OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 11 March 1987

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)
SIR DAVID AKERS-JONES, K.B.E., C.M.G., J.P.
THE HONOURABLE THE CHIEF SECRETARY
MR. DAVID ROBERT FORD, L.V.O., O.B.E., J.P.
THE HONOURABLE THE FINANCIAL SECRETARY
MR. PIERS JACOBS, O.B.E., J.P.
THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
MR. JEREMY FELL MATHEWS, J.P.
THE HONOURABLE LYDIA DUNN, C.B.E., J.P.
THE HONOURABLE CHEN SHOU-LUM, C.B.E., J.P.
THE HONOURABLE PETER C. WONG, C.B.E., J.P.
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 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, O.B.E., J.P.
THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.
THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.
DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.
THE HONOURABLE CHAN YING-LUN, J.P.
THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.
THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.
THE HONOURABLE YEUNG PO-KWAN, C.P.M., J.P.
THE HONOURABLE KIM CHAM YAU-SUM, J.P.
THE HONOURABLE JOHN WALTER CHAMBERS, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE
THE HONOURABLE JACKIE CHAN CHAI-KEUNG

THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.
DR. THE HONOURABLE CHIU HIN-KWONG
THE HONOURABLE CHUNG PUI-LAM
THE HONOURABLE THOMAS CLYDESDALE
THE HONOURABLE HO SAI-CHU, M.B.E., J.P.
THE HONOURABLE HUI YIN-FAT
THE HONOURABLE RICHARD LAI SUNG-LUNG
DR. THE HONOURABLE CONRAD LAM KUI-SHING
THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.
THE HONOURABLE LEE YU-TAI
THE HONOURABLE DAVID LI KWOK-PO, J.P.
THE HONOURABLE LIU LIT-FOR, J.P.
THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.
THE HONOURABLE PANG CHUN-HOI, M.B.E.
THE HONOURABLE POON CHI-FAI
PROF. THE HONOURABLE POON CHUNG-KWONG
THE HONOURABLE HELMUT SOHMEN
THE HONOURABLE SZETO WAH
THE HONOURABLE TAI CHIN-WAH
THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING
THE HONOURABLE TAM YIU-CHUNG
DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.
THE HONOURABLE ANDREW WONG WANG-FAT
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.
THE HONOURABLE GRAHAM BARNES, J.P.
SECRETARY FOR LANDS AND WORKS
THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER
THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.
SECRETARY FOR SECURITY
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT

ABSENT

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, J.P.
THE HONOURABLE CHENG HON-KWAN

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR. LAW KAM-SANG

Papers

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

Subject	*L.N. No.*
Subsidiary Legislation:	
Public Revenue Protection Ordinance Public Revenue Protection (Dutiable Commodities) Order 1987	48/87
Public Revenue Protection Ordinance Public Revenue Protection (Immigration) Order 1987	49/87
Public Revenue Protection Ordinance Public Revenue Protection (Road Traffic) Order 1987	50/87
Road Traffic Ordinance Road Traffic (Public Service Vehicles) (Amendment) Regulations 1987	51/87
Employees' Compensation Ordinance Employees' Compensation Ordinance (Amendment of Second Schedule) Order 1987	52/87
Summary Offences Ordinance Summary Offences Ordinance (Exemption from Section 13) Order 1987	53/87
Shipping and Port Control (Hong Kong—China and Macau Ferry Terminals) Regulations Hong Kong—Macau Ferry Terminal Boundaries Order 1987	54/87
Adoption Ordinance Adoption (Amendment) Rules 1987	55/87
Inland Revenue Ordinance Inland Revenue (Interest Tax) (Exemption) (Amendment) (No. 2) Notice 1987	58/87
Tax Reserve Certificates (Fourth Series) Rules Tax Reserve Certificates (Rate of Interest) (No. 2) Notice 1987	59/87
Probation of Offenders Ordinance Probation of Offenders (Amendment) Rules 1987	60/87
Water Pollution Control Ordinance Water Pollution Control (Appointed Days) Order 1987	61/87
Chinese Permanent Cemeteries Ordinance Chinese Permanent Cemeteries Rules 1975	62/87
Road Traffic (Public Service Vehicles) (Amendment) Regulations 1987 Road Traffic (Public Service Vehicles) (Amendment) Regulations 1987 (Commencement) Notice 1987	63/87

Sessional Papers 1986-87:

No. 46—Hong Kong Academy for Performing Arts—Annual report 1985-86 with statement of accounts for the year ended 30 June 1986.
No. 47—City Polytechnic of Hong Kong—Annual report with financial report—July 1985-June 1986.
No. 48—Traffic Accident Victims Assistance Fund—Annual report by the Director of Social Welfare incorporated for the year from 1 April 1985 to 31 March 1986.

Address by Member Presenting Paper

Hong Kong Academy for Performing Arts—Annual report 1985-86 with statement of accounts for the year ended 30 June 1986

MR. SOHMEN: Sir, tabled today is the first annual report and statement of accounts for the year ended 30 June 1986 for the Hong Kong Academy for Performing Arts.

Over the last decade Hong Kong has seen many improvements in the quality of its everyday life. The development of cultural activities has been a major factor in this change. With the establishment of professional performing companies, and a growing demand for well-qualified teachers in the performing arts, it became a matter of urgency to create facilities for professional training in this area, comparable to those already available in other professions.

In 1981, Government, the Royal Hong Kong Jockey Club, and a number of far-sighted individuals, united their endeavours in the planning of an Academy for Performing Arts. Their concept of a bi-cultural, multi-disciplinary institution of international standards, serving the people of Hong Kong was visionary and had few precedents in the world. Under the dedicated leadership of a then Member of this Council, Mr. Alex WU, chairman of the Provisional Council of the Academy, an educational policy was established, financial estimates were drawn up, a prime site in Wan Chai was donated by the Government, and the Jockey Club undertook the financing and construction of a building.

Four years later, in September 1985, the building was completed, and the four Schools of Dance, Music, Drama and Technical Arts commenced operations. The academy building is of considerable diversity and complexity, serving a wide range of functions. But a building, however remarkable, is only a means to an end. The achievements of education, at whatever level and in whatever field, will essentially always depend on the quality of the teachers and their students, and upon the relationship between them. The academy has been fortunate to attract a body of teachers and students of calibre.

The arts of dance and music in particular demand intensive and sustained pre-vocational training from an early age, if international standards are to be achieved and maintained. In Hong Kong specialised training facilities in the performing arts are at present limited at secondary level. The academy has therefore established part-time junior courses for exceptionally gifted children in dance and music, to prepare them for possible future entry into full professional training.

As every educational institution belongs, in a real sense, to the society which funds and supports it, the academy has recognised from the beginning its responsibilities to the community and the need to establish close links with the people of Hong Kong. An expanding programme of outreach is being pursued. Regular visits are arranged for educational and community groups. The academy is offering classes and seminars on many aspects of the arts for the public and for specialist groups, and has acted as host for conferences on the arts in Hong Kong and as a venue for local and overseas performing organisations.

The educational programme of the academy is under continuous review. Two aspects currently under consideration are the admission of a limited number of students from abroad and the role of the first-year foundation courses.

In this inaugural session the academy has faced the double challenge of establishing new teaching courses and of settling into a brand-new building. By the end of the session most of the initial problems were on the way to a solution, and a firm base has been secured for growth and development as an institution of international standing. Arrangements have also been put in place just recently to manage and let academy venues on a commercial basis, to further enrich the cultural resources of the territory and to generate some limited revenue. The academy is presently fully subvented and not cheap; but I see no reason why Hong Kong should be satisfied with second best in an area of considerable scope for its future.

Oral answers to questions

Abuse of mentally retarded female inmates in rehabilitation institutions

1. MRS. NG asked (in Cantonese): *In the light of recent reports concerning the alleged raping and abuse of mentally retarded female inmates of a rehabilitation centre, will Government inform this Council—*

(a) of the number of cases involving the abuse of mentally retarded female inmates of rehabilitation institutes in the last three years, particularly those involving staff of such institutions;

(b) how complaints of abuse in such institutions are handled; or

(c) what steps will be taken to protect the mentally retarded from such possible abuse?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, two allegations of sexual abuse of female inmates by two ward attendants of a rehabilitation centre have been made in recent weeks and both allegations are now being investigated by the police. Apart from these there have been no other allegations of rape or abuse of mentally retarded female inmates of a rehabilitation institution during the last three years.

When a complaint of abuse in such an institution is received, the superintendent immediately enquires into the facts by interviewing the parties concerned. At the same time, the superintendent informs the parents or guardians of the alleged victim if they are available. After this preliminary inquiry, the case is then reported to the police for investigation, and concurrently, to Social Welfare Department Headquarters. Any member of the staff of an institution involved in a case of abuse is interdicted during the police investigation and, where necessary, during judicial proceedings. Whether or not the incident leads to a criminal prosecution, appropriate disciplinary action is taken.

There are standing arrangements and rules to protect mentally retarded residents in a rehabilitation institution from abuse. These include the separation of accommodation by sex, the provision of personal care for male and female residents by male and female staff respectively, the close supervision of any male workmen required to enter a female dormitory to carry out repairs or heavy work, the strict prohibition of corporal punishment of any residents, the regular and frequent inspection of institutions by supervisory staff, and a general awareness of the complaint procedures amongst the residents and the staff.

MRS. NG (in Cantonese): *Sir, I am glad to know that we have regular inspection of institutions by supervisory staff. I would like to know whether we have other people, for example, Justice of the Peace, other than the staff from the institute, to inspect these institutions and how long such inspections take.*

SECRETARY FOR EDUCATION AND MANPOWER: Well certainly there would be inspections from outside the institution, but on the duration of such inspections I think I will have to let you have a written reply on that point. (See Annex I)

Utilisation of MTR stations on the Island Line

2. MR. LIU asked (in Cantonese): *Will Government inform this Council of the details of the average daily passenger patronage during peak hours at MTR stations on the Island Line as compared with their designed capacities, and what measures will be taken to ensure that these stations are fully utilised?*

SECRETARY FOR TRANSPORT: Sir, at present the maximum one direction loading in the peak hour on the Island Line is some 25 000 passengers which is about one third of the comparable figure on the Tsuen Wan Line and 44 per cent of that on the Kwun Tong Line.

It is worth noting, however, that of the nearly 1.6 million people currently using the MTR system daily, some 448 000 or 28 per cent use an Island Line station (excluding Central and Admiralty) for at least one end of their journey.

It is true that currently the Island Line is less well utilised than either the Kwun Tong or Tsuen Wan Lines. However, it must be recognised that the full Island Line has only been in operation for some nine months and the growth since the opening of the initial section between Admiralty and Chai Wan in May 1985 has been quite encouraging; the current intra-Island patronage being some 50 per cent higher that attracted last year.

The Island Line stations have been designed for the long term and thus it is not surprising that currently the stations are operating below maximum capacity. The corporation will be continuing its efforts to attract additional patronage to the Island Line through improvements to the service and through promotions. There will also be a natural increase in demand once the many new developments near Island Line stations are completed.

MR. LIU (in Cantonese): *Sir, we know that the utilisation rate of the Sheung Wan station is very low so will MTRC consider extending this to the Western area so that the utilisation rate can be boosted?*

SECRETARY FOR TRANSPORT: Sir, for the record the Sheung Wan station is not the one with the lowest usage. In fact the one with the lowest usage is Heng Fa Chuen station. But to take Mr. LIU's point on the Western District extension, the MTRC retains certain railway reserves for a possible future extension of the Island Line to Western District. The possibility of such an extension had been studied in some depth by MTRC in the recent past and it was concluded that the present potential demand would not provide a financial justification. If at some time in the future, reclamation on the west of Central was to proceed, the subject will of course again be studied to determine whether it is feasible, with increased population, to build an extension to the Island Line. In the meantime, to alleviate the situation in the Western District the Commissioner for Transport is studying the Western District Traffic Study with a view to improving transport arrangements in that district. This is in hand. I expect that the study will be finished by the end of this year.

Consultation with district boards

3. MR. LEE YU-TAI asked: *Is there a unit in the Government which makes decisions on which policy proposals should be put to district boards for consultation, and what are the criteria for such decisions to be made?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, within the Government, the decision as to whether district boards should be consulted on a particular policy issue rests with the policy secretary concerned. Generally, such a decision takes into account the degree of public concern over the matter, the need for the Government to give a full explanation of the proposed policy and the availability of options on which district boards are to be consulted. The Government places great importance on such consultation and will see to it that the policy proposals are carefully selected for consultation with district boards.

MR. LEE YU-TAI: *Sir, I would like to refer to public concern which was mentioned in the answer. Why have district boards not been consulted over the Public Order (Amendment) Bill 1986 which has generated so much public concern?*

SECRETARY FOR DISTRICT ADMINISTRATION: I think before the district boards are consulted, this Council is now being consulted in the first instance. But in due course if it is considered that any policy which requires consultation with district boards, the Branch Secretary concerned will so recommend.

MR. MARTIN LEE: *Sir, does it mean that if this Bill were to be passed into law today, then the district boards would only be consulted after the event?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, that may be the case depending on the outcome this afternoon.

MR. LI: *Sir, has past consultation with district boards led to any change of policy or formation of new policy?*

SECRETARY FOR DISTRICT ADMINISTRATION: It has, Sir, certainly. In the case where the policy has not been formulated and the consultation precedes the formulation of the policy, this has often been the case.

British National (Overseas) passport

4. MR. SOHMEN asked: *The British National (Overseas) passport or BN (O) is scheduled to be issued by the middle of this year. So far eight countries have recognised its validity. Will the Government inform this Council what information it has received from the British Government on the steps currently being taken to persuade more countries to accept the new document and how many more countries are expected to have granted recognition by the date of first issue?*

SECRETARY FOR SECURITY: Sir, Her Majesty's Government has since September of last year mounted an extensive diplomatic exercise to explain to other countries the new British National (Overseas) status and the passport that goes with it. We have adopted a three-pronged approach. First, formal approaches

have been made by Her Majesty's Government to missions of foreign and Commonwealth countries in London. This exercise has been complemented secondly by parallel action by British missions in the capitals of these countries at the same time. Thirdly the Hong Kong Government has approached all consular representatives in Hong Kong. I have spoken personally to the consuls general and commissioners of 25 countries to which Hong Kong people tend to travel most. I stressed the importance of their getting in touch with us immediately if they foresaw any difficulties. Sir, so far nine countries have publicly indicated that they will recognise the BN(O) passport. They are the United States of America, Canada, Australia, New Zealand, Switzerland, Spain, Hungary, Israel and Tonga. And I would like to take this opportunity to state our appreciation and thanks to these governments for reacting so promptly. The initial reactions of other governments have been favourable. None has stated that it will not recognise the new status and the passport that goes with it.

The passport is due to be issued from 1 July 1987. As a reminder to foreign and Commonwealth governments and as part of HMG's on-going campaign to obtain international recognition of the new status, specimens of the passport showing the national status and other endorsements will be handed over to these governments and we will do the same to their representatives here in Hong Kong.

To answer the second part of my hon. Friend's question, Sir, we are confident that the new BN(O) status and the passport that goes with it will have received widespread international recognition by 1 July this year.

MR. SOHMEN: *Sir, I am happy to hear that another country has been added to the list of countries since the time I drafted my question. But could the Secretary for Security try to quantify the 'widespread international acceptance' the Government expects to have by 1 July this year, keeping in mind that before people will apply for a passport they will want to have assurance that their choice of travel is quite large?*

SECRETARY FOR SECURITY: Sir, I fully accept my hon. Friend's last point. As I say, the important thing is that no country has stated that it has any difficulties over this status and the passport that goes with it. I am afraid what we are probably up against is natural bureaucratic processes. It is quite a complicated business within a country to get agreement for a particular travel document. But I am personally very confident that by 1 July most countries will have answered us and answered us favourably.

MR. CHEONG-LEEN: *Sir, to follow up on Mr. SOHMEN's supplementary, may I ask the Secretary to clarify whether by expressing confidence that most countries will have replied affirmatively, he has in mind the 25 countries which are most frequently visited by Hong Kong residents; and since time is of the essence between now and July 1, will particular steps be made to ensure that virtually all of these 25 countries will have given affirmative responses?*

SECRETARY FOR SECURITY: Yes, Sir, I am very sure from the response of their representatives here in Hong Kong that we will have a favourable response from these 25 countries before 1 July. And, as I said, we have stressed to their representatives that if they foresee any difficulties they should get in touch with me immediately and we, for our part, are keeping in touch with them.

Population and improvement works in villages and new towns

5. MR. TAI asked: *Will Government inform this Council what is the village population in the New Territories as compared with that in the new towns and what is the level of public expenditure on village improvement and new town improvement in the New Territories in each of the past three years?*

SECRETARY FOR LANDS AND WORKS: Sir, the population living in the country and villages outside the new towns in the New Territories, that is Sha Tin, Tuen Mun, Tsuen Wan, Tai Po, Fanling, Junk Bay, Kwai Chung/Tsing Yi, Yuen Long and the rural townships of Peng Chau, Cheung Chau, Sai Kung and Mui Wo, amounts to about 290 000. The population living inside the new town areas and rural townships which includes some 119 000 persons living in villages houses and other small structures, is now about 1 600 000.

Village improvement works outside new towns and rural townships is mainly carried out under the Local Public Works vote controlled by the district offices. The annual expenditure on Local Public Works for the past three years amounted to $12.3 million in 1983-84, $12.7 million in 1984-85 and $13.5 million in 1985-86. Expenditure for 1986-87 will be about $14.25 million. From 1987-88 onwards improvement works outside new towns and rural townships will be funded by means of a new PWP item which has $13 million for new Local Public Works projects and $12 million for urban fringe improvements such as access roads in areas near to new town, in each of the next five years. In addition, there will be a new provision of $7.5 million for maintenance of Local Public Works. The Regional Council also spends about $3 million per annum on rural sanitation schemes, and a fairly small part of the district board funds allocations is also spent on these areas.

Total expenditure on new works in the new towns and rural townships including land formation, roads and the government-funded utilities, amenities and facilities not included in the public housing estates for the past three years amounted to $3,030 million in 1983-84, $2,802 million in 1984-85 and $2,555 million in 1985-86. In 1986-87, the expenditure is expected to be about $2,700 million.

MR. TAI: *Sir, I have two supplementary questions. They are a bit long and I hope you can bear with me for a couple of minutes. Sir, my first supplementary is; in view of the present sanitation and sewerage system in the rural area, which is*

highly unsatisfactory, and bearing in mind there are about 600 villages in the New Territories, with the average provision for each village at about $25,000 a year, could the Secretary inform this Council how he could tackle the problem of improvement to the sewerage and sanitary system, bearing in mind that funds voted are inadequate? My second question is; the access roads to villages built over twenty years ago require urgent maintenance. However, these roads were built on private land albeit with government funds. Recently the Government refused to provide funds for its maintenance for the reason that consent of the land owners was required. Could the Secretary inform this Council how this problem can be tackled so that the badly needed maintenance can be carried out?

HIS EXCELLENCY THE PRESIDENT: I think the second question, Mr. TAI, doesn't follow naturally from the first but could the Secretary give a reply to the first supplementary?

SECRETARY FOR LANDS AND WORKS: Sir, I took it from Mr. TAI's first question that he was comparing the relative expenditure of new towns and rural areas and, of course, I doubt if that would be a very satisfactory standard for comparison bearing in mind that the new towns' expenditure includes a considerable proportion for amenities which are shared by the rural areas and also, of course, it provides for land formation and infrastructure for the benefit of people who will move into the new towns in the future. I am sure that Mr. TAI is quite right in his general dissatisfaction with the sanitation of many areas and although the first part of his question related to sewerage and it was the second part which related to access, I think that, in fact, the two together are the prime reasons for the lack of satisfactory sanitation in these areas. I think the basic question is how to tackle the sewerage problem in those areas and I think perhaps the best way forward may be, and we certainly hope it will be, through schemes such as we are starting in Sun Hing Chuen, north of Tuen Mun, where we are putting in a basic system of local roads and sewerage which should make a considerable improvement in this area. It is a pilot scheme and I believe that it has wider application, provided that we can keep the costs down to a reasonable amount. Whether we will be able to do so or not, I think will depend upon how we in fact are able to deal with the private land question because in many parts of the New Territories where the sanitary conditions are worst, there is very little Crown land available for use for roads. Although, Sir, you on my behalf suggested that the second part of the question might not be answered, there is one point I would like to make. Mr. TAI may have noticed and I hope he is pleased, that I mentioned there was $7.5 million provision for maintenance and that includes access roads. I do believe that if the question of private land is the main issue which is holding up the maintenance and use of these funds on access roads in rural areas, the problem can be overcome by discussion between departments and with the land owners of the district.

MR. TAI: Sir, *I am grateful for the Secretary's answer to the second part of my question. As to the first supplementary question, could the Secretary inform this Council whether he is prepared to recommend resumption of private land for the purpose of building sewerage?*

SECRETARY FOR LANDS AND WORKS: Sir, I think this will have to depend upon the situation. From the Sun Hing Chuen scheme we are going to have to derive a policy for the private land which is required for these rural improvements, and without discussion with those interested, I would not be prepared to venture an answer to Mr. TAI's question this afternoon.

MR. TAI: *Sir, could the Secretary inform me whether there is any precedent for the Hong Kong Government to resume land for road building purpose or public works purpose?*

SECRETARY FOR LANDS AND WORKS: Sir, of course.

Precautionary measures against Hepatitis 'B' and AIDS viruses

6. MR. CHEONG-LEEN asked: *To guard against possible infection from Hepatitis 'B' and AIDS viruses, can this Council be advised what advice or guidelines have been issued in regard to precautionary measures on the use of needles by acupuncturists and tattooists, and if no such advice or guidelines have been issued, whether Government has plans to do so in the near future?*

SECRETARY FOR HEALTH AND WELFARE: Sir, advice on the risk of transmission of Hepatitis B through the use of unsterilised contaminated needles was included in publicity material used during a campaign on the prevention of communicable diseases in 1983.

So far as AIDS is concerned, the pamphlets produced and distributed hitherto do not specifically refer to the use of needles by acupuncturists and tattooists. However, new publicity material now being prepared will include guidelines on how to prevent infection by the AIDS virus and other microorganisms when carrying out acupuncture, tattooing, ear-piercing, shaving, manicure and other procedures. It is the intention to distribute these pamphlets as widely as possible, in addition to publicity through other media such as posters and television.

MR. CHEONG-LEEN: *Sir, could the Secretary elaborate just a little more specifically on the procedures. If manicure is included, I suppose pedicure would be included and what else would there be?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I think it is any operation which involves piercing the skin. That is where the danger arises and basically what the new publicity will say, and I have a draft of it here, is that needles used for these various purposes should preferably be disposable but if that is not possible and if they are to be re-used, then they should be sterilised through boiling for at least ten minutes, which we are advised should kill the AIDS virus and other germs that may have contaminated these instruments.

MR. SOHMEN: *Sir, could the Secretary for Health and Welfare advise whether Government is noting the measures taken in other countries to contain the spread of the AIDS virus, such as by compulsory examination, and whether he proposes to take similar measures in Hong Kong?*

SECRETARY FOR HEALTH AND WELFARE: Yes, Sir, we are watching very closely what is happening in other countries. This is an extremely difficult problem and there is a great deal of discussion, as Members are aware, throughout the world as to how to tackle this dreadful scourge. I can assure Mr. SOHMEN and Members that we will monitor very closely activities in other countries and decide whether they are appropriate to be introduced in the same way in Hong Kong.

Speculation of taxi licences

7. PROF. POON asked: *Is Government aware of any indications of speculation activities being carried out with regard to taxi licences, and, if so, does Government have any plans to tackle this problem?*

SECRETARY FOR TRANSPORT: Sir, the value of a taxi licence has fluctuated in the past few years: it fell from $237,000 in 1978 to $161,000 in 1984 and has risen rapidly to $450,000 at the time of the last tender exercise in January this year. In real terms, however, allowing for inflation, the average premium of a taxi licence has actually gone down by as much as 23 per cent over the last 10 years.

The Transport Advisory Committee has set up a sub-committee under the chairmanship of Mr. Jackie CHAN with a majority of unofficial members to carry out an overall review of the taxi policy, including the question of speculation of taxi licences. A recent survey undertaken on behalf of the sub-committee has found tender price for licences to be following the market price, and that the factors contributing to the rise in the value of the licence include:

(*a*) the profitability of taxi operation, which has a direct bearing on the demand for taxi licences;
(*b*) growth in the economy and real income which results in an increase in the demand for taxi services; and
(*c*) the supply of new licences.

Although the survey results do not provide any direct evidence that speculation is a major factor, this element cannot be ruled out entirely when free trading takes place and the supply of new licences is limited.

The TAC Sub-Committee is examining all feasible improvements to the current method of issuing taxi licences. Appropriate recommendations will be made to strengthen and improve the current system now in operation. However, I should point out that our primary concern is the general quality of taxi service in Hong Kong to the public and the efficiency of our overall transport system in serving the community. It is important to note that both the quality of and cost taxi service in Hong Kong are generally reasonable and satisfactory. Even supposing there is speculation it is not having an obvious effect on the service offered to the public.

PROF. POON: *Sir, according to the Secretary's reply, the TAC Sub-committee is examining means to strengthen and improve the current system of issuing taxi licences. Now, it must imply that the present system is far from satisfactory. Will the Secretary inform this Council of the weaknesses in the present system that the Government has detected?*

SECRETARY FOR TRANSPORT: Sir, the TAC Sub-committee has, in fact, very wide terms of reference covering the role of taxis in the transport system, the size of the taxi fleet, the method of issuing taxi licences, the fare policy of taxis, government regulations, classification of taxis and the quality of taxi services. So this is only one of the many factors which the committee will look at in the next few months. The existing tender system has been in operation since 1964 and is found to be generally satisfactory and the Government, in fact, does not see any need to change it overnight. However, the Government looks forward to the committee's recommendations and will consider them when they are available.

MR. SOHMEN: *Sir, the Secretary for Transport has mentioned that part of the reason for the increase in the free market prices for the licences is the profitability of taxi operations. Would he confirm that profitability of taxi operations has, in fact, risen in recent times?*

SECRETARY FOR TRANSPORT: Sir, based on the results of the last six tender exercises, the value of profits has ranged from about $40,000 upwards to $100,000. This is not unreasonable having regard to the amount of investment that operators have put in to the taxi tendering. So I think in general terms the taxi operation is not making excessive profit but neither is speculation having an adverse effect on the system.

DR. LAM (in Cantonese): *Mr. Chairman, under what circumstances will the Government consider issuing more urban taxi and NT taxi licences to reduce speculation activities?*

SECRETARY FOR TRANSPORT: Sir, the existing policy on urban taxis is that Government will issue 200 licences per year. For New Territories' taxis the present policy is not to issue any more licences. Under the existing policy the Government will review the policy every two years and the next review is due in 1988. In the meantime the Government looks forward to the sub-committee's recommendations as regards whether the policy should be reviewed.

Implementation of recommendations in the report on ex-mental patients

8. MR. HUI asked: *In the light of the recent killing and the incidents of assaults by persons allegedly suffering from mental disorders, will Government inform this Council which recommendations set out in the Report of the Working Group on Ex-Mental Patients with a History of Criminal Violence or Assessed Disposition to Violence (published in May 1983) have been implemented, and the reasons why some of the recommedations have not been implemented?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the Report of the Working Group on Ex-Mental Patients with a History of Criminal Violence contained 32 recommendations. I have tabled a paper (see Appendix) which summarises the present position with regard to the implementation of these recommendations.

Nineteen of the recommendations have been accepted and have either been fully implemented or are in process of being implemented. The more important of these include the establishment of a central registry, the use of multidisciplinary case conferences, increased outreach services, the stepping-up of publicity measures, the establishment of community work and aftercare units, and the provision of additional half-way house places.

In addition, 11 recommendations requiring changes in the law have been incorporated in a Bill to amend the Mental Health Ordinance. I expect that this Bill will be introduced into this Council within the current session, subject to the agreement of the Governor-in-Council.

Only two of the recommendations have not been accepted. The first of these was that the establishment of a psychiatric emergency squad, to provide on-the-spot help for mental patients and their families in emergency situations, should be examined. The conclusion was that this would not be a very appropriate way of dealing with such situations, particularly when the patient was violent; nor would it be possible to provide territory-wide coverage with the limited staff resources available. The second recommendation that was not accepted was that a full-time psychiatrist should be provided for the Siu Lam Psychiatric Centre; in this case it was considered that the existing arrangement of two visiting psychiatrists would be more appropriate, particularly when the proposed consultant post with overall responsiblity for forensic psychiatry has been established.

APPENDIX

Implementation of recommendations in the report on ex-mental patients

Serial No.	*Recommendation*	*Present position*
1	*Establishment of a central registry*	
	A confidential registry should be established in the headquarters of the Mental Health Service, centralising the case summary records of all mental patients with a history of criminal violence or disposition to violence.	Action completed.
2	*Further research*	
	The Medical and Health Department should continue to record and analyse the different categories of patients in the target group. Research should include: (*a*) the long-term relapse rate and commission of violent offences by sub-target group patients; and (*b*) the different sub-groups of violent offenders, their treatment and recidivism.	Action on-going.
3	*Improved assessment*	
	To assess the propensity to violence of a patient on admission, and after seeking a second medical opinion, provisionally classify a patient.	Action completed.
4	*Multi-disciplinary case conferences*	
	Multi-disciplinary case conferences should be held in respect of all target group patients prior to discharge.	This is being done when staff resources permit.
5	*Conditional discharge*	
	To amend the law so that all sub-target group patients as well as some target group patients, whether offenders or non-offenders, are discharged subject to conditions imposed by the medical superintendent or a consultant psychiatrist.	Included in the Mental Health (Amendment) Bill.
6	*Recall for breach of conditions*	
	To amend the law so that all conditionally discharged patients should be subject to recall for medical examination and possible readmission to hospital if necessary.	Included in the Mental Health (Amendment) Bill
7	*Unconditionally discharged patients*	
	To persuade the patient and his family to accept home visits by a social worker or community psychiatric nurse, and to continue the necessary follow-up treatment.	This is now being done.
8	*Referral to half-way houses*	
	To discharge all conditionally discharged patients to special half-way houses and to encourage unconditionally discharged patients to spend some time in an ordinary half-way house prior to full return to the community. (*Note:* the title ‘Community Therapeutic Centre’ has been adopted to replace ‘special half-way house’.)	475 ordinary half-way houses places are available, but so far no Community Therapeutic Centres are in operation.
9	Reaching out	
	More positive efforts to be made by community psychiatric nurses and social workers to reach out to ex-mental patients.	Action being taken.

Serial No.	*Recommendation*	*Present position*
10	*Advice to families*	
	An amended pamphlet to be published and discussed with family members before the discharge of the patient.	Action completed.
11	*Public education*	
	(*a*) to include the subject of mental illness in school curriculum;	Action taken.
	(*b*) to produce a documentary on mental health and the rehabilitation of the mentally ill;	
	(*c*) to feature a character suffering from mental illness in a television series;	
	(*d*) to organise a "Mental Health Seminar";	
	(*e*) it was agreed at a meeting held on 27 September 1983 by the Steering Group of the Report on EX-Mental Patients that district board members should be adequately briefed on the subject of mental health.	
12	*New procedures for discharge and aftercare*	
	The Social Welfare Department and the Medical and Health Department have drawn up new procedures for the discharge and aftercare of patients.	To be implemented together with Serial No. 23
13	*Transfer of female prisoners*	
	The Governor's power under section 52 should be delegated to the Secretary for Health and Welfare in order to streamline the administrative procedure for making a transfer order.	Action completed.
14	*Community Work Aftercare Unit (CWAU)*	
	To establish a CWAU in all psychiatric hospitals and units.	Action completed.
15	*Community Psychiatric Nursing Services*	
	These should be expended throughout the territory on a regional basis, including the provision of ten community psychiatric nurses specifically to implement, with social workers, the new aftercare procedures recommended.	Action on-going.
16	*Other additional medical personnel required*	
	Two consultants, four senior medical officers, one EO II and three CO II should be added to the existing establishment.	Action on-going.
17	*Vacancies for psychiatric doctors and nurses*	
	Government should consider ways of attracting and retaining experienced doctors and nurses in the psychiatric field.	Action on-going.
18	*24-hour hotline and psychiatric emergency squad*	
	(*a*) the Medical and Health Department to consider the feasibility of establishing a 24-hour hotline.	Implemented.
	(*b*) The Medical and Health Department to consider the feasibility of establishing a psychiatric emergency squad.	Not accepted.

Serial No.	*Recommendation*	*Present position*
19	*Full-time psychiatrist for Sir Lam Psychiatric Centre*	
	The Medical and Health Department to consider a fulltime psychiatrist post for Siu Lam Psychiatric Centre with wider consultancy responsibility for the forensic side for the whole of the Territory.	Replaced by alternative action.
20	*Expansion of Siu Lam Psychiatric Centre*	
	The project should be accelerated to provide more additional places as soon as possible.	Action being taken.
21	*Improvement to security ward facilities in Castle Peak Hospital*	
	Dangerous patients on remand after committing serious violent offences and convicted offenders detained under a hospital order are at present accommodated in the same overcrowded security ward as non-offenders. Facilities need to be improved to isolate those who are tentatively dangerous.	Action commpleted.
22	*Provision of special half-way houses*	
	(*a*) Half-way houses for non-offenders: the admission criteria of half-way houses for non-offenders should be reasonably lenient to admit non-offenders with a disposition to violence; (*b*) half-way houses for offenders: the staffing provision of these half-way houses should be improved; (*c*) half-way houses for target group patients: sufficient places should be provided for the wider target group to be accommodated on a voluntary basis.	Action on-going. (See Serial No.8)
23	*Medical social workers*	
	To review the caseload of medical social workers and to ensure all existing vacancies are filled, possibly by providing a special allowance.	Action being taken on a phased basis.
24	*Revision of Mental Health Ordinance*	
	To make a complete revision of the Mental Health ordinance.	Review completed with appropriate amendments incorporated in the Bill.
25	*Revised admission procedures*	
	To amend secion 31 regarding admission procedures.	Already included in the Mental Health (Amendment) Bill but modified in the light of public response.
26	*Absence on trial*	
	To amend section 39 of the Ordinance.	Included in the Mental Health (Amendment) Bill.
27	*Conditional discharge and recall*	
	To amend Parts III and IV of the Ordinance.	Included in the Mental Health (Amendment) Bill.
28	*Appeal to an independent court*	
	To amend Parts III and IV of the Ordinance.	Included in the Mental Health (Amendment) Bill.

Serial No.	*Recommendation*	*Present position*
29	*New appeal tribunal*	
	To establish a new tribunal.	Included in the Mental Health (Amendment) Bill.
30	*Definition of mental disorder*	
	To amend the definition of mental disorder.	Included in the Mental Health (Amendment) Bill.
31	*Psychopathic offenders*	
	To amend the definition in the Ordinance.	Included in the Mental Health (Amendment) Bill.
32	*Admission of offenders*	
	To provide for greater flexibility.	Included in the Mental Health (Amendment) Bill.

MR. HUI: *Sir, in thanking the Secretary for his detailed and informative reply, could he inform this Council whether there will be public consultation when the Bill to amend the Mental Health Ordinance is ready? Referring to recommendation 4 in his tabled report, is staff available now for multi-disciplinary case conferences and finally, referring to his tabled report recommendation 8, how many cases of ex-mental patients have been approached by psychiatric nurses and social workers?*

SECRETARY FOR HEALTH AND WELFARE: Sir, last year there was extensive consultation on the proposals which are now included in the draft Bill with the various professional bodies that are interested in this area, such as the universities, the medical associations, the psychiatric and psychological associations and the Hong Kong Council of Social Service, and we have made a number of changes to the draft Bill as a result of this consultation. Subject to the approval of the Governor-in-Council, the Bill of course will be published in the usual way in the Government Gazette before it is introduced into this Council and there will be an opportunity of full discussion of all its proposals. On the second question, the situation differs in the two main mental hospitals. The staff situation, I am told, in the Kwai Chung Hospital generally permits multidisciplinary case conferences to be held in most of the cases of the type dealt with by the report. In the Castle Peak Hospital, I am afraid, the position is not quite so satisfactory and it is not yet possible to implement this recommendation fully. On Mr. HUI's third point of cases approached by psychiatric nurses and social workers, I understand that as a result of the recruitment of a considerable number of psychiatric nurses, the number of home visits has increased from 2 033 in 1983 to 10 585 last year.

DR. HO: *Sir, the half-way houses are familiar terms but the community therapeutic centre is a fancy one. May this Council be informed what steps have been taken to educate the public of these facilities?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the half-way houses as Dr. HO says are familiar in that we have had half-way houses for some years. They deal with the ordinary run of ex-mental patients who do not need any particular security or other arrangements when they are living in half-way houses. The report referred to special half-way houses and the community therapeutic centre is, as Dr. HO says, a slightly fancy term for this type of institution. There has been in areas, and particularly in Sha Tin, where it is proposed to open a number of these centres. Originally there was considerable public opposition to this idea but an extensive publicity campaign has been undertaken by the Social Welfare Department with the assistance of the district office and the Government Information Services, which has resulted in much greater understanding of the problems; as a result it has been possible already, I understand, to open three of these centres and several others will be opened fairly shortly.

MRS. NG (in Cantonese): *Sir, I am glad to learn that some of the proposals in the report have been implemented, for example, community work and after-care units. For these units, I wonder if employment counselling will be given to the ex-patients so that they can make a living on their own and be integrated into society?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I must confess to not being familiar with all the details of what these units will achieve but I will check and write to Mrs. NG. (See Annex II)

MR. ANDREW WONG (in Cantonese): *Sir, can the Secretary confirm that Sha Tin residents are becoming more and more favourable to the idea of the special half-way houses—thanks to the District Board of Sha Tin.*

SECRETARY FOR HEALTH AND WELFARE: Sir, my apologies to the District Board of Sha Tin. They played a very considerable role in this very successful exercise. My apologies.

Written answers to questions

Employment of retired civil servants

9. DR. LAM asked: *In view of the fact that policy secretaries and department heads are heavily concerned with policy making of the Government directly affecting the public and people's livelihood, will Government inform this Council of its policy on secretaries / department heads taking up employment in the private sector after their resignation or retirement from the Civil Service and what steps have been taken to ensure that public interests have been safeguarded?*

CHIEF SECRETARY: Sir, retired civil servants, that is pensioners, are required, under section 16 of the Pensions Ordinance, to seek prior approval before

taking up post-retirement employment or entering into business, if the principal part of such employment or business is in Hong Kong; otherwise pension benefits payable to them may cease.

Under existing arrangements, permission is granted freely if the following three criteria are satisfied:

(*a*) the officer will not have unfair advantage over competitors;
(*b*) the officer will not be in a position to use official information improperly; and
(*c*) the officer will not be in a position to exert influence over his former department.

For officers at secretary or head of department level a further caveat is that they are not permitted to take up employment until at least three months from their last day of active service. Although the Governor has discretion to waive this 'sanitisation' period, he has the authority to withhold permission for up to two years in exceptional circumstances, for example, if a conflict of interest may arise.

Apart from provisions of the Pensions Ordinance, all officers are bound by the Official Secrets Act and are thus debarred from making use of or releasing any information which may be sensitive.

As regards officers who resign from the Civil Service without a pension they are free to take up employment in the private sector without seeking permission but they too are bound by the Official Secrets Act.

Reduction of traffic signs

10. MR. HILTON CHEONG-LEEN asked: *In view of the large number of traffic signs that appear at some busy locations and the confusion that might be caused to drivers, will Government inform this Council whether there are plans to reduce the number of traffic signs at such locations to avoid confusion to drivers?*

SECRETARY FOR TRANSPORT: Sir, traffic signs are the language of the road. They have an essential function to perform, and it is inevitable that in a densely populated place with heavy vehicular and pedestrian traffic there are going to be a lot of them.

At the same time it was recognised a year or two ago that in some locations there were so many signs that road users could be confused as a result.

Therefore, following the implementation of the Road Traffic Ordinance in 1984, which allowed the Transport Department to simplify signing arrangements, two trial areas, East Tsim Sha Tsui and Causeway Bay, were chosen to

see what could be done to reduce the number of signs. As a result, about 350 sign plates in East Tsim Sha Tsui have been reduced to 130, and in Causeway Bay 674 sign plates have been reduced to 281. In neither area have there been any complaints from the public that the reduced number of signs is inadequate, nor have the police experienced any enforcement problems.

In view of this, the Transport Department is considering other areas for the same treatment and will be carrying out further, similar exercises as and when resources permit. The resources which can be allocated to this task are however limited and it is likely to be some years before the whole Territory can be covered.

Government Business

Motions

EXCHANGE FUND ORDINANCE

THE FINANCIAL SECRETARY moved the following motion: That under section 3(5) of the Exchange Fund Ordinance, with the approval of the Secretary of State, that the aggregate amount of borrowings under section 3(3) of the said Ordinance shall not at any one time exceed fifty thousand million dollars.

He said: Sir, I move the first motion standing in my name on the Order Paper.

In moving the Second Reading of the Appropriation Bill 1987 a fortnight ago, I referred to the prudent build up in the Government's fiscal reserves(1). Indeed, as I said, by the end of the current financial year, our balances on the General Revenue Account and in the various funds will have accumulated to about $20 billion and $12 billion respectively, or a total of $32 billion.

The bulk of the Government's accumulated balances on the General Revenue Account and in the various funds is invested by the Treasury with the Exchange Fund against the issue by the fund of interest-bearing debt certificates. This is done so as to avoid these reserves having to bear the exchange risks arising from investments in foreign currency assets, by effectively transferring the risks to the Exchange Fund. Section 3(4) of the Exchange Fund Ordinance limits the amount which the fund may borrow from any source; and under section 3(5) this limit may be altered by the Legislative Council by resolution with the approval of the Secretary of State. The current limit of $30 billion was set by a resolution of this Council on 9 December 1981. It had been successively raised during 1980 and 1981 from $7 billion to $30 billion to accommodate the rapid build up of fiscal reserves at that time.

(1) 1987-88 Budget speech, paragraphs 68 and 69.

Speaking in support of the last increase in the borrowing limit to $30 billion, my predecessor also described an arrangement whereby the Exchange Fund conducts money market operations with a view to influencing the level of interest rates in the interbank market in a manner consistent with monetary policy objectives. This arrangement which remains in operation and has been useful at times in exerting the appropriate influence on interest rates, involves the Exchange Fund in borrowing and lending in the interbank market. Depending on market conditions and the specific objective to be attained, the Exchange Fund may borrow long term and lend short term, or vice versa, or borrow or lend without matching the transactions. Sums borrowed by the Exchange Fund in the course of this arrangement must also fall within the borrowing limit set by section 3(4) of the Exchange Fund Ordinance.

As at the close of business today, the total amount of debt certificates issued by the Exchange Fund in return for money transferred from the General Revenue Account and the various funds, in other words the total borrowing by the Exchange Fund from these sources, will be $26.9 billion. Borrowing arising from money market operations will amount to an additional $2.9 billion, making a total of $29.8 billion, that is just short of the borrowing limit of $30 billion.

As I mentioned earlier, the Government's fiscal reserves are expected to total around $32 billion by the end of this financial year. Over the next few months these reserves are likely substantially to exceed that figure in view of the seasonal inflow of revenue and the large turnover in our public finances which on General Revenue Account totals around $90 billion and on Consolidated Account totals well over $100 billion in the next financial year.

The current borrowing limit of $30 billion will, therefore, constrain the ability of the Exchange Fund to continue to take in these fiscal reserves by the issue of interest-bearing debt certificates. It will also constrain the ability of the Exchange Fund in its money market operations, although in comparative terms the borrowings arising from these operations are small.

Sir, the approval of the Secretary of State to introduce a resolution in this Council to increase the borrowing limit to $50 billion has, therefore, been obtained. The relatively large increase is proposed so as to reduce the number of times it will be necessary to introduce a similar motion into this Council. We have quite enough to do already. In 1980, the limit had to be tripled in three successive increases to accommodate the build up of fiscal reserves at that time [(2)].

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(2)

Date of increase	*From* (HK$ billion)	*To* (HK$ billion)
12. 3.80	7	10
9. 7.80	10	15
17.12.80	15	20
9.12.81	20	30

Sir, I beg to move.

Question put and agreed to.

PUBLIC FINANCE ORDINANCE

THE FINANCIAL SECRETARY moved the following motion: That—

1. Authority is hereby given for a sum not exceeding $16,266,785,000 to be charged on the general revenue in advance of an Appropriation Ordinance for expenditure on the services of the Government in respect of the financial year commencing on 1 April 1987.

2. Subject to this resolution, the sum so charged may be expended against the heads of expenditure, and expenditure for each such head shall be arranged in accordance with the subheads, shown in the draft Estimates of Expenditure 1987-88.

3. Expenditure in respect of any head shall not exceed the aggregate of the amounts specified in respect of each subhead in that head, by reference to percentages, in paragraph 4(*a*) and (*b*).

4. Expenditure in respect of each subhead in a head shall not exceed—

(*a*) in the case of a Recurrent Account subhead, an amount equivalent to—

(i) except where the subhead is listed in the Schedule hereto, 20 per cent of the provision shown in respect of it in the draft Estimates;

(ii) where the subhead is listed in the Schedule hereto, that percentage of the provision shown in respect of it in the draft Estimates which is specified in relation to that subhead in the Schedule; and

(*b*) in the case of a Capital Account subhead, an amount equivalent to 100 per cent of the provision shown in respect of it in the draft Estimates,

or such other amount, not exceeding the provision shown in respect of the subhead in the draft Estimates, as may in any case be approved by the Financial Secretary.

5. A reference in this resolution to the draft Estimates of Expenditure is a reference to the draft Estimates as changed from time to time pursuant to sections 7 and 8 of the Public Finance Ordinance.

SCHEDULE

Head of Expenditure	*Subhead*		*Percentage of provision shown in draft Estimates*
Architectural Services Department	109	Training expenses	35
Audit Department	002	Allowances	40
	113	Administration	30
Buildings and Lands Department	221	Clearance of Crown land—ex-gratia allowances	35
	259	Enforcement of the Buildings Ordinance—works on private property	35
Census and Statistics Department	113	Administration	30
Civil Aviation Department	102	Technical Services Agreement	30
	111	Hire of services and professional fees	30
	113	Administration	25
	170	Airport insurance	100
Customs and Excise Department	121	Contract maintenance	35
Education Department	152	Scholarships, bursaries and maintenance grants	35
	154	External activities for government primary schools	50
Education Subventions	330	Assistance to private secondary schools and bought places	30
	350	Refund of rates for private schools	30
	355	Assistance to the Lingnan College	50
	365	Grants towards selected adult education services	30
	489	Miscellaneous educational services	25
General Expenses of the Civil Service	013	Personal allowances	30
Government Land Transport Agency	225	Traffic accident victims assistance scheme—levies	100
Government Secretariat	121	Contract maintenance	30
Government Secretariat: Overseas Offices	002	Allowances	25
Housing Department	228	Clearance	25
	230	Management of cottage areas	25
	231	Management of temporary housing and temporary industrial areas	25
	232	Squatter control	25
Industry Department	002	Allowances	25
	111	Hire of services and professional fees	30
Inland Revenue Department	002	Allowances	30
	113	Administration	30
	209	Special legal expenses	30
Internal Security: Miscellaneous Measures	195	Defence Costs Agreement: cash contribution	30
Judiciary	206	Expenses of witnesses and jurors	30
Labour Department	255	Storage of explosives	25
Legal Department	111	Hire of services and professional fees	30

Head of Expenditure	*Subhead*		*Percentage of provision shown in draft Estimates*
Medical Subventions	382	Cheshire Home	25
	383	Community Nursing Service	25
	394	St. John Council for Hong Kong	25
	401	Refund of rates (non-profit-making hospitals)	25
Miscellaneous Services	123	Write-offs	50
	190	Other miscellaneous items	50
	191	Payment to Cross-Harbour Tunnel Company Ltd.	100
	192	Refunds of revenue	100
	262	Subscription to the General Agreement on Tariffs and Trade	100
Pensions	015	Civil pensions, police pensions, retiring allowances and gratuities	25
	016	Gratuities for officers on contract	25
	017	Widows' and children's pensions, widows' and orphans' pensions and increases	25
	026	Employees' compensation	50
Police: Royal Hong Kong Police Force	245	Pay and allowances for the auxiliary services	25
Post Office	117	Data processing	25
Printing Department	121	Contract maintenance	30
Public Debt	238	Loans (Asian Development Bank) Ordinance, Cap. 271: Second Sha Tin urban development project: interest	80
	257	Loans (Government Bonds) Ordinance, Cap. 64: borrowings for General Revenue: interest, service charges and listing fees	50
Rating and Valuation Department	002	Allowances	25
Royal Hong Kong Auxiliary Air Force	246	Training expenses for the auxiliary services	40
Royal Hong Kong Regiment (The Volunteers)	106	Temporary staff	30
	245	Pay and allowances for the auxiliary services	30
	246	Training expenses for the auxiliary services	30
Social Welfare Subventions	All recurrent subheads		25
Subventions: Miscellaneous	462	United Nations Fund for Drug Abuse Control	100
	506	Contribution towards the Trade Policy Research Centre	100
	All other recurrent subheads		25
Technical Education and Industrial Training Department	468	Grant (Recurrent) Vocational Training Council	25
Television and Entertainment Licensing Authority	002	Allowances	50
	100	Stores and equipment	25
	111	Hire of services and professional fees	50

Head of Expenditure	*Subhead*		*Percentage of provision shown in draft Estimates*
Trade Department	109	Training expenses	40
	111	Hire of services and professional fees	60
	186	Trade negotiations and associated activities	30
Transport Department	233	Student travel scheme—payment to operators	35
Treasury	002	Allowances	30
	111	Hire of services and professional fees	40
Universities and Polytechnics	002	Allowances	30
	169	Visitation	30
	496	Refund of rates—universities, polytechnics and Baptist College	25

He said: Sir, I move the second motion standing in my name on the Order Paper.

The purpose of this motion is to seek funds on account to enable the Government to carry on existing services between the start of the financial year on 1 April 1987 and the enactment of the Appropriation Bill.

The funds on account sought under each subhead have been determined in accordance with paragraph 4 of the resolution, by reference to percentages of the provision shown in the draft Estimates. As the draft Estimates are changed from time to time, by the Finance Committee or under delegated powers, the provision to which the percentages are applied will also change. Thus the provision on account under each head is not constant but may vary, with every increase being matched by an equal decrease. The initial provision on account under each head is shown in a footnote to this speech. The aggregate total under all heads is fixed, however, at about $16.3 billion and cannot be exceeded without the approval of this Council.

The resolution also enables the Financial Secretary to vary the funds on account in respect of any subhead, provided that these variations do not cause an excess over the amount of provision entered for that subhead in the draft Estimates or an excess over the amount of funds on account for the head.

A vote on account warrant will be issued to the Director of Accounting Services authorising him to make payments up to the amount specified in this motion and in accordance with its conditions. The vote on account will be subsumed upon the enactment of the Appropriation Bill, and the general warrant issued after the enactment of the Appropriation Bill will replace the vote on account warrant and will be effective from 1 April 1987.

Sir, I beg to move.

Question put and agreed to.

FOOTNOTE

Head of Expenditure	*Amount shown in the Draft Estimates*	*Initial amount of provision on account*
	$	$
His Excellency the Governor's Establishment	8,318,000	1,664,000
Agriculture and Fisheries Department	180,700,000	51,844,000
Architectural Services Department	464,883,000	96,150,000
Audit Department	36,381,000	7,329,000
Auxiliary Medical Services	12,171,000	2,435,000
Buildings and Lands Department	453,779,000	98,655,000
Census and Statistics Department	98,342,000	20,214,000
Civil Aid Services	23,462,000	5,134,000
Civil Aviation Department	186,834,000	57,026,000
Civil Engineering Services Department	281,199,000	59,926,000
Correctional Services Department	584,492,000	124,182,000
Customs and Excise Department	304,411,000	64,236,000
Education Department	941,860,000	197,629,000
Education Subventions	5,233,599,000	1,258,844,000
Electrical and Mechanical Services Department	632,717,000	135,036,000
Environmental Protection Department	82,643,000	28,863,000
Fire Services Department	643,543,000	188,592,000
General Expenses of the Civil Service	1,463,605,000	310,353,000
Government Data Processing Agency	114,217,000	62,249,000
Government Laboratory	43,112,000	11,751,000
Government Land Transport Agency	17,388,000	4,862,000
Government Secretariat	307,057,000	62,788,000
Government Secretariat: City and New Territories Administration	290,432,000	67,837,000
Government Secretariat: Civil Service Training Centre	56,559,000	11,312,000
Government Secretariat: Lands and Works Branch	37,647,000	7,530,000
Government Secretariat: Municipal Services Branch	67,499,000	15,587,000
Government Secretariat: Overseas Offices	73,086,000	16,954,000
Government Supplies Department	77,463,000	15,817,000
Highways Department	463,536,000	95,244,000
Housing Department	308,318,000	77,437,000
Immigration Department	475,143,000	126,326,000
Independent Commission Against Corruption	188,379,000	45,471,000
Industry Department	53,870,000	25,213,000
Information Services Department	82,280,000	17,253,000
Inland Revenue Department	305,505,000	65,308,000
Internal Security: Miscellaneous Measures	1,625,899,000	537,768,000
Judiciary	203,239,000	43,507,000
Labour Department	162,968,000	35,861,000
Legal Department	181,654,000	49,241,000
Legal Aid Department	91,643,000	18,379,000
Marine Department	305,053,000	129,294,000
Medical and Health Department	2,995,471,000	649,271,000
Medical Subventions	1,495,839,000	470,762,000
Miscellaneous Services	2,112,772,000	563,930,000
Office of Members of the Executive and Legislative Councils	21,056,000	4,227,000
Pensions	1,446,710,000	362,274,000
Police Complaints Committee	3,500,000	700,000
Police: Royal Hong Kong Police Force	3,060,559,000	775,962,000
Post Office	731,922,000	167,634,000
Printing Department	95,896,000	27,929,000
Public Debt	216,918,000	148,846,000
Public Service Commission	1,969,000	394,000
Radio Television Hong Kong	185,356,000	54,219,000

Head of Expenditure	*Amount shown in the Draft Estimates*	*Initial amount of provision on account*
	$	$
Rating and Valuation Department	82,094,000	16,617,000
Registrar General's Department	112,095,000	23,437,000
Registry of Trade Unions	3,194,000	639,000
Royal Hong Kong Auxiliary Air Force	37,829,000	23,274,000
Royal Hong Kong Regiment (The Volunteers)	23,818,000	7,374,000
Royal Observatory	57,739,000	18,709,000
Social Welfare Department	2,172,792,000	437,558,000
Social Welfare Subventions	625,578,000	156,582,000
Standing Commission on Civil Service Salaries and Conditions of Service	5,062,000	1,013,000
Subventions: Miscellaneous	578,296,000	146,303,000
Technical Education and Industrial Training Department	529,914,000	209,303,000
Television and Entertainment Licensing Authority	9,428,000	2,140,000
Territory Development Department	106,745,000	21,453,000
Trade Department	74,440,000	17,827,000
Transfers to Funds	6,600,000,000	6,600,000,000
Transport Department	414,110,000	124,553,000
Treasury	86,810,000	20,161,000
Universities and Polytechnics	2,309,286,000	749,962,000
Water Supplies Department	1,047,365,000	212,601,000
Total	44,409,449,000	16,266,785,000

First Reading of Bill

PARTITION (AMENDMENT) BILL 1987

SIR EDWARD YOUDE MEMORIAL FUND BILL 1987

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bills

PARTITION (AMENDMENT) BILL 1987

THE ATTORNEY GENERAL moved the Second Reading of: 'A Bill to amend the Partition Ordinance'.

He said: Sir, I move that the Partition (Amendment) Bill 1987 be read the Second time.

The Partition Ordinance, which was enacted in 1969 as a law reform measure, provides for the division of the ownership of buildings or land held by co-owners. The need for this machinery arises most frequently where there are

disputes between such co-owners. The Ordinance empowers the court to divide buildings and land fairly in accordance with settled legal principles. It is a very necessary piece of legislation and it is frequently used. The only problem which has arisen in practice is that, as the Ordinance stands now, under section 3, the Crown has to be made a necessary party to every partition proceeding. Is this—and the consequential expense to the taxpayer or the owners really necessary?

A review was carried out to see whether public issues arise beyond the interests of the private parties in these cases. This review was prompted by a court case where the Attorney General's costs in appearing were disallowed by the trial judge on the basis that the Crown's involvement had been unnecessary. This review reached two conclusions. Firstly, experience has shown that few issues of concern to the Crown arise in these actions and secondly, that any interests the Crown has can be adequately protected without the intervention of the Crown in the first instance.

Thus the main object of this Bill is to abolish the statutory requirement of making the Crown a necessary party to every partition action. The Bill seeks to replace this requirement with a new requirement for service of the relevant documents on the Director of Buildings and Lands in the first instance. That will ensure that he will have notice of the intended partition. The Bill also provides the means for the director to obtain more time, where necessary, to seek advice from or instruct the Attorney General. This is achieved by a provision allowing the director to file a memorandum in court upon which the proceedings will be stayed for a specified period of time. Allied to these measures is the provision enabling the Attorney General to be joined as a party at any stage in a partition action on his application.

Sir, the amendments are sensible and straight-forward. The Crown will no longer have to be a party. If the Attorney General needs to intervene in the public interest, the right to do so is expressly reserved. Costs to the public purse or to the private litigants involved will be saved. The Bill benefits everyone.

The Bill has the support of the Judiciary, and the legal profession represented by the Bar Association and the Law Society.

Sir, I propose to move at the Committee stage one small amendment. This amendment will seek to delete the new section 3B(3)(*a*)(*ii*) in clause 4 of the Bill as it has been brought to my attention that there is no system of caveats in Hong Kong now and that therefore this provision serves no practical purpose.

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

Motion made. That the debate on the Second Reading of the Bill be adjourned.

Question put and agreed to.

SIR EDWARD YOUDE MEMORIAL FUND BILL 1987

THE SECRETARY FOR DISTRICT ADMINISTRATION moved the Second Reading of: 'A Bill to establish a trust fund called the "Sir Edward Youde Memorial Fund" and to provide for the administration thereof and for matters connected therewith'.

He said: Sir, I move that the Sir Edward Youde Memorial Fund Bill 1987 be read the Second time.

The purpose of this Bill is to establish a trust fund to be known as the 'Sir Edward Youde Memorial Fund', in memory of the distinguished governorship of the late Sir Edward YOUDE. In accordance with Lady YOUDE's wishes, the application and purpose of the fund will be sufficiently broad to cover the furtherance of education, learning or research locally or overseas for the people of Hong Kong and to enable grants or loans to be made for that purpose to educational institutions based in Hong Kong.

The Commissioner of Inland Revenue has confirmed that a trust fund with the above object is a charitable trust under the Inland Revenue Ordinance. It will therefore be exempt from tax; and donations to it, including those received prior to its formal establishment, are tax deductible.

The fund will be vested in a Board of Trustees comprising a chairman and four members. The trustees will be empowered to invest any moneys of the fund, to employ any professional person or financial institution to advise them on investment matters, to borrow money and to accumulate any income of the fund. The Board of Trustees will be required to make an annual report and to submit its annual accounts to the Legislative Council.

A council, comprising a chairman and six members, will be set up to apply the income of the fund for its object. Members will have noted that the structure of the fund is different from similar funds, for example, the Sir Robert Black Trust Fund and the Sir Murray MacLehose Trust Fund which are vested in and managed by a single trustee. The present structure takes into account the fact that the Sir Edward Youde Memorial Fund will be larger than other funds.

In view of her interest in the fund and the implementation of its object, the Bill has provided for the appointment of Lady YOUDE as one of the members of the Board of Trustees as well as the council. Members will be pleased to know that Lady YOUDE has indicated that she will be happy to accept such appointments.

In order that the Ordinance may come into effect on 1 April 1987, it is proposed that this Bill should pass through all stages in one sitting if all Members of this Council agree.

I am pleased to report that the community at large has responded enthusiastically to donations to the fund. This is borne out by the substantial amount of donations which to date stands at about $76 million. Further contributions to the fund are expected.

Members will recall the generous donation of $30 million by the stewards of the Royal Hong Kong Jockey Club. Additionally, over 70 major companies and associations in the financial, commercial and industrial sectors as well as leading philanthropists made a total contribution of about $38 million to the fund. The number of donations is, however, as important as the amount of donations. In this respect, it is gratifying to note that the $10 donation campaign launched by Members of this Council has received overwhelming response at the district level. All the 19 district boards in the territory either supported the campaign or took the lead in encouraging other community organisations to contribute. So far, 170 community organisations including area committees and mutual aid committees have raised donations to the fund involving tens of thousands of people. At the same time, it is estimated that about 200 000 students from 340 primary and secondary schools donated their pocket money to this worthy cause.

On behalf of the Sir Edward Youde Fund Committee, I would like to thank all donors for their spontaneous and generous support of the fund. May I also take this opportunity to thank the Law Draftsman and his colleagues for the remarkable speed with which they have been able to produce this Bill.

Sir, I move that the Bill be read a Second time.

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).

PUBLIC ORDER (AMENDMENT) BILL 1986

Resumption of debate on Second Reading (7 January 1987)

MR. PETER C. WONG: Sir, when I was asked by my colleagues to form an *ad hoc* group to examine two related Bills—The Control of Publications Consolidation (Amendment) Bill 1986 and Public Order (Amendment) Bill 1986—I thought it was a straight-forward assignment. But as events unfold, our task turns out to be progressively difficult. The complexity of the assignment escalates in direct proportion to the rapidly rising political temperature. It is to the credit of my colleagues in the group that we have been able to tackle objectively points raised and arguments put forward within the group, by members of the public, representatives of various organisations and by the Administration.

With your permission, Sir, I shall deal with both Bills in this speech. This will avoid repetition and overlapping.

The group held several meetings, had useful and in-depth discussions with the Administration, which took full account of the various representations made to the group. Given the sensitive nature of one particular issue, differences of opinion within the group, in so far as this issue is concerned, are unavoidable. I shall attempt to highlight some areas where consensus was reached, and the area where a common view could not be obtained. My colleagues speaking this afternoon will no doubt elaborate further on the points at issue.

I shall speak first on the Control of Publications Consolidation (Amendment) Bill 1986. As pointed out by the Chief Secretary in moving the Second Reading of the Bill, suppression provisions on local newspapers have been used most sparingly during the existence of the Ordinance, which was enacted in 1951. In fact, these provisions have not been invoked since 1967. The proposed deletion of 10 sections relating to control and suppression of local newspapers is therefore supported by the group as a positive step towards enhancing freedom of our press.

The group also supported the proposal to retain and rationalise the sections relating to registration of newspapers and to retitle the principal Ordinance as 'Registration of Local Newspaper Ordinance'.

However, whilst accepting the Bill in principle, Members called for certain refinements regarding—

(i) the definition of newspaper; and

(ii) the Schedule listing publications to be excluded from the definition of newspaper.

Members were also concerned with the amount of personal details required under the regulations, such as the requirement to provide photographs, home addresses and home telephone numbers.

The Administration was receptive to our proposals and it has been agreed that some of the particulars required for registration such as those mentioned above would be dispensed with. At the Committee stage, the Chief Secretary will move an amendment refining the definition of newspaper and substituting a revised Schedule.

Sir, I shall now turn to the Public Order (Amendment) Bill 1986. This Bill introduces two new sections, 27 and 28. New section 28, which replaces section 30, is non-controversial. It is based upon section 51 of the Criminal Law Act 1977 of the United Kingdom and specifically deals with the problem of bomb hoaxes.

The new section 27 reproduces section 6 of the Control of Publications Consolidation Ordinance which is to be repealed. Section 6 relates to the publication of false news which is likely to alarm public opinion or disturb public order.

As Members are aware, opposition to new section 27 has been gathering momentum during the past two weeks, I shall not repeat what has been reported by the media, but shall concentrate on the formal as well as informal discussions within the group and with the Administration.

One area where the group was able to reach consensus was that the section should not be aimed only at the press since it is intended to be included in the Public Order Ordinance. Representations by journalists on this point was duly conveyed to the Administration. This argument was accepted by the Government as logical and a Committee stage amendment to this effect will be moved by the Chief Secretary.

Another areas where consensus was reached was the deletion of 'maliciously' in subsection 1 and 'malice' in subsection 2. Members felt that there was a conceptual difference between 'maliciously' in subsection 1 and 'malice' in subsection 2. The former means ill will whereas the latter means negligence. The deletion will be effected by a Committee stage amendment.

Sir, the points of contention are:

(*a*) whether there is a need to retain section 6; and

(*b*) if it is thought necessary, whether the onus of the burden of proof regarding knowledge of the false news should continue to rest with the accused.

A diversity of views have been expressed and Members have been unable to reach a consensus.

Sir, let me briefly present some of the arguments put forward by Members who are against the introduction of the new section 27. They feel that the new section 27 represents a departure from the Common Law principle that an accused is presumed innocent until his guilt is proved beyond reasonable doubt. The accused is therefore entitled to remain silent until the Crown has proved all the ingredients which constitute the offence. A number of Members therefore feel that subsection 2 of the new section which effectively shifts the burden of proof regarding knowledge of false news to the accused is unfair and contrary to established principles of Criminal Law. This new section, they argue, constitutes an undue suppression of press freedom. One often repeated argument is that professional ethics within the journalist trade requires journalists to keep confidential information confidential, and under no circumstances should the source of confidential information be identified or revealed. If a journalist follows this internationally accepted principle, then he would be deprived of the only defence available to him should he be charged under the new section. Furthermore, a few Members also believe that in cases where the truth or authenticity of the news is not immediately or readily available, the new section would pose an almost impossible burden on the accused and would unduly

inhibit further investigation by the media which might eventually bring out important and material facts in the interests of the whole community. Sir, the same argument applies to the existing section 6.

None the less, despite the doubts and reservations cited above, other Members are convinced that the Bill, as amended, strikes a fair balance. They regard the publication of false news likely to alarm public opinion or disturb public order as a serious offence which may be distinguished from the ordinary type of criminal offences. Since it is extremely difficult to establish what was in the mind of the person publishing the false news, it is acceptable to require the accused to prove that he had reasonable grounds for believing that the news to which the charge relates was true. Otherwise, the provision would become a dead letter of the law.

It is important that what is laid down in the law can be effectively enforced. The reason is obvious. Furthermore, effective legislative provisions may serve as a deterrent against unscrupulous acts which may result in serious internal disturbances. These Members therefore conclude that on balance the retention of section 6 is both necessary and acceptable.

Section 6 has been on the statute book since 1951, and has never been invoked since 1967, when the environment then was entirely different from what it is today. In fact, one may say that the new section 27 is old wine in a new bottle or in a bottle where it belongs. False news in itself is not an offence under the existing or the new section. An offence would be committed, however, only if the false news is also likely to alarm public opinion or disturb public order. The combination of these two factors would make it extremely unlikely for an offence to be committed under the existing or the new section, particularly under normal circumstances.

Furthermore, some Members note that of the 10 sections under the Control of Publications Consolidation Ordinance, nine will be repealed. Only section 6 will be transferred to the Public Order Ordinance. It is felt that in Hong Kong today, there is justification to retain some residual power over unscrupulous publication, which may result in serious consequences to the public.

Sir, the group reported its findings and recommendations to the Legislative Council in-house meetings on at least three occasions and I believe all Members present at these in-house meetings were reasonably cognizant of the main points at issue. The majority of the Members present at the in-house meetings were in favour of the new section 27 as amended.

Sir, there has been suggestion that the Bills be further deferred to allow more time for consultation. In fact, at the request of the group, the resumed debate has already been deferred twice to allow more time for discussion. A number of Members are satisfied that discussion on the Bills has been adequate.

Sir, the suggestion that by not discriminating against the press and thus widening the ambit of the section to cover any person, represents a change in the legislative intent, is not shared by a number of Members. They are of the view that the legislative intent has always been the same, that is, the prevention of publication of false news likely to alarm public opinion or disturb public order. Widening the ambit of the new section so that its application is not just limited to the press and thus avoiding discrimination is not only logical but an improvement over the original proposal. An individual, Sir, is not subject to the professional ethics of journalists regarding identifying source of information. To suggest that making it an offence for a person to publish false news likely to alarm public opinion or disturb public order is a threat to freedom of expression is stretching reason and logic to a point where it stands on very tenuous grounds. No press, no person in an orderly and democratic society should be permitted to commit acts which are prejudicial to the public good. And that is what the proposed amended new section 27 is all about. One must remember that is always the final guarantor—the independent court. If the case is tried in the High Court, there is, of course, the judge and the jury.

Burden of proof, however, is a separate issue. Members are aware that my colleague Mr. Martin LEE, a Member of my group, will also be moving an amendment to section 27, which puts the burden of proof squarely on the Crown. I look forward to hearing his arguments.

Sir, it is said that politics is the art of compromise. In fact, life itself is a compromise. As a lawyer, I am naturally not happy about shifting the burden of proof to the accused. In this particular case, the arguments are finely balanced. Having considered all the pros and cons, as a legislator, I am inclined to agree with the majority view. After all, nine out of the 10 control provisions will be removed, and keeping only one provision for the time being should not cause any hardship or alarm. The existing provision has been in existence since 1951, and has not caused any problem nor posed any threat at all, nor has it been abused by the Government at any time during the last 36 years. To allow the two Bills to pass into law is a sensible and acceptable political compromise.

Sir, Hong Kong is fortunate to have a responsible and responsive press. In concluding this speech, I would like to pay tribute to their immense contribution to Hong Kong and its people. I am sure my colleagues and I are deeply conscious of the importance of a free press and freedom of speech. No doubt, we are all committed to the preservation and promotion of these important pillars of a free society. Any evidence of infringement of these or other freedoms will certainly be carefully examined by this Council.

MR. CHEN: Sir, before I comment on the Bills, let me stress from the outset that I have no doubt on both the discipline and integrity of our press. In fact, the outstanding enthusiasm and devotion of Hong Kong journalists have

already earned themselves considerable international esteem. Today I shall speak on one or two aspects of the Bills and examine them from a practical point of view.

Press freedom has always been a major concern in our community. Nobody can deny the contribution that a responsible press is capable of making towards keeping the public informed. Nor anyone can ignore the significant influence newspapers may have on their readers. Many people rely on newspapers as their major, if not the only, source of information. The need for legislative provisions to be in place to regulate and prevent irresponsible reporting is therefore obvious.

The new section 27 as proposed in the Public Order (Amendment) Bill 1986 deals specifically with the publication of false news which is likely to alarm the public or to disturb public order. Some arguments have been put forward by those who object to the new section 27 that legislative provisions against the publication of false news are no longer necessary since they have remained dormant throughout recent years. Sir, I would tend to look at this from a different angle. The absence of cases which involve the invocation of legislative provisions against publication of false news could be attributable to two factors. Firstly, it serves to confirm the discipline of our journalists who work conscientiously in the interest of the whole community. And secondly, it demonstrates clearly the effectiveness of such provisions in deterring irresponsible reporting. The lack of prosecution cases should therefore be viewed in a positive light.

Sir, since the publication of the Bill, considerable criticisms have been raised on the wording of the new section 27, in particular in regard to the lack of clear definition for the terms such as ‘malice’, ‘maliciously’ or ‘public opinion’, the discriminatory nature of the new section against the press, as well as on the burden placed on the defendent to prove that he had reasonable grounds to believe that the then false news was true. As a result of the discussions between the Administration and the ad hoc group under the chairmanship of my friend, Mr. Peter C. WONG, a Committee stage amendment will be moved by the Chief Secretary to replace the ambiguous terms cited above, and to extend the new section so that it applies equally to any person who publish false news in any form. In view of this, I shall confine myself to speak on the question of burden of proof.

Sir, I have full faith in the impartiality of our legal system and also the common law principle of ‘presumed innocence until proven guilty’. None the less, it is also my belief that this principle should be flexibly and sensibly applied. I understand there are a number of criminal offences to which this fundamental principle does not apply. For example, section 126 of the Banking Ordinance puts the burden on the defendant to prove that the offence was committed without his consent or connivance and that he had exercised all such diligence to prove its commission. Another is section 26 of the Trade Description Ordinance

which puts the burden on the defendant to prove that the offence was committed as a result of faulty information supplied to him or by some other causes beyond his reasonable control. The rationale for placing the burden of proof on the defence is that in many cases where the ingredients of the offences are largely within the personal knowledge of the accused, it will be almost impossible for the prosecution to establish evidence to prove the guilt. To follow the principle of 'presumed innocence' will, in such cases, nullify the deterrent effect of the law.

I have no hesitation to acknowledge the public's right to know and the crucial role played by the media in reporting the truth. But for an important issue such as publication of false news which may cause public disturbance, a balance has to be struck in order to safeguard the overall public interest. In my view, the balance should be tilted in favour of the maintenance of public confidence. I agree that any hinderance or control on freedom of expression is undesirable, but it is also my belief that there has to be a base line to underscore the professional and social responsibility of any person, irrespective of whether they are involved in newspaper publishing or not, before they spread a piece of news.

In the case of the new section 27, I firmly believe that there are enough justification for a departure from the principle of 'presumed innocence'. In practice, before a person can be charged, the prosecution will have to prove three points of facts, namely that the news was false, that it was actually published, and that it was likely to cause disturbance to public order. Given these ingredients, I think it is fair to place on the defendant the burden of proof that he has reasonable ground for believing the news to be true. As I have said earlier, the public has a right to know. Surely this must include whether the item of news given to them is in fact true or false. And the only person who can give the answer is obviously the defendant. Having said that, I agree that safeguards should also be available to prevent possible abuse of power. In this connection, it is important to note that no prosecution may be instituted without the consent of the Attorney General. Furthermore, we all accept that we have an independent judiciary which could provide a high degree of safeguard.

Sir, with these remarks, I support the motion before Council.

DR. HO: Sir, freedom of speech, like other civic rights, in a democratic society is not without limits and must have regard to the rights of other individuals and, more importantly, to the peace and order of the community. The Public Order (Amendment) Bill would provide a legal framework for this freedom to be properly exercised and is never meant to suppress this freedom.

People not just want to be informed, but to be informed accurately and correctly. False information reported may lead to wrong judgment resulting in personal losses or public commotion or disorder. This is unnecessary and avoidable, if the person who intends to make public the information will make a serious and honest effect to establish its truthfulness before publishing it. Public

interest should always override any other considerations in the publication of information. Accuracy and correctness should never be sacrificed for speed or selfish motives.

People who report or publish responsibly need not worry about the amendment to be proposed by the Chief Secretary at Committee stage. There is a provision for the defence of the accused if he proves that he has reasonable grounds to believe that the news is true. An additional safeguard is that no prosecution will be commenced without the consent of the Attorney General. I am sure that the Attorney General would carefully scrutinise every case before deciding whether to bring it to court.

Finally, Sir, I wish to point out that as the rule of law prevails in Hong Kong and the judiciary is independent, any abuse of the law by the Administration will be dealt with judiciously by the courts. Under the existing system of a common law jurisdiction, the prosecution is required to bring a case to court and to establish the necessary facts and evidence against the accused. But the accused always has the chance to defend himself. It would then be up to the court to decide the case. In other words, the courts would provide an effective safeguard for the public against possible abuses of the law by the Administration.

With these remarks, Sir, I support the motion.

MR. ALLEN LEE: Sir, the Public Order (Amendment) Bill 1986 was gazetted on 19 December 1986. It was presented to this Council on 7 January 1987 by the Chief Secretary. I am not a member of the Legislative Council ad hoc group which studied the above-mentioned Bill. However, I understand that the ad hoc group held four meetings and Mr. Peter C. WONG, the convener of this group, reported to the Legislative Council in-house meetings on four occasions. Eventually, on 13 and 27 February 1987, during the in-house meeting, a majority of Members of this Council supported the passage of the amended version of this Bill.

During the course of scrutinising this Bill, a controversial issue has arisen with regard to false news. Comments in our press have included such remarks as: it is a Bill containing a ‘press gagging’ provision and a Bill under which the ‘Government would be able to exercise wide-spread control over the media’. I would like to speak on points of principle today because it is important for people to understand that press freedom is of significant importance to our community. I do not believe that our Government has any intention of gagging the press nor exercising wide-spread control over our media. This is certainly not the principle nor the spirit of this Bill. What we are talking about is with regard to false news which is likely to alarm public opinion or disturb public order.

Sir, I believe members of the press will agree that there is professional integrity involved in journalism, as in any other profession. To report false news which is likely to alarm public opinion or disturb public order is a serious matter and surely it is not in the interest of our community at large. In order to save time, I wish to make the following three points:

1. the prosecution must establish that it is false news;
2. the false news must be harmful enough that it is likely to cause public alarm or disturb public order; and
3. the prosecution of this offence must have the consent of the Attorney General.

These points, in my view, offer significant protection to members of the press. We want a responsible press in Hong Kong. If I believed that the provisions of this Bill is in any way a means for Government to gag the press or to exercise wide-spread control over the media which would in turn threaten our press freedom, I would fight against it.

In discussing this issue with my colleagues, Mr. Stephen CHEONG and Mr. Martin LEE, we are in agreement that false news which is likely to cause public alarm or disturb public order is not desirable and must be dealt with. The question is on the burden of proof. On balance, I believe that if the degree of false news is severe enough to cause public disturbance, certainly the person who reported this false news must bear the responsibility. It is in this spirit that I am in support of the recommendations made by the ad hoc group in discussing with the Administration.

Sir, there are also those who are concerned about press freedom after 1997. It is understandable, but I believe we should not allow the 1997 syndrome to get into our heads. Frankly, the SAR Government may make new laws or amend existing laws as they deem necessary at that time. The Government of the day must administer and administer effectively in the interest of our people.

Sir, a friend of mine asked me why would the Government wish to pass a Bill which would curb the freedom of the press and the freedom of expression? I asked him what gave him this impression. He replied that the newspapers reported it. I then took out the Bill and asked him to read it. After having read it, I asked him what was wrong? All he said was that he could not believe the powerful influence of the press. He subsequently advised me to vote against the Bill because it would be politically suicide to do otherwise. I thought about my friend's advice for one minute and I said to myself, if I were to do what my friend suggested, perhaps it would be politically desirable, but I would not be able to live with my conscience. I have been with this Council for nearly nine years and have had the honour of serving Hong Kong according to my conscience. I am proud of Hong Kong and its achievements. I have always believed that at the end of the day, the truth will prevail. Therefore, I support the amendment which will be proposed by the Chief Secretary at the Committee stage.

MR. CHAN KAM-CHUEN: Sir, today will be a long hot day and I will make my speech short and to the point. This Bill touches upon two fundamental issues. Point one, the punishment of publication of false news which would likely cause public alarm—I have no quarrels on this issue. But for point two, the shifting of the burden of proof to the defendant—it is very much against British justice, as every defendant is presumed innocent until proven guilty by the prosecution. Also, no defendant shall be compelled to be a witness against himself or herself in any criminal case. It is also very much against universal journalistic ethics for reporters to produce the source of information. Even if they do, the informer may deny what had been said and the poor reporters would be left holding the bag. Freedom of press and speech is one of our main pillars of stability and prosperity. This is made possible, not only by our sophisticated and efficient communication systems, but also by the overworked and bulldog tenacity of our reporters in obtaining information in difficult conditions. How could we let our suspected murderers and drug traffickers sit tight in court and make our prosecutors work hard to prove their guilt whilst the onus is shifted on to our press. On such an important issue which rocks the very foundation of our legal system and the four basic freedoms of human rights, I will vote 'No' to this Bill and I shall ask for a division under Standing Order 36(4). Even if the results will show that I am the minority, I have performed my duties of reflecting public opinion. As Mencius once said: 自反而縮,雖千萬人,吾往矣, that is, if on self-examination I find that I am upright, I shall go forward against thousands and tens of thousands. If I am roundly defeated in this convergence Bill like the attempt of dismantling the jury system, my advice to the press is: 節哀順變, that is, moderate your grief in accordance with the natural change of times and events and bow three times to the freedom of press and speech as a last tribute. [*Applause in the public and press galleries]*

HIS EXCELLENCY THE PRESIDENT: Order, order.

MR. STEPHEN CHEONG: Sir, in speaking against the proposed new section 27 proposed in the Public Order (Amendment) Bill 1986 which deals with publication of false news, allow me to state at the outset that I am not against the spirit of imposing a deterrent against those persons who publish false news which is likely to cause an alarm to public opinion or disturbance to public order. However, I remain unconvinced of the need to put the onus of proof onto the defendent, particularly when no satisfactory answer was forthcoming from the Administration to the two points raised during a meeting of the ad hoc group set up to examine the Bill. With your indulgence, Sir, I would like to share with my colleagues what worries me.

First, I refer hon. Colleagues to the famous Watergate incident that brewed for many months before bringing down the Nixon Administration. At the outset, when the two reporters wrote and published rather unbelievable articles on the extent of involvement in the Watergate affair of officials working within the Nixon Administration, there were strenuous denials by high officials to the

extent that Washington Post was accused of being irresponsible in putting out untrue stories. The young reporters, Messrs. BERNSTEIN and WOODWARD even had to face the threat that the Administration intended to go to court to get at their sources. They certainly had their fair share of harassments. In the end, as we all know, months after their first article, the truth came out and the reporters were proven that whatever that had been reported were not fantasies and that the contents of the articles were not false. The question I asked was: Could the new section 27 of the Public Order Ordinance adversely affect or even impede the work of the two reporters if somehow this section was invoked at the very early stage of their work? Could it be that under the requirement that the defendents would have to prove their own innocence, they would be very hard put to put up any meaningful defence unless they reveal the source of the information? In a case where truthfulness of the news was not yet fully revealed, would an intention by the Government unduly inhibit investigation by the media which could eventually bring out the important facts in the interest of the whole community? Such feelings of unease had not been answered, and I submit that we have to ponder and think it through.

Secondly, allow me to pose a very hypothetical scenario closer to home. Let us imagine, Sir, that our Governor was under so much pressure and frustration over certain important issues that he was depressed to such an extent that he indicated a wish to step down. His aide inadvertently learned of this and became so depressed himself that he accidentally, under the influence of alcohol at a dinner party, briefly touched upon this possibility during a chit-chat to a close friend who happened to be a journalist. The journalist reported this story which probably would have caused great public alarm. Naturally the Governor did not step down. The news so published therefore runs a risk of being false, it caused public alarm and the journalist could be prosecuted. The question is: How could the journalist defend himself without resorting to divulging his source and the circumstances?

Sir, I am not a lawyer nor do I have the capacity to see quickly through the maze of legal jargons and procedures to argue effectively against any legal practitioner on points of law. I simply approach the issue from a commoner’s point of view and that is, Hong Kong must uphold as much as possible our legal system and one of the major principles of our system is that everyone is innocent until proven guilty. Of course, there may be exceptions to this rule and the Administration has brought out some examples. Yet in my view, those examples cited are indeed very exceptional cases. The nature of these exceptional cases and their effect on our community do not seem to have the same degree of seriousness as that before us today. Moreover, the examples cited do not have to be directly incompatible against any internationally accepted practices of the trade. Furthermore, in our many years of experience, there has been no case examples cited that warrants the need for the bending of the internationally accepted rules and practices of the journalist trade. Of course, one can argue that journalists should not be so privileged as to be protected from revealing

their sources of information when public interest warrants them to be responsive to the responsibility any citizen should bear in the society. Yet we have to be pragmatic enough to recognise that there exists certain ethics and practices within the journalist trade and that journalists worldwide by and large adhere stringently to this practice. It would at best be unreasonable and at worst wrong for Hong Kong to require our journalists to break such international code of practice without careful consideration especially when we have every desire to try to maintain Hong Kong as an international centre.

Sir, in voting nay to the Bill, I humbly recognise that my analysis on the subject matter has been approached from slightly different angles from those taken by the majority of my hon. Colleagues. In a place like Hong Kong, though we may not have the form of western democracy, yet our actions and policies have been guided by the spirit of democracy, differing opinions expressed openly contributes to healthy debate as well as a means to stimulate progress. Unfortunately, events that happened in the last few days had seemed to me to have too much of an air of political brinkmanship. Emotions, in my view, has been unnecessarily whipped up to so high a level that one may be liable to fall into a trap of losing one's sense of balance. Pressure campaigns were mounted designed to lobby or even force councillors into a corner so as to stop this Bill dead. The net effect of all these high pressure tactics really had not been conducive to cool-headed and objective analysis of the subject matter. For example, the Administration in striking out references to local papers in the amended version of the Bill, is now accused of purposely widening the scope of coverage from the original gazetted version so as to gag the freedom of speech in Hong Kong. This is a gross misunderstanding of facts. The fact of the matter was that such references were only struck out after due careful consideration were given to the submissions by the Hong Kong Journalists Association. The intention of the Bill in the amended version remains unchanged from its original purpose without the amendment. The interpretation so far put out lately is, in my view, very unfortunate and rather far-fetched. In pointing this fact out, let me hasten to appeal that there should be no misunderstanding that it is an attempt to pin anything on to the responsible Hong Kong Journalists Association. I simply try to show that the Administration do not necessarily harbour any evil intentions. No one, not even our severest critics should forever approach any issue with the assumption that the Government always have an evil twist of conspiracy. If we are to continue to survive in future and if we do treasure what we have, then we must not start to approach any issue with unbending suspicion in our minds. If we fall into this trap, then we are more likely to be doomed, because suspicion tends to breed insecurity which in turn breeds irrationality and overreactions which in the end will create more problems than solving them.

Sir, it is also a fact that this Bill had been discussed extensively in ad hoc group meetings as well as in four Legislative Council in-house meetings and that the majority of our colleagues indicated support for the Bill. At this moment in time, whether one personally like it or not, in the true spirit of practising

democracy, if one intends to remain as responsible team players, one must learn to be mature enough to respect and accept the decision of the majority. Accordingly, despite my own reservations to the new section 27, I wish to declare that I am not supportive of the request for the deferrment of the Second Reading, nor will I be supportive of the hon. Martin LEE's proposed amendment in the Committee stage.

Nevertheless, it must be accepted as another fact that the publishing industry and those associated with it plus some concern groups had made some eleventh hour representations to my unofficial colleagues as well as the Administration. In my view, some of the points raised will need to be addressed. Their concern over the adverse effects this section 27 may have on their trade are real. We need to find out in more depth the likely practical effect the Bill may have on the publishing industry. Would the Bill have a likely adverse psychological burden on those engaged in this industry? If so, how could these be addressed, minimised or clarified? Would this Bill adversely affect the day-to-day operations of the industry so much so that the publishing industry loses the occasional role of playing some sort of a public watchdog? If so, in what way and how can it be improved whilst accepting the principle that there needs to be a deterrent established against false reporting? What are the existing inherent weaknesses of our publishing industry? Can these weaknesses be improved may I ask? If so, what is the industry doing about improving such weaknesses? After all, better-paid and better-trained reporters and editors must be beneficial in every respect to the future development of the industry.

In short, Sir, it seems to me that all interested groups in Hong Kong in particular the Administration and the publishing industry do need to spend some time in future thinking deeper and wider on the subject matter. Accordingly, Sir, if the Bill were to be voted on positively later this afternoon, I strongly urge that the Administration commit to a thorough review of all provisions of the Public Order Ordinance, in particular section 27, within a period of, say, three years. I also urge that the publishing industry should not be totally negative after this debate. This could well be the catalyst needed that could set into motion the building of a foundation for closer dialogue and co-operation amongst different components of the industry. After all, given that the Hong Kong Administration, in my view, has been respectful and responsive to logic and rationale, it will be highly unlikely, for such an Administration to turn a blind eye to well-reasoned analysis and/or suggestions put forward through the combined efforts of all concerned within the industry. Furthermore, through this exercise, if some of the weaknesses of the industry can be identified and improved upon, it will certainly help to lay a more solid foundation for the future growth of this important industry of ours.

MR. CHEUNG (in Cantonese): Sir, for a long time Hong Kong has been known as a territory where opinions of different stripes and tastes are allowed to flow freely. I am sure that we all agree that thanks to the existence of a free press in

actual practice, Hong Kong is now developing itself into an information-oriented society. Looking at the prospects of development into the 21st century, I am sure that there should be more of the same development in the same direction if the territory is to compete with its neighbours on trade, industry, finance and even entertainment as a way of enriching the life of the general public.

Therefore maintaining a free press should be regarded as the cornerstone of our Government's policy in the area of media communication. For without such a safeguard for freedom of publication, the variety of information and opinions as reflected in the mass media which have helped shape the colourful life of Hong Kong may not be sustained.

However, it should be pointed out that the existence of an atmosphere of free expression was the result of hard work on the part of our journalists, who are conscious of the value of free speech and have worked conscientiously on the whole to refrain from abusing the freedom. On the other hand, press laws that have been in the statute books for the last three decades require a close look in today's context. There is therefore a strong case updating the law without jeopardising that freedom enjoyed by our journalists.

All of us who wish to maintain a free spirit for the community have spoken in general support of the proposed legislation for its purpose. However, doubts have been raised as regards the adequacy of the proposed measures in achieving the goal of maintaining an atmosphere of free expression. It seems to me that some of these doubts are well-founded.

The opposition to the proposed amendment to the Public Order Ordinance making it an offence for the publication of 'false news that is likely to alarm the public' is considerable, judging by the reactions over the past few days. I am glad that the Government has taken steps to propose reducing the jail sentence and to refine the provision to reduce the chances of abuse on the part of the prosecution.

No amount of verbal assurances other than concrete measures enshrined in the law may allay the fears of those in the trade of publication. And no such important law, even if passed by this Council, may be effective for the fulfilment of its original purpose unless it is so clearly drafted as to leave very little room for abuse or misinterpretation.

The effect of the current changes to the press laws will be seen in the months ahead. All sides must therefore work hard to give the latest legislative changes a chance before contemplating further necessary measures.

In supporting the general spirit of the proposed legislation, I therefore propose that there should be safeguards against undue pressure on journalistic practice. In supporting the proposed changes, I urge the Administration to consider adding the following preventive safeguards against undue pressure:

(1) the trial of 'publishing false news' be conducted in front of a jury; and
(2) the existing 'burden of proof' on the defence be reviewed in the light of experience after this law has been enacted for a period of, say, one or two years, so as to ensure it does not present hardship or unjust pressure on journalists to act against their professional ethics.

Sir, I also take this opportunity to express my strong belief that the significant gesture to liberate the press from the anachronistic legal measures should not mean a licence to print what one likes, irrespective of the common good of the community and the dignity of those under criticism. In Hong Kong, it is true that press enterprises are practically all privately owned but such an arrangement should not disguise the fact that the press or the mass media as a whole constitute an important part of the machinery for the advancement of the interests of the community. Where the audacity to speak with a high degree of decency will ensure a healthy state of mass communication business, abuses— notably when it becomes a phenomenon—will in due course engender a public sentiment that may cry for a re-instituting of the constraints of the kind which we will soon remove and which no one, least of all our friends in the journalistic field, would like to see.

Sir, with these remarks, I support the motion.

MISS TAM (in Cantonese): Today, I had lunch with some friends of mine. The moment I sat down, they asked me, 'What is the Hong Kong Government doing now? Why do people outside say that you are jointly working with the Chinese Government to gag press freedom in Hong Kong through legislative means?'. I asked them why they had such an impression. They said in the past two weeks, they read about reports of the Government enacting legislation to control, or even to gag, press freedom whenever they opened a newspaper. The reports said that if Hong Kong had a totalitarian government after 1997, it could make use of the Public Order (Amendment) Bill 1986 to exert pressure on the press. I then said it was not the whole story, it was only a small part of the story. But I do not know why up to now no one has disclosed the large part of the story in detail.

Today we are not here only to amend the Public Order (Amendment) Bill 1986, but are here also to repeal a section of the Control of Publications Consolidation (Amendment) Ordinance enacted in 1951 through the Control of Publications Consolidation (Amendment) Bill 1986. Why do we have to do so? The reason is very simple. The control over press freedom is harsh and stringent in the 1951 Ordinance which not only prohibits the newspapers to publish anything that may induce any person to commit an offence, to join a triad society or a certain political organisation which may be prejudicial to the public order of Hong Kong, but may also immediately suspend the publication a newspaper on grounds of maintenance of public order and public safety, health and morals. Moreover, the 1951 Ordinance states that the police are empowered, during the investigation process, to enter the newspaper premises to

seize and confiscate printing presses; registration of newspapers is also required; the operator is liable to punishment if the particulars furnished during registration are incomplete.

If the Hong Kong Government really intends to pave the way for a totalitarian government, I certainly do not believe I can stand here today talking about the deletion of those sections in the Control of Publications Consolidation Ordinance 1951. This is a very important part of the story. Why do I have to bring this up? Because I believe the present Government is an open government. Two years ago, when we moved into this new Legislative Council Building, we found next to our Council Chamber a room specially designed for the press, and such facility was not provided in the past. But it was there before we had elected Members as colleagues so that once they began their work they could use this room and also use it after every meeting to disseminate information. Why do we have to do that? Because we want to be open.

Let me quote another example but it might only represent my personal view. The Transport Advisory Committee never released information in the past. But now, after a meeting, every member can criticise or air his views on government policy in public. This is another example of open government.

The third example is that following this debate on the Public Order (Amendment) Bill, we shall have another debate on whether or not we should have a Commissioner for Administration. Why can't we see that if the debate produces the desired result and we can have a Commissioner for Administration in Hong Kong, it will be an example of open government?

Yet another example is that the Government has promised to publish a green paper on changes in our system of government in May this year. The Government will consult the public afterward. Anyhow, our direction is towards an open government. What we have to debate may be the pace or the form of open government, but what we never need to debate is the direction of open government.

Hence I believe that this time we are going to repeal a harsh and draconian Ordinance of 1951 on the one hand, and to reserve a base line in the interests of the public on the other hand. For during this transition period, the Government will have to face and handle a lot of problems. If we look at things positively, we can see that both the Land Commission and the Joint Liaison Group have done a very good job. We learn time and again from newspapers how the Government has never slackened its pace or relaxed its efforts in fields of education, public facilities, basic infrastracture, in meeting our needs and providing us with services. Is this not a proof that we should have confidence in the future of Hong Kong? Why do we need a base line in respect of press freedom? I think the reason is simple. In my opinion, the Hong Kong Government will have a lot of things to do in the next 10 years and there are many things the Government will have to do with an open mind. It is just like a person holding six or seven balls in his hands, throwing them up one by one and catching them, and then throwing

and catching them again. With each new development, there will be new meetings forging things ahead. Under such circumstances, I do not think we should throw any ball too far away for fear that all other balls may fall to the ground through the loss of rhythm.

Some people may ask: you can say that the current judicial system is sound and that the prosecution system will not be queried or doubted by the people. But what about the future? My view is that if we are really to implement the provision in the Joint Declaration that the legislature shall be constituted by elections, how can you say that our present legislature with both appointed and elected Members is more open, more impartial and safeguards an independent judicial system in a better way than a legislature formed by elections? How can you say that our present legislature is more effective in protecting our prosecution system against pollution by personal pressure or pressure of those in power? Why can't you believe that a totally elected legislature will be more effective in protecting the freedoms we treasure, like press freedom, like equality before the law and so on.

On the topic of equality before the law, I know the journalists are worried about one point, and that is: if a person contravenes section 27 of the Public Order (Amendment) Bill and is subsequently prosecuted, he will have to disclose his informant and his source of information. I can fully appreciate their concern here. Sometimes when I talk to journalists, I ask them not to quote me as the source of information, but then they do; and sometimes when I ask them to quote me as the source, they misquote me. However, I fully understand their editing right. They have the right to decide, from their professional viewpoint, what is worth reporting.

Before the court everyone is equal. If a witness has some information and if the judge feels it necessary to know what it is for the cause of justice, no matter who the witness is, he will have to help the court to find out the truth.

Lawyers and doctors do have some prerogatives in that after a client has divulged what he wants to say about the case to his lawyer, the latter has the right to ask that he be not required to disclose what he has been told. But then he may be asked to explain why in the chambers and the decision to accept his request or not will rest with the judge. For it is also the responsibility of a lawyer to help the court to find out the truth.

So, if it is unfortunate that a journalist should become a witness or a defendant, he-would have to bear the same responsibility towards the court. Under the principle of equality before the law, the responsibility of a journalist and a lawyer is entirely the same.

There are others who ask: doesn't the Hong Kong Government have anything better to do? Why does it have to introduce a law on press freedom causing so much controversy? Perhaps I had better mention something that happened in the past.

During 1984 to 1985, Mr. SHUM Choi-sang was the Chairman of the Hong Kong Newspaper Society and I was his legal advisor (I hope I shall continue to be his legal adviser in future). He told me the Government consulted him as to whether the Control of Publications Consolidation Ordinance should be repealed and he asked me for my opinion. In response, I wrote several articles on this Ordinance and I also attended their annual general meeting to discuss the matter with them.

When we talked about section 6 of the 1951 Ordinance—now section 27 of the Public Order (Amendment) Bill—I said, "I understand that under the old legislation, if a piece of news reported is false, then the person who reports it will be presumed to be malicious. I think this is not right." I said to members of the Newspaper Society, "As your legal advisor, I think you should oppose this piece of legislation to the end. However, as a reader, I think it is my basic right to receive news that is true and your basic responsibility to report news that is true. If this piece of legislation really goes to the legislature to be reconsidered, you must understand that the Government will have to make a final balance." My stand has always been clear-cut. I have done my best as his legal advisor. As a reader, however, I want to read news reports that are accurate and impartial. At home, in the morning, I read 'Sing Tao Jih Pao'; on Sunday I read 'Sunday Morning Post'. In my office, I subscribe to seven to eight newspapers of stands right, left and central. I do not wish to elaborate further.

There is still one question we have not solved, and different people have different views about this question. Under the present section 27 of the Public Order (Amendment) Bill, should the burden of proof be placed entirely on the defendant or on the prosecution? But in fact, I can say simply and for sure that in a criminal case, it is always the prosecution that shoulders the burden of proof and the standard to be used is 'beyond reasonable doubt'. Morever, when we look at the present section 27, we can see that the defendant may prove himself innocent on grounds of his believing that the news he has obtained is true. So his standard regarding proof is on the balance of probabilities alone. Even if he cannot clear his guilt on the balance of probabilities, it lies with the prosecution to prove his guilt 'beyond reasonable doubt'. Therefore, the judge will still have to consider in detail all evidence tendered by the prosecution. Prima facie evidence alone is not enough, there must be proof beyond reasonable doubt that the defendant is guilty.

So today what we have to decide on is, under an open government, a law which we have read out here which champions press freedom but reserves a base line that protects public order.

One of the reasons why Hong Kong is successful is that when we seek improvements, we never plunge right in, we introduce such changes step by step.

I believe our Government has the intention, the faith and the ability to continue to introduce laws that grant Hong Kong press freedom, apart from debating this Bill today. So I support today's Second Reading without reservation and I shall support the amendments Mr. FORD is going to propose.

I believe that today is just a beginning. No matter what I will become in future, a poor councillor or a rich barrister—for I can start earning money if I choose not to be a councillor—I still hope to hear from the Government as a member of the public or someone else, that it will maintain its open policy and we shall continue the work we started today, on 11 March 1987.

4.53 pm

HIS EXCELLENCY THE PRESIDENT: I think at this point Members might like a short break.

5.16 pm

HIS EXCELLENCY THE PRESIDENT: The debate will continue.

MR. CHAN Ying-lun (in Cantonese): Sir, as the name implies, the Public Order (Amendment) Bill is to protect public order. My view is that section 27, which aims at preventing publication of false news, is necessary.

The general public relies on the mass media to know news concerning their interest. And there was a piece of news related to my constituency Shau Kei Wan Hillside Area. That piece of news had aroused the worry of my constituent members. It was about the clearance of squatters in Shau Kei Wan. After much deliberation we had already achieved a proper arrangement and the residents knew about the progress on the matter. However, all of a sudden, there was news on a Sunday that the Government did not have sufficient units to accommodate the squatters and this arouse great worry and fear among the local residents.

Through such an incident, representatives of the residents realised that false news, or incorrect news, is detrimental to social interest. They said they would not trust completely the mass media any more. I am sure that responsible members of the press will feel that this is very regrettable.

Laws have to be effectively implemented in order to safeguard the interests of the public. And the Government will be supported in exercising this law.

Sir, I support the motion.

MR. JACKIE CHAN (in Cantonese): Sir, according to the Chief Secretary's proposed amendment which removes the reference to local newspapers, the Public Order (Amendment) Bill 1986 provides that it is a criminal offence for any person to publish false news likely to alarm public opinion or disturb public order. The legislative intent of the Bill as amended is totally different from that of the Bill which was gazetted.

The Bill which was originally intended to control the press has now become one which adversely affects the freedom of speech enjoyed by all members of the public. Should the Bill be passed, it is likely that any speech, conversation or publication with a limited circulation may contravene the law. Such a significant change was only made known to the public by a government official in a meet-the-press session on 5 March. Moreover, the substantially amended Bill was not gazetted, thus depriving the public of the chance to have a full understanding of the proposed amendments. Neither did the Government endeavour to widely consult the public on the Bill as amended.

I cannot agree to the Bill as introduced by the Government because a piece of news which was proved to be false in court may not necessarily be false. If the Government wilfully hides and denies the facts, the truth reported by the press will still be considered as false news. For instance, when the press reported that a certain bank was financially unsound, the Government accused the press of being irresponsible on the one hand and privately salvaged the bank on the other.

Under such circumstances, there is no way for the public to know the truth. If it is the Government's intention to hide the facts, innocent journalists who publish the truth will, under the amended legislation, be prosecuted and convicted by the court for committing a criminal offence of publishing false news.

I hope that the Government will collect more views from members of the public and reconsider whether there is a need to rush through the Bill. Disregarding public opinion and bending on having its own way is not what a responsible government should do. Internationally, Hong Kong has been known as a liberal society where freedom of the press and of speech exists. Should the Government insist on passing the Bill, it will only do more harm than good to the territory.

In view of the above, I have reservations on the Second Reading of the Public Order (Amendment) Bill 1986.

MR. CHEONG-LEEN: Sir, it is with much regret that I rise to express my disagreement with the amendment which will be moved by the Chief Secretary during the Committee stage, under the heading 'False News'.

This amended section 27 states that, any person who publishes false news which is likely to cause alarm to the public, or a section thereof, or disturb public order, shall be guilty of an offence. Originally, section 27 as gazetted, was limited to false news published in any local newspaper. The amendment now casts the net wider to include any person who publishes, not only in a local newspaper but also in any material that is typewritten, or coming off a personal computer, or stencilled by any individual in Hong Kong, and meant for public consumption.

Because of the significant change in the scope of the amended clause, I would have thought the least the Government should have done was to postpone the Second Reading of the Bill by a fortnight or more, in order to further assess public reaction.

However, the fundamental issue is whether there should be section 27 at all, be it in its gazetted form or in its amended form. Any person with some intelligence who is not a lawyer may want to ask the following questions. How will the Government define false news? And how will false news be separated from propaganda? And what are the parameters of public alarm and public disorder? What is meant by the phrase 'likely to cause alarm'? And how could free speech and expression be preserved in Hong Kong if section 27, as amended, were passed? To what extent will the Attorney General have to exercise editorial judgment? Why is the false news offence on the statute books of only two common law jurisdictions, namely, Singapore and Canada. And in the case of Canada, the burden of proof is not imposed on the defendant, as in the case of section 27. In other words, only Singapore and Hong Kong will have the same type of false news legislation in the world of common law jurisdiction. And the political situation in Hong Kong is different from both Singapore and Canada.

Although the equivalent of a false news offence had been part of the legislation for many years, and no one recollects when it was last invoked, if at all; the question is whether it is worthwhile retaining the false news offence as a deterrent, or whether we should now eliminate it altogether, at the time when freedom of speech and expression is such a highly sensitive issue, as we move through the transition period.

By retaining the false news offence clause at this particular time, are we causing further genuinely felt anxiety and are we in danger of, ever so imperceptibly, sliding down the slippery slope of heavy-handed control of the press and of free expression? On balance, I am of the view that we should do away with section 27, as revised, especially in this day and age of instant communication, when the perpetrator of false news can be swiftly disavowed, and lose credibility as well.

Sir, as I am not in favour of section 27, I will vote against it in either the amended form proposed by Mr. Martin LEE, or in the amended version to be moved by the Chief Secretary, at the Committee stage.

DR. CHIU: Sir, it is most unfortunate that the real intentions, sincerity and goodwill, to amend an outdated Ordinance by removing the suppression provisions from the Control of Publications Consolidation Ordinance, and transferring the control provisions regarding publication of false news to the Public Order Ordinance, have been to a large extent, misunderstood. To my understanding, the Control of Publications Consolidation Ordinance was enacted some 36 years ago when there was considerable, concern, locally, about the publication of seditious or subversive material in Hong Kong.

But times have changed. Some legislation that was necessary more than three decades ago, may not be applicable in today's society. The Government, having regard to the present day social and political situation, feels that it is time to repeal certain sections of the Ordinance regarding the control and suppression of newspaper-reporting, and to update some provisions of our existing Ordinance concerning the registration of newspapers. In the process of so doing, the need to retain legislative provisions to safeguard public interest from irresponsible reporting of false news, is also considered as imperative.

Today, the Public Order (Amendment) Bill has turned into a controversial issue and has received extensive and prominent coverage in the media. The concerned groups and individuals have expressed worry that the enactment of this Bill will mean an infringement on the freedom of expression in general, and the freedom of the press in particular. Their worries and anxieties are understandable and I share their feelings to the utmost.

As a Hong Kong resident, I cannot agree with the journalists and publishers more on the point that press freedom is the fundamental and essential element in this society.

Sir, while I recognise the importance of the freedom of the press, I cannot forget that to obtain accurate information and to report responsibly is also a basic expectation of the individual. As a legislator, my prerogative is to strike a balance between them if conflict arises.

Some people have mentioned about common law principles and have different opinions on some technical areas of the Bill, such as: switching the burden of proof over the publication of false news from the defence to the prosecution; the definition of the term publish and so forth. I understand that some of my learned colleagues who speak from the legal perspective will probably touch upon the technical questions concerned. I therefore, do not intend to go into any further detail at this meeting, but before closing, I would like to emphasise three points.

Firstly, all legislatures should be fair to all. Secondly, there is a need to retain legislative provisions to safeguard public interest from irresponsible reporting of false news. And thirdly, review exercises should be undertaken from time to time in the light of actual experience gained from the enactment of the proposed amendments.

With these remarks, Sir, I support the motion.

MR. CHUNG (in Cantonese): Sir, if the provisions on 'false news' as proposed in the Public Order (Amendment) Bill are effective in strengthening confidence in the society against 'malicious rumours' during the transitional period and are helpful in removing the unfavourable factors that may hamper the stability and economic prosperity of Hong Kong, I feel that this Bill should be seen as a new approach in line with the rule of law to safeguard the interest of the community.

I think we can ease our minds with the enactment of the Bill for the following reasons:

(1) it is stated clearly in the Bill that no legal action can be instituted without the consent of the Attorney General. We have no reason to believe that the Attorney General would abuse his power; and

(2) Hong Kong has an independent and reliable judicial system which is respected by the public. The judiciary is independent of government intervention. Even if the Attorney General has decided to take legal action against a person involved in the publication of 'false news', the defendant is entitled to a fair trial. I firmly believe that the court will follow the spirit of common law to avoid 'overkilling' and to provide the defendant with the benefit of a less exacting test of proof on the balance of probabilities before arriving at a verdict.

I do not believe that the Government would unreasonably propose or enact any legislation to restrict or suppress press freedom or to gag the freedom of speech since this would be a regressive and degenerative step in political and social development. However, as we know, after the publication of the Public Order (Amendment) Bill, certain sectors of our society feel that the Bill amounts to an infringement on press freedom and the freedom of speech.

In Hong Kong, press freedom is part of our social rights based on facts, justice and the rule of law. However, press freedom certainly does not mean unlimited freedom. It has its own responsibilities and obligations. In the United Kingdom, there are the Libel Act and the penal codes against incitation of treachery to impose restraints on freedom of news reporting. Hong Kong has been affected repeatedly by spate of rumours in the last five years. The Hong Kong dollar plunged drastically and the stock market became extremely volatile whenever there was a 'scoop'. Public interest was gravely hampered. In view of this, it is understandable that the Public Order (Amendment) Bill is introduced during the transitional period to deal with publication of 'false news'. The problem which remains is therefore how to achieve a 'co-existence' of this legislation together with press freedom which forms part of Hong Kong's social system.

I believe the mass media, above all others, should be more concerned about the authenticity of news and their responsibility towards the verification of news because they have to bear the consequences associated with the truth, the justice and the legal implications of a piece of news. I also believe that everyone of us, no matter what profession we are in, would like to see that the black sheep of the family being dealt with seriously. Public concern and different views on the Bill simply demonstrate our sense of responsibility and the importance that we attach to the rule of law in Hong Kong. I sincerely hope that the Government would give due attention to public opinion in this respect. This is the first point I would like to emphasise today.

The second point I wish to make concerns the proposed amendments to the new section of the Public Order (Amendment) Bill, especially as regards the widening of its scope to make it an offence for any person to publish 'false news'. I think more time and effort should be given to examine carefully the issues involved.

Thirdly, it is better to postpone the Bill than to steamroll its Second and Third Readings at this stage. I strongly believe that postponement, at least, would not adversely affect the spirit and principle of this Bill and therefore worth considering.

Sir, on the basis of the three factors mentioned above and in the hope that we could achieve a 'co-existence' between the upholding of public order and the protection of press freedom, I propose that Second Reading of the Public Order (Amendment) Bill be postponed. Accordingly, I will abstain from voting, if there is to be one, when the Chief Secretary moves the Second Reading of the Bill and the related Committee stage amendments.

Thank you.

MR. HO (in Cantonese); Sir, before speaking, I wish to declare an interest in the matter in view of my position as publisher and chief editor of Tin Tin Daily News, a vernacular newspaper of some standing locally.

Having said this, I wish to say that I am in favour of having a provision which restricts irresponsible reporting of false news although I am conscious of the fact that the media is generally against having such a provision in our statute books in that it would, in their view, restrict the freedom of the press.

As a responsible publisher and editor, I personally feel, as a matter of principle, that the public should be protected from irresponsible reporting of false news which could undermine the confidence, internal stability of Hong Kong and the public's right to know about what is happening both here and abroad. It should not be too difficult a task for the media to check and verify the truthfulness or otherwise of an item of news. It is their responsibility to do so as they have a paramount duty towards the public rather than a desire to arouse public interest and to boost the marketability of their publications without due regard to the social impact of their conduct.

The media should not fear the enactment of such a measure as a new provision will, I understand, be proposed at Committee stage to provide a defence for the person charged to prove that he had reasonable grounds for believing that the news to which the charge relates was true. Moreover, no prosecution will be commenced without the consent of the Attorney General.

Sir, I recall that at a meeting of the ad hoc group to study the Bill, Mr. Stephen CHEONG made an assumption that if the 'Watergate Incident' occurred at a time when the Public Order Bill which is the subject of our discussion today was already passed, would the press refrain from reporting it? Would the public

be deprived of a full understanding of the truth? And would it be possible that the truth of the incident could never come to light because of the existence of the Bill? I am fairly interested in this matter. After checking relevant information on hand and pondering over it again and again, I may tell you that the answer to the above questions is in the negative.

Sir, please let me breifly relate the development of the 'Watergate Incident' as follows: Two years and two months elapsed between the time when two reporters discovered that someone had sneaked into the Watergate Building to set up bugging devices and the time when President NIXON tendered his resignation. During the first year after the discovery, the two reporters published many reports after investigation but such reports had not caused any social unrest or disturbance. They had, however, aroused public concern. Later, more and more information about the Watergate Incident was revealed and the public became more concerned, thus creating a social impact.

Sir, I think the two reporters would not have been prosecuted under the provisions of the proposed Public Order Bill both at the start and at the end of the incident. Later, although the public responded strongly, their reports were based on results of substantial investigations and proven information which would have relieved them of any suspicion of publishing false news.

Sir, I must stress that a conscientious and responsible journalist will be absolutely free from the restraints imposed by the Public Order Ordinance.

Sir, I am aware that at times, difficulties may arise as a result of the media's professional ethics of not disclosing its source of information without prior consent but surely, if this happens, it seems to me that the interest of the public should prevail. As a newspaper man myself, I fully appreciate that a conflict of interests may arise which could place myself in an invidious position. But to be fair, I sincerely believe that should one finds oneself in such a situation, the interest of the public should always come first. It is for this reason that I support the proposed measure to restrict the reporting of false news.

I have no wish to be drawn into the question as to where the burden of proof of the mental element should lie and would like to close my short speech by asking for an assurance that the new section should not be used for trivial cases as the section clearly permits these cases to be tried summarily and as such, cannot be of any great moment.

Sir, before ending my speech, I wish to stress once again that in view of the strong social impact of newspapers, at least some minimum protection should be provided for the general public. Amendments to the Public Order Bill are aimed at protecting the public from false news and irresponsible reporting. On balance, public interest as a whole should surmount certain inconvenience to journalists when they carry out their duties. Being a responsible publisher, I support the Bill.

Sir, with these words and subject to the Committee stage amendments to be moved by the Chief Secretary, I support the motion before Council.

MR. HUI (in Cantonese): Sir, I recall that the Government has indicated in the past that in formulating proposed legislation affecting a certain profession, the professional bodies concerned would be consulted beforehand. Basically, this is an enlightened and responsible approach and the practice should be continued.

However, from the way in which the Public Order (Amendment) Bill 1986 is being dealt with by the Government, it is apparent that the media have not been treated fairly on this occasion. At the very least, the Bill should not have been submitted hurriedly to this Council for Second Reading before clear definitions have been given on certain controversial and obscure expressions.

To make matters worse, the Secretary for Administrative Service and Information announced only on last Thursday (5 March) that the Chief Secretary would propose an amendment to clause 27 of the Bill, which would be presented at the Second Reading of the Bill today. But how can the media and the public be able to express their views fully on the amendment in less than a week's time? Yet, as reflectors of public opinions, should Members of this Council not feel compelled to speak out on what they think is right?

Furthermore, the amendment Bill provides that any person who publishes false news shall be guilty of an offence. This includes not only the media as was originally intended, but applies also to each and every member of the public. Hence, it could well become a means to control public expression. More importantly, the words 'maliciously to publish' in the original section are to be left out. In other words, if the news is proved to be false, then the Attorney General will be able to bring a prosecution without having to prove that there is a malicious intent.

It would appear that the Government, in proposing the Bill, probably intends to protect the public from being affected by false news. But repeated efforts by the Government to explain the meaning of the Bill has failed to put the mind of the press and the public at ease. This reflects that there may actually be something amiss in the content and wording of some of its clauses. Therefore, I think the passage of the Bill should be deferred to allow ample time for both the media and the public to express their views. Only then should it be presented to this Council.

Moreover, as stated by the Government, the Ordinance has been invoked only once since it came into force. Neither have there been any indications that the publication of false news will become more prevalent. This being so, I could not see why the Government has seen fit to rush through the Bill. In my opinion, if there is any need for the Government to enact or amend legislation of a controversial nature in the public interest at this sensitive time, the public should be fully consulted beforehand and their views must be given due consideration so as to reduce conflicts between the Government and the public.

There is a famous Chinese saying: 'Virtue alone is not sufficient for the exercise of government; laws alone cannot carry themselves into practice'. I call upon the Government to think twice before taking any action.

Should the Government persist in going its own way and refuse to listen to the voice of the public, I shall have no alternatives but to show my disappointment by voting against the motion.

DR. LAM (in Cantonese): Sir, the objective of amending any Ordinance is to protect the interests of the general public. Although Members of this Council may have different demands for freedoms of speech and the press, I believe the Public Order (Amendment) Bill will affect freedoms of speech and the press in Hong Kong. It will deprive the citizens of the right to know things and will be a blow to their confidence. Just now Mr. HUI asked a question and that was: 'Why is it that the Government has to hurry the process of passing the Bill?'. I think one of the main reasons is that the Government is doing this deliberately in order not to give our Governor-designate a chance to demonstrate his abilities. I think all of us, being Legislative Councillors from the electoral college, will agree that the Government should extensively consult the public on the Bill through district boards, and amend the Bill accordingly. In fact, the Bar Association and the Law Society, which know best about legal affairs, have also suggested that the passing of the Bill be postponed so as to facilitate wider consultation.

Sir, I object to the passing of the Bill. Owing to changes in time and circumstances, things that did not happen in the past may happen in the future. As a legislator, I believe that my hon. Colleagues will taken all possibilities into consideration. If the proposed amendment to the Bill is passed during this afternoon session, and if this leads to suppression of public opinion or freedom of the press in future, then the responsibility will have to be borne by the Government and all the Legislative Councillors who vote for the Bill today. I very much hope that 11 March 1987 will not be a day signifying retrogression of freedom and democracy in the history of Hong Kong and the Legislative Council.

MR. LAI: Sir, as early as last August and in the last policy debate I called for the repeal of the Control of Publications Consolidation Ordinance and replace it with a simple registration ordinance because of a number of restrictive and oppressive provisions in the Ordinance. I was delighted, naturally, to hear from the Government that a number of amendments would be introduced. But to my dismay and disbelief, other than deleting a number of outdated sections, the exercise amounted to no more than re-locating the most objectionable element in the Ordinance to another Ordinance. It is like telling the waiter in a restaurant that the dish he has placed on a round plate is not what he wants, only to find two minutes later he brings in the same dish again, this time on an oval plate. Section 27 of the Public Order (Amendment) Bill retains the same

provision stipulated in section 6 of the Control of Publications Consolidation Ordinance, that is 'The publisher of a piece of false news that is likely to alarm the public or disturb public order will be required to satisfy the court that he has taken reasonable care to verify the source of his information on which he bases his story.' It is meaningless just to switch this provision to another Ordinance under another name. The intention of putting the press under the threat of prosecution for publishing something that may be a scoop has not been changed. The effect of this provision is that the publisher will be subject to a constant threat of prosecution for publishing false news if he publicises information that is considered likely to cause public alarm, revealed by a reliable source or someone who prefers to remain anonymous and it is impossible to substantiate its truthfulness without identifying his source. If challenged by the authorities, a journalist must either reveal the identity of his source, who may or may not be willing to testify for him, or bear the consequences of being deemed to have published false news under section 27 of the Public Order (Amendment) Bill.

The present freedom enjoyed by the press is possible because of the non-aggressive enforcement of section 6 of the Control of Publications Consolidation Ordinance. This may be seriously curtailed if Government chooses to exercise this section more fervently. Some people argue that past experience indicates that the Government has been judicious in invoking this law and that since this legislation has rarely been used against the journalist, there is really no case for its removal from the statute book. I wish to counter that past judiciousness of the persons who were responsible for bringing charges against someone who might have violated the law is no guarantee that the full power of this law will not be used to interfere with the freedom of the press. Precisely because we want to prevent the inconsistency of judgment of individuals, we lay down legislation. Therefore, we must put in place a piece of legislation that leaves as little room for interpretation and abuse as possible. Section 27 of the Public Order (Amendment) Bill as it stands now certainly is too loose to inspire confidence that freedom of press is safeguarded adequately.

Sir, there has been a lot of publicity recently on this issue. The purge in China does not help to ease the anxiety of certain people over the freedom that we, as citizens of Hong Kong, will be able to enjoy after 1997. Of course, I understand that we are considering a piece of legislation for Hong Kong here and now and the likelihood that any law, good or bad, will be inherited by the SAR Government after 1997 makes it imperative that we must have an equitable law to regulate our press now and beyond.

Since Council Members have not been able to come up with a consensual decision which I have heard advocated in this Chamber many times previously, and in the light of the recent flood of public outcry generated by the proposed amendments, perhaps we should allow ourselves more time to study them more carefully. There is a balance in everything and if something is worth having, there is a price to pay. Ice-cream and chocolates are very appealing but they are

also fattening, as we can see. And as in this classical theory of Thomas Hobbes: 'In securing an orderly social environment in which each member of the community can live and work in harmony, everyone is sacrificing part of one's individual freedom to the State.' I do not believe that any Member in this Chamber would advocate unlimited, unchecked individual or trade freedom. We all want public order and social control. We pay for that by wilfully subjecting ourselves to the law, but no more than necessary.

Sir, I do not wish to talk about theory. What we have here today are amendments to the Control of Publications Consolidation Ordinance and the Public Order Ordinance, which touch not only on the freedom of the press but, by their extension, aspects of our individual freedom as well. To decide whether to endorse these amendments we must decide where to strike the delicate balance between individual freedom and public order. If the Government is to keep taking away the freedom of the press, it had better be able to demonstrate that the press is not able to regulate itself, and during the period of the whole 36 years of the existence of the Control of Publications Consolidation Ordinance it has only been used three times, all during the 1967 riots, which I consider—and I believe you, Sir, and the rest of my colleagues will agree—to have been extraordinary times. The record speaks for itself: the press here in Hong Kong by and large is responsible and self-disciplined.

I can understand the worries some people have about irresponsible reporting. However, we have the Emergency Principle Regulations to cover extraordinary times, and in peaceful circumstances the conduct of our journalists has been responsible. I do not see the need to preserve such a draconian measure in the Ordinance. As to the call for a review after a certain period, I wish to counter-propose that, since we have seen how well the press conducts its business under the present strict legislation, if anything is to be tried out, it is far more sensible to see how the press will behave without being subject to the threats under section 27 of the proposed Public Order (Amendment) Bill or section 6 of the existing Control of Publications Consolidation Ordinance. We can introduce immediately all similar legislation if we find the results any less than satisfactory.

Sir, in our constant effort to minimise the threat to public order, I consider that there is no necessity to keep section 27 of the Public Order (Amendment) Bill, while the threat it poses on press freedom is real, imminent and averse to public interests. I will not endorse these Bills as they stand now. I will only consider them if the press will be given reasonable protection thereunder from unnecessary interference.

6.00 pm

CHIEF SECRETARY: Sir, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be concluded.

Question put and agreed to.

MR. MARTIN LEE: Sir, I rise with sadness to oppose the Second Reading of this Bill. There is sadness in my heart because, in the light of such strong public demand for a postponement of any further reading of this Bill, the Administration has still declined to move for an adjournment.

But let me first declare my interest as one of the honorary legal advisers of the Hong Kong Journalists Association.

Today will go down in history as a very important day for Hong Kong. It is either going to be a glorious day or a mournful day depending on how we vote.

The issue now before this Council is of fundamental importance to all the people in Hong Kong because it affects their freedom not only today, not only for the next 10 years, but also for the 50 years beyond 1997.

I therefore appeal to all Members of this Council, whether appointed, elected or official, to unite together in our purpose and to strive to reach a consensus for the benefit of all the people of Hong Kong.

This is certainly not the time for us to think of personal glory, to claim credit or to attribute blame. And I trust that each and every Member of this Council will vote according to his or her conscience.

The Legislative Council ad hoc group on this Bill has had a number of meetings with various concerned parties as well as the Administration. The last discussion by the ad hoc group on this Bill was on 10 February 1987 when it had its last meeting with the Administration. Non-government Members of the Legislative Council discussed this Bill in its in-house meetings on 13 and 27 February 1987.

The Administration released its proposed amendment to this Bill last Thursday, 5 March 1987. Since then a number of concerned groups made further representations to the Legislative Council ad hoc group, including in particular the Hong Kong Journalists Association, the News Executive Association, the Newspaper Society and the Foreign Correspondents' Club.

Other representations were also made to the ad hoc group. Although some of the points raised at these further meetings had already been considered by the ad hoc group, there were clearly other new and meritorious points raised by them which were never considered either by the ad hoc group or at our in-house meetings.

Furthermore there had been no further discussion on this Bill either by the ad hoc group or by the non-government Members of the Legislative Council subsequent upon these further representations. In the circumstances I feel that we would all benefit much if this Bill were to be postponed for a reasonable period of time. And speaking for myself, although I have attended every ad hoc

group meeting on this Bill I am unable to say that I feel fully ready to debate on it today and I am conscious of the fact that even in my proposed amendments to this Bill, I have not been able to deal with every point of importance, particularly those which were only presented to us for the first time within this week.

I appreciate that some of my colleagues in this Council may feel that they are willing, able and ready to have a full debate on this Bill today. But surely, even to them, a postponement cannot possibly prejudice them for they will not become any less willing, able or ready to debate this Bill at the adjourned meeting.

I appreciate that some of my colleagues may feel embarrassed to vote against this Bill today after they had given support for it at the two in-house meetings on 13 and 27 February 1987. They may feel that they owe some loyalty to their Senior Member as well as to one another. I appreciate their feelings and I respect them. But I must appeal to their better judgment because our loyalty to one another or to our respected Senior Member cannot possibly outweigh our loyalty to the people of Hong Kong. If we feel therefore that the principle behind this Bill is wrong because it restricts not only the freedom of the press but also the freedom of expression, then we owe it to our own conscience and to the people of Hong Kong to vote against it.

The Administration has always taken pride in its method of government, namely, by consultation and consensus. But how can it be government by consultation or consensus when the people of Hong Kong are given only less than one week to consider this Bill in its amended and extended form? And although the people of Hong Kong and the concerned groups are given so little time, they have acted promptly and have given many valuable suggestions. Their views, albeit inexhaustive because of the shortness of time, do not deserve to be dismissed so lightly by this Council.

This Administration has openly denied that it is rushing this Bill through, saying that the Bill was first gazetted on 19 December 1986, exactly two years after the formal signing of the Joint Declaration in Beijing. This is true. But I must remind the Administration that when it was gazetted, the proposed section 27 to the Public Order Ordinance was materially different from the proposed amended section 27 as per the motion lodged with this Council last Thursday. Furthermore, the Administration seems to be complaining that the concerned groups should have made their voices known much earlier than they did. But can we really blame them? They were looking no doubt to the non-government Members of this Council to look after the interests of the people of Hong Kong. Representations had indeed been made to the ad hoc group in no uncertain terms that the proposed section 27 to the Public Order Ordinance should be scrapped altogether. Could we therefore blame them for having put their trust in the non-government Members of this Council to do that for them?

And so it was only on last Thursday when the proposed amendments to this Bill were published that the people of Hong Kong knew, for the first time, that the Administration will not scrap section 27.

But let us suppose for the sake of argument that these concerned groups have indeed been guilty of delay in making their voices heard, although I do not think so for the reasons given above. But does it therefore mean that they will forfeit their right to have their valuable views considered by this Council? Should a responsible government deprive the people it governs of the opportunity of further discussion on a Bill which strikes at their fundamental freedoms? Why must the Bill be passed today? Is it not the Administration's own case that many of the sections contained in the Control of Publications Consolidation Ordinance are to be repealed because they have become obsolete? What possible harm can come to the Administration or this Council or to anyone else for that matter if there were indeed an adjournment? Or is it feared that once there is an adjournment and the public is given more time to study the Bill, then it will become more difficult for it to be passed?

If the answer to the last question is in the affirmative, then I must warn the Administration that this is a grossly improper way of effecting the passage of a bill, as no responsible government should push a Bill through a legislature, which is not a fully elected one, merely because it has the transient support of the majority of the Members of the legislature, when the people outside it are so very much against it. For this is totally contrary to this Administration's own avowed philosophy of government by consultation and consensus.

If this Bill were to become law today, can the Administration expect to have the respect of the people it governs? And indeed can the non-government Members of this Council expect that its collective image can ever be enhanced by the engagement of an experienced public relations expert? If we, the non-government Members of this Council, were to give a helping hand to the Administration to force this law on our people, 'all the perfumes of Arabia will not sweeten this little hand'—(Shakespeare: Macbeth).

And what about the political review which will soon be conducted by this Government later this year? If the people of Hong Kong perceive that their Government will not listen to them now on this matter of such fundamental importance to them, and will not even give them time to consider this Bill when there was no urgency at all, can we really and honestly expect them to voice their opinions to us on the political review? And how can we convince them that the majority view of the people will be accepted?

It has been said by the Administration as reported in the mass media that it is desirable for this Bill to be debated in this Council today. I do not disagree that a debate is useful. But the question is: Are we ready to reflect the views of the people of Hong Kong in this Council today when so many people are not yet ready to make their views known to us? And what is even more worrying is that this is not a mere adjournment debate; and if there is no postponement today,

the Bill may well become law—when the people of Hong Kong have not been given sufficient time to consider the full implications thereof.

Then it is said that only very few people have voiced their objections to this Bill in public. That may be true. But apart from Members of the Executive Council and the Administration who have indeed spoken out in support of this Bill, where else do we find support for it? And why is it that of the many representations that have been received there are so few, if at all, which support it? Sir, can all these people be wrong? Or could it be that we collectively have misjudged the situation?

Yesterday, 125 lawyers signed a petition addressed to Members of this Council requesting a deferment of the Second Reading of this Bill. Their petition has already been lodged with the OMELCO Secretariat. Today another 192 lawyers signed a similar petition. I was particularly touched when a government lawyer walked into my chamber this morning and handed me a petition containing the names of 41 government lawyers and assistant registrars. They all gave their office addresses in government buildings. And this petition is enclosed under cover of a letter which I will read out:

> 'Dear Martin:
> I enclose three sheets of signatories. The signatories on Sheet No. 1 are lawyers in the Registrar General's Department, and the signatories on Sheets No. 2 and 3 are assistant registrars in the Official Receiver's Office. I have had insufficient time to circulate the petition amongst other members of staff, although I get the impression that most, if not all, oppose the Bill.
> In haste, Yours sincerely, A. L. Robertson.'.

The petition reads:

> 'We, the undersigned, call upon the Members of the Legislative Council of Hong Kong to defer the second reading of the Public Order (Amendment) Bill to enable the people of Hong Kong to study and to comment upon the amendment introduced and published for the first time on Thursday, 15 March 1987.'.

I trust that they will not be prosecuted for sedition.

In my respectful submission, this debate ought to be adjourned. But I will not move a motion to have it adjourned because I do not want to stop my other colleagues from making their views known. I hope that someone else will move such a motion later.

I now turn to my reasons for opposing this Bill.

My fundamental objection to the Bill is that 'false news' may in fact be 'true news', because the question whether a particular item of news is true or false is to be determined by a court of law in the light of evidence produced before it.

This new section is likely to be a very useful weapon in the hands of a repressive government. Experience shows that no government likes being criticised whether the criticism is justified or not. Experience has also shown us that even in the most open and democratic countries in the world, governments have from time to time resorted to telling lies to the public in order to suppress the truth from them. And unfortunately our Government is no exception. In recent press articles, and in representations made to the hoc group, various pertinent examples have been given and I do not propose to repeat them here.

If a very responsible newspaper has got a tip-off from a very reliable inside source about serious mistakes being made by the Government, what is it to do? The editorial board believes that it is 100 per cent true after it has been confirmed by other reliable sources on an off-the-record basis; but it also knows that the Government will deny it. And action may then be taken against the newspaper for publishing false news likely to alarm the public. And if that happens, the defendants will find it almost impossible to prove that they have reasonable grounds for believing that the news is true, for a number of reasons. First, no newspaper would like to be seen in public to divulge the source of its information. Secondly, even if the source be revealed, unless the actual 'source' agrees to testify, which is most unlikely, the defendants will still fail to establish this defence even on a balance of probabilities. I say this after 20 years of experience in the criminal bar. To offer such a defence to the press is really like adding salt to injury.

But what is 'false news'? What is true news unfortunately can be proved to be false news even in a criminal court on the high standard of proof required, namely, beyond reasonable doubt. All it takes is for the government department concerned to send somebody to court to testify that there was no substance in the reports published by the newspaper concerned. And so long as the truth remains hidden, the news would be 'false' and the defendants will be convicted. I too have nothing but respect for and confidence in our judiciary, but our courts act on the evidence produced before them; and experience tells us that false convictions have been obtained unwittingly by the prosecution from time to time because of the perjured evidence of prosecution witnesses.

But the point to emphasise is that there need not be an actual prosecution at all. For if there is such a law, many publishers and journalists may decide not to risk prosecution and imprisonment by publishing such sensitive news. If so, the truth will never be told. Of course some other publishers and journalists in similar circumstances may decide that they owe it to the public to publish the news and face criminal prosecution. In such cases, at least the news would have been published, possibly followed by prosecution and conviction. And this may or may not lead to a public enquiry about the conduct of the government department in question. If there is such a public inquiry as in 'Watergate' and 'Irangate', the newspapers may finally be vindicated although at a great personal price to the brave publisher and journalist concerned. But if no public enquiry is held because the publicity given by such a report is nibbed in the bud

before it could attract sufficient public attention, then the publisher and journalist would have paid a very high price indeed, because apart from fines and imprisonment, their reputation would be lost forever.

It has been insinuated both inside and outside this Council that members of the mass media are taking strong objections to this Bill out of self-interest. This is an unjust and unfair thing to say, because the less courageous and publicspirited members of the mass media will simply decline to report the story. And so those who will stand to suffer are the common people of Hong Kong who are kept in the dark.

The question before us today, like many other questions, involves conflicting principles of public policy:

(*a*) the right of the public to be informed, and to be informed promptly; and
(*b*) the right of the public not to be misled or alarmed by false news.

We must realise that if we want to protect the public from the imaginary irresponsible reporting of false news likely to alarm the public, then we must be prepared to sacrifice on behalf of the people of Hong Kong, their overriding right to know. I said 'imaginary' because such irresponsible reporting has never happened in Hong Kong as would warrant a prosecution under this section. Indeed, I understand that even during the riots in 1967, the offenders were not prosecuted under this section, but for sedition.

Further, we are not dealing with emergency situations, which are amply provided for in the Emergency Regulations Ordinance which confer very draconian powers on the Administration to control the publication of any news, including pre-publication censorship. Regulation 27 of the Emergency (Principal) Regulations more or less covers the same situation here.

It has been said by a political commentator Mr. T. L. TSIM in a recent documentary that the freedom of the press depends on four things: first, public figures must be willing to speak out on sensitive topics; secondly, there must be willingness on the part of reporters and journalists to report what they say; thirdly, the editors must be willing to publish these reports; and fourthly, the proprietors concerned will not take subsequent action to sack the reporters, journalists and/or editors by reason of such publication.

If the present Bill were to become law, particularly in its amended form, what chances are there that the public figures will speak out on sensitive issues? And even if they do, what chances are there that they will be faithfully reported?

All over the free world, newspapers are the most readily available commodity and also the most reliable indicator as to whether freedom lives in a particular country; for there can be no pretence in newspapers. They either tell their readers only what the state wants them to know or they also tell their readers what the people think of their government.

The freedom of the press is thus the most important of all freedoms because without it no other freedom can exist, and a government can act arbitrarily without its people even knowing about it.

In relation to the series of amendments proposed by the Administration, I believe the motive behind them is generally a commendable one. But unfortunately, the Administration has not gone far enough, because although the original section 6 of the Control of Publications Consolidation Ordinance is to be repealed, the same section is re-introduced word for word as section 27 of the Public Order (Amendment) Bill 1986. As the Bill now stands, the section only strikes at 'any person who maliciously publishes in any local newspaper false news which is likely to alarm public opinion or disturb public order.' But in the Administration's proposed amendment, and indeed in mine, it strikes at 'any person who publishes any false news...'. The deletion of the phrase 'in any local newspaper' is the result of representations made to the ad hoc group that the law should not be discriminatory against the local press. Both the Administration and the ad hoc group thought that there was merit in this, particularly when the section in question is no longer part of an Ordinance entitled 'Control of Publications Consolidation Ordinance', but will be transplanted to the Public Order Ordinance which affects everybody.

Unfortunately, if thus amended, this Bill is no longer only concerned with the freedom of the press, but it will adversely affect the freedom of speech and the freedom of expression of everybody in Hong Kong.

The word 'publish' deserves looking into. The Shorter Oxford Dictionary defines it as: 'to make publicly or generally known; to declare openly or publicly, to tell or noise abroad; ...to make generally accessible or available; to place before or offer to the public.

As the section now stands, the word 'publish' in the context of 'publish in any local newspaper' is necessarily a narrow one and the publication must be in print and in a local newspaper. But once the phrase 'in any local newspaper' is deleted, the word 'publish' is no longer to be confined to local newspapers or even to the mass media but clearly includes all other statements made in public: during a luncheon talk, or during a public debate, or by somebody standing on a soap-box in Victoria Park.

It is therefore clear that this Bill does not simply affect the local newspapers as it did originally in section 6 of the Control of Publications Consolidation Ordinance but it will clearly affect the community at large.

It is regretted that the Administration does not seem to have appreciated this or else it would not have gone into the Second Reading of this Bill without having the widest possible public consultation.

Let us now turn to the rationale behind this series of the amendments to our press law. The reason proffered by the Administration is in effect that of obsoleteness. And although the Chief Secretary did not make any reference to

this in his speech in moving the Second Reading of this Bill, we know that these suppression provisions were enacted in 1951 principally in order to control pro-communist newspapers published or imported into Hong Kong. With the signing of the Joint Declaration on 19 December 1984, the relationship between the People's Republic of China and Great Britain and Hong Kong has much improved and hence there will be no more necessity to retain these suppression provisions.

Why, then, is it necessary to keep this particular section in our statute books? We know that the section has never been used. Then why make a difference with this section? It has been suggested that without the former section 6 in the Control of Publications Consolidation Ordinance, the press might not have behaved so responsibly all these years. But surely the same argument would apply with equal force to each and every other section of the same Ordinance under repeal.

Now that so much public attention has been drawn to this Bill, though the former section 6 has been with us since 1951, we must be careful not to kill the freedom of the press during this very critical period in the history of Hong Kong.

I like to think that this is not a deliberate act on the part of this Administration. But let us hope that this Administration will show us that it cares and feels for the people of Hong Kong and is willing to listen to them; that it is courageous enough to admit that it has made an unintentional mistake in misjudging the public sentiment; gracious enough to withdraw support for this Bill; and confident enough that it will continue to have the respect and confidence of the people it governs.

MR. LEE YU-TAI (in Cantonese): Sir, the slogan of the City Forum 'Liberty fills the air of Victoria Park; you have full rights to voice your opinions' has been in popular use for a long time among the local people and serve to indicate the extent of the freedom of speech they enjoy. With future developments in mind, one wonders if Victoria Park would retain its name. If freedom of speech is thwarted, Victoria Park will become ghastly and horrifying, even the glamour of its flowers and plants will fade. I insist that freedom of speech should be without any conditions. The imposition of any conditions or restrictions will result in a situation where 'the authorities can always trump up a charge' in order to condemn people. It may even give rise to 'literary persecutions'. The confidence of the people will then be completely shattered. Even if there is no prerequisite to the freedom of speech, one need not worry that it will be abused. If one uses this freedom indiscreetly, others will also have the freedom to retort. Such checks and balances can ensure that any expression of opinion will not exceed the reasonable boundary and there is no need to impose legislative control.

Section 27 of the Public Order (Amendment) Bill states that it is an offence to publish any false news. The defendant must prove that he has already taken reasonable measures to verify the truth of the news or else he will be considered. This is entirely contrary to the common law principle that 'an accused person is innocent unless and until proved otherwise'. Moreover, this provision directly conflicts with the code of practice of the journalistic profession, that is, it violates the right of keeping secret the sources of information. To prove that the truth of the news has been verified is tantamount to compulsory requirement to divulge the source of the news. Hence this provision is totally unacceptable.

The provision on 'false news' is not a new piece of legislation. It has always been a law in the existing Control of Publications Consolidation Ordinance which was passed decades ago. But its extraction from the said Ordinance and incorporation into the Public Order Ordinance still requires legislative procedures. I am considering whether this Bill should be passed or not in the light of social circumstances of today and its impact on the future. My own judgment is that the false news legislation is unreasonable, and it will infringe on basic human rights, thus undermining public confidence. After consulting professional media organisations and other civic bodies, my views are all the more reinforced by their reactions. Hence, I have decided to object to all the provisions concerning false news in section 27 of the Public Order (Amendment) Bill.

The provisions not only suppress the freedom of the press but also affect the public at large. For instance, newspaper editors, who recognise that the views expressed by readers are also subjected to the same restrictions, will be scrupulously careful in publishing 'letters to the editor'. In this way, the channel for the public to air their views will be obstructed. Furthermore, Hong Kong is a capitalistic society. There are bound to be some unscrupulous people who will make use of loopholes in the law to take advantages through foul means. Criticisms exerted by public opinion are the only means to enforce social justice. For this reason, the press is entrusted with the mission of upholding social justice. Suppressing news and publication not only violates social justice but also deprives the public of the basic right to know the truth of issues. For example, a newspaper reports that a certain bank is in trouble and the bank denies the news right away. If the newspaper is then charged with publishing false news and the accused person is sent to jail, it will be a miscarriage of justice if the bank was really found in a crisis later on. I therefore object to the 'presumption clause' as well as all the provisions concerning false news in section 27 of the Public Order (Amendment) Bill. As the competition in the local media industry is very keen, I believe that any publication of false news will soon be exposed by the rest of the trade, to the detriment of the prestige and circulation of the publication concerned. Hence there is no need to provide legislation against possible abuse. Furthermore, both the Emergency Regulations Ordinance and the Defamation Ordinance can prohibit the malicious spreading of false news and so the provision in the Public Order Ordinance is unnecessary.

The term 'false news' and the clause 'possibly gives rise to public panic' as contained in section 27 of the Public Order (Amendment) Bill involve subjective judgment, which will represent a move away from 'the rule of law' towards 'the rule of man'. Any legislation should aim at being objective and avoid subjective judgments which might vary with the human judgment of individual persons. Otherwise, the foundations of rule by law will be undermined and the confidence of the public will be shaken. A recent painting exhibition in the Landmark gave rise to a dispute because the authorities claimed that according to law, the exhibits should have been submitted for censorship in the first instance. This immediately attracted criticisms from artists as well as the public, showing how inappropriate it is to retain obsolete laws. In another instance, the press had uncovered two incidents which involved the threatened poisoning of packeted drinks. A warning letter was issued by the Attorney General. But the newspaper concerned claimed that the report was in fact true. Therefore, if the news distributor was to be prosecuted according to the 'false news' provisions, it would be a 'miscarriage of justice' when the news was eventually found to be true.

Sir, freedom of speech is one of Hong Kong's major advantages. Within Asia, a continent which embraces more than half of the world's population, only Hong Kong and Japan enjoy genuine freedom of speech. Hence I support the Control of Publications Consolidation (Amendment) Bill in the deletion of all the severe provisions in the existing Ordinance which might hamper the freedom of speech. At the same time, I have objected, ever since the beginning, in the Legislative Council ad hoc group and in-house meetings, to the amendment of some of the wordings in the Public Order (Amendment) Bill and insisted on the deletion of the entire section 27 of the Bill. Therefore, I shall object to the Public Order (Amendment) Bill during its Second and Third Readings. As for the other councillors, they might pass the Bill by majority vote. Of course, I respect their freedom of decision. I must want to respond with a saying of Confucius as recorded in the Analects: 'Do it if you could have a peaceful mind'. I myself could not have a peaceful mind over this issue. If I go along with other people and endorse a Bill which will have serious effects, I shall be conscience-stricken and feel deeply ashamed.

The Second and Third Reading of the two Bills were originally scheduled for 21 January 1987. Subsequently, they were deferred to 18 February 1987 and then further postponed to this afternoon (11 March 1987). Despite the two postponements, the Administration does not accept the suggestion of the Legislative Council ad hoc group made on 10 February 1987 that the Journalists' Association should be consulted on this matter. It seems that the rights of that profession have been ignored. Therefore, even if the Public Order (Amendment) Bill is passed today by majority, I would still ask the Government to conduct an immediate review, including consultation with the journalist profession and the deletion of section 27 in future.

Sir, in voting on legislative items, this Council rarely takes division. The last time was in 1981 when division on the Abortion Bill was taken. In fact, abortion only concerns those who could become pregnant, that is, roughly 50 per cent of the population, and only about one third of the life-span (from their age of puberty to menopause) of such people would be affected. But legislation concerning freedom of speech affects the entire population, and from birth till death. Hence the importance of the Bill we are now debating far exceeds that of the Abortion Bill. Sir, I therefore hope you will, in accordance with the Standing Orders, listen to the voicing of ayes and noes. I urge that division be taken and hope that Official Members would vote according to their own wish.

HIS EXCELLENCY THE PRESIDENT: Order! Order, please!

MR. LI: Sir, section 6 of the Control of Publications Consolidation Ordinance was a draconian piece of legislation. Its presence on the statute books was a threat to press freedom, relieved only by the common sense and the fairness of the Administration in not seeking to apprise its provisions. I am not alone in believing that the common sense and fairness cannot be considered a satisfactory guarantee of the freedom of expression of the people of Hong Kong. It is therefore a matter of grave concern to all, that the Government's proposed amendment should extend the provision of section 27 of the Public Order (Amendment) Bill to every form of expression. This amendment reflects the restriction on the freedom of expression which we have seen in this region in the past few months.

With the new section 27 enacted, similar restrictions on freedom of expression in Hong Kong can take place any time when the Administration's common sense and fairness has been eroded. I believe that the amendment to be proposed by my learned Friend, Mr. Martin LEE, drafted as it is in similar terms to the equivalent provision in the Canadian Federal Criminal Code, provides a proper safeguard for freedom of expression, not only of the media but of every concerned citizen of Hong Kong.

MR. LEE's proposed amendment therefore deserves the support of all Members of this Council in their desire to see that we maintain in Hong Kong that freedom of expression which is unequalled in any other territory in Asia.

MR. NGAI (in Cantonese): Sir, the Bill now being moved for Second Reading, the Public Order (Amendment) Bill 1986, has provoked many reactions, the greatest of which is the dispute over the issue of freedom of speech, a reaction that we might not initially have expected. I wish to take this opportunity to state briefly my position on the issue in question.

I consider that even in a free society without any form of censorship the exercise of one's freedoms should still have a specific purpose and be within reasonable limits. It must not be treated as if the freedom is an absolute and unconditional right. Take, for instance, my right of freely making a speech here

in this Council. It does not mean that I am entitled to go on speaking recklessly and imprudently for hours and hours and deprive other Members of the opportunity to make speeches. This is the minimum amount of discipline required in a civilised society and we must all respect this.

Freedom of speech is not a right by which we can publish at will irresponsible and false information regardless of the consequences and not expect to be disciplined by society. I hold the view that the Public Order (Amendment) Bill should exist for the very reason that we are enjoying in Hong Kong a high degree of freedom of speech. In that case we will be able to control those undesirable elements who attempt to abuse the spoils of freedom, to fabricate false and unsupportable information or even to spread around rumours that cause public concern and alarm and fear in a bid to reap personal profits.

I am, therefore, fully in support of the basic spirit embodied in the Bill moved by the Chief Secretary. I wish to point out at the same time that the Bill, with the amendment to be proposed by the Chief Secretary, is fair both to the prosecution and the defence in proposing that once the prosecution has proved that the news in question has been published, that it is false and that the news is likely to alarm the public or a section thereof, then the onus of proof should be shifted to the defence. I consider that this will have a real deterrent effect on those who are irresponsible.

Sir, those of us who live together in this society have a common responsibility to maintain the order, peace and stability of the society. This is just our responsibility. Because of this, if we do not take precautions in advance and only try to repair the damage afterwards, we can probably have no way of estimating the harm which will already have been caused to the overall interests of the society.

Lastly, I want to point out that the Bill is preventive in nature and that it does not cause any inconvenience or worry to the mass media who have been able to exercise self-discipline, let alone interference with the freedom of speech or the freedom of the press. Anyway, any freedom that affects public security will not be accepted by members of the public. Now, we are in the same boat, so to speak, so if there is anything that will rock the boat, it will certainly not be acceptable to the passengers on the boat.

Mr. Chairman, as far as I know, the proposed Bill is not innovative; rather, it is a tidying-up of existing legislation that has been in existence for a long time. The obsolete provisions and clauses will be deleted. Mr. Chairman, as a Legislative Councillor, in the interests of the community and in order that we can live in peace and in a stable society and that we will be safeguarded, I think I have the responsibility to support the motion moved by the Chief Secretary.

MR. PANG (in Cantonese): Sir, first of all, I would like to declare my interest. I own a publication which cannot be bought from the newstands. It is called ‘The Hong Kong Labour Monthly Review’ and has been properly registered with the Government.

Last night I could not sleep even when it was very late. I do not understand why the Government is in such a hurry and in such great haste to propose the passage of the Bill today. Listening to the speeches just now, we should all know very well that the Control of Publications Consolidation Ordinance, enacted in 1951, has only been applied three times in the past 30 years and more. And I do not understand why the Government should choose this unusual time to propose the Second Reading of the Bill.

Now, just when the public have gradually regained their confidence in the Government, we are suddenly presented with this Bill and we are given the impression that the Bill has to be passed today. I think at today's Council meeting on 11 March 1987, my hon. Colleagues and the Hong Kong Government have once again demonstrated 'obscurantism' since the Daya Bay issue last year. I think at least for the time being, a lot of people and professionals are still not very clear about the Bill. Therefore, there is a need to postpone the passage of the Bill, so as to allow more time for changes, and to enable our professionals to have a thorough understanding of sound opinions from abroad. I think at least we should respond to their opinions and postpone the passage of the Bill for the time being. Just now I have listened to many speeches made by my hon. Colleagues and they all praised the contribution of our press to Hong Kong in the past years, and my hon. Colleagues have been saying that the freedom of the press is very important to Hong Kong. And so it is really unexpected that the Council should have to rush the Second Reading of the Bill. Having said these words, I will state my stance very clearly. I strongly object to the Bill. I think it should be postponed or even scraped altogether. Thank you.

MR. SOHMEN: Sir, in listening to this debate this afternoon, I was reminded of something written by Chesterton in 'The Wisdom of Father Brown.' He said, 'Journalism largely consists of saying 'Lord Jones Dead' to people who did not even know Lord Jones was alive.' Not surprisingly, the Public Order (Amendment) Bill has been the subject of considerable debate among Members of this Council and elsewhere. In the past few days in particular the discussion has developed into a crescendo of emotive comment in the press, dramatically describing the amendments variously as a press-gagging measure, as being against the fundamental principle of the common law, as a threat to free speech and even as the beginning of a journey into the authoritarian night. Sir, as someone who has spent his early life in an environment ruled by an extreme totalitarian regime, I am not insensitive to concerns about individual rights and freedoms. Nor, as someone once trained in the law, am I ignorant of the gravity of the issues under discussion. As Mr. Peter C. WONG already mentioned earlier, the arguments are indeed finely balanced, as is the case so often in this Chamber. As legislators we face the difficult task of having to make decisions at the end of the day as to what we believe is the greater interest to be protected. In so doing we must carefully weigh all views expressed but must also bear in mind that there is never any one sector of the community which can claim to be the best protector of our rights, particularly when the most vocal expressions come from those with a vested interest.

Some of my colleagues have already stressed that in any civilised community freedom of speech, like all other freedoms, can never be absolute but must find its scope limited by the need to safeguard the rights and the well-being of all members of the society. Freedom of speech must be used responsibly and that responsibility must be the higher the greater the influence which the speaker can bring to bear on his audience. Equally, the effectiveness of the sanctions applied for exceeding any limitations must be fully assured. At the heart of the present controversy is the perceived difficulty for the Crown to prove beyond all reasonable doubt the state of mind of the defendant when the subject matter is so much within his or her personal knowledge and when in the absence of direct evidence such as a confession, the prosecution has to rely solely on circumstantial evidence. We also cherish the right of an accused to remain silent and not incriminate himself, so to suggest that the burden of proof in this particular circumstance should rest entirely with the prosecution is, in essence, an argument to remove the threat of conviction in all but the most blatant cases. This result in my mind would produce bad law and is therefore not worthy of support.

This brings us to the question as to whether the Bill should be enacted at all. My answer to that is yes. Hong Kong is a small and densely populated territory with an alert population particularly prone to bouts of anxiety. News is disseminated very fast here and false news is therefore more likely to have an impact in this community than in other locations. We have had a similar law on the books for quite some time and the fact that it has been applied sparingly is, in itself, not enough justification to remove it altogether. In fact, this is an argument to judge some of the worries so suddenly and vehemently expressed today as being exaggerated.

Sir, I entirely agree that we should be careful when creating exceptions to long-established legal principles and that we should not sacrifice these principles for the sake of expediency only. But we must remind ourselves that the proposed legislation is new only to the extent that it will apply beyond the printed media and that the exception is not unique in Hong Kong. We should also remember, particularly since it seems not to have been sufficiently emphasised in any of the public comments, that the initial burden of proof as to falsehood and the likelihood to cause alarm or disturb public order, remains with the Crown, is in itself difficult, and requires a standard of proof higher than that imposed on the defendant for the defence.

All those claiming that the legislation will muzzle the media should be conscious of the risk of propagating the right to publish falsehoods without regard to their social consequences. This itself could be a dangerous tendency given the continuing increase in the ability of the media to sway public opinion. One might also comment that by imposing responsibility for their pronouncements on all persons in the public eye, and not just on the press, very different results from the alleged gagging of the press could result: the media should be able to have more confidence in the accuracy of public statements made which

they report. The public was quite critical in a recent decision not to prosecute for a false statement made in a financial context. Does this not suggest that the community recognises the need for statutory limitations on the freedom of expression and accepts the need for sanctions?

Why then should the preservation of public order and the avoidance of public alarm be of lesser importance than the protection of investors? Are we not suddenly applying double standards?

Finally, Sir, like Mr. Allen LEE, I do not accept as valid the references heard in the debate that these specific legislative provisions could be open to abuse by this or any future government. All laws can be misinterpreted or misapplied but I submit that we cannot legislate properly to achieve current social objectives if from the start we premise our judgment on a distrust of either the judicial system or the willingness of the executive branch to act in accordance with the rule of law.

We should, of course, not legislate in a manner which leaves the door open for interpretational problems, or provide for too wide an administrative discretion or which, on the face of it, leads to abuse of power. But how can we be expected to produce legislation which anticipates and caters for all political contingencies?

Sir, those who argue in this fashion only evidence a lack of confidence in Hong Kong and in the strength of our community to maintain the present legal and social systems. They cover a weakness in their argumentation by an appeal to the fear of Doomsday.

MR. SZETO (in Cantonese): Sir, I formally move to defer the Second and Third Readings of the Public Order (Amendment) Bill 1986. I also request that after other hon. Members have spoken on the subject, a division be taken on my motion before we proceed to vote on the Second Reading.

Freedom of the press, freedom of publication and freedom of speech are the vanguards of all forms of freedom, democracy, human rights and rule of law. Any attempt or action to restrain and infringe on freedom of the press, freedom of publication and freedom of speech is a pioneering move to restrain and infringe on all forms of freedom, democracy, human rights and rule of law. For this reason, any person who values freedom, democracy, human rights and rule of law will and should oppose this Bill.

It is said that the purpose of this Bill is to take sanctions against any false news which will likely give rise to public panic or disturb public order. But just take a look and listen—for the past few days, public sentiments and clamours have been running high. Public panic has been aroused rather than likely to be aroused. I believe that if unfortunately, the Second and the Third Readings of this Bill managed to be forced through today, it will certainly give rise to a stronger and more penetrating degree of public fear. I also believe that people

who value freedom, democracy, human rights and rule of law will not give up just like that. I shall not 'moderate my grief in accordance with the change of time and events'. I will join their ranks and fight on both within and outside this Council.

One of my colleagues in this Council said that even if there was no such legislation, other means could be used after 1997 to restrain and infringe on the aforesaid freedoms. Therefore, passage of this Bill does not matter much. To make such remarks means that one has totally abandoned one's stance as a legislator and violated our vows to abide by and defend the laws of Hong Kong. It also reflects that one has forsaken the determination and courage to maintain the rule of law between now and 1997, and even beyond. Such remarks amount to saying: to press a sharpened knife against your throat is nothing serious; you do not have to bother about it, for even without such a knife, a pistol could be used to kill you. So why bother to oppose?

Another colleague in this Council said: there must be a base line for press freedom and this Ordinance is only a base line. For the time being, I am not going to discuss whether press freedom should have a base line, but I must point out: this is not a base line but a floating check line. The moon has different phases. When there is a change of climate, this floating check line will appear and rise, possibly without end, till we are suffocated or even drowned. Do not believe the talks about base line. We must take a clear look at the contents of the legal provisions.

Yet another of my Legislative Council colleagues said that the Bill aimed only at the evil members of the herd (of horses). Being a member of the newspaper trade is in fact a member of the herd as well. Or can it be said that 'a crimson-coloured horse is not a horse'? To make the aforementioned remark and support the Bill seem to suggest or manifest that he himself is not an evil member of the herd. But I am not sure what kind of a horse he is in the opinion of the other horses of the herd.

Very often, news is not the cause of public panic or disturbance; instead, it is pointed and vigorous conflicts which already exist in society. Even if false news has created a certain effect, it is only a kind of fuse; without explosives, the fuse will not explode. When press freedom is subject to restraint, we would often overlook the pointed and vigorous conflicts which already exist in society. We have to clear the explosives, not the fuse. Take a look at our history over the past century or so, was there any public panic or disturbance caused by false news alone? Even 20 years ago, on the occasion when the Ordinance was used, that was the case.

For those who constantly say that they want to safeguard the interests of the public, have they considered that the right to know and freedom of the press are also public interests? For those who constantly say that it is necessary to deter those who disseminate false news irresponsibly, have they considered that everybody will be so scared as to become blind, deaf and dumb?

The Government only brought forth the amendment motion five days ago. The ad hoc group of this Council have not been able to hold discussions on it and the community has not been given the opportunity to examine it in detail. Why must it be in a hurry? Why is it necessary to force it through the Second and Third Readings in this Council today? Is it possible that someone has already foreseen that this Ordinance has to be applied tomorrow to institute prosecution against certain false news which may give rise to public panic or disturbance?

Since, once again I move to adjourn the Second and Third Readings of this Bill. I also request that a division be taken.

This Council is an institution which reflects public opinion. I appeal to all colleagues in this Council: irrespective of your stance in connection with this Bill, please look around and listen to the views of the public. Even if your stance is contrary to these views, you have the responsibility to reflect them. The clamour outside this Council is for adjournment; this clamour should be echoed within this Council. Please support my motion.

HIS EXCELLENCY THE PRESIDENT: Mr. SZETO Wah is moving a new motion, that is, that the debate be now adjourned. Members wishing to speak on this motion may raise their hands. You may speak again, if you wish, Mr. SZETO Wah, on your motion.

MR. SZETO (in Cantonese): Just now I said that after the Members have spoken I would like to vote on this motion.

Question proposed.

MR. CHEN: Sir, although I am not a member of the ad hoc group, I have studied carefully their deliberations during the past month. I have complete confidence in my colleagues who serve on the group. They had since January this year received many public representations and had spent many hours of deliberations before arriving at their recommendations. Furthermore, their recommendations were fully discussed at several in-house meetings of the non-government Members of this Council and were endorsed by an overwhelming majority of Members at those meetings.

It cannot therefore be said that there has been insufficient time to examine these Bills. Indeed there was nothing to stop Members of the group to consult widely during all this time and I am sure they did.

I have also read the submissions received recently. I believe many of these submissions, many of the concerns expressed, had in fact been considered in the course of our deliberations and also reflected in today's debate. Of course, it would be popular for me to vote in favour of the motion to be adjourned, but at

the cost of popularity I do not consider that further adjournment of this debate would serve any useful purpose except to disrupt the efficient conduct of business of this Council.

Sir, I value consultation, but consultation cannot be interminable. At some point, this Council has to make the decision against the background of different and diverse opinions. After three months, I am of the opinion that time has now come for us to decide. I therefore oppose the proposal to defer the debate any further.

MR. CHEONG-LEEN: Sir, I personally am in favour of the Bill but with one exception and that is section 27. Now, the reason why I am in favour of a deferment is because the revised section 27 was issued only on last Thursday night and I did not get to see a copy until the next day. And when the representatives from the four different associations met with the ad hoc group, just a couple of days ago, and after listening to them carefully, I did make a request that the ad hoc group should have an urgent meeting but that request was denied. As I have said, Sir, the proposed amendment by Government has much wider ramifications than its involvement with the press alone. Personally, I am in favour of some safeguards, some legal safeguards, against an irresponsible press but I think the draft amendment is not good legislation. It is neither fish nor fowl and that is why neither the press is satisfied and I do not think the general public should be satisfied with them. That is why, Sir, I am very much in favour of the deferment.

MR. CHEONG: Sir, I have made my position known quite clearly that I am not in favour of the Bill. But in speaking against the motion for adjournment, I would just like to echo simply a few of the impressions that I get during this afternoon's debate so far. There were a lot of emotional speeches, using a lot of terms like 'democracy', 'that we would be the sinner of Hong Kong if we vote for the Bill' and so on.

Sir, I know for a fact that a campaign has been mounted in the past few days by people saying that it is the democracy that is important in Hong Kong. Ask every Member here. Most of us have received telephone calls from people associated with the so-called democratic groups, saying that if you are not going to vote against the Bill, you are a sinner and you are basically going to have to bear heavy responsibility.

To me, these campaigns were not designed to promote democracy. These are political campaigns, designed to achieve certain objectives. The objective, as Mr. Martin LEE has said in his speech, that this Council is not fully elected and therefore he thinks that this Council probably does not have the right to make the right decisions. Sir, I may sound emotional but this is coming from the heart. I know that the gallery may not necessarily agree with my views and I respect that. But let us not try to force our views on to each and every of our councillors. Whether appointed, elected or official, we know our job, we know our responsibilities and there is no need, as the Chinese say'扣帽子'.

MR. CLYDESDALE: Sir, I shall be utterly unemotional. This has been a long and very interesting debate and much hard work has been done by the ad hoc group studying the matter. Members of that group told me that representations recently received have added very little to previous submissions made. After all, Members proposing deferment do have the option to vote 'no' to the Bill. I think a hard decision has to be taken and I do not believe that delaying it will make it easier. I am therefore against the motion to adjourn.

MR. MARTIN LEE: Sir, I do not have the advantage of a prepared speech on this occasion. But dealing first with the hon. Mr. S. L. CHEN's speech, if I may; I do not believe that these matters which have been canvassed today have been so carefully discussed at the in-house meetings. Now, it is true that I did not attend the first one because I was in Kunming and I missed the second one because I had already told the Senior Member of my other commitments and I did not expect that it would be discussed again at the second meeting. But I have read the minutes and they certainly do not show that these matters were raised in detail at any one of those meetings.

Of course, I agree that consultation cannot be 'interminable' in the words of the hon. Mr. S. L. CHEN. But consultation, with respect, has hardly begun; because what was gazetted on 19 December 1986 was a totally different thing. And what is more, I agree with the hon. Mr. Hilton CHEONG-LEEN, that after our meeting with the four press group representatives last Monday, we did not even have another meeting because, unfortunately, the convenor kept on saying that we must put an end soon to this meeting and everybody had to rush away for lunch.

I cannot, therefore, with the greatest respect, agree that the matters have been sufficiently canvassed among ourselves. What is the use of having an in-house meeting if we discuss or deliberate on a particular topic long before we are ready? We then hear other views. We do not have further discussion or deliberation on these further views and we claim we are ready. Anybody can see we are not.

Sir, I have said it before: unless this Council collectively feels as our people feel and think as our people think, we do not deserve to be here.

As regards the 'unemotional' speech of my hon. Friend, Mr. Stephen CHEONG, he said that he had been called a sinner in effect. I certainly did not hear anybody using that word in this Council. I am sure he heard them outside the Council. Sir, with the greatest respect to him, I too have heard a number of vicious rumours about me, but I do not think it right to import them into this Council.

So, Sir, the people of Hong Kong want an adjournment and they deserve to be heard.

MR. PETER C. WONG: On a point of order, Sir.

HIS EXCELLENCY THE PRESIDENT: A point of order, yes, Mr. WONG?

MR. PETER C. WONG: Mr. Martin LEE mentioned about the convenor. I must inform this Council that I have been out of action for two and a half days because of illness, so when he refers to the 'convenor' I am sure he was not referring to me. [*Laughter*]

MRS. CHOW: Sir, may I say first of all that this is not nor is meant to be a personal attack on anyone but I do believe that those of us in public life have to be responsible for what we say and do in the public arena and since certain Members of the ad hoc group or the Legislative Council in-house meeting seem to have played an active and significant role in leading public opinion on this specific Bill before us, as well as in the wider issue of press freedom, and the even wider one of freedom of expression, the public has a right to ask how and why those Members have arrived at their present position against the background of facts in the last two and a half months of consultation, during which the Bill has been deferred twice to accommodate opinions expressed within and outside this Council.

Although this Council has attempted to keep the public fully informed of its work, in practice the public may not and cannot be kept informed of everything that goes on in this Chamber or in the enormous amount of committee work that we do. However, in this instance the public must be informed fully of the truth, the whole truth and nothing but the truth. It is only then that the Members here and the public can judge whether we have fulfilled our duty honourably.

One of the major queries raised, even today in this Chamber, particularly in the last week, is the substitution of the word 'malicious' with 'false news' in the proposed amendment. Indeed, Mr. Martin LEE and Mr. CHEONG-LEEN questioned this substitution earlier this afternoon. Little had been said but this substitution was proposed by Mr. LEE himself in the Legislative Council ad hoc group as early as 8 January.

His expertise helped the ad hoc group as well as other Members, to accept his recommendation as the clearer and more well-defined wording. The adoption of this amendment in the meeting of the ad hoc group and the Administration on 10 February, in which Mr. LEE was present, has never been challenged until today. In fact, his proposed amendment to the Bill contained that very phrase.

The public could have well benefitted from the explanation so ably given by him to us in our previous meetings, instead of being cast into further doubts and confusions by his public arguments against the term.

On 15 January, almost a month after the Bill was gazetted, the ad hoc group received a representation from the Hong Kong Journalists Association. The spokesman for the association, Miss Emily LAU, and here I quote from

the record of the meeting, expressed dissatisfaction with the 'proposed new section 27 of the Public Order Ordinance which only applied to people in- volved in newspaper publication.' Both Miss LAU and Mr. WONG KWOK-wah argued strongly that the proposed new section 27 should be re-drafted along the line of section 30 in the Public Order Ordinance which dealt with public mischief. Specifically, they felt that the new section 27 should apply to any person who published information which they knew to be false and should cover information conveyed either orally or in writing which tended to give rise to public alarm or disturbance to public order. Immediately after receiving this representation, the ad hoc group, well equipped with the brilliant brains of the hon. Peter C. WONG, the hon. Martin LEE, met with the Administration. The Journalists Association's earlier pleas were forwarded to the Administration with the endorsement of the group. On 16 January the Legislative Council in-house meeting was thoroughly briefed and agreed with the ad hoc group's stand that the Journalists Association's view aganist the singling out of local papers should be endorsed. Most of us did so because we agreed with the Journalist Association's line of reasoning while believing at the same time that such a change will not threaten basic civil liberties.

I still believe that to be true for we are dealing specifically, and I stress, specifically with persons who publish false new which is likely to cause public alarm and disorder. On 6 February another representation from the Christian Industrial Committee were met by the ad hoc group; Rev. Hans LUTZ, Miss Helena WONG and Mr. LAU Chin-shek all urged that section 27 and here I quote again from the record, 'should be extended to cover anyone who published orally or in writing false news which caused public alarm or disorder' to dispell anxiety among members of the media that the press was being singled out for discriminatory treatment.

In the meeting between the Legislative Council ad hoc group and the Administration on 10 February, a thorough discussion took place and covered the point regarding whether the offence should be confined to newspapers. The Administration expressed a willingness to consider an extension to cover persons other than newspapers as proposed by the ad hoc group in response to public press representation.

At the conclusion of the meeting, agreement was reached to widen the scope and the amendment presented by the Administration was further amended by deleting the words, '-any local newspaper.'

As late as last Friday, our colleague on the ad hoc group, Mr. Martin LEE, announced publicly that he was to move an amendment to the Bill and his amendment read: 'Any person who publishes false news knowing the same to be false or being reckless as to whether the same was true or false and which is likely to cause' and so on. But note 'any person who publishes false news.'

This indicates quite clearly that he was at that point, after two months of deliberation, still in favour of widening the scope. I was therefore quite shocked to hear him yesterday on the radio. Mr. LEE, after having played a most active part in the ad hoc group's efforts to urge the widening of the scope, should now, six days after his own proposed amendment, which consists of widening the scope, accuse the Administration of widening the scope of the Bill and thereby curbing the freedom of expression. I was more shocked when I opened the papers this morning to see a report of Miss Emily LAU's speech yesterday, opposing the widening of the scope on the ground that it may be a possible threat to the freedom of expression, when she herself proposed that very same to the Legislative Council ad hoc group on behalf of the Journalists Association.

What changed the minds of these two very vocal leaders of public opinion? Where have the eloquent and forceful arguments they put forward to convince our ad hoc group and the Administration gone? It is hard to imagine that the very strong convictions of the creme de la creme of our journalistic and legal minds took an about turn overnight.

HIS EXCELLENCY THE PRESIDENT: Mrs. CHOW, we must speak to the motion which is that the debate be adjourned.

MRS. CHOW: Well, I have to give the background to oppose the deferment. I am sure I am not alone in wanting to know the reason and our colleagues in the ad hoc group, the Legislative Council in-house meeting, the Administration, the media and all those members of the public who are concerned with this Bill, are perfectly entitled to know the reason.

Now, the motion for adjournment; it has been argued that the Second Reading and the Third Reading of this Bill should be adjourned because many new points have been raised in representations to the Legislative Council last week and yet none of these points have been mentioned. Going through the points raised in the last two and a half months, I believe that we have exhausted most of the arguments and now is the time for decision. It is true that the submissions and representations were made by a number of groups in the last week and many valuable points were made, but I, for one, am satisfied that the Bill, with its amendments to be proposed by the Chief Secretary, satisfies the legislative intent that was originally set out. I cannot see the logic in the argument that it gags the press or any person's freedom of expression for that matter.

What it aims to do is to protect the wider public—

HIS EXCELLENCY THE PRESIDENT: Please speak to the motion, Mrs. CHOW.

MRS. CHOW: against false news which may cause public alarm or disorder. I understand and I believe that we have taken into consideration many of the arguments which have been forwarded by many members of the public and I would oppose any adjournment of the Second Reading of this Bill.

MR. CHEONG-LEEN: Can I make a point, Sir? To my recollection, at no point in this debate did I question the substitution of the word 'malicious' by 'false news.'

HIS EXCELLENCY THE PRESIDENT: Thank you.

MR. LEE YU-TAI: My speech is written impromptu and not prepared in advance because I have not been informed of any motion which would take place this evening.

I have only one intention and that is to vote against the Public Order (Amendment) Bill before the Second Reading. If this attempt is successful, it will not be necessary to proceed to the Committee stage or the Third Reading. My first aim is therefore to throw out the Bill altogether. There is however a risk that the 'noes' may not have a majority because of emotional voting or some other reasons, and the danger of the Bill being passed is great.

I would therefore at this point in time, second the motion which is now being put to the Council, to forestall the freedom of the press being threatened. And I maintain that freedom of speech is what makes the difference between a civilised society and a barbarous community. If the deferment is passed, I hope and trust that the Government will be responsive to the mounting pressure which I am certain will continue to grow in the community. In the eventuality that the motion for adjourning the debate is not passed, I will vote against the Bill in both the Second and Third Readings and claim division, at both of these readings and probably also in the Committee stage.

Finally, I am asked by Mr. Martin LEE to inform the Council that he agreed to the deletion of the word 'maliciously' in the Bill only on condition that the phrase 'knowing the same to be false' be added into section 27 of the Bill. He said his first aim was the same as mine and that was to scrap the Bill altogether. An amendment is only a concession. We will deal with it in the Committee stage when he moves his amendment.

Miss TAM (in Cantonese): Sir, just now Mr. LEE Yu-tai spoke on behalf of Mr. Martin LEE and said that Mr. Martin LEE agreed to the removal of the word 'malicious' in the Bill. I am glad he said that himself. The reason is although I have disucssed this through written submission to the ad hoc group, it is because of Mr. Martin LEE's considered opinion that it is finally decided to remove the word 'malicious'. Page 3, paragraph 4 of the minutes of the meeting held on 8 January said: 'Mr. Martin LEE declared his interest as one of the legal advisors of the Hong Kong Journalists Association. He expressed general agreement with the points raised by Mr. Peter C. WONG and highlighted a conceptual difference between 'malice' and 'negligence'. Mr. LEE felt that although the term 'malice' held a variety of meanings within different legislation, it would probably be interpreted by the court in accordance with its literal meaning of 'ill will' in the context of the Public Order Ordinance. The proposed new section

27(2) would therefore be an attempt to equate 'failure to make reasonable verifications (which amounted to gross negligence)' with 'malice'. To illustrate his point, Mr. LEE tabled an extract from the Hong Kong Law Report 1984 which summarised the ruling of a case (Robin Miles Bridge v WAI Kin-bong and Another)'. And having taken into account the views of Mr. Martin LEE, Mr. Peter C. WONG finally suggested to the Administration that the word 'malicious' should be removed. Mr. Martin LEE through the words of Mr. LEE Yu-tai said he agreed to remove the word because he would like to add in the words, 'without having reasonable grounds to believe that this is true'; this took place during the discussion on 10 February.

Judging from the above, it is clear that expert opinion has already been fully expressed on 8 January on the proposal to remove the word 'malicious'. Since Mr. Hilton CHEONG-LEEN has reservation on the proposal, I have therefore simply quoted the minutes for his reference. The question of whether or not the word 'malicious' should be removed has been raised again recently. But since this has already been fully discussed at the ad hoc group meetings, I do not consider it necessary to have the passage of the Bill postponed bacause of this.

MR. HU: Sir, Public Order (Amendment) Bill 1986 has been discussed thoroughly by the ad hoc group four times. Although I am not a member of the group, I do read the minutes. And this Bill has been studied repeatedly in the Legislative Council in-house meeting. The public has ample time and opportunity to express their views on the Bill and these views have been fully analysed and studied by the ad hoc group and the Legislative Council in-house meeting. Only recently has there been a sudden increase in the views expressed on the Bill. Studying these views, I have come to the conclusion that all these views are all more or less similar to those already studied by the ad hoc group and by the Legislative Council in-house meeting. There has been practically no additional material or information which may justify the ad hoc group and the Legislative Council in-house meeting to study the Bill again. I believe every Member of the Council has his or her own contact and has had discussions with the interested parties and has up to now more or less made up their minds what to do on the Bill and they will vote according to their principles and conscience, and certainly with the long-term interest of the public in mind.

As to whether any adjournment will enable Members to receive any additional views from the public, especially from the silent majority, I think any adjournment to the Bill will not change the views of the Members of the Council but will only cause unnecessary delay which will set an undesirable precedent in making the operation of this Council clumsy and inefficient. Therefore, I oppose the motion to adjourn.

MR. HUI: Sir, I support the motion for deferment of the Bill because, firstly, the latest amendment was only announced last Thursday and therefore adequate time has not been provided for consultation.

Secondly, the Legislative Council ad hoc group has not been able to deliberate on this very last amendment. Not even once.

Finally, Sir, I still cannot see the reason for the hurry to rush the Bill through today and to create such controversy and bitterness inside and outside this Council.

MR. WONG PO-YAN: Sir, although on certain occasions I did say I agreed to one of the points the Journalists Association had presented, that is the amendment was made known only last week and the time might be too short, I think the amendment is a very good one and also takes care of some of the representations from the journalists. So I cannot agree to the deferment of this debate. Sir, I would also like to say that the interest of the society as a whole should come before the interest of any particular section of the society. It is on this basis that I support the Bill. It is a good Bill and it is a fair Bill.

MR. TAI: Before I was cut off by Mr. SZETO Wah, Sir, I would like to mention that I am generally in favour of the spirit of this Bill. However, I am for a deferment of this Bill owing to the following reasons. This issue goes beyond freedom of the press. The amendments limit the freedom of speech. The public is worried about the implications of the Bill. Like all other legislation, this legislation is by no means perfect. It suffers from uncertainty but there is no other suggestion to put it in better and more acceptable terms. Sir, the legal profession is worried; a lot of my close friends without political affiliations are worried about the implications of this Bill.

Now, Sir, let's ask ourselves why we have to rush this Bill through tonight. Sir, would the credibility or the effectiveness of this Government suffer if this Bill were delayed? Sir, the public has a right to know and I agree with Mrs. CHOW that the public must be informed fully and they must make their own assessment on the implications of the restriction on freedom of speech. None the less in the present form I support the Bill unless there are other better amendments to it.

MRS. TAM (in Cantonese): Sir, first of all, I would like to state my standpoint and that is, I am in support of the Bill and I will support the motion to be put forward by the Chief Secretary. I am against the postponement of the Second and Third Readings of the Bill. It may seem that postponement of the readings is the easiest way out and the easiest way to gain popular support. But as some councillors have said, we must act according to our conscience. Sir, I do not agree, that is, I object to the postponement of the Second and Third Readings of the Bill. I respect the work of the ad hoc group. The particular ad hoc group had worked very hard on the Bill and there had been sufficient time to discuss the Bill at the in-house meetings. If a councillor said that he had not taken hold of the opportunity or he had not raised questions or he had not tried to understand, Sir, then I would say that as a responsible councillor, he must bear the responsibility.

MR. ANDREW WONG (in Cantonese): Sir, first of all I would like to say that I believe that every councillor is like Mr. LIU Bin-yan. We all have the second type of loyalty. We share this loyalty with the press. But if we would like to describe the loyalty of Legislative Councillors with certain adjectives we can also do so to the press. So even if we are not naming anyone in particular as a sinner, we must be careful in what we say.

I have chattered with the Acting Attorney General and we have said something about Standing Order 30(1). The Standing Order is a provision concerning the adjournment of debate on Second Reading. But the way I read it is that the President should not allow a debate on the motion that the debate on the Second Reading be adjourned, that is, a vote should be taken right away. Well, of course, this is my personal view. We can see from the speeches just now that practically everybody takes the opportunity to speak not on the motion to adjourn but on the original motion, and we will be debating and debating over and over again. And this sitting will not end until 7.00 am tomorrow.

Of course, Mr. O'GRADY, the legal adviser of the Legislative Council will be giving his advice to you, Sir. I am not the appropriate person to do so. But looking at the procedures, I would say that instead of a debate on the motion to adjourn the debate should be on the Second Reading, and according to our Standing Orders, a debate on the Second Reading is a chance for us to give the spirit and principles and the pros and cons of the legislation. Now, listening to the speeches I would say that all Members agree that the spirit is commendable. We just have disagreements on the details. It is not that details are unimportant; details, of course, can also be related to principles. We have different views on these details but I think our concern over these details have overshadowed the principal Bill itself which ought to be considered on the spirit and principles. If we all think that we should consider the details, then I suggest we should do this in the Committee stage or some stage before the Committee stage. So I will not support the motion to adjourn the Second Reading of the Bill.

I think there are ways that we can adopt. To put it simply, when we reach the Committee stage and if we are not satisfied with the amendment to the Public Order (Amendment) Bill 1986, for example, sub-section 2 of the new section 27 and think that it should be scraped altogether, we can always raise it. Or, if we are not satisfied with sub-section 1 of section 27 and we think we must add in the words 'knowing the news to be false', we can always do so. Or, we can always propose an adjournment of the discussion! So there are various means that can be adopted. And I think it is simply a waste of time to have a debate at this particular stage.

ATTORNEY GENERAL: Point of order, Sir. Just to deal with a point that Mr. Andrew WONG made. Subject to the views that the Counsel to the Legislature may have, my reading of Standing Orders is that Standing Order 30 should be read with Standing Order 24(2), which provides broadly that where

the question is put then a debate may take place. Sir, I am satisfied, subject to the views of the Counsel, that the debate has properly been had on this motion to adjourn.

CHIEF SECRETARY: Sir, question has been raised by Mr. Martin LEE and others as to whether this Government will lose credibility if it fails to delay this Bill today. Questions have been raised about our relationship with the public and how they will view us in the future.

Sir, I believe that the public of Hong Kong will look at the record of this Government on consultation and will see the immense care that we have taken over a number of years over many pieces of legislation. On many occasions, Sir, we have delayed legislation for further public consultation. They will also judge our performance in this case, against the background of our performance in the freedom of speech and expression in Hong Kong and I shall have more to say about that later.

Sir, the media does not have the monopoly of the judgment of public opinion in Hong Kong, nor, dare I say it, does Mr. Martin LEE. We have to make judgments ourselves in this Council about the carriage of government business. Nothing I have said is intended in any way to infer that we do not listen very carefully to all that has been said today and will continue to listen. But, Sir, if I summarise the procedures that we have taken, I do not believe that the charge that has been laid against us that this Bill is being rushed through can stand real scrutiny. These Bills, Sir, were gazetted on 19 December 1986. They were introduced into the Legislative Council by me on 7 January. As Member have said, it has taken two months for these Bills to reach the resumption stage of this debate. The pace of that development, Sir, does not suggest great haste. Indeed on the contrary, this Administration agreed to defer the resumption of debate on the Second Reading twice. Originally schedule for 21 January and then for 18 February.

We have heard reference, Sir, to the ad hoc group under the chairmanship of Mr. P.C. WONG. This Administration has met on three occasions with that group to exchange views. The meetings considered in detail the published Bills as well as, Sir, the points raised by the Hong Kong Journalists Association. I have seen minutes of those meetings, Sir, and they are several inches thick. It was as a result of these meetings that the amendment clause, tabled today, was agreed by the majority of Members of the ad hoc group and published in the Government Gazette. Sir, indeed as has been said, the changes involving the removal of the word ‘malicious’ and the widening of the clause so that it was not limited to the press was initiated by a large majority of the ad hoc group following representations to that group.

Sir, there is one other point I would like to mention. Mr. LEE has suggested in this Council today that we must delay the Bill in order to achieve a consensus. I find the use of the word ‘consensus’ coming from Mr. LEE a somewhat strange

one because I know that in terms of his belief in democracy, he knows as I know that there must come a time when the majority decision must be taken. If the views of the Members of this Council cannot reach a consensus then we should put the matter to the vote.

Sir, with these remarks, I object to the motion from Mr. SZETO Wah.

HIS EXCELLENCY THE PRESIDENT: Mr. SZETO Wah, you have the right to speak last before the matter is put to the vote.

MR. SZETO (in Cantonese); Sir, I would like to move my motion again. I move that the debate be adjourned.

Question put and the Chairman stated that the 'Noes' have it.

Mr. LEE Yu-tai claimed a division.

The Chairman was of the opinion that a division was unnecessarily claimed and proceeded under Standing Order 36(5). There was a clear majority in support of the Chairman's decision and the Chairman declared that the motion was negatived.

MR. TAI: Sir, the Public Order (Amendment) Bill 1986 and its provision has aroused public attention and anxieties. Although no law whatever its nature is a hundred percent perfect, we should still strive to make it as near perfect as possible. The Bill has a number of flaws—it fails to clarify the meaning behind the wordings such as 'publishes false news' and wordings such as 'likely to cause public alarm and public disorder', the precise legal implication of which is unclear. It is the uncertainty or ambiguity in this area that worries the general public as to the exact legal position thus threatening the freedom of speech and, Sir, it also imposes the burden of proof onto the defendant. This is contrary to the common law principle that the prosecutor has to prove all the essential element including the elemental element of criminal offence and instead requires the accused to prove that he has committed the offence in the absence of requisite criminal intent.

The main criticism against the Bill is that it is a threat to freedom of speech and of the press and will make it difficult for journalists to perform their task. Sir, this criticism is not totally without merit. The Bill has received close examination by the ad hoc group set up under the convenorship of Mr. Peter C. WONG and has been thoroughly discussed at the Legislative Council in-house meeting on no less than three occasions. The primary aim of the Bill is to render a publisher responsible for what he publishes. In dealing with such a legislation I take the following factors into consideration.

First, whether the objective of the Bill deserves support. Second, the gravity of damage to society by the wrongdoers, and third the practical enforceability of the legislative provisions. None the less, Sir, in this particular case, one should be careful not to depart too easily from our fundamental common law principle by swinging the burden of proof onto the defendant for the sake of an easy conviction. By balancing the various factors, it is the gravity of damage to society and the practical enforcement aspect of the legislation which receive my support today for putting the burden of proof for the requisite criminal intent onto the defendant in contrary to the common law principle.

We have a number of legislation in our statute books in which the defendant is required to show at the time of commission of the offence he does not have the requisite criminal intent. Indeed we also have absolute offences that negate any criminal intent. I agree that we must be careful not to be diverted too easily from that particular principle. Sir, the lack of clear definition for terms such as 'false news', 'publishers likely to cause' appear in this Bill are not satisfactory. I feel that in cases where a publication is published with a justifiable cause— though not 100 percent accurate—and which aims to arouse public attention to a particular issue, the publisher should not recessarily be liable to prosecution. This will pose a threat to our freedom of speech.

Much criticism of this Bill is on the point that the public has not been sufficiently consulted. I sympathise with the view. Moreover, the late amendment of this Bill changes the version of this Bill into a total new dimension. Not only are we restricting the freedom of the press, we are in danger of threatening the freedom of speech. I shall not deal with the points requesting an extension of consultation.

Sir, Hong Kong has lately been subject to much political confrontation and it is wrong to think that deferring the Bill will be regarded as detrimental to the Government's effectiveness and credibility. For the longer-term benefit and viability of Hong Kong we must learn how to compromise. Sir, section 27(3) of the Bill stipulates the necessity of the Attorney General's consent to initiate prosecution. Now, Sir, this is a safeguard against abuse, for the Attorney General himself is accountable to this Council for whatever action or inaction he takes over a particular case. Too often, Sir, we talk of the accountability of the executive to the legislature and the legislature's accountability to the public. Should we not ask ourselves whether our publishers in turn should be accountable to the public for what they publish if the statements they make are false and have resulted in public disorder.

Sir, until and unless this Bill is put into practice and case law established regarding its practical enforcement or alternative acceptable wording is found to remove the difficulties of this Bill, or that there is clear evidence indicating that this Bill has indeed imposed supression on freedom of speech, Sir, I would support the present version of the Bill.

MR. ANDREW WONG (in Cantonese): Sir, I am still not satisfied with the reply just given by the Attorney General. Although Standing Order No. 24 is applicable to all motions, the motion in hand is a procedural motion. Otherwise if someone moves an adjournment at the Committee stage, there will be another debate which may drag on for hours and the meeting may never end. I hope the Attorney General and the Law Draftsman will discuss the matter again.

Basically, I support the amendments to the two said Ordinances. My reasons are more or less the same as those put forward by most Members, particularly those so well put by Mr. SOHMEN. In principle, I support and agree with most of them. But I think some of the reasons put may lead to problems, thus causing misunderstanding. Take for example, the concept of the so called base line. Essentially, I consider the base line concept wrong. My personal view is that if an act of a certain person or group of persons is regarded by us to be a criminal offence, he or the group should be punished. There should be rules and laws prohibiting and punishing the persons concerned. It has, therefore, nothing to do with a base line for the freedom of the press and of speech. The essence is that it is a criminal offence. The act of publishing news which turns out to be false and which truly is likely to lead to public disturbance or social unrest does not necessarily constitute an offence. We could say that he has done so unintentionally and he has tried to verify the truth of his report. That is why we must add some such elements as: there has been some degree of negligence or irresponsibility, or as insisted by Mr. Martin LEE, we must be satisfied that he himself knew he was telling lies and not the truth. It is here that judgment must be made. We have to determine whether or not we ought to insist on such intentions as lying, market manipulation, or even causing disturbance to Hong Kong—this last intention tantamounts to the crime of treason or counterrevolution. And we have to judge in order to determine.

The two Ordinances and the sections concerned have existed since 1951. Essentially the word ‘malicious’ could have included the meanings of ill will, involving serious failure of duty, gross negligence, negligence or irresponsibility. This was the objective of section 6 of the previous Control of Publications Consolidation Ordinance. At that time, the Attorney General spoke at length on moving the Bill in 1951. My attention is particularly drawn to the word ‘irresponsible’. Basically, by ‘malicious’ he did not mean, as most people think, ill will, or acts with ill will or treasonable acts—such acts are punishable and ought to be punishable under the Emergency Regulations Ordinance and the Emergency Regulations.

Now if we generally agree in principle that there must be some laws to control news reportings which are, say, irresponsible, negligent, grossly negligent, malicious, ill-willed, and so on, and which are false and are likely to create social unrest, then we should support the Second Reading of the Public Order (Amendment) Bill which is on the principles. It is only at the next stage that we consider the details, for example, the wordings of the proposed section 27 of the revised Public Order Ordinance, but they are more or less the same as those of

the previous section 6 of the Control of Publications Consolidation Ordinance and, for example, people might not be happy about the provision concerning the onus of proof, that is, who should be responsible for proving that one has committed an offence and what should he be charged with?

Now we could see the word 'malicious' in the Ordinance had always meant that if we have not tried our best to verify the truth of the case, we would be considered as having had malice or guilty of serious failure of duty or of being grossly negligent. Basically the proposed section 27 of the Public Order Ordinance should not be compared with the old section 6 of the Control of Publications Consolidation Ordinance and, in fact we should judge in the total context which is that the Control of Publications Consolidation Ordinance can now become or is now changed to another Ordinance, with the provision concerning the suppression of newspaper completely deleted. Therefore the revision is fundamentally an improvement.

However, because of the issue of the onus of proof as well as some new developments such as the replacement of 'local newspaper' with 'any person' which includes radio and television stations, there might be some changes of significance. Nevertheless, all these should not be discussed during the debate on the Second Reading. If we all agree to the Bill in principle, it would be all right to touch upon the issues lightly during today's debate, but any divergence of opinion on such issues should be studied at the Committee stage when amendments are proposed, or even during the debate on adjournment at Committee stage, if any, or by a Select Committee. I consider all these, rather than what we have just done, to be the proper ways of handling the matter.

As two amendments have been moved at the same time, something strange can happen. Let us suppose: the debate on the Second Reading of the Public Order (Amendment) Bill held first today, during which it was deferred or voted down, while the Control of Publications Consolidation (Amendment) Bill was later approved, then an indirect consequence would be brought about through the backdoor. In that case, section 6 of the Control of Publications Consolidation Ordinance would be deleted without being replaced elsewhere by a new provision. This is a probable result—I am not saying that anyone earnest intends it that way. I am of the opinion that when debating on the adjournment, or the setting up a Select Committee, or completely postponing the Second and Third Readings altogether, we should bear in mind whether it is the Bill on the Public Order Ordinance or the Bill on the Control of Publications Consolidation Ordinance that we are talking about. If we feel so strongly about public reconsultation on the whole matter, I think we might as well halt the whole proceedings.

In fact, if I were opposed to the proposed section 27 of the Public Order Ordinance, I would argue that after we have adjourned the debate on the Public Order (Amendment) Bill, when we come to discussing the Control of Publications Consolidation (Amendment) Bill, I would move an amendment to clause 5 which proposes repealing sections 3, 4, 5 and 6.

ATTORNEY GENERAL: I do not believe it is permissible for Mr. Andrew WONG to debate the technicalities of the previous motion for the adjournment of the debate. That motion was negatived—the debate now is on the principles of the Public Order (Amendment) Bill.

HIS EXCELLENCY THE PRESIDENT: Confine your remarks to the principles of the Bill, Mr. WONG.

MR. ANDREW WONG (in Cantonese): Sir, I am sorry you do not permit me to continue my remarks on the Control of Publications Consolidation (Amendment) Bill, but the two Bills are really linked together because section 6 in clause 5 of the said Bill has to do with the Public Order (Amendment) Bill—the clause to introduce a proposed section 27. I really think this is very strange. If this Bill were deferred or if the Second Reading motion were negatived, and if the next Bill were carried, the particular legal provision would have disappeared without our noticing it. I think, under such circumstances, that the two Bills are so intertwined, that we basically agree in spirit that the Public Order Ordinance should include provisions to punish certain acts such as involving serious failure of duty (call it malicious or ill will), then at this stage, we ought to support the motion that the Bill be read a Second time, and further debate its specifics during the Committee stage.

Thank you, Sir.

MR. LAU (in Cantonese): Sir, I have heard Members debating heatedly over this particular Bill and I will abstain from voting.

ATTORNEY GENERAL: Sir, the debate this afternoon has not unexpectedly focused on the proposed new section 17, clause 2 of the Bill. Apart from the broader issues of policy a number of more technical legal issues have been raised which I should like to take this opportunity to answer before the Chief Secretary replies to this debate.

I would like to deal first, Sir, with the question of the burden of proof. A good deal has been said both within this Chamber and elsewhere about where the burden of proof should lie. Critics of the Government's proposals allege that they run counter to the common law principle, that the burden of proof should rest on the prosecution. But putting the point in that way serves rather to confuse than to clarify the issue. The real question is whether the offence should have a mental element as one of its ingredients. The three ingredients of the offence as proposed by the Government are that there was a publication of news, that the news was false, and that the publication of the news was likely to alarm public opinion or to disturb public order. If the prosecution can prove those three things beyond reasonable doubt then, subject to the defence which I will come to in a moment, the offence would be established.

The amendment standing in Mr. Martin LEE's name would add a fourth ingredient, namely, that the accused knew that the news was false or was reckless whether it was true or false. It is, of course, true that cases where those responsible for the publication actually knew that the news was false or were reckless in that regard are the most serious and that that is the area where the need for a check is greatest. But the difficulty is a practical one. It is that it will very rarely be possible to prove what the defendant's state of knowledge was. There are those who say that the prosecution can rely on a confession by the defendant or on circumstantial evidence to prove his state of mind. For example, if one newspaper published the story and no others did, it might be inferred that it had been published with knowledge of its falsity. In my view that is simply not the case.

As far as a confession goes, those responsible for the publication will almost certainly have access to good legal advice and that advice will undoubtedly be to exercise the right of silence. Faced with that silence it is hard to see what other line of enquiry could be pursued. As regards the suggestion that the defendant's mental state can be inferred from such circumstantial evidence as what other papers or broadcasters may or may not have published, it has to be remembered that every part of the prosecution's case must be proved beyond reasonable doubt. The mere fact that no other newspaper has published the news would fall far short of that. Scoops can and do happen without there being any presumption that the story is false, still less that the newspapers' producers knew it was false. Therefore, even if it is subsequently shown that the story was false, no inference can be drawn that the publisher knew that it was false. It follows that Mr. Martin LEE's amendment would rob the proposed new section of almost all effectiveness because the prosecution would rarely, and then only by chance, be able to find the evidence to prove the necessary knowledge or recklessness.

However, the Administration recognises that it would not be right to impose strict liability for the publication of false news, even where the publication is of such a sensational character as to fall within the definition of the offence. It is intended, therefore, as Members are well aware to move an amendment at the Committee stage to provide a defence whereby if the publisher can show that, at the time of publication, he had reasonable grounds for believing that the news was true, he will be entitled to be acquitted. As is usual with statutory defences—and there are many, many of them on our Statute Book—the burden of proving that defencee rests upon the defendant. But he does not have to discharge that burden beyond reasonable doubt as does the prosecution. It will be enough if he can prove it on a balance of probabilities, in other words, if he can show that it is more likely than not. Even in the form proposed by the Administration which so far as the press is concerned is in substance the same as the old section, this offence will certainly not be an easy one for the Crown to prove. It would, in my view, be a travesty to suggest that this new section will be a soft option for prosecutors.

I will move now, Sir, to disclosure of sources. One objection that has been made to the structure of this offence is that in order to establish the defence of having reasonable grounds to believe the truth of the news, journalists may have to reveal their sources, thereby breaking one of the ethical rules of their profession. That could certainly happen in some cases, where the information has been given on the condition of anonymity, though of course the need to rely on the defence at all would only arise if the prosecution had first established the three ingredients of the offence.

This is a situation which can arise in other context as well, and it is not confined to journalists. Others whose professional ethics require them to preserve confidentiality, such as priests and doctors, may also find themselves asked questions in court about these matters. In practice the courts always handle such situations with great sensitivity. The court will first determine whether the question really needs to be answered for the purpose of doing justice in the case. If it does then the court will—if the witness so requests— allow him to write down the name, or whatever it is, and that piece of paper will be shown only to those who need to see it, that is the judge or magistrate, the jury if there is one, and counsel. The court can direct that the name of the person whose name is written on the paper shall thereafter be referred to as 'Mr. X', and that nothing shall be said in court which might reveal his identity. This is a well-tried procedure which works well, even where it is the witness himself who seeks anonymity, for example, the victim of blackmail or a prosecution witness who fears reprisals from the defendants' friends.

Reference has also been made to the amendment standing in the Chief Secretary's name which would delete the reference in the proposed new section 27 to local newspapers. It is said that this will greatly extend the scope of the section. In practice the amendment will be of limited significance. It is of course correct as has been said, that the removal of the restriction to newspapers extends the clause to other forms of publication. In the case of the broadcasting media, this in practice adds little or nothing to the controls to which they are already subject. So far as anything else is concerned, publish for this purpose bears its ordinary dictionary meaning of making something generally known. Therefore, private conversations, and even speeches to private meetings and clubs, or company circulars will not be caught. Public speeches would in principle be covered, but bearing in mind that another ingredient of the offence is the need to show a likelihood of causing public alarm and disturbing public order, it would only be in cases of public speeches to large audiences that the possibility of offending against this section could arise. Since this means of communicating information is in volume terms negligible in Hong Kong compared to what is published by the mass media, this extention of the Bill will have little practical effect. On the other hand it removes an anomaly. In so far as the mischief against which the clause is aimed can be effected by publications other than in newspapers, it is illogical to single out newspapers as the target of the new section.

Examples have been given of instances where a prosecution might be brought against a publication which had published the results of an investigation which the Government finds inconvenient. The example of the Watergate investigation has been given. But it has to be remembered that the truth does not become a lie simply because a person or an organisation, even a government, says it is a lie. In the unlikely event that a prosecuting authority—in this case the Attorney General—launched a prosecution in such a case, the prosecution case would almost inevitably fail because it would be impossibly difficult to prove beyond reasonable doubt, and I would remind you that that is a very heavy burden of proof that the report was false. Further, the near certainty of the failure of the prosecution means that it would not be brought at all because its failure would achieve precisely the result the Government would wish to avoid, namely the confirmation of the truth of the report.

I turn now to the allegations of vagueness concerning false news and likely and public alarm. It is said that these terms and concepts are insufficiently clear and well defined to be an adequate guide for the press as to what they can and cannot do. I am bound to say that in relation to the term 'false news' I find that, frankly, a surprising argument, I thought that journalists spent much of their lives trying to get at the truth and then cross-checking to make sure they have got it. Mr. C. P. SCOTT, the Editor of the Manchester Guardian, as it then was some years ago, once said: 'Comment is free, but facts are sacred.' And the difference between what is true and what is not is crucial in several areas of the law. For example, in the civil law of defamation the falseness of the liable is crucial. If the defence can prove the truth of what they publish they will win the case. Yet I had never heard it suggested that that is an unworkable law. Here, of course, the defendant will not even have to prove the truth of the publication, all he will have to do is cast reasonable doubt on the prosecution's allegation that the news is false, or, if he cannot do that, show that he had at the time reasonable grounds for believing the news to be true.

The prosecution will also, of course, have to prove that the news was false in a material way. I am sorry if I keep coming back to this point. In other words, the prosecution must show a connection between the false aspect of the report and the likelihood of causing public alarm that is necessarily implied in the way the clause is drafted. The term 'likely' is one which is familiar in a legal context and its meaning is well established. Its dictionary meaning is that, with reference to a possible eventuality, it is something that might well happen. Judicial decisions have determined that it means more than a fanciful or remote possibility, but need not mean as much as a probability; in other words 'likely' by itself covers a lower degree of possibility than 'more likely than not'.

As to the meaning of 'cause alarm to the public' such concepts must, I suggest speak for themselves. Any attempt to define them would be liable to confuse the position rather than clarify it. Nor is any further definition necessary. The

concept of public alarm is perfectly well understood as a matter of every day common sense. I am quite sure the courts would not find a likelihood of causing alarm proved except in a very clear case.

Another point that has been made is that there is provision in the Emergency (Principal) Regulations which is similar to this proposed new section. That is quite true, but the point about those regulations is that they are not part of the law which is normally in force. They are only brought into force—and then not necessarily the whole of them—if a state of emergency exists. They contemplate a very, very serious state of emergency indeed.

Mr. Desmond LEE, I think it was, suggested that the proposed new section 27 interferes with human rights. It is certainly correct that various international conventions on human rights guarantee freedom of expression and freedom of the press. But those conventions also recognise there must be limits to that freedom. For example, the International Covenant on Civil and Political Rights which applies to Hong Kong expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities and that it may therefore be subject to certain restrictions. The covenant goes on to state that the restrictions shall be only such as are provided by law and are necessary for either the respect of the rights or reputations of others and the protection of national security or public order or public health, or morals. Thus, in my submission, proposed new section 27 clearly falls within the restrictions contemplated by the covenant.

Mr. CHEUNG Yan-lung proposed that all trials for offences under the proposed new section 27 should be held in the High Court before a jury. The Bill provides that offences may be tried either summarily—that is, before a magistrate—or on indictment. Trials on indictment are held for serious cases and are held in either the district court or the High Court. In the latter, trials will be held with a jury. So the Bill already contains provisions that will enable cases under the section to be heard by a jury. The nature of the offence is one which would generally render it suitable for jury trial, although a decision as to the appropriate mode of trial will have to be taken by the Attorney General having regard to the particular circumstances of each case.

If I may then, Sir, sum up the essence of what I have been saying. The Administration's proposal is not contrary to the spirit of the common law as has been alleged. It is designed to lay down an offence that is workable, without being either ineffective on the one hand or harsh on the other, and as far as the press is concerned it represents very much the situation as before. The defence which will be available will be fair taken as a whole. The section is one about which no responsible journalist needs to be worried.

CHIEF SECRETARY: Sir, I would like to thank all those Members who have spoken this afternoon. All have expressed with great conviction their strongly held views and the debate even so far, Sir, has been lively and stimulating. It is

further evidence if any were required of the freedom which we all enjoy, to speak our minds in this community. We have come a long way since January when I introduced this Bill into the Council. Much has clouded the issue and I crave Members' indulgence to take them back to the purpose of the introduction of this Bill.

When I introduced it two months ago, I emphasised the fact that it followed a long and thorough review of existing legislation dealing with the control of publications in Hong Kong. As a result of that review, which the media asked for and support, and we support it, the Bills which we introduced into this Council were repealed, I repeat repealed, the following provisions which had been on the statute book for over 30 years. In passing Mr. Richard LAI has suggested that they were modest provisions and that we had taken the fiercest of them into our new legislation. May I ask him in passing, which of the following he would like to retain. To make it an offence to print or publish anything of a subversive nature—we have repealed it. To provide for the suppression of newspapers and their publication—we have repealed it. To provide for the prohibition and importation of publications. To provide for the Registrar of Newspapers, to refuse or suspend the registration of news agencies. To provide for the seizure of printing presses. To provide for search, seizure, forfeiture and the disposal of articles used for the contravening of the Ordinance. To allow for the registrar to refuse the licence or cancel the licence of distributors. Hardly I suggest, Sir, modest provisions.

Sir, for some 35 years then, this community and the media in Hong Kong, has lived with these provisions as part of the law, and amongst them in the Control of Publications Consolidation Ordinance, in Chapter 268, section 6 was a passage concerned with the publication of false news. Sir, in spite of the existence of these laws, this Government has espoused and encouraged the freedom of expression in the media and in the public generally in a way which has drawn praise, not only from countries in this region, but from many parts of the Western world also. I have every reason to believe that it is because the Government has encouraged these freedoms, that the journalists of Hong Kong have not felt it necessary to march to Government House to demand the repeal of our press laws over the last 30 years. The Far East Economic Review has not moved out of Hong Kong and Radio Television Hong Kong, the government-owned station, has not felt inhibited from biting the hand that feeds it, indeed RTHK enjoys an independence of spirit which few, if any other government stations in the world can match.

Newspapers have continued to speculate wildy, accurately and inaccurately. Exclusive front-page headlines in bold type have subsequently been proved true or false. Four thousand teachers have shouted slogans at Government House; 2 000 civil servants have condemned the Government in virulent speeches at the secretariat, and countless public demonstrations have been held in Victoria Park.

Sir, long may this situation continue, but two months ago, in order to bring our laws into line with the freedoms we practice in Hong Kong, we proposed to repeal these draconian laws and retain only one clause in one piece of legislation which is solely concerned with the maintenance of public order. The removal of false news from the Control of Publications Consolidation Ordinance to the Public Order Ordinance, is a clear indication that provision is not meant to limit press or personal freedom but simply to safeguard the community from false news which is likely to alarm public opinion or disturb public order. Without doubt, the present formulation of the clause is the most mildly phrased section in all our previous legislation. It is for this reason, and for this reason alone, that we have included this clause in the Public Order Ordinance. Sir, we believe that the community is entitled to protection from irresponsible reports which have serious consequences for the stability of this territory. If it is ever used, it will be used sparingly and with particular care. It is a measure of last resort. I totally reject every allegation which impugnes the motives of this Government in bringing in this clause. Some, such as the absurd proposition that we have retained it to seek favour with Peking are bizarre to say the least. Although no one has challenged this Government on its record of allowing, and indeed encouraging free speech in Hong Kong, I am indeed astounded, Sir, by the way in which this proposal which aims to liberalise press law, was greeted in the last week of a two-month consultation period by our friends in the media. Let me give you a few examples. 'It is a monstrous piece of legal fascism'. 'What worries me most about the Bill is the maliciousness the Government is showing in the acquisition of more power'. 'The Bill, if enforced, will turn Hong Kong into an autocratic society'. Sir, as a long-time defender of the principle of free speech, I could hardly take issue with the rights of the authors of those quotations to speak their mind as they see fit, but I enjoy that freedom too. I enjoy the freedom to suggest that such irrational outbursts as these do little credit to certain sectors of the media in Hong Kong. They have raised the temperature in a way which has clouded the issues involved, and are in marked contrast to the studied response of Members such as Mr. Martin LEE. If one studies with an open mind, the careful explanation by my friend the Attorney General, one will appreciate the very limited effect of retaining in our Public Order Ordinance, an offence of public mischief for the publication of false news.

Sir, over the many years I have been closely associated with the media in Hong Kong, I have always believed, and will continue to believe, that they have an important role to play as watchdogs in our community, but the tremendous influence they exert over the public carries with it the responsibility to present arguments in a fair and balanced way and wherever possible, to ensure that their news is true. Similarly, it is for the Government to exercise its power in a responsible way. The track record of this Government, I believe, can give no cause for concern in this regard.

Sir, I come now to what I believe to be the nub of the matter and the aspect of this amendment, which beneath the surface has indeed caused most concern.

Despite all that has been written about the immediate and damaging effect of introducing this legislation, I really do not believe that the media or the people of Hong Kong foresee the prospect of this Government making use of it to inhibit personal freedom. Indeed, many members of the media have made this point to me personally. Their real fears have been neatly described by the vice-chairman of the Newspaper Society. This Bill, he said, will be the perfect weapon in time should the authorities use it, to gag the press, so at the heart of their problem, appears to be the thought that a future government of this place, could use this Bill in a repressive and authoritarian way. I find this argument difficult to follow on these grounds. Firstly, if the rule of law is to continue to apply, the considerable burden of proof which lies with the prosecution, as eloquently described by my friend the Attorney General, will certainly inhibit its use as a repressive measure against the freedom of the press.

Secondly, the absence of any law which makes the dissemination of false news an offence, would not in itself guarantee that there would be total press freedom. Indeed, a better safeguard would be to build a system with checks and balances so as to ensure the powers were not abused, and thirdly, sadly, if however a future government is determined to restrict press freedom, the absence or presence of a law would not inhibit it, as every journalist who has worked elsewhere in this region must know.

Finally, Sir, as has been said by many Members, we must legislate for this place at this time as we believe best. In recommending this Bill to Council in its revised form, I would ask Members to consider the record of this Government on the question of personal freedom because this Bill cannot be looked at in isolation. I would stress the extremely limited effect of the clause we are discussing and the considerable burden of proof it puts upon the prosecution. In particular, I would ask Members to remember the key element in the Bill which requires proof by the prosecution that alarm is likely to be caused to the public or that the public is likely to be disturbed. A clause, I must say, the vociferous opponents of the Bill have more often than not, chosen to ignore in their argument against the proposed amendment.

Most importantly, Sir, I would ask Members to consider carefully the fact that this Bill was published over two months' ago and was well received by the people of Hong Kong at that time. Furthermore, only in the last 10 days has the campaign waged by the media clouded the fact that this whole process started in this Council with the determined effort by this Government to repeal those repressive measures in our laws which were so contrary to all the freedoms that Hong Kong stands for. Let us not today, be diverted from the fundamental aim of the legislation we are considering.

With these remarks Sir, I beg that the Bill be read the Second time.

Question put and the Chairman stated that the 'Ayes' had it.

Mr. LEE Yu-tai claimed a division.

The Chairman was of the opinion that a division was unnecessarily claimed and proceeded under Standing Order 36(5). There was a clear majority in support of the Chairman's decision and the Chairman declared that the motion was carried.

Bill read the Second time.

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

8.45 pm

HIS EXCELLENCY THE PRESIDENT: I think at this stage, Members might like a short break. The Council will convene again at 8.55 pm.

9.00 pm

HIS EXCELLENCY THE PRESIDENT: Council will resume.

CONTROL OF PUBLICATIONS CONSOLIDATION (AMENDMENT) BILL 1986

Resumption of debate on Second Reading (7 January 1987)

MR. PETER C. WONG: Sir, my speech on the Public Order Amendment Bill 1986 also applies to this Bill.

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).

ADOPTION (AMENDMENT) BILL 1987

Resumption of debate on Second Reading (18 February 1987)

DR. HO: Sir, I rise to speak in support of the Adoption Amendment Bill 1987. The proposed amendments are aimed at promoting the welfare of the infant while adequately safeguarding the rights of those parents who show genuine

interest in the well-being of the infant. One of the most significant provisions in the Bill is to enable the Director of Social Welfare if he is the legal guardian of an infant to obtain an order from a court, freeing the infant for adoption. By virtue of this court order, the Director of Social Welfare can proceed to locate a prospective adoptive home for the infant and the infant may be given an opportunity to move from an institution to a home with parental love and care. It has been established that the effect of long-term institutionalisation is detrimental to the emotional and physical development of a child. There have been a number of cases where a child has been deprived of a home for an unnecessarily prolonged period, as a result of his or her parents blatant indifference towards the child's interest on the question of consent. This deprivation is unnecessary and avoidable in the light of the many applications for adoption locally or over- seas. Adequate manpower resources including trained social workers assigned to the Adoption Unit, must take into consideration, the labour intensive nature and workload of this service, otherwise the improvements arising from this streamlining of the adoption procedures will be quickly diminished.

SECRETARY FOR HEALTH AND WELFARE: Sir, I would like very briefly to thank Dr. HO for his support for the Adoption Amendment Bill and to assure him that the need of the Adoption Service have always been given high priority in the department's allocation of manpower resources. The manning ratio of one worker to forty cases which is considerably more favourable than for other types of casework, takes into consideration the labour-intensive nature of this service. The amendments to the Ordinance, will I am sure, enable the adoption procedures to be further improved and streamlined.

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 EXAMINATIONS AUTHORITY (AMENDMENT) BILL 1987.

Resumption of debate on Second Reading (18 February 1987)

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.

SIR EDWARD YOUDE MEMORIAL FUND BILL 1987

Clause 1 to 15 were agreed to.

PUBLIC ORDER (AMENDMENT) BILL 1986

Clause 1 was agreed to.

Clause 2

MR. MARTIN LEE: Sir, let me first of all indicate to Members the difference between my amendment and the Administration's proposed amendment. They are in fact identical, except in one respect, and that is, I propose the addition of the following words in sub-section 1 of the proposed section 27 of the Public Order Ordinance, namely, 'knowing the same to be false or being reckless as to whether the same was true or false'. And for the sake of completeness, the whole section should read 'Any person who publishes false news, knowing the same to be false or being reckless as to whether the same was true or false, and which is likely to cause alarm to the public or a section thereof, or to disturb public order, shall be guilty of an offence and shall be liable and so on;' then it deals with the penalties.

Legislative intent

Sir, in moving this motion, may I first of all deal with the question of legislative intent, that is to say, what is the group of people we try to cover under the net. It was clear to my mind when we first met with the Administration that the intention was to prohibit the deliberate reporting of false news. Thus, deliberateness would be an ingredient of the offence. In this connection, it is pertinent to note that the original section 6(1) of the Control of Publications Consolidation Ordinance, contains the word' maliciously', and it reads: 'Any person who maliciously publishes in any local newspaper false news, which is likely to alarm public opinion...' and so on. In that context, I respectfully submit that it would be important and indeed necessary for the prosecution to prove that the accused had known of the falsity of the news. It is the deliberate reporting of false news which was outlawed and not the publication of news which should later turn out to be false. But of course we in the ad hoc group were unhappy with the presumption then contained in sub-section (2) because that had the effect of confusing two concepts, equating negligence with malice, and we had no difficulty in seeking the Administration's agreement that that sub-section (2)

should not be retained in that form. And so it is necessary to bear in mind the legislative intent, that is, we are seeking to prohibit the deliberate reporting of false news. At subsequent meetings, the Administration took the view that it would be extremely difficult to prove knowledge of falsity on the part of the accused person and therefore they proposed to shift the burden of proof on to the defence, their suggestion being that the prosecution would still have to prove the publication of false news, which is likely to alarm the public or a section thereof. They said that the question as to whether or not the accused person had known that the news complained of was false or not, being a matter peculiarly within the knowledge of the accused, ought to be left to him or her to explain to the court. But unfortunately, it is not as simple as the mere shifting of the burden of proof, and as to that I will deal with later on in my submission. The result is that the net has now become larger and will include a journalist who had no deliberate intention to publish false news, because the journalist did not realise that the news was false, in that he or she might only have been negligent, yet the prosecution could still establish a prima facie case against the accused. In other words, even though the journalist might have been negligent in fact, that negligence would have made it necessary for the journalist to go into the witness box and explain his or her case. So in effect, the net has been cast wider than was originally intended. And with the greatest respect to the Administration, that is not what we should be doing, because we should first of all determine what are the people sought to be affected by the law, and once we have determined that the group of people sought to be covered consists only of those who deliberately report false news, then we must stick to that principle and should not, under the guise of difficulty in proving knowledge, cast a wider net than we originally intended. And of course, Members have heard already the history as to how the phrase 'in any local newspaper' has become omitted in both of the amendments now before the Council. I will not repeat that. Suffice it to say that the net result is that this net is cast much wider than we originally had in mind, because it does not only include local newspapers, but it includes the other forms of the mass media, and indeed any person who should make a public statement. I shall later elaborate on the point as to whether or not, couched in such language, the section can also affect people having private telephone conversations. I will deal with that later on in reply to some of the points specifically mentioned by the learned Attorney General in his speech.

Knowledge of falsity

Now I come to another point, and that is knowledge. Sir, knowledge is a necessary ingredient of quite a few criminal offences in Hong Kong. This is nothing exceptional; nothing new. I will just give some of the examples, because if I were to be exhaustive, I could take another hour.

Firstly, murder. That we all know, but in order to prove murder, the prosecution has to prove, always beyond any reasonable doubt, that the defendant had killed somebody unlawfully 'with malice aforethought'. The word 'malice' is familiar. In other words, the prosecution has to prove that it

was a deliberate act with intent on the part of the accused to cause the death. Of course, as any prosecutor will know, that may be the most difficult part of the offence to prove in a court of law.

The second example is theft, and many related offences under the Theft Ordinance. Dishonesty is a necessary ingredient in each and every offence in that Ordinance. Theft, robbery and so on. How does one prove dishonesty? It is the state of mind of the defendant. The Attorney will say: 'very difficult to prove'. I know, but that is not the answer.

Now I come to the third example, commercial crimes, which are quite popular these days. Conspiracy to defraud for example. Now in such offences, the prosecution again has to prove, among other things, the intent to defraud. Now one may ask the same question: 'How on earth do you expect the prosecution to prove what is peculiarly in the mind of the accused, whether he did certain things with intent to defraud or not?' Surely it would be much more convenient for the defence to explain to the judge and jury; and yet that is the law.

Then we come to criminal libel, contained in the Defamation Ordinance (Chapter 21). Now Members may think that this is a particularly pertinent example because we have similar words like 'publish' and so on. I will first of all read section 5 of the Defamation Ordinance:

> 'Any person who maliciously publishes any defamatory libel, knowing the same to be false shall be liable to imprisonment for two years, and in addition to pay such fine as the court may award.'.

Now I come to section 6:

'Any person who maliciously publishes any defamatory libel....'.

So far the same, and yet you do not have the phrase 'knowing the same to be false', and it goes on to say:

'....shall be liable to imprisonment for one year'....'.

So it is a lesser sentence, one year instead of two.

So the difference between the two sections is that in the first one, in section 5, the prosecution has to prove knowledge of the falsity and if it succeeds, the offence is proved, and it carries a heavier penalty of a maximun imprisonment of two years. But if the prosecution has no evidence of knowledge of falsity, it can still go under section 6, but this time the maximum penalty is only one year of imprisonment. Again, knowledge of falsity is made specifically an ingredient of the offence. Of course, the Attorney will say it is very difficult to prove, and I agree. Indeed it may well be the most difficult part of the case for the Crown but that is our law.

Reckless

Now I will come to the word 'reckless' contained in my motion for amendment. Now what is the meaning of the word 'reckless'? There are some decided cases which may help. In the case called Ellis (John T.) Ltd. v. Hinds, (1947) K.B. 475 at page 486, Mr. Justice HUMPHREYS said:

'I take the view that the word 'reckless' means a great deal more than negligence.'.

And in another case, Reed (Albert E.) & Co. Ltd. v. London and Rochester Trading Co. Ltd. (1954) 2 Lloyds Rep. 463 at page 475 where Mr. Justice DEVLIN said: 'I think it means deliberately running an unjustifiable risk'. And then there is a much longer passage in the Queen v. Grunwald (1960) 3 All E.R. 380, per Mr. Justice PAULL at page 384, who says:

'Reckless is a word which is in quite common use and the ordinary citizen when asked whether there was any difficulty in defining the word "reckless" would, I venture to think, say 'No'. He is accustomed to it in many ways—reckless driving, reckless conduct and now in the Act of 1958, a reckless statement or promise ... If you look up the meaning of the word "reckless" in the Oxford English Dictionary, you will find with regard to such things as statements or promises, that there is only one meaning given and that meaning is "characterised by heedless rashness". In other words, the statement or promise must be a rash statement or promise and must be made heedless of whether the person making it has any real facts on which to base the statement or the promise. Facts of course, may include what one has been told by apparently responsible persons, and I do not think that it would be right to import into the word "reckless" a meaning which might include a statement made as a result of an apparently responsible person having given the information on which one makes the statement or gives the promise. Of course, if one knows facts outside what one has been told, that must be taken into consideration. I want to say something else. A man may honestly and strongly hold an opinion with which others disagree. Provided that he bases that opinion on facts which he has reason honestly to believe exist, and makes the statement or gives the promise because of the existence of those facts, then, in my judgment, that statement or promise is not reckless. He has reckoned, although he may have reckoned wrongly, or may even have been somewhat careless in the conclusion to which he has come. Carelessness in my judgment, may not in itself be sufficient to constitute recklessness, although, of course, it is one of the factors which have to be taken into account. Clearly, a statement or promise cannot be both careful and reckless. On the other hand, I do not think that it is necessary to find dishonesty. A statement or promise may be reckless although the person making it, in some somewhat vague way, thinks that the statement is true and the promise is warranted. I would sum it up in this way. Before a jury can convict under section 13(1) of the Prevention of Fraud Investments Act of 1958, they must be satisfied of three things:

(i) that the statement or promise was in fact made;
(ii) that it was a rash statement to make or a rash promise to give; and
(iii) that the person who made the statement or gave the promise had no real basis of facts on which he could support the statement or the promise.

If those three matters are proved to the satisfaction of a jury, then, in my judgment, the jury may convict. If any one of those three matters is not proved, then the jury must find a verdict of not guilty. In considering the matter, bases of fact may, and indeed must, include that which has been told to the person charged by apparently respectable and responsible persons.'.

That was, of course, a summing up to a jury, and Members will see that under that English Act it would be necessary for the prosecution to prove recklessness as in my proposed amendment.

And then, if I may come to the last case which is shorter. In Shawingan Ltd. v. Vokins & Co. Ltd. (1961) 3 All E.R. 396 Mr. Justice MCGAW said at page 403:

'In my view, "recklessly" means grossly careless. Recklessness is gross carelessness—the doing of something which in fact involves a risk, whether the doer realises it or not: and the risk being such having regard to all the circumstances, and the taking of that risk would be described as "reckless". Each case has to be viewed on its own particular facts and not by reference to any formula. The only test, in my view, is an objective one. Would a reasonable man knowing all the facts and circumstances which the doer of the act knew, or ought to have known, describe the act as "reckless" in the ordinary meaning of that word in ordinary speech? As I have said, my understanding of the ordinary meaning of that word is high degree of carelessness. I do not say "negligence" because "negligence" connotes a legal duty.'.

Sir, the reason why I have to explain 'reckless' is because it is a word used in my proposed amendment, but I think Members will feel confident that to prove 'recklessness' would be much easier to do than to prove actual knowledge of falsity.

The burden of proof

Under the common law, the prosecution in any criminal trial must prove every ingredient of the offence, and the most celebrated and leading case on the subject is Woolmington v. DPP, (1935) A.C. 462 and the headnote reads: 'In a trial for murder, the Crown must prove death as a result of a voluntary act of the prisoner and malice of the prisoner. When evidence of death and malice has been given, the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted.' And at page 481, there is this beautiful passage in the speech of the Lord Chancellor Viscount Sankey:

> 'Throughout the web of the English Criminal Law, one golden thread is always to be seen, that it is the duty of a prosecution to prove the prisoner's guilt, subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.'.

Of course, Sir, I accept that there are exceptions to this common law principle, so that in many common law jurisdictions including Hong Kong, the ligislature has found it necessary, from time to time, to introduce statutory presumptions with the object of shifting the burden of proof on a particular ingredient of an offence to the defence. But before the legislature would undertake such a task, which is a departure from the Common Law, there are two very important conditions which must first be fulfilled. The first is prevalence, in other words, it must be established that the offence in question occurs very, very regularly and frequently. The second is that that particular ingredient of the offence is very difficult to establish because of the very nature of the offence. I will give an example in the Dangerous Drugs Ordinance. Now if I were in possession of dangerous drugs, the chances are that I would not be putting them on the table or on my bed. The chances are that I would be hiding it somewhere in the corners of my flat. So if the police were to come in and were to find it, it is very easy for me to say 'Oh what is that', and they say 'It smells like drugs, and tastes like drugs'. I say 'Sorry. No idea how it got there', and then I will start to give an account as to how many visitors have been to my flat, my amahs, chauffeur and so on. So it is very difficult to prove that the dangerous drugs found inside my flat are actually in my possession, particularly when the standard of proof is that of beyond any reasonable doubt. So the legislature, in order to assist the prosecution, and bearing in mind that such offences are prevalent, has enacted a presumption which in effect says that so long as the dangerous drugs are found inside my flat, or inside a place to which I have the key, then I shall be presumed to be in possession of the thing. But it is still not good enough because very often, the drugs are put inside a box, so I can say 'Alright, even if you can presume that this box is in my possession, I do not know what is inside. I have got a little boy who likes little boxes. I do not know when he brought it back.' So again the legislature, because of the prevalence of the offence and the inherent difficulty in proving it, has also enacted a presumption that if something is found in my possession and that happens to be dangerous drugs, then I am presumed by law to know that they are indeed dangerous drugs. But Members will see the necessity which justified such enactments in our laws.

What about this offence? I asked the Administration again and again for the Administration to show to me that the offence is prevalent and that it is difficult inherently to establish knowledge of falsity, because I know and they know that in many criminal offences, the state of mind and intention is one ingredient they must prove. I was told first of all that that particular offence, whether it be in the new form or the old form, as section 6 of the Control of Publications Consolidation Ordinance, was never made use of at all. Further, we were told that it was only in a few instances last year, that the Attorney General had found it necessary to write warning letters to some naughty journalists. In the event, of course, there was no prosecution at all. So the fact remains that such an offence had not occurred in the whole of this territory for the 30 odd years since the enactment of this secion 6. Not only has it not been proved that the offence is prevalent, quite to the contrary, they proved a case of its non- existence.

Difficult to prove?

And then the next question. Why is it so inherently difficult to prove knowledge, when the prosecution has to prove malice aforethought in murder, dishonesty in theft, intent to defraud in commercial crimes and knowledge of falsity in criminal libel?

Now I come to the next argument: that it is very difficult to prove knowledge of falsity and therefore if the law were to be amended in the way I suggested, then it would become a dead letter of the law. With the greatest respect, this is a bad argument.

The learned Attorney General in his speech earlier, made reference to this. He said ‘It is already very difficult for the prosecution, to prove that a particular item of news was false news; that it had been published and that it was likely to cause alarm’. That is a grossly exaggerated statement because it is so easy to prove it. Let me show you how.

The fact of publication can be easily proved because the publisher has to lodge with the registrar a copy of his newspaper, so in times of need such as this, it would be produced and will be evidence that the news has been published in that newspaper. I would have thought that is not beyond the competence of an ordinary Crown Counsel. News is easy because the definition is very wide. Whether it is false or not false, of course, depends on the evidence; but is it that difficult to prove. If a story were to be published about a particular government department, alleging a certain fact, and that government department denies it and sends somebody into the witness box to say that statement is untrue, then unless that witness is not credible on cross-examination, I would have thought that it would not pose any difficulty to the young Crown Counsel. What about likelihood to cause alarm? The learned Attorney explained to us what ‘likely’ means, and I am indebted to him and do not quarrel with him there at all. Surely it is not difficult to prove.

With respect to some of my colleagues who had made statements to the mass media recently, they seem to take the view that it was necessary for the prosecution to prove that the public was actually alarmed. There is no such thing. Even one Crown Counsel who appeared on a radio programme yesterday morning made the same mistake. Incidentally, that is why I asked for more time to enable Crown Counsel to study that Bill more carefully. Therefore 'likelihood to cause alarm' is not difficult to prove. It depends on the nature of the news and the more sensitive the news, the easier it is to establish likelihood to cause alarm to the public. But assume I am wrong. Assume somehow because of hunger or otherwise, you have become persuaded by the learned Attorney that it is very difficult to prove these three things. Of course if you then add an additional ingredient of knowledge of falsity, it becomes even more difficult to prove. Let us say you accept all that and my question is still 'So what?'—because the same would apply to all these offences which I have given as examples. If there is no evidence to prove malice aforethought beyond a reasonable doubt in a case of murder or dishonesty in a case of theft, or intent to defraud in commercial crime cases, or knowledge of falsity in criminal libel, what happens? The police would be advised by the Legal Department to let the suspect walk free. That is our system of law. As the Americans would say 'No big deal.' But you do not, because of that alleged difficulty, change the common law by standing it on its head, and shift the burden of proving knowledge or intent to the defence.

Furthermore, Sir, if there is no evidence after investigation by the police, and I shall demonstrate it is not difficult at all to unearth such evidence, that a suspect had prior knowledge of falsity of the news before publication, in other words, if the prosecution cannot show one way or the other whether it was due to negligence or deliberateness, I would have thought that that man or woman, as the case may be, does not deserve to be punished. It happens every day. More people are brought into police stations to assist in their enquiries than those who are charged, and people are let out all the time.

I agree that in blatant cases it would be much easier to prove knowledge. I accept also that in borderline cases such knowledge would naturally be more difficult to prove. But suppose some false news had appeared in the newspaper, what should happen? Really, Sir, I find it distasteful that I should have to lead Members by the hand as it were and go through the investigatory stages. But because the Administration has repeatedly said it is almost impossible to prove such knowledge, I have got to do this exercise. Some detectives no doubt, would be sent to the newspaper, or rather to its offices. They would explain to the editor their business there. Very often the editor would be obliging and say 'Now look. All right, I will tell you who is responsible for this piece of news'. But even if the editor would not tell, that does not mean the policemen have to go away. They can ask other people inside the office. If the name is given, no problem. The detectives can go to the person, the journalist in question. Ah, but the journalist, as was suggested by the Administration, may be advised by his lawyers to remain silent. True, but records and experience show that there are

many confession statements ably obtained and voluntarily obtained by the Royal Hong Kong Police Force. So confessions are not unheard of. Indeed, the legal professions have been quite worried because there have been too many confessions. So confession is one clear way of proving knowledge or prior knowledge of falsity. But even if the suspect would not talk, surely there would be other journalists sitting around him; and knowing the conditions which obtain in most offices of newspapers, journalists do not have separate rooms to themselves like Members of this Council, even though there are not too many rooms for us to share. So there is bound to be Mr.CHAN, Mr. WONG and Miss CHEUNG sitting around this journalist. They may say, 'Oh, yes, I heard him on the phone a couple of days ago saying to somebody that he would not really care whether a particular piece of news was true or false'. Or words like that. It always happens that there will be evidence because people who commit offences do not normally plan beforehand. That is why the detective rate in this territory is still reasonably high. When you have statements like that or like those, from prospective witnesses, you then mount up a case. Of course, very often the prosecution has to resort to circumstantial evidence, but that does not mean that circumstantial evidence is weak evidence. In fact it has been said repeatedly that circumstantial evidence could be the strongest possible evidence because if each of the pieces of evidence points to the same conclusion of guilt, what reasonable jury would not convict. Take an example of a very guilty and naughty publisher, who is in financial difficulties. He wants to leave Hong Kong because he cannot face his creditors but he wants to make a quick kill before he does. He sells short heavily on one afternoon; causes a sensational piece of false news to be published in his newspaper on the following morning and when the stockmarket drops, he gives orders to the broker to buy back what he has previously sold, thereby making a handsome profit. Is it so difficult to prove that? It does not matter whether he talks or not. You produce evidence of his financial difficulties by calling a banker or bankers. That is not difficult. You produce evidence of his activities in the StockExchange by selling short. You need a broker or two. That is not difficult. You prove that there was this piece of news published, which of course you have to prove to be false anyway, under whichever motion you decide on. You prove that he gave orders to the same brokers or other brokers to buy back what he had previously sold. That is not difficult. Now, which jury would not find as a fact that he must have published that false news deliberately and knowing the same to be false?

As I said, Sir, if you have borderline cases, I accept that it may be more difficult; but if you cannot even prove satisfactorily that there was prior knowledge in that that particular journalist might have been guilty of no more than negligence, do we in this Council feel that that journalist ought to be punished? We must remember: the wider we decide to cast the net, the more we are going to whittle down the other right of the public, their right to be informed.

I therefore respectfully submit that if this Council considers it necessary to have this section, then we should limit it to a very narrow ambit so as to strike at only those who deliberately publish false news, knowing the same to be false or being reckless as to whether the same was true or false.

Other jurisdictions

Sir, one of the questions the hon. Mr. Peter C. WONG asked, as convener of the ad hoc group, was: Do we find equivalent sections elsewhere in the world. The Administration did some homework. At the following meeting they produced two photostat sheets. One from Canada; one from Singapore. In Canada, it is called 'Spreading false news'. Section 177 of the Canadian Federal Criminal Code reads:

> 'Everyone who wilfully publishes a statement, tale or news, that he knows is false, and that causes or is likely to cause injury or mischief to a public interest, is guilty of an indictable offence and is liable to imprisonment for two years.'.

So the victim, as it were, of the false news, statement or tale, is a public interest, not just the public. It is more narrow, and you see the familiar clause '...that he knows is false'. My motion is based on the Canadian mode.

Now we come to Singapore. It is a lovely place to visit but hardly the place which brags of its freedom of the press. Section 505 of the Singapore Penal Code reads:

> 'Whoever makes, publishes, or circulates any statement or rumour or report (and I go straight to B) with intent to cause or which is likely to cause fear or alarm to the public or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquility, or (C) with intent to incite or which is likely to incite any class or community of persons to commit any offence against any other class or community of persons, shall be punished with imprisonment which may extend to two years or with fine or with both.'.

We also follow the two years in Singapore, but that is not my complaint. My complaint is, that it is not necessary at all for the prosecution to prove that it is false, but it is a matter for the defence because you have an exception there: it does not amount to an offence within the meaning of the section when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true. This rings very familiar. That is the Administration's model. So in Singapore, the prosecution need not even prove that the news complained of was false because the relevant words are simply 'Any statement, rumour or report'. The word 'false' was not even there, but then, that is Singapore.

Members will see therefore that the Administration's motion is somewhat based on the Singaporean model casting on the defence the burden to show that he has 'reasonable grounds for believing that such statement and so on is true'. Very familiar language. Because of the comity of nations, I will not make any further comment about Singapore. It is a lovely place to go to as I said.

Subsection (2)

Let me explain then, Sir, why I have seen fit to incorporate the Administration's proposed sub-section 2. Members will remember that I have suggested, that the prosecution should be required to prove knowledge of falsity of the news or recklessness as to whether the news was true or false as part of the offence, therefore the burden is back on the prosecution where it should have been under the common law. And yet I have found it necessary and desirable to incorporate the Administration's sub-section 2 which creates a defence, and it reads:

> 'It shall be a defence to a charge under sub-section 1 for the person charged to prove that he had reasonable grounds for believing that the news to which the charge relates was true.'.

Now, Sir, although the prosecution in my formula is required to prove knowledge of falsity or recklessness, before it can establish a prima facie case, once that is established, the defendant under my model can still avail himself of the statutory defence by proving that he has reasonable grounds for believing the news to be true. Now this would be necessary if the prosecution's case is based on recklessness as opposed to prior knowledge of falsity because if the prosecution's case is based on knowledge of falsity, the defence need not worry a thing. That is part of the Crown's case and that statutory defence would be unnecessary. But if the Crown's case is cast in the alternative approach of recklessness, then it may be in the interest of the defendant also to have such a defence.

The Attorney General's speech

May I now deal with the points make by the learned Attorney General. His first point was that the Administration's proposed amendment is not contrary to the spirit of the common law, it just makes it workable. I have said already that in order to make an exception of the common law principle enshrined in Woolmington v. DPP, two prerequisites have to be proved: prevalence and inherent difficulty in proving knowledge. The learned Attorney General has not even begun to make up a case on either count, and that in my respectful submission should be the end of the matter. This Council need not consider the matter any further. But if Members are somewhat confused, because of hunger or otherwise by his very able submission, I must go on. The learned Attorney is of the view that he understands the proposed section to refer only to public speeches made to large audiences. With respect, I beg to differ. Originally, as I said in my earlier speech, which I will not repeat, the old section 6 provided:

> 'Any person who maliciously publishes in any local newspaper.'.

There the word 'publish' is necessarily confined to a newspaper, that is something in writing. But once you remove the phrase 'in any local newspaper', and you have 'any person who publishes false news', then immediately the meaning of the word 'publish' is enlarged. This word 'publish' appears in a

number of different statutes in our law, and in the law of libel for example, it means nothing more and nothing less than communication to a third party. In other words, if I say something defamatory of Mr. A, but in the presence of a third party Mr. B, that would suffice. Similarly, if I have a telephone conversation with Mr. B, defamatory of Mr. A, although it be a private telephone conversation, it will suffice. Likewise with a letter marked 'confidential'. If I write you a 'confidential' letter and say something defamatory of you, that is no publication, but if that letter becomes read by any other individual, that is already publication.

Of course, I like to think that the learned Attorney is right in applying such a narrow interpretation of the word 'publish', but if that is the intention, then in order to protect the public, I would suggest that word 'publish' ought to be defined here because the word 'publish', as I said, has been construed by the courts differently under different statutes.

The next point raised by the learned Attorney was that, in establishing this statutory defence, it is not necessary for the defence to give the name aloud in court. He says it can be done by asking permission from the trial judge to have the name written on a piece of paper and from henceforth he shall be called Mr. X. This is not an unusual practice. But I am afraid the learned Attorney has missed the whole point. Journalists have a code of ethics. They have their own Bible and that is, never divulge your source. Alternatively never be seen to be divulging your source. If you see this defendant in the witness box asking permission from the trial judge to write somebody's name on a slip of paper, what will the onlookers think? They will see him writing the name of the source on a piece of paper. Although the onlookers, the audience and the press, will not know the name, they know the act of betrayal of the source. If I may use a foreign word: it is 'finito' for that journalist and that newspaper. So I am afraid the learned Attorney has completely missed the point with the greatest respect to him, and I do respect him.

Now another point raised by the learned Attorney was that, journalists should cross-check. I agree they should. I understand that the highest standards in England would require some sensitive news to be confirmed by three different sources and yet their code of conduct would permit these sources, confirmatory sources, if I may call them, to be on an off-the-record basis. So what happens if a particularly alert journalist picks up some exclusive news from some inside source on an unattributable basis that is, on the understanding that it can be reported but the name should be withheld. That should be checked if it is very sensitive and sensational news, I accept, but you could check it with some Executive Council Members on an entirely off-the-record basis, and if the confirmation is forthcoming, then the journalist and the editor have a right to publish even according to the highest standards. And yet when such news is published, the government department in question or the establishment in question—it may be a private enterprise—may find it necessary to deny it. The journalist cannot get the same people to confirm it on the record, naturally. So

there may be a prosecution, and if the Crown Counsel can prove publication of false news which is likely to cause alarm to the public or section thereof, the journalist will have to step into the witness box to answer the charge. Although he has confirmatory sources, he cannot divulge them. And so he will be found guilty.

The learned Attorney General referred to one of the international covenants and I was able to pick up some of the words which are relevant. 'As necessary for public order, health or morals'. In other words, this legislature can, indeed, restrict the exercise of the freedom of expression by enacting law when it is necessary to do so for public order or for the preservation of public order. I would have thought the relevant point of time is when we are actually considering such legislation. In other words, the question to ask is, has the Administration made out a case that it is necessary today for the preservation of public order to enact this section or to maintain this section in our statute books?

Since 1951 we have such law in section 6 of the Control of Publications Consolidation Ordinance. It has never been used once. I have it on good authority, as I said before, that in 1967 the three offenders were charged and convicted for sedition which is part of our Crimes Ordinance, (Chapter 200) of the Laws of Hong Kong, not this one. In times of peace, and not emergency situations, has the Administration made out a case that it is necessary for the sake of public order to have it introduced? With respect I say 'No'.

The Chief Secretary's speech

May I now respectfully turn to the very helpful speech by my hon. Friend the Chief Secretary. He paid us all a compliment for taking part in an exciting debate. I do find it a little exciting. He said also:

> 'The present proceedings are an indication that there is freedom to express ourselves in this Chamber.'.

The answer is of course, yes, because we all know we are privileged anyway. But the question I put to him is this. Will public figures continue to speak up on sensitive matters? They form a group which ought to be a protected species because they are so hard to find! And will newspapers continue to report faithfully what they say on sensitive matters. That is the question. As I said, it is not necessary for the Government, whether repressive or otherwise, actually to use such power to prosecute. The very presence of such a law hangs over the heads of the press like the sword of Damocles, persuading them very gently, but convincingly, to practice self-restraint. Is that what we want to see in Hong Kong? Then, the Chief Secretary said, well we have repealed many, many, even more offending sections. True, they have, and I salute them for doing it, but the question remains, why keep one?

The Chief Secretary also said correctly, 'The journalists have not marched up to Government House'. They have not, but I know that some of them, certainly the Journalists Association, have written to the Attorney General some time

back requesting the repeal of the entire Control of Publications Consolidation Ordinance, so it is not as though they have not done anything. They have. They have not marched up to Government House. I do not think the Chief Secretary intended to provoke them into doing just that or to provoke RTHK to bite his hand. That is why we all know we have got a very responsible press, self-restrained too perhaps.

The Chief Secretary said community is entitled to protection from false news. With that I agree, but let me remind Members that in order to give that protection to the public, which is really unnecessary in the light of the track record, we are going to sacrifice, on their behalf, something which may be even more important to them, that is, their right to know.

The Chief Secretary read some parts of some recent publications in the local press. I accept they have been exaggerated. Indeed they have been, but he only picked out one or two sentences. If one were to read the lot, the whole article, I do not think the overall impression can be said to be unjustified. After all, can they not be forgiven in the light of this Administration's continued and unreasonable refusal to postpone the reading the Bill?

Then let me come to what the Chief Secretary described as 'the crux of the matter', that is the lack of trust in the future Government of this territory. He says 'It is difficult to follow this argument'. With respect to him I find it difficult to follow his argument. He first of all said 'If the rule of law should continue to apply with the burden of proof on the Crown, there is no possibility of abuse', or words to that effect.

ATTORNEY GENERAL: I am sorry to interrupt Mr. LEE in full flight. I take a point of order. We are, Sir, now in Committee and in Committee, debates must be limited to the detailed consideration of the amendment subject of the motion. Principles of the Bill cannot be discussed again.

HIS EXCELLENCY THE PRESIDENT: Thank you Attorney General. Mr. LEE, you may continue.

MR. MARTIN LEE: I am obliged. I shall not be long.

HIS EXCELLENCY THE PRESIDENT: Would you bear in mind the Attorney General's guidance.

MR. MARTIN LEE: I am obliged, but in the light of that, Sir, I do not think it is proper for me to continue on this point because I accept that it is not really within the ambit of what I am supposed to be doing, and although you did not make a ruling, I shall bow to the objection.

Conclusion

Sir, let me conclude by saying this. The only difference now between the two different motions is that I have suggested that it be made into an ingredient of this offence, knowledge of the falsity of the news or recklessness on the part of the defendant as to whether the same was true or false. I accept that it will re-introduce a fourth ingredient into this offence, but that is in keeping with the common law. I accept that it will make it more difficult for the prosecution to prove the guilt of the defendant. I do not accept that it would thereby turn the section into a dead letter of the law. It has been said repeatedly, but no convincing proof has been provided. I do not accept that a case has been made out either by the Administration as to why it should be up to the defendant to show that he had reasonable grounds for believing that the news was true. There is no case of prevalence and there is no case of peculiar or inherent difficulty about this requirement of knowledge, like the other examples which I have given to this Council and which I will not repeat.

Finally, Sir, if the Council thinks it is necessary to protect the public, let that protection be confined to the minimum: to the absolutely necessary class of people that we seek to cover, because the wider we cast the net, the more erosion we will be making into the other basic freedom of our people, their right to know.

I apologise for the length of time I have taken.

MR. JACKIE CHAN (in Cantonese): Sir, just now when I spoke on the Second Reading of the Public Order (Amendment) Bill 1986, I had some reservations. It is because if this Bill is not properly amended, it is likely that we may not be able to see and hear any inside stories as well as spontaneous and exclusive news reports. What we may be able to see and hear are all ‘filtered’ and ‘stereotyped’ news announcements or ‘mere coincidental’ issues which are the subjects of the talk in town in variety shows.

Amongst the various freedoms enjoyed by the people of Hong Kong, the freedom of the press and of speech is the most treasured. Hence, legislative provisions regarding these areas must be clear and explicit, but not generalised so that abuse on the part of the Government and threats to press freedom can be prevented.

I fully support the motion moved today in this Council by Mr. Martin LEE to amend the Public Order (Amendment) Bill 1986 to shift the burden of proof to the prosecution with a view to bringing it in line with the spirit and principles of the laws in Hong Kong.

MR. CHEONG-LEEN: Sir, I consider Mr. Martin LEE’s amendment like the Chief Secretary’s amendment is still abhorent to the spirit of common law justice because the net has been cast so wide as to cover any adult person in Hong Kong. Neither of the two proposed amendments is a good piece of legislation and it suffers from being neither fish nor fowl in that it obviously aims to apply

to the press in particular and to the general public as well. In my view, the amendment to section 27 is good neither for the press nor for the general public and the end result is that it comes out as a bad piece of legislation.

I gather that the Government's revised amendment to section 27 was published only on Thursday night and it first appeared in the press on Friday and it seemed to arouse a fair amount of concern, so much so that the ad hoc committee did receive representations on Monday and on Tuesday. I would have thought that in view of these representations, Sir, it would have been prudent for the Second Reading of this Bill to have been delayed for about a fortnight. After all, this piece of legislation had been on the law books since 1951.

HIS EXCELLENCY THE PRESIDENT: You must speak on the amendment.

MR. CHEONG-LEEN: If the Government wish to establish legal safeguards against the press acting in an irresponsible way, it should have been more specific in the drafting of the revised amendment by way of the sub-section 2, section 27, so as to take account of the special conventions of the profession. As for the application of section 27 to other members of the general public, I can only express today my grave concern on section 27 as it stands if it were adopted today, and I do hope that the Attorney General will exercise the utmost care and caution in protecting the freedom of expression of the individual citizen in Hong Kong. I shall vote against Mr. Martin LEE's amendment even though I would agree it is less unacceptable than the government amendment.

MR. HUI (in Cantonese): Sir, as I have indicated earlier, I object to the Government's action in rushing through this Bill without conducting extensive public consultation and heeding public opinion first. Regarding this Bill which will have far-reaching effects on freedom of the press as well as freedom of speech among Hong Kong people, my original intention is to have it deferred. As now I must make a choice between the amendments proposed by the Chief Secretary, Mr. D. R. FORD, and those proposed by my colleague in this Council, the hon. Martin LEE, I have decided to support hon. Martin LEE's proposed amendments after careful analysis and consideration.

HIS EXCELLENCY THE PRESIDENT: Mr. Hui Yin-fat, you must speak to the amendment.

MR. HUI: After careful analysis and balances, I support Mr. Martin LEE's motion.

DR. LAM (in Cantonese): Sir, it is against the spirit of common law if the onus of proof is shifted to the defendant. A responsible government should not, for the convenience of legislative procedures or because of technical difficulties, go against the spirit of the common law. Therefore I support Mr. Martin LEE's proposed amendment.

MR. LEE YU-TAI: Sir, I rise to support this motion for amendment, not because it is a satisfactory situation but because it is less unsatisfactory than the original Bill and the official's amendment. I will accept only the complete deletion of section 27 and would therefore oppose to the Bill being passed into law at the Third Reading. The reason for supporting this amendment is to take precautionary measure against the eventuality of my opposition being rejected. If that eventuality materialised, I would not be able to achieve a satisfactory position. But with this amendment, the situation would be a lesser evil. In the case that even if this motion failed, I would then vote against the less preferable of those amendments because of its embracing effect which has led to public anxiety. However, when it comes to the Third Reading, I would still oppose the Bill in a final attempt to achieve a satisfactory position. If the opposition to the entire Bill failed, whether it is with or without amendment, I would call upon the Administration to conduct an immediate review of the legislation and to consider the possibility of the removal of the whole section 27 at the earliest opportunity. For this review, the Administration must consult the views of the public, particularly those of the journalist profession. I maintain strongly, that there could be no compromise over freedom of press and that no condition should be imposed to restrict freedom of speech otherwise the way would be left wide open for abuse of power and a danger for people being framed up is quick.

MR. PANG (in Cantonese): Sir, under such circumstances I would not like to speak.

MR. SZETO (in Cantonese): Sir, I am against the Public Order (Amendment) Bill 1986. After my motion to adjourn the Second and Third Readings of the Bill has been rejected, my next effort is to support the amendment motion proposed by hon. Martin LEE.

If a base line must be drawn for freedom of the press, this amendment motion could enable the Ordinance to become a genuine base line rather than an undulating and hidden fuse wire.

This Ordinance involves the press as well as all those social personages who have any announcement to make. Whether certain news if 'false' has to be proved by history; or perhaps it could never be verified. The words 'possibly give rise to' need not be based on facts, but rely entirely on subjective judgment. If this amendment motion is not accepted, then the law would become all-powerful.

The original Bill would force the press to disclose the source of their information. This is like drawing up a prohibited area or setting a trap for journalists who stick to their professional ethics. Some people say the purpose of the Bill is to deter and that is what I find most frightening. Before finding out the presumed black sheep, one would witness the woeful situation of 'not hearing a neigh from 10 000 horses'. Hong Kong will become over-shadowed by a deathly silence. The power of prosecution lies in the hands of the Government

and the defendant has to provide the key evidence by himself. In that case, only news officially released by the Government will be 100 per cent safe. Even if the Government had disclosed some false news, it could remain above the law. Then Hong Kong is not only overshadowed by a deathly silence, but also by an air of officialdom.

Some people say, such an amendment will make it difficult to prosecute offenders. I think it is essential to make it difficult to prosecute. Or is it on the contrary, that it should be essential to make it easy to prosecute? Difficult is not the same as impossible. Those who utter the above views also say that after the Bill has been passed, it will be rarely used. Even if it is really rarely used, some restrictions are necessary to ensure that it is rarely used, and not just by praying for the mercy of certain people.

DR. TSE: Sir, I am going to speak in support of the amendment to be proposed by the Chief Secretary, but before I do I want to pay tribute to the many of my colleagues who have spoken against the Bill so eloquently. Momentarily I was carried to the high heavens of idealism but as I fell back to my seat and looked around, I found myself surrounded by real people in an imperfect world.

HIS EXCELLENCY THE PRESIDENT: Dr. TSE, you must speak to Mr. Martin LEE's amendment.

DR. TSE: In supporting the amendment as proposed by the Chief Secretary, I am very mindful of the necessity of protecting the freedom of the press and freedom of speech but I am equally mindful of the need to protect the welfare of the general public who is so susceptible these days to the powerful influence of the media. Therefore I have taken the position that the law must protect the interests of the public without suppressing the freedom of the press or of the individuals who propagate news and information with a proper sense of accountability.

HIS EXCELLENCY THE PRESIDENT: Dr. TSE, you must speak to Mr. Martin LEE's amendment.

DR. TSE: Therefore, I am against Mr. Martin LEE's proposed amendment. [*Laughter*]

MR. ANDREW WONG: Sir, I cannot support Mr. Martin LEE's proposed amendment to clause 2 of the Public Order (Amendment) Bill, for two reasons.

First, in his speech moving the amendment, he was trying to justify his amendment by pleading to the original legislative intent. Now with respect I cannot see this could be corroborated by facts, except perhaps if this is the legislative intent of Mr. LEE himself and those of us convinced by his other arguments. And I quote the original legislative intent which can be found in the 1951 Hansard, page 145, and I quote:

> 'Nevertheless, I suggest a clause which no newspaper which discharges its own risk duties with the sins of responsibility need fear. The inclusion of the provision is, however, proposed because experience has shown the necessity for it. It is admittedly the case that a newspaper always goes to press in a state of urgency and that a service of the press to the public demands the announcement with undue delay of all factual news, but it is the case that irresponsible journals have little regard for the need to check on rumours brought to them so that they can have the edge as the saying goes on newspapers which accept a higher responsibility.'.

and so on. So, Sir, in that, particular paragraph the then Attorney General, Mr. John GRIFFIN, when moving the original Bill, had no intention, because of the phrasing of the particular clause, had no intention of placing the burden of proof on the prosecution all together, and I think we are all familiar with the phrasing.

Now I refer to the 1986 brief which was issued to all Legislative Council Members towards the end of December, and I think Mr. LEE must have a copy of it. On page 4 of that particular brief it reads:

> 'Section 6, malicious publication of false news to constitute an offence.
>
> Paragraph 9: This section renders it an offence maliciously to publish in any local newspaper false news which is likely to alarm public opinion or disturb public order.'.

Now important, mark this:

> 'In addition, the definition of malice in sub-section 2, means in effect that mere negligence on the part of the accused may surprise to make him guilty of an offence under this section.'.

Now this is the original legislative intent. So one should not be persuaded by arguments as to the original legislative intent to support Mr. LEE's amendment.

Now, second, Mr. Martin LEE would like to put the burden of proof back on the prosecution and has argued that there is no difficulty in doing so, he has led us on to all kinds of possibilities, too. I am no lawyer and I will leave it to the lawyers, both the defence counsel like Mr. Martin LEE and prosecutors and prosecution counsel like all those in the Attorney General's Chambers to argue it out. But if we agree in principle that such facts of gross negligence deserve punishment, the clause, the section of the law, ought to be operational and not a mere dead letter.

Now Mr. LEE has quoted the Canadian case, the Canadian Criminal Code 177, on which his own amendment is really based, and I will read the text from the Canadian Government on Criminal Code, section 177 which reads:

> 'The Department of Justice have told us that until quite recently section 177 of the Federal Criminal code was regarded as pretty much a dead letter and then a case came...'.

and so on, and then it was quashed, and then there was an appeal, and so on. I think most Members have that copy. Now paragraph 3 reads:

> 'After this case section 177 may fade into oblivion again. Canadian criminal law is being recodified by the Law Reform Commission at the moment. The Justice Department says it is too early to know what will become of the provisions for spreading false news.'.

So from that particular report we should be satisfied that once we add in words like knowing the same to be false to the Public Order (Amendment) Bill, that particular clause will become a dead letter and then we cannot punish newspapers or any other media for reporting false news on the basis of the sort of behaviour which is gross negligence.

So I would appeal to all Members that Mr. LEE's amendment ought to be defeated.

MR. CHEN: Sir, I am unfortunately not so learned as my friend, Mr. Martin LEE. I can only speak from the point of view of common sense. If the prosecution can go so far as to prove beyond any reasonable doubt that the news was false, was published, and was likely to cause disturbance to public order, then I strongly believe that the person so charged has a duty to the public to inform them whether the news was true or false. And it is he and only he, not the prosecution, knows and can give the true answer. As we all seem to agree that the public has a right to know, I therefore cannot see the logic, or the reason, why he should be so privileged as to be allowed to hide behind a shield of preserving confidentiality of the source. However, if a piece of information is given with restriction that the source must not be quoted or disclosed, then I would have thought that any responsible reporter must have a duty to make doubly sure that he has a reasonable ground for believing the information to be true before its publication.

Sir, with these remarks and also for the reason which I have clearly stated in my speech at the Second Reading of the Bill, I oppose that clause 2 be amended as proposed by Mr. Martin LEE.

MR. CHEONG: Sir, I shall be brief. On the surface it seems contradicting for me to vote against Mr. LEE's amendment as the net effect of his amendment would have addressed the issue of the onus of proof that worries me. Allow me, Sir, to state my reasons for voting against the amendment.

I always hold the view that healthy debate is good but deployment of pressurising confrontational tactics will not be good for Hong Kong. I also believe that my own personal satisfaction should not endanger the spirit of teamwork which we need in Hong Kong. In teamwork I believe that no one can be so dominating and obstinate as to continue to insist on one's viewpoint even when a decision has been reached by the majority to adopt contrary viewpoints.

Accordingly I vote 'no'.

MRS. CHOW: Sir, the proposed amendment calls for a departure from the existing situation. I oppose this proposed amendment for the following reasons.

There are enough safeguards without shifting the onus of proof to the prosecution. The prosecution will have to prove beyond reasonable doubt that any person who publishes false news likely to cause public alarm or disorder before he has a case to answer. Mr. SZETO Wah's argument that false news cannot be easily proved in fact works to the favour of the defendant. Even after the prosecution has attempted to prove these three points, and even if the Attorney General has consented to prosecute, it is for a court of law to decide whether he has proved his case beyond reasonable doubt. It is then, and only then, that the defence has a case to answer. Even then his defence can be built on his proof that on a balance of probability he did not at the time of publication know that the news was false, if the Administration's proposed amendment at Committee stage is carried.

Secondly, the shifting of the burden of proof onto the prosecution would render the enforcement of this clause quite ineffective, as it would be difficult to prove the state of mind of the person at the time of publication.

Thirdly, the argument that the burden of proof on the defence would force journalists to breach their professional immunity is not strong. It is argued that this threat would cause an undesirable exercise of self-restraint by journalists, but I fail to see the logic of this argument. Whatever degree of pressure this has had on them in the past is not likely to increase with a continuation of the existing burden. Since it has not caused any such undesirable self-restraint in the past, the same will hold true in the future.

Furthermore, the proof does not need to rest on the disclosure of one source along. There are other circumstances and evidence the defendant can cite in his own defence. I cannot agree with Mr. LEE also that because we have not used this statute in the past, we should not need it for the future. That also defies logic. The Administration's amended Bill when passed into law hopes to serve a preventive and deterrent function against false news which may cause public alarm or disorder.

I therefore oppose the proposed amendment as well as the motion.

ATTORNEY GENERAL: Sir, I do not intend to respond in detail to Mr. Martin LEE's points, interesting though they were. I would like very briefly and simply to remind Members, as they have already in part been reminded, of the salient points that I made earlier on, in the Second Reading debate.

The first is that there is a heavy burden on the prosecution to prove all three ingredients of this offence beyond all reasonable doubt and it is not just a prima facie case as Mr. LEE continues to insist. I would remind Members of the practical near impossibility of proving what the defendant's state of knowledge was at the time of publication. I would remind Members of the provision of a

statutory defence of a common type, a defence that can be proved on a balance of probabilities, a lower test than the prosecution. I would remind Members that the ethical rules of journalists are not unique. Other honourable professions have similar rules and I have described the practical and sensitive way in which the courts handle these ethical considerations. I have described how the removal of the words 'local newspaper' will have limited significance. And on the question of publication, I would remind Members of the nexus between publication and the likelihood of causing public alarm that the Crown must prove. I remind Members that a mere allegation of falsity is not sufficient. Truth does not become a lie simply because the Government says it is a lie. I would remind Members that the expressions 'false news', 'likely', 'public alarm', are well understood, but of course they are all elements that the prosecution must prove once again beyond all reasonable doubt.

The question before the committee is essentially a very simply one. It is whether the definition of the offence of publishing false news should have an additional ingredient added to it, namely that the prosecution should have to prove that the defendant knew that the news was false or was reckless as to the falsity of the report.

It is said that the proposed new section 27 is contrary to the spirit of the common law. For the reasons I gave earlier, I do not accept that that is so. Offences of strict liability do exist in the common law and they exist in the common law relating to the press. Mr. LEE has given you many examples of offences that require proof of a mental element. I will just give you two examples of common law offences relating to the press, offences of strict liability.

The first is the law of contempt of court, a common law offence. That offence strictly requires the press not to publish anything which might prejudice pending proceedings. It does not require proof of intent and indeed there is no defence.

I turn now to Mr. LEE's example of criminal libel. He described the effect of sections 5 and 6 of the Defamation Ordinance. So far, so good. But he stopped too early. He forgot to describe the effect of section 7. Of the two sections mentioned, only section 5 requires the proof of knowledge on the part of the defendant that what he published was false. Only one. Moreover, in both sections the prosecution does not even have to prove that the allegations published were in fact false and I hope I have described sufficiently the difference. Instead a defence is provided by section 7 whereby the defendant can escape conviction if he can show that the allegations were true and that their publication was for the public benefit. I should add that all three sections, and they were codified into our Defamation Ordinance, but were all originally part of the common law. The burden of establishing a defence under the proposed new section 27 now under discussion will be much lighter, even though the public interest which it is designed to protect is broader.

There may be theoretical attractions about Mr. LEE's clause. But the objection remains essentially a practical one. The amendment would, in my submission, rob the section of its effectiveness. The prosecution would rarely, and then only by chance, be able to find evidence to the necessary knowledge or recklessness and it must be remembered, and I am sorry that I keep on coming back to it and hammering it home, that the knowledge or recklessness must be proved beyond reasonable doubt, a very heavy burden of proof. There is no case at all for enacting an ineffective provision. I therefore urge the Committee to reject this amendment.

MR. MARTIN LEE: Sir, I seek your leave to make a reply and I take it I have it, Sir.

HIS EXCELLENCY THE PRESIDENT: Please carry on.

MR. MARTIN LEE: Sir, in relation to legislative intent addressed to Members of this Council by my hon. Friend Mr. Andrew WONG, he said that the original intent is to punish also negligent reporting. And with the greatest respect to him, he is wrong. Because Section 6(1) of the original Control of Publications Consolidation Ordinance used the word 'maliciously' and it is malicious reporting of false news which was sought to be outlawed and the marginal note makes it even clearer. So that was the original intent. What the legislature did was to enact a sub-section (2) which created a presumption of malice, to assist the prosecution to prove that the publication of a falsehood was malicious. But, as I said, that still means that the original net was meant to cover only those guilty of deliberate publication of false news. Subsection (2) only made it easier for the prosecution to prove malice. So with great respect to him, I beg to differ.

And Mr. Andrew WONG also cited a note from the Canadian authorities and I am sure he did not mean to mislead but, with respect to him, he should have read a little more closely. Because the note says 'the conviction was quashed on the grounds that the judge had misdirected the jury on the question of the burden of proof as to the state of the mind of the accused'. That note is very brief. One knows not in what way the trial judge had erred in misdirecting the jury on the burden of proof. The same point was raised with us by the Administration and when I raised exactly the same point to them, they put the paper away because they knew it could not help them at all. If the judge got it wrong in his direction, you cannot blame the Canadian legislature for enacting a law which cannot be enforced. The answer is as simple as that.

Then my hon. Friend, Mr. S. L. CHEN, professed difficulty in understanding me because he said well surely there is a duty to inform the authorities whether the news was true or false. I really regret to have to say this, but that is not our system of criminal justice because we follow the British system of criminal justice which is adversarial system as opposed to the continental system practised in France or even in the PRC, and that is in a criminal court it is up to the prosecution to prove every ingredient of the offence, and so there is no duty

cast at all on the defendant to say anything. He has the right to remain silent, absolutely silent. And, indeed, when police officers arrest suspects they have to caution them by telling them that they are not obliged to say anything unless they wish to, but whatever they say will be taken down and may be used as evidence. So there is this absolute right to remain silent.

I must profess inability to understand why my learned Friend, my hon. Friend Mr. Stephen CHEONG would decline to support me. He has not given any reason on the merits except to say that he does not like the deployment of confrontational tactics. I regret to say that if I had offended him by what he called confrontational tactics, then that is, I am afraid, a necessity in the circumstances because we are dealing with a technical amendment, an amendment of law. And that being so, one has to put one's wig on, as it were, as if one were in court and try to demolish as politely as possible the other side's submissions. And I really hope that Mr. CHEONG, when the time comes, will vote not according to his likes or dislikes of me, but according to the merits or dismerits of my motion.

And now I turn to the hon. Mrs. Selina CHOW. She said there are enough safeguards without shifting the burden of proof to the prosecution. Secondly she said shifting the burden of proof to the prosecution will render it impossible for them to establish the offence. With respect, it is never for me to suggest that the burden should shift to the prosecution because that duty to prove knowledge should have rested with the prosecution to begin with. My hon. Friend did not seem to realise that it was the establishment, the Administration, that tries by their motion of amendment, to shift the burden of proof to the defence, contrary to the common law.

Then my hon. Friend said, well, using the Administration's format will not force a journalist to reveal the source. I entirely agree, provided the journalist in question does not seek to avail himself or herself of the defence, then there is no need to review the source. But if the defence is to be meant for them to use, I cannot see how the accused journalist could have proved to the satisfaction of the tribunal, albeit on a balance of probabilities, that he or she has reasonable grounds for believing the said news to be true. If you do not even tell the tribunal who told you, what chance do you have?

And then she says, well, if there is self-restraint it is too bad, it cannot be more than before. But this fails to answer the question that the very ambit of the section as per the Administration's motion has thereby been widened, and that is my objection.

The learned Attorney was extremely brief. I am sure he did not mean to be impolite in dealing with my long submission the way he did. Maybe it was the lateness of the hour. He said that there is a heavy burden on the prosecution to prove all these three ingredients beyond a reasonable doubt and not just a prima facie case. Surely that is too brief because there are two stages in a criminal trial. The first stage—I hate to go into this but I was hoping that he would help me by

telling Members of the Council what it is. But since he has not I will have to do it. The first stage is the prosecution must establish a prima facie case which means an apparent case of guilt. They do not have at that stage to prove the guilt of the defendant beyond a reasonable doubt. And if that prima facie or apparent case has been established, then the court will rule that there is a case for the accused to answer. Now of course it is still up to the defendant to decide whether or not to answer the case by going into the witness box; but experience shows that unless the prosecution case is very shaky indeed, if the defendant does not go into the box and tells his tale, the chances are that he will be convicted. I am afraid that the two stages of the criminal trial have to be understood by Members of this Council. And, as I said, the three ingredients are so easy to prove beyond any reasonable doubt anyway. He keeps on saying it is difficult. I suggest that Members, if necessary, should go into a police station, and ask any detective sergeant there whether it is difficult or not. I hope Members will be alert, in spite of the late hour, and not to be persuaded by the Attorney saying a thing four times without any evidence in support, and believe that he is right.

Then the learned Attorney mixed up some thoughts I am afraid. He said in relation to publication, that there is a nexus between publication and the likelihood of causing alarm. I fail completely to understand. I can see a nexus between the false news or rather the degree of falsity, and the likelihood of causing alarm because the more false the news or rather, the more sensational the false news, the greater the likelihood of causing alarm. That I can understand. But surely publication is a separate ingredient of the offence. The question that he must address is: when will a publication be deemed to be caught by the section? Is it a publication by the telephone or by letter, being a communication to a third party, or is it, that the communication must always be in a public place, or made publicly? That was a question I challenged. I am afraid, with the greatest respect to him, it cannot be just brushed aside like that in spite of the lateness of the hour.

Then the learned Attorney says that there are offences of strict liability in the common law. Of course there are, but again it will be unfair to make such a general statement without telling Members more, particularly when most of us are not lawyers. Take speeding, of course that is an absolute offence which unfortunately he does not explain. That means an offence which does not require, as we say, mens rea or guilty intent. And if you drive a car exceeding the permitted speed limit, it does not really matter whether you are in a hurry to see your girl friend or to visit your mother in hospital, that is mitigation only. So long as you exceed the speed limit, that is it. That is what we mean by an absolute offence. Of course these offences are known to the law, but again there is a prevailing prerequisite, and that is, that these offences are so prevalent that if you allow the defendant to challenge the guilty intent and to make that into a necessary ingredient of the offence, everybody will then come up with, some explanation, like my mother in hospital. So the legislature says: nobody cares

whether you have intent to break the law; so long as you exceed the speed limit, you break the law. That is an absolute offence. But that is only justified when the prevalence of the offence makes it unnecessary to prove mens rea or guilty intent. Surely the Attorney, with the greatest respect, knows that—

ATTORNEY GENERAL: If Mr. LEE would graciously give way, could I just interrupt to elucidate the remark that I made when I spoke. We were, of course, talking about common law offences. Speeding is, of course, a statutory offence not known to the common law. We were talking, Mr. LEE, about common law offences.

MR. LEE: That is a most interesting intervention. I am obliged for it. Is it suggested that this statutory offence is a common law offence, since we are enacting it by statute?

ATTORNEY GENERAL: The remarks that I made were in response to the allegations that this proposed new section is contrary to the spirit of the common law.

MR. LEE: Surely it has to be understood in the light I raised it: a common law system of law which we have in this jurisdiction. Surely that has to be so understood. So we are dealing with a statutory offence. I gave examples of a statutory offence. And I am quite frankly at a loss as to why the Attorney should have seen fit to make a reference to section 7 of the Defamation Ordinance. I hope he will intervene and tell me why. But he has made it necessary for me to read it to the Council. I cannot, with the greatest respect to him, understand why he complains that I had not read on. I read section 5, I read section 6. Section 5 is 'Publishing libel known to be false' as Members will remember. Section 6 is 'Publishing defamatory libel'. As to section 7, I am afraid it is very long, and I thought it was totally irrelevant. It is 'Trial of information for defamatory libel'. Sections 5 and 6 create the offences. Section 7 deals with the trial. I had better read the whole lot. Sub-section (1):

> 'On the trial of any information for defamatory libel, the defendant having pleaded such plea is hereinafter mentioned the truth of the matters charged may be enquired into but shall not amount to defence unless it was for the public benefit the matters charged should be published.'

So that deals with the defence. Now sub-section (2) reads: 'To entitle the defendant to give evidence of the truth of the matters charged as a defence to the information...' Again it deals with the defence. Sub-section (3) reads:

> 'If after such plea the defendant is convicted on the information, it shall be encumbent to the court in pronouncing sentence to consider whether the guilt of the defendant is aggravated or mitigated by the plea and by the evidence given to prove or to disprove the same.'.

That deals with mitigation or aggravation of sentence. What I am complaining, what I am trying to illustrate, is that in section 5, the section which creates the offence of publishing libel known to be false, knowledge of falsity is a requisite ingredient. Where have I got it wrong? With respect, Sir, I will now sit down.

Proposed amendment

Clause 2

(*a*) In the heading to the new Part V by deleting 'MALICIOUS PUBLICATION' and substituting the following—

'FALSE NEWS'.

(*b*) By deleting the new section 27 and substituting the following—

'False news.

27. (1) Any person who publishes false news knowing the same to be false or being reckless as to whether the same was true or false and which is likely to cause alarm to the public or a section thereof or to disturb public order shall be guilty of an offence and shall be liable—

(*a*) on conviction on indictment, to a fine of $100,000 and to imprisonment for 2 years; and

(*b*) on summary conviction, to a fine of $30,000 and to imprisonment for 6 months.

(2) It shall be a defence to a charge under subsection (1) for the person charged to prove that he had reasonable grounds for believing that the news to which the charge relates was true.

(3) No prosecution for an offence under this section shall be commenced without the consent of the Attorney General.'.

Question put and the Chairman stated that the 'Noes' had it.

Mr. Martin LEE claimed a division.

The Chairman was of the opinion that a division was unnecessarily claimed and proceeded under Standing Order 36(5). There was a clear majority in support of the Chairman's decision. The Chairman declared that Mr. Martin LEE's amendment to the proposed amendment was negatived.

Clause 2

CHIEF SECRETARY: Sir, I move that clause 2 be amended as set out in paper circulated under my name to Members. In the course of the debate, Sir, and in the course of the debate on Mr. Martin LEE's amendment, my amendment clause 2 has been exhaustively examined. My remarks will therefore be very brief.

In drafting an appropriate provision, the Government has regard, has had regard, Sir, to both the importance of preserving the freedom of expression and the need to provide a degree of protection to the community against the publication of publicly disruptive false news. The amendments I propose, Sir, will, I believe, achieve these objectives without in any way affecting the freedom of expression in Hong Kong. Sir, I would emphasise one point. The suggestion for these amendments were made following lengthy discussions with interested groups by members of the ad hoc group of the Legislative Council. The aim of the amendments was to meet the representations made by interested groups and officials readily acceded to these suggestions. I believe it should now be apparent that the amendments I am moving will not inhibit their freedom of expression in Hong Kong, will not limit the freedom of the press, and, above all, will not discourage investigative reporting. It is simply designed to protect the public from a mischief which could cause them unnecessary alarm.

Finally, Sir, I assure Members, in response to the request of several of them, that the Government will carefully monitor the situation and will review the provisions—this provision—in the light of experience.

With these remarks, Sir, I beg to move.

MISS MARIA TAM: Sir, I shall briefly state that I support the amendment, not because it is introduced by the Chief Secretary but because I have checked through the notes of the meetings of the ad hoc group and the notes that are made and copies of the documents of the submissions by the public and interested groups and I have found support for those amendments.

DR. TSE: Sir, I would like to continue to speak on my support to the amendment as proposed by the Chief Secretary. In supporting the amendment, I have taken the position that the law must protect the interest of the public without suppressing the freedom of the press or of the individuals who propagate news and information with a proper sense of accountability. As to those who are irresponsible or reckless, I would assume that they can be left to defend themselves, albeit that they should still be given the benefit in case of doubt. I have examined in the last few days the original version as well as the two proposed amendments of the Bill in great detail. I have traced the history of the development of the issue. I have sought legal advice to help clarify in my mind the meaning of the various legal terms and expressions contained in the Bill. As a laymen without formal legal training, I found the job rather difficult and, frankly, I had some reservations about the Bill at the beginning. However, I am now sufficiently convinced that the amendment to the Bill as proposed by the Chief Secretary is acceptable, and my conviction is based on the following observation.

Firstly, I am convinced that the amended Bill will be able to protect the public from the damages that could easily be caused by the publication of false news. Because it is an enforcible law. It is not disputed that the Hong Kong public is in an anxious state of mind as we face the prospect of an uncharted future. If there is ever a time when we need the protection from false news mongering, it is now, when so much is at stake and public confidence is of paramount importance to the well-being of our community. Thanks to the professionalism of our friends in the media industry, we have not needed to use the law very much in the past so many years. We shall be very happy if we shall never have a need to use it again. But the important point is, we must have an enforcible law when we need it, and I believe the amended Bill as proposed by the Chief Secretary will be effective in dealing with the true villain because when he is confronted by the law, the responsibility is placed on him to prove his innocence. On the other hand, I am satisfied that the Bill will not suppress the freedom of responsible press or of the responsible people. Quite contrary to the misconception that Government has tried to amend the Bill to achieve the suppressing effect, by shifting the burden of proof to the defendant, the original version of the Bill which has been in existence for some 30 or more years as section 6 of the Control of Publication Consolidation Ordinance, 2.68, has explicitly stated, and I quote:

> 'Malice shall be presumed in default of evidence showing that prior to publication the accused took reasonable measures to verify the truth of the news.'

If the long existence of this law with the onus of proof squarely on the defendant has not resulted in the curtailment of the freedom of the press as it is known and enjoyed today, I would find it hard to believe that after it is put under the Public Order (Amendment) Bill without essential change in its legislative intent, it would suddenly become a press gag in the hands of the Government. In fact, as the proposed Bill stands, the prosecution has to do a great deal of proving before he can establish the case. He has to prove beyond reasonable doubt three things in a row, namely: publication, falsity, and likelihood to alarm the public. In other words, if there is one thing missing, for example no evidence that the public has been greatly alarmed or likely to be alarmed after the publication of the false news, the prosecution still would not have a case. Furthermore, I understand that the Chinese translation of the term 'false news' is (虛假消息). If the Chinese translation is true reflection of the meaning, then false news would not be just wrong news (錯誤消息) or inaccurate news (不確消息) or wrong speculation (錯誤揣測) but something that is made up and is unfounded and groundless. Indeed if the public is alarmed by the publication of such kind of (虛假消息) to the point that the community gets hurt, honestly I would have no sympathy to the guilty body if he cannot even give a reasonable explanation for what he did and why he did it to satisfy the requirement of the law. For I just cannot imagine that a reasonable person or a reasonable press would still want to claim immunity in the name of freedom

of speech or freedom of press when something so drastically wrong had been committed. Sir, with these comments, I wish to support the Chief Secretary's motion.

Proposed amendment

Clause 2

(*a*) In the heading to the new Part V by deleting 'MALICIOUS PUBLICATION' and substituting the following—

'FALSE NEWS'.

(*b*) By deleting the new section 27 and substituting the following—

'Flase news. **27.** (1) Any person who publishes false news which is likely to cause alarm to the public or a section thereof or disturb public order shall be guilty of an offence and shall be liable—

(*a*) on conviction on indictment, to a fine of $100,000 and to imprisonment for 2 years; and

(*b*) on summary conviction, to a fine of $30,000 and to imprisonment for 6 months.

(2) It shall be a defence to a charge under subsection (1) for the person charged to prove that he had reasonable grounds for believing that the news to which the charge relates was true.

(3) No prosecution for an offence under this section shall be commenced without the consent of the Attorney General.'.

Question put and the Chairman stated the 'Ayes' had it.

Mr. CHAN Kam-chuen claimed a division.

The Chairman was of the opinion that a division was unnecessarily claimed and proceeded under Standing Order 36(5). There was a clear majority support of the Chairman's decision. The Chairman declared that the motion was carried.

The amendment was agreed to.

Clause 2, as amended was agreed to.

CONTROL OF PUBLICATIONS CONSOLIDATION (AMENDMENT) BILL 1986

Clauses 1 to 3, 5 to 17 and 19 were agreed to.

Clauses 4 and 18

CHIEF SECRETARY: Sir, I move that clauses 4 and 18 of the Control of Publications Consolidation (Amendment) Bill in respect of the interpretation of the newspaper and its accompanying Schedule be amended as set out in the paper circulated to Members on 5 March 1987. The revised definition of newspaper has, I believe, taken into account the observations made by the Legislative Council ad hoc group under the chairmanship of the hon. Mr. Peter C. WONG. The revisions are now much clearer to those who need to find out whether the publication is registrable under the amended Ordinance. Sir, I would like to thank the ad hoc group for their comments on the subsidiary regulations. The Administration supports in principle the various points made. The appropriate amendments will be incorporated in the regulations which will be submitted for consideration by the Executive Council.

Sir, I beg to move.

Proposed Amendment

Clause 4

By deleting paragraph (*d*) and substituting the following—

'(*d*) by deleting the definition of "newspaper" and substituting the following—

"newspaper" means any paper or other publication and any supplement thereto available to the general public which—

(*a*) contains news, intelligence, occurrences or any remarks, observations or comments in relation to such news, intelligence, or occurrences or to any other matter of public interest; and

(*b*) is printed or produced for sale or free distribution and published either periodically (whether half-yearly, quarterly, monthly, fortnightly, weekly, daily or otherwise) or in parts or numbers at intervals not exceeding 6 months; and

(*c*) does not comprise exclusively any item or items specified in the Schedule.".'.

Clause 18

In the new Schedule, by deleting items 1 to 24 and substituting the following—

‘1. Academic journals.
2. Almanacs.
3. Cartoons and comic strips.
4. Collections of photographic images (with or without captions).
5. Commercial circulars.
6. Company and partnership reports and company prospectuses.
7. Commercial advertisements and commercial advertising circulars and brochures.
8. Consumer information and reports
9. Election pamphlets and posters.
10. Financial, economic and statistical reports.
11. Information sheets and newsletters relating to clubs, educational institutions, professional associations, societies, trade unions and other organizations.
12. Maps, charts and tables.
13. Price lists.
14. Public speeches and statements.
15. Racing tips, racing form reports and other related materials.
16. Religious materials
17. Sales catalogues.
18. Sheet music.
19. Trade catalogues and journals.
20. Travel brochures.’.

The amendments were agreed to.

Clauses 4 and 18, as amended, were agreed to.

ADOPTION (AMENDMENT) BILL 1987

Clauses 1 to 5 were agreed to.

HONG KONG EXAMINATIONS AUTHORITY (AMENDMENT) BILL 1987

Clauses 1 to 12 were agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

SIR EDWARD YOUDE MEMORIAL FUND BILL 1987

ADOPTION (AMENDMENT) BILL 1987 and the

HONG KONG EXAMINATIONS AUTHORITY (AMENDMENT) BILL 1987

had passed through Committee without amendment and the

CONTROL OF PUBLICATIONS CONSOLIDATION (AMENDMENT) BILL 1986 and the

PUBLIC ORDER (AMENDMENT) BILL 1986

had passed through Committee with amendments and moved the Third Reading of each of the five Bills.

Question put on each of the five Bills.

The first four Bills were agreed to.

Mr. LEE Yu-tai claimed a division after the President had declared that the motion for the Third Reading of the Public Order (Amendment) Bill 1986, had been agreed to.

The Chairman was of the opinion that a division was unnecessarily claimed and proceeded under Standing Order 36(5). There was a clear majority in support of the Chairman's decision. The Chairman declared that the motion for the Bill to be read the Third time was agreed to.

Bills read the Third time and passed.

HIS EXCELLENCY THE PRESIDENT: As Members know, we were going to have an adjournment debate this evening but I think it is the general wish of Members that we should postpone the adjournment debate upon the Green Paper on 'Commissioner for Administration' until a later date.

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 pm on Wednesday, 18 March 1987.

Adjourned accordingly at twenty minutes past Eleven o'clock.

Note: The short titles of motions/bills in the Hansard Report have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

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WRITTEN ANSWERS

Annex I

Written answer by the Secretary for Education and Manpower to Mrs. NG's supplementary question to Question 1

Rehabilitation centres are visited quarterly by Justices of the Peace. The duration of each visit is at the discretion of the visiting Justices, but in practice they usually last about two hours.

Annex II

Written answer by the Secretary for Health and Welfare to Mrs. NG's supplementary question to Question 8

The answer is yes. In addition, the medical social workers in these units maintain close liaison with the Selective Placement Division of the Labour Department with a view to finding jobs for patients who are suitable for open employment. As a result, 110 jobs were successfully found for ex-mentally ill patients during 1986.

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