentrating mainly on the personalities of the Joint

Liaison Group, whilst missing out the reason why it is of significant importance to have local people taking part in the activities of the group as full members.

The people of Hong Kong have accepted the agreement as a good one. Successful implementation will depend on their continuing to believe that it is so. One of the most effective ways to achieve that is to allow local people, say one local Government officer at this stage, to participate in the Joint Liaison Group as an illustration that the interest of Hong Kong would be adequately reflected, fully respected, and taken into account throughout the transition period.

It is an indisputable fact that the people of Hong Kong are bent on making the 'one country two systems' concept work successfully, for this is the only way to preserve our life style and to achieve future progress. There is no lack of enthusiasm and motivation to contribute to the work of the Joint Liaison Group. Not to tap this resource and utilise it to the fullest extent is, to say the least, hardly in the best interest of all parties concerned.

There is one widely speculated yet unconfirmed reason for keeping a local Government officer out of the group. That is members of each side of the Joint Liaison Group are diplomatic representatives of their respective governments, and it is deemed inappropriate for a Hong Kong person to acquire that status. This may be a technical point of some validity, yet, I believe the people of Hong Kong, being very pragmatic, would appreciate that without the spirit of 'mutual understanding and accommodation' as demonstrated by China and U.K., the remarkable Sino-British Joint Declaration could not have materialised. The work of the Joint Liaison Group is very important and crucial to the well being of Hong Kong. In achieving a smooth working relationship, communication and consultation must form a significant part. Since the common objective of all sides, namely, U.K., China and the people of Hong Kong is to work for the well being of Hong Kong, there is no reason why a way cannot be found so that pragmatism would prevail over doctrinaire and theoretical considerations. After all, the Joint Declaration has promised a high degree of autonomy for the Hong Kong Special Administrative Region after 1997, therefore it is only appropriate to give meaning to that promise by involving Hong Kong local people in the work of the Joint Liaison Group. This sensible approach will help to alleviate any lingering doubts people may have about the Joint Declaration.

Further, it would enhance confidence and demonstrate China's commitment to and sincerity in implementing the terms of the Joint Declaration. It is also important that, during the transition period, local people are trained and developed so that leaders can emerge in time to realise the 'Hong Kong people ruling Hong Kong' concept. If both Britain and China agreed to let local people have a hand in important issues such as taking part in the Joint Liaison Group, then we are really making our first step towards that goal.

Sir, it is inconceivable that the membership of the Joint Liaison Group will remain unchanged up to the year 2000. It is also inconceivable that the

people of Hong Kong will not ask for more direct participation in the Joint Liaison Group as the governmental system moves towards more representative. Appointing a local Hong Kong Government official to the Joint Liaison Group now would make the evolution towards Unofficials' participation later on more natural.

Sir, with these remarks, I support the motion.

THE ATTORNEY GENERAL:—Sir, I have followed with interest the remarks of the two honourable Members Mrs. Rita FAN and Mr. CHEUNG Yan-lung. In their speeches they did not raise points directly related to the details of the Bills and therefore I have no comments to make. As for their comments on the composition of the Joint Liaison Group which clearly represent deeply felt views, I have taken note.

Contacts between the Chinese and British Governments are continuing on arrangements for the Joint Liaison Group and an announcement will be made in due course. Until such time the press reports should continue to be regarded as speculative. Sir, the Government naturally shares Members' commitment to the Sino-British Joint Declaration and to its faithful implementation.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

HONG KONG INDUSTRIAL ESTATES CORPORATION (AMENDMENT) BILL 1985

Resumption of debate on second reading (18 April 1985)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of bills

Council went into Committee

APPROPRIATION BILL 1985

Heads 21 to 194

MISS DUNN:—Sir, I shall abstain from voting on further stages of this Bill.

At the end of my speech in the debate on the second reading I put a number of questions to the Financial Secretary. I explained that it was difficult to take a definitive view of the Appropriation Bill 1985 without answers to these questions.

Unfortunately, and I regret having to say this, the Financial Secretary did not provide me with sufficient or sufficiently convincing answers to these questions. For instance, he explained why the Government publishes its selective Statement of Assets and Liabilities *but* he did not answer the question ‘What is the Government’s true financial position?’

He ignored entirely the fact that the Government’s definition of the public sector, which excludes both the M.T.R. and the K.C.R., is hopelessly misleading. We still don’t know what actually is the size of the public sector either in absolute or relative terms and are unable, therefore, to take an overall view of our situation.

He resolutely refused to make ‘long term budgetary forecast’, *but* I didn’t ask him to. My complaint is that he gave us no projections at all, not even for next year.

In other words, the Financial Secretary asked us to accept that his proposals are correct, but lightly dismissed the need to supply us such facts as we think are necessary to enable us to come to an informed view of the Government’s budgetary strategy. This attitude, I suggest, Sir, is inconsistent with the way in which business should be conducted in this Council and is incompatible with the objective stated in the recent White Paper of making Government ‘more directly accountable to the people of Hong Kong’.

Heads 21 to 194 were agreed to.

The Schedules were agreed to.

Clauses 1 and 2 were agreed to.

PUBLIC FINANCE (AMENDMENT) BILL 1985

Clauses 1 and 2 were agreed to.

AUDIT (AMENDMENT) BILL 1985

Clauses 1 to 3 were agreed to.

PRIVILEGES AND IMMUNITIES (JOINING LIAISON GROUP) BILL 1985

Clauses 1 to 5 were agreed to.

The Schedule was agreed to.

HONG KONG INDUSTRIAL ESTATES CORPORATION (AMENDMENT) BILL 1985

Clauses 1 and 3 were agreed to.

Clause 2

SECRETARY FOR TRADE AND INDUSTRY:—Sir, I move that clause 2 be amended as set out in the paper circulated to Members.

Following publication of the Bill, the draftsman noted that in proposing the amendments to section 7(1), a number of tidying-up amendments needed for the remainder of this section were missed out. At present, provisions for the appointment of Members of the Board who are not public officers and those who are appear in section 7(1)(c) and (d) respectively. The provisions for their re-appointment, resignation or removal are also listed separately. With the combining of the provisions of section 7(1)(c) and (d), the details I have referred to need to be adjusted as well. These are minor consequential amendments which are now included in the paper before Members. Nothing of any substance is involved.

*Proposed amendment***Clause 2**

That clause 2 be deleted and the following clause be substituted—

‘Amendment of section 7. (Cap. 209.)

2. Section 7 of the principal Ordinance is amended—

(a) in subsection (1)—

(i) by inserting at the end of paragraph (b) the following—
“and”;

(ii) by deleting paragraphs (c) and (d) and substituting the following—

“(c) 7 members appointed by the Governor, not more than 4 of whom shall be public officers.”;

(b) in subsection (4), (5) and (6) by inserting after “member” the following—

“who is not a public officer”;

(c) in subsection (7)—

(i) by inserting after “member” the following—

“who is a public officer”;

(ii) by deleting “(1)(d)” and substituting the following—

“(1)(c)”;

(d) in subsection (9)—

(i) by inserting after “any member” the following—

“who is a public officer”;

(ii) by deleting “(1)(d)” and substituting the following—

“(1)(c)”.

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Council then resumed.

Third reading of bills

The Attorney General reported that the

APPROPRIATION BILL

PUBLIC FINANCE (AMENDMENT) BILL

AUDIT (AMENDMENT) BILL and the

PRIVILEGES AND IMMUNITIES (JOINT LIAISON GROUP) BILL

had passed through committee without amendment and the

HONG KONG INDUSTRIAL ESTATES CORPORATION (AMENDMENT) BILL

had passed through committee with an amendment, and moved the third reading of the Bills.

Question put on the Bills and agreed to.

Bills read the third time and passed.

Unofficial Member's motion

APPOINTMENT OF A SELECT COMMITTEE

Sir ROGER LOBO moved the following motion:—That a select committee be appointed to consider and report on the appropriate measures to be taken to resolve the problems involved in the prosecution and trial of complex commercial crimes, including changes in the procedures before and during trial and the mode of trial.

He said:—Sir, I rise to move the motion standing in my name on the Order Paper. It reads:

—
‘That a select committee be appointed to consider and report on the appropriate measures to be taken to resolve the problems involved in the prosecution and trial of complex commercial crimes, including changes in the procedures before and during the trial and the mode of trial.’

Sir, as you are aware, a group of Unofficials under the convenership of my colleague, Mr. Peter C. WONG, has been hearing public representations and examining the Trial of Commercial Crimes Bill. It has become evident that there are serious problems involved in the prosecution and trial of complex commercial crimes.

What the solutions to these problems are and whether the Bill proposes one answer or a partial answer we do not know.

However, we are satisfied that, whatever the merits of the Bill may be, public opinion is such that it would be unwise to proceed with the measure until there has been a thorough examination of all the options available.

The motion before this Council proposes the appointment of a select committee under Standing Order 61 to conduct that examination.

In fairness, I would like to say that, whether or not the proposals in the Bill are right, I do not think the Administration should be criticised for failing to consult adequately.

It appears that at the time of the introduction of the Bill into the Legislative Council, the response to the proposals was generally in favour of a change in the mode of trial for these offences and the opponents seemed to be in the minority.

However, since the Bill was published, a swell of public opinion to postpone the Bill and give the matter further consideration has grown. Many people expressed strong views that they did not volunteer during the consultative process. Others have changed their views and are opposed to change, at least, at this time.

As the President of the Law Society has said:—

‘Those responsible for the introduction of the Bill have prepared and introduced it in the reasonable belief that it would be more widely supported than it has turned out to be the case, and all who contributed to that belief must share the responsibility for not having voiced their reservations at an earlier stage.’

I would like to invite my colleague Mr. WONG to elaborate further on the findings of our Ad hoc Group.

MR. PETER C. WONG:—Sir, in a controversy which is somewhat unprecedented, public opinion has won the day. And this is as it should be. However, that does not mean that Government is necessarily at fault. Far from it, credit should be given to the Administration for tackling a problem which all agree exists and should be solved as expeditiously as possible.

Since the publication of the Trial of Commercial Crimes Bill on 15 February 1985, the Ad Hoc Group set up to consider its provisions has received 23 written submissions from groups as well as individuals from a wide cross section of the community.

The group has held several meetings and heard separate representations from the Hong Kong Bar Association, Mr. Henry LITTON, QC, the Hong Kong Branch of Justice, the Hong Kong Law Society, and Mr. Frank FRAME, Legal Adviser and Director of The Hongkong and Shanghai Banking Corporation. The group has also taken careful note of what was reported in the media. Needless to say, useful discussions have been held with the Administration.

Members of UMELCO were kept fully informed of developments. Unofficial Members discussed this matter on at least five occasions. The final decision was taken at an in-house meeting of Unofficial Members of the Legislative Council held last Wednesday, 24 April. Before that meeting, a report containing more than 80 pages had been submitted by the Ad Hoc Group. In addition, there was a volume containing written representations which is about one inch thick. A further volume containing relevant press cuttings was being assembled and bound but is now available. Should this motion be carried and a select committee be appointed by Your Excellency, it is hoped that these documents would serve as useful information.

All the representations we received recognise that there is a problem with the existing system of trial of complex commercial crimes but the majority are

against the proposed solution of trial by judge and adjudicators. Nearly all regard the Bill's proposal as a fundamental change to our legal system and call for careful and detailed consideration. The main objections are: first, trial by jury is a safeguard for civic liberties and it should not be replaced unless there is clear evidence that the jury system is not working properly or unsuitable for the trial of the type of crime under consideration. Second, it would be difficult to find an adequate number of impartial adjudicators in the small business community of Hong Kong.

However, two of the representations we heard were cautiously in favour of the concept of trial by a judge and commercial adjudicators. On balance, it appears that the collective emphasis of the opposition to the Bill is more on the timing than on the concept itself, although many thought that translating it into practice would require further consideration and research.

All in all, there is a strong demand for deferring the Bill in order to allow more time for public discussion. Specifically, four common requests have been identified—

- (i) Wait for the Roskill Committee report which is likely to be available later this year so that Hong Kong can use its findings and recommendations for reference.
- (ii) Consult as widely as possible before any changes are made.
- (iii) Examine alternative ways of solving the problem relating to the trial of complex commercial crimes, e.g. improving pre-trial procedures, making use of the special jury, increasing the commercial expertise of the prosecution and the judges, etc.
- (iv) Refer the matter to the Law Reform Commission for consideration.

As regards the detailed provisions of the Bill, not much comment has been received except for clause 7 which provides that the judge shall retire to discuss with the adjudicators after his summing up in open court and that the verdict shall be delivered without any reasons given. All who have expressed any view on this provision are unanimously opposed to it.

Another area which has attracted criticism is clause 5 where the Chief Justice is empowered to decide whether a particular case should be tried by judge and adjudicators. This is not subject to appeal or review, nor is his decision on the selection of adjudicators (clause 10).

A substantial number of individuals and organisations who made representations to us indicated that they would wish to reserve their position, especially in respect of details of the Bill itself. A view would be expressed after they had an opportunity to consider all the relevant facts and alternative means of solving the problem of prosecuting and trying complex commercial crimes in Hong Kong.

A question often asked is: what is the problem and how serious is it? Our preliminary enquiry reveals that the problem lies not only with investigation but

also with the trial itself. We are told that the police examined some 1.5 million documents in investigating one case alone, 5 000 of which were tendered as evidence at the committal hearing. In another case, 2 000 documents will be produced by the prosecution and the defence has indicated that it will be producing some 10 000 documents.

The sheer volume of documents that the judge and the jury are asked to look at and consider is, to put it mildly, rather daunting. It is fair to assume that the average person as well as the judge may not find it easy to digest these materials, not to mention grasping the full implications of intricate commercial dealings, especially when these are specifically contrived sometimes with the aid of experts for the purpose of fraud and deception. And it has been suggested that most of our judges have little commercial experience, and business expertise on the bench is a rare asset. The problem, as presented to us and as we see it, deserves careful examination and one that should be urgently addressed, particularly in view of the dramatic increase in complex commercial crimes in recent years.

Whether the proposal in the Trial of Commercial Crimes Bill is the best solution to the problem we do not know. The concept as well as the details of the Bill has yet to be examined. In view of the impending report to be made by the Roskill Committee and the popular call for waiting for this report, the Ad Hoc Group recommends that the Bill be adjourned indefinitely to allow more time for discussion, taking Roskill's recommendations and findings into consideration. The group further recommends that a select committee of this Council be appointed to consider the whole issue of trial of complex commercial crimes and not just the Bill itself.

In the public debate and representations to UMELCO following the introduction of the Bill, a number of issues have been raised, many of which fall outside its provisions. Pre-trial procedures and alternative modes of trial are two examples. These are issues that warrant in-depth investigations and deliberations. It is therefore proposed that the select committee be appointed under Standing Order 61(1). This would enable the committee to examine principles as well as details. The committee will consider and report on the appropriate measures to be taken to resolve the problems involved in the prosecution and trial of complex commercial crimes, including changes in the procedures before and during trial and the mode of trial. This would not be possible if the Bill were committed to a select committee under Standing Order 44(1).

Many have suggested that there has been inadequate consultation and that Government is rushing the Bill through the legislative process with unseemly haste. Perhaps some background information may be in order.

The following sequence of events as presented to us by the Administration speaks for itself—

1. The idea of change was first suggested by the Chief Justice in July 1979 and he raised it again in May 1981. It was considered but not enthusiastically received by the Attorney General's Chambers. The matter was shelved in December 1981.
2. In January 1983, the idea was again advanced by the Hong Kong Branch of Justice. It suggested that such trials should be before a District Judge and assessors or a High Court Judge alone. Later, in March 1983, Justice suggested that assessors should be advisory only.
3. The matter was again researched in 1983. The first draft paper was floated in December 1983. In the same month, Justice proposed the assessor system again, without any committal procedure. The main proposal was that trials should be before a High Court Judge with advisory assessors. Justice pressed for implementation 'as a matter of urgency'.
4. The first discussion paper was circulated in December 1983. Responses indicated general support for change in the method of trial. Considerable support for the use of assessors came from Justice, the Law Society, the Chairman of Bar Association, judges, as well as government bodies. The then Chairman of Bar Association suggested that the matter need not be delayed to await the outcome of investigations to be conducted in England.
5. The first draft of the Bill was ready in February 1984. The Bar Association was divided. An eminent Queen's Counsel was quoted as saying that it was not a bad idea from the legal point of view but opposed on political grounds.
6. In August 1984, a discussion paper was issued to the public. No response from the Bar Committee, the Law Society or Justice. 22 lawyers responded; 15 in favour of the proposals; seven against. 11 responses from commercial/industrial sector; eight supportive, two critically supportive, one against. However, there was little general public opposition in the media.
7. In October 1984, 26 members of the Bar Association passed a resolution opposing the Bill 'as presently formulated' and suggested that it be referred to the Law Reform Commission.
8. From then until publication of the present Bill, there had been very little further comment on the issue.

I therefore agree with Sir Roger that it would be unfair to criticise the Administration for failing to consult adequately. Certainly, a great deal of effort has been made, but unfortunately there appears to be a break down in communication. It is a matter of record that some of those consulted have now changed their mind. This is perfectly legitimate. In the light of events, any aspersion relating to the handling of the issue should be interpreted in its proper perspective.

The much publicised Roskill Committee was appointed by the Lord Chancellor and the Home Secretary in April 1984, with the following terms of reference—

‘to consider in what ways the conduct of criminal proceedings in England and Wales arising from fraud can be improved, and to consider what changes in existing law and procedure would be desirable to secure the just, expeditious and economical disposal of such proceedings.’

The Committee is chaired by Lord Roskill, Lord of Appeal. Its members include Lord Benson, Mr. David BUTLER, Sir James CRANE, Judge HAZAN, QC, Sir Arthur KNIGHT, Dr. Barbara MARSH and Mr. Walter MERRICKS. Although the Committee planned to report in July this year, it appears most unlikely that it would be able to meet this deadline. So, it is fair to say that the problems facing the Roskill Committee are not quite the same as those we in Hong Kong are now facing.

Regarding the suggestion that the whole matter should be referred to the Law Reform Commission, the better view is that since the Bill is with this Council, it is our responsibility to decide what course of action would be in the best interests of our community.

Members will be pleased to note that many critics of the Bill welcome UMELCO’s proposal to defer the Bill and set up a select committee. The President of the Law Society of Hong Kong was quoted as saying that it was an ideal arrangement.

Sir, in supporting the motion, I would emphasise that at the end of the day, it would be the duty of this Council to enact legislation, which in its collective view, would best serve the needs of Hong Kong.

THE ATTORNEY GENERAL:—Sir, I welcome the motion moved by Sir Roger LOBO and the Government will give it its support.

It is part of my duty, as I conceive it, to formulate and propose changes in the law where it seems to me that there is scope for improvement and increased efficiency in the administration of justice. Present arrangements for the prosecution and trial of complex commercial crimes do seem to me to raise serious problems. And as Mr. Peter C. WONG has just told this Council, all the representations received by his Ad Hoc Group have acknowledged that problems exist.

So it was that the Trial of Commercial Crimes Bill came forward to this Council for consideration. But since I rose to move its second reading, the support which the proposals originally appeared to enjoy has faded. Opposition to the passage of the Bill has been made up of various strands of opinion as we have heard. Some are opposed to any departure from trial by jury. Some prefer to reserve their position and want more time to reflect, and absorb Roskill.

Some go along with the main thrust of the Bill but say, for instance, that the tribunal should give reasons for its verdict.

Sir, my personal belief—and the Government's view—is that there is much merit in the Bill's proposals for the optional mode of trial by judge and adjudicators in both the High Court and the District Court. But that is no longer the point.

As Attorney General, I hold an office with a heavy responsibility for the maintenance of the rule of law and the preservation of confidence in our legal institutions and their processes. Even if this Council were minded to pass this Bill, it would in my judgment be fraught with danger to introduce a mode of trial that did not command broad support. It is no longer a question of whether the Bill's proposals are good ones or the best of the alternatives. It is a question of whether they would be generally regarded as a basis for a fair trial if they were passed into law. Public confidence in the justice of our trial procedure is far more important than the choice between one mode of trial and another. The strength of feelings that presently run against the passage of this Bill at this time in this form create a real risk of damaging public confidence in a just verdict, whatever the merits of the proposal may be.

The recent controversy over the Bill has taken many by surprise. But out of it has come a variety of suggestions, from opponents and supporters alike, trying to find ways of easing the problems that exist. All of them deserve to be calmly and carefully considered. I therefore welcome the appointment of a select committee because it will afford both the community and Members of this Council more time to find the right way forward in a difficult area.

In England too, proposals to replace trial by jury in these cases were put forward in 1983 by a number of distinguished judges and writers, including Lord Hailsham, the Lord Chancellor, Lord Roskill himself and the Lord Chief Justice, Lord Lane, who made his views known to the 7th Commonwealth Law Conference which was held here in Hong Kong in that year. The Roskill Committee was set up in consequence some 12 months ago. Latest reports suggest that the strong support which seemed to exist for this reform in England has also fallen away. The Roskill Committee has received many submissions, similar to those received by UMELCO, opposed to any departure from trial by jury. So in England as well, the supporters of reform have found themselves opposed by legal professionals and organisations who favour no change for one reason or another. In due course, we shall be able to see what the Roskill Committee makes of it all.

It is of course one thing to criticise proposals. It is another to find solutions to a problem. And do not think that the problem will disappear or become any easier as time passes. The complexity of yesterday's cases is bad enough. But the rapid evolution here in Hong Kong of electronic data processing will undoubtedly provide new scope for the commercial criminal. Some claim that

the new technology is more secure than former modes of communication. But there have been dramatic computer frauds and losses reported in the United States. Our courts must be ready to dispose of tomorrow's crimes fairly and efficiently. And by 'fairly' I do not mean convictions where there are reasonable doubts, but procedures that ensure that the issues and evidence are properly understood by the tribunal and that the verdict is a just one. It would be a sad day if an Attorney General felt unable to authorise a prosecution because the inevitable complexities of the case put in doubt a fair trial.

When I moved the second reading on 13 March, I reminded Members of the way in which our proposals had taken shape. All that now needs to be said is that the process of consultation which Mr. Peter C. WONG began early in 1984 and concluded at the end of 1984 after the publication of a 92-page discussion paper had failed to provide a true indication of the depth of hostility to change and the extent of criticism of the proposals, Mr. Peter C. WONG has given details. I think it is now well appreciated that Government was given a misleading picture.

Some of those who responded may have given too little attention to the issues. Some critics, like the Hong Kong Observers, did not respond at all. Some respondents have since altered their stance and withdrawn support. The organisation 'Justice' who in January 1983 first asked my predecessor urgently to research proposals for commercial cases to be tried in the High Court without a jury now think the jury should be retained. Although copies of the discussion paper were sent to every single member of the Bar, more letters were received from supporters of reform than from opponents. Our attention was drawn to the resolution passed at the Extraordinary General Meeting of the Bar. But there was no detailed response from the Bar Association to the discussion paper. The Law Society, the largest group of lawyers in the community, has frankly and honestly admitted a change of heart. In doing so, Sir Roger Lobo has reminded us, their President acknowledges that the Government acted on a reasonable belief of support.

An editorial in the South China Morning Post of the 17 August 1984 seemed to sum up the general attitude of the community when it wrote:

'When juries first came into existence several hundred years ago, there was none of the complexity that prevails in some of today's commercial criminal charges. Justice has to move with the times and this seems a timely move'.

But seven months later, the same editorial, still with its finger on the pulse, described the provisions of the Bill as a dangerous departure from the system that we employ in jury trials. I am reminded of the line from Omar Khayam: 'the moving finger writes and having writ, moves on'.

I mention these matters only to illustrate the way in which the attitude towards the Bill has changed dramatically since the end of 1984. The strength of opposition to the proposals of the Bill did not emerge until the bill was about to be introduced. The supporters of the proposals who changed their minds or

chose to remain silent were entitled to do so. Public opinion can be fickle. But the fact is that the process of consultation—and it was in this case a widely spread process based on a full discussion paper and a draft bill—led the Government to believe that there would be more support among the community generally, including the important legal sector, than has proved to be the case. If the views now expressed had been made known in October last year, I doubt if the Bill would have been approved in its present form by the Executive Council.

Sir, what will the historian make of this episode? A proposal to alter the mode of trial in a handful of cases appeared to be broadly if thinly supported as a sensible measure. Within six months it became the focus of outraged indignation and strident criticism of its promoters.

A trite explanation would be the thought that apparently good ideas are often nodded through by busy people and organisations without much critical examination. That is probably true in which case it shows that the Government cannot take too much trouble over the business of consulting the community on its proposals, even when it has gone to the lengths of publishing a discussion paper outlining its ideas.

It is also easy to see with hindsight that it was unfortunate that the discussion paper was published when it was, in July 1984. During the period of consultation, momentous events took place in Hong Kong: the publication of the Sino-British Joint Declaration and the work of the Assessment Office. The community had at that time far more important things to worry about than these proposals for law reform.

But it is also possible to suggest that there has in fact been a change of public mood since those momentous times. The Joint Declaration brought relief to the people of Hong Kong. It also focussed their attention upon the essential systems underpinning Hong Kong's way of life, which the Annexes highlighted. Doubts about the outcome of the negotiations gave way to doubts about Hong Kong's ability to preserve its way of life. And in consequence I detect a new mood of wariness to change: particularly changes to the legal system, on which the rule of law and the preservation of individual rights and freedoms so much depend. Because it came so soon after the Joint Declaration, the Bill was the first proposal to touch the raw nerve of anxiety about future political arrangements. And the community recoiled instinctively from changes to traditional procedures that have served Hong Kong well in the past.

Many articulate professionals advanced a host of arguments against the Bill. They worked hard to deploy the forces of opposition. But the argument which succeeded most in mounting opposition to the Bill was the argument that any tampering with the jury system is undesirable in view of the future political changes.

It is right for the Government to accept that the present political mood is not receptive to radical change. But I do not think it follows that changes cannot be

made to the legal system before 1997. The law must respond to new demands placed upon it. As I said in my speech at the opening of the legal year, the law is not a museum exhibit or fossil, it is a public service responding to the demands that society places upon it. We will fail in our duty as guardians for the future if we do not ensure that our legal system is rational and up-to-date. Where its procedures need to be changed, then they should be changed. But it is plain from the recent events that the arguments for change must be carefully and fully argued through. Although no-one has any right of veto, every attempt will have to be made to obtain at least broad support of both professional and public opinion for important legal reforms.

Sir, another quite different aspect of the controversy is the anxiety expressed by many that because the Bill had been introduced into this Council, it followed that it was being rushed through by Government with the supine concurrence of Unofficials. This really was uncharitable and grossly mistaken, as past and present events have proved, and as this motion demonstrates.

There is still not a sufficient understanding of the important consultative role played by Members of this Council who are in the end the territory's legislators. Just over a year ago, I tried to make this very point in a speech to the Council following the controversy over taxi licensing. I said then:

‘The Unofficials ... interpret and expound the views of the public and ...participate in reaching a final judgment upon the public interest. They are a fundamental check within our system of government by consensus. And they are surely never hurried in their consideration of bills. They are given all the time they need to deal with representations and formulate their views. Government representatives have often ... qualified remarks on reform and legislation by saying that this or that proposal is ‘subject to the views of Executive Council and ultimately Legislative Council’. This is no empty phrase. It means exactly what it says. We in Government may always hope that by consulting widely and striving to get it right, we will in due course obtain the necessary support. But there will always remain the final opinion of Members of the Legislative Council in which there is anyhow a clear majority of Unofficials. This Council is the ultimate safeguard if the Government were to misjudge what is politically acceptable to Hong Kong’.

The events of these last few weeks have vindicated what I then said. This Council has taken heed of the change in attitude to these proposals since they were first canvassed and now proposes, quite rightly, that there must be further time for study of the problems which the Government had sought to solve by the introduction of this contentious Bill.

The terms of reference of the select committee will enable it to take a broad view of all the problems surrounding the prosecution and trial of complex commercial crimes. Many lawyers have agreed that there is room for improvement in trials of this type of case before a jury. The organisation

'Justice' has put forward constructive proposals for improving pre-trial procedures and the presentation of evidence at the trial. The Chinese General Chamber of Commerce has endorsed the aim of improving the efficiency of trials of commercial fraud.

So it is clear that the select committee will have much to do studying prosecution procedures. Studying the preparations for trial and studying the trial process as well. If there is a case for retaining jury trial for complex commercial cases, it is all the more important that acceptable reforms should be identified and implemented. At the same time, the select committee will no doubt look also at the District Court where presently no trial by jury is available.

Finally, may I pay tribute to those Unofficial Members of this Council who made up the Ad Hoc Group of which we have heard, and particularly its Chairman, Mr. Peter C. WONG, for the time and energy they have already devoted to the oral and written representations on the Bill that they have received. It is even more of a tribute to them if what I have been told is correct, that those same Members have indicated that they are willing to offer themselves for membership of the select committee. Your Excellency will have a wide range of professional commercial and industrial talent from which to choose the membership of this select committee. The community can be assured that the committee will be well qualified to receive evidence and to draw conclusions.

I hope, Sir, with the passage of this motion, that passions will now cool and reason will resume its seat. It is time for the community to tackle constructively the solution to the problems it has recognised and to join in a positive spirit in working out the most acceptable solutions. The future of the Bill will depend upon the outcome of the work that can now begin.

SIR ROGER LOBO:—Sir, as you see, the terms of the motion are wide enough to enable a select committee to consider all the problems concerning the prosecution and trial of complex commercial crimes and not only the proposals contained in the Bill.

I believe it is desirable to extend the scope of the enquiry so that this Council may receive recommendations in relation to possible changes in procedure other than in relation to the mode of trial.

I envisage, Sir, that the committee will consider and draw on a wide range of submissions and materials, including the report of the Roskill Committee on Fraud Trials when it is published. It should concern itself with the particular problems of Hong Kong which may not be the same as those in the United Kingdom.

In putting forward this motion for the Unofficial side, it is obvious that we do not consider that the matter should be referred to the Law Reform Commission.

The Bill is in this Council and it is the responsibility of Members to decide what should be done in the best interests of Hong Kong. Any proposals for the legislation to be made by the commission would have to be considered by this Council and I believe we should get on with the job now.

Sir, I beg to move.

Question put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on 15 May 1985.

Adjourned accordingly at twenty minutes to five o'clock.