

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 21 April 1993

The Council met at half-past Two o'clock

PRESENT

THE PRESIDENT

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

THE CHIEF SECRETARY

THE HONOURABLE SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE YEUNG KAI-YIN, C.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

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

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

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

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E., J.P.

THE HONOURABLE MRS PEGGY LAM, O.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E.

THE HONOURABLE JAMES DAVID MCGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE MRS ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE VINCENT CHENG HOI-CHUEN

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE GILBERT LEUNG KAM-HO

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE ZACHARY WONG WAI-YIN

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

ABSENT

THE HONOURABLE DAVID LI KWOK-PO, O.B.E., J.P.

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE CHRISTINE LOH KUNG-WAI

IN ATTENDANCE

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.
SECRETARY FOR TRANSPORT

THE HONOURABLE JOHN CHAN CHO-CHAK, L.V.O., O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

MR ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.
SECRETARY FOR SECURITY

MRS ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.
SECRETARY FOR HEALTH AND WELFARE

MR ANTHONY GORDON EASON, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR MICHAEL DAVID CARTLAND, J.P.
SECRETARY FOR FINANCIAL SERVICES

MRS ELIZABETH MARGARET BOSHER, J.P.
SECRETARY FOR ECONOMIC SERVICES

MR LEUNG CHIN-MAN, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

THE CLERK TO THE LEGISLATIVE COUNCIL
MR CLETUS LAU KWOK-HONG

THE DEPUTY CLERK TO THE LEGISLATIVE COUNCIL
MR PATRICK CHAN NIM-TAK

Papers

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

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Public Health and Municipal Services (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 2) Order 1993	98/93
Rules of the Supreme Court (Amendment) Rules 1993	99/93
Food Business (Regional Council) Bylaws (Exemption From Bylaw 31 (1)) Notice 1993	100/93
Food Business (Urban Council) Bylaws (Exemption From Bylaw 32(1)) Notice 1993	101/93
Television (Amendment) Ordinance 1993 (22 of 1993) (Commencement) Notice 1993.....	102/93
Building (Administration) (Amendment) Regulation 1993	103/93
Building (Oil Storage Installations) (Amendment) (No. 2) Regulation 1993	104/93
Antiquities and Monuments (Declaration of Monument) Notice 1993.....	105/93
Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 1993	106/93
Travel Agents (Amendment of Schedule) Notice 1993	107/93
Commissioner for Administrative Complaints Ordinance (Amendment of Schedule 1) Order 1993 (L.N. 97 of 1993) Corrigendum.....	108/93
Public Health and Municipal Services (Public Markets) (Designation and Amendment of Tenth Schedule) (No. 2) Order 1993	109/93

Declaration of Markets in the Regional Council Area (Amendment) Declaration 1993	110/93
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Sessional Papers 1992-93

- No. 69 — Mass Transit Railway Corporation
Annual Report 1992
- No. 70 — Kowloon-Canton Railway Corporation
Annual Report 1992
- No. 71 — Hospital Authority Annual Report 1991-1992
- No. 72 — Report on the Samaritan Fund and Statements of
Accounts of the Samaritan Fund 1991-1992
with Certificate of the Director of Audit

Affirmation

Mr YEUNG Kai-yin made the Legislative Council Affirmation.

Addresses

Mass Transit Railway Corporation Annual Report 1992

FINANCIAL SECRETARY: Mr President, in accordance with section 16(4) of the Mass Transit Railway Corporation (MTRC) Ordinance, I table the Annual Report and Accounts of the Mass Transit Railway Corporation for the year ending 31 December 1992.

In 1992, the MTRC carried about 751 million passengers, 3.4% higher than 1991. Total revenue amounted to \$3.99 billion, 12% higher than 1991. Total operating costs increased by 15% to \$1.69 billion, mainly due to rising wages and railway maintenance costs. Interest and finance charges amounted to \$1.31 billion, 10% less than 1991.

For the second consecutive year, the MTRC registered a net profit even without any contribution from property developments. The total net profit for the year was \$403 million, compared with \$67 million in 1991. This firmly places the Corporation on its way to eliminate accumulated losses, now reduced to \$3.06 billion.

At the end of 1992, the Corporation's loans and finance liabilities stood at \$18.4 billion. The year-end debt to equity ratio was 2.3 to 1. The MTRC is widely respected in the international financial community. The high credit

ratings enjoyed by the Corporation demonstrate confidence in the financial strength of the Corporation and its future plans.

The Corporation's results in 1992 are consistent with its long-term financial targets. Without an extension of the existing system, the Corporation expects to be able to retire all debts on existing loans by around the turn of the century.

Over the next five years, the MTRC has budgeted to spend \$5 billion on major capital projects to upgrade the existing system through the provision of new facilities and application of modern technology. The Corporation is planning to improve the morning peak train service on the Tsuen Wan Line from the existing 30 train trips per hour to 31 some time this year, 32 in 1994 and 34 in 1996. Looking ahead, I am encouraged by the Corporation's commitment to enhancing the safety, efficiency and reliability of its services. The Corporation has made long-term plans to improve its service and to increase cost-effectiveness and customer satisfaction. I also welcome the Corporation's regular publication of its performance targets and achievements.

Once agreement is reached with the Chinese side regarding the financing of the Airport Railway, and Finance Committee approval is obtained, the Corporation will be able to proceed with a project that affords much needed relief to the existing system and support for the new airport. All this will bring long-term benefits to Hong Kong.

Finally, I would like to thank the Chairman, the Board, and all staff of the MTRC for continuing to maintain high standards and achieve efficiency during the past year.

Kowloon-Canton Railway Corporation Annual Report 1992

FINANCIAL SECRETARY: Mr President, in accordance with section 14(5) of the Kowloon-Canton Railway Corporation ordinance, I table the annual report and accounts of the Kowloon-Canton Railway Corporation (KCRC) for the year ending 31 December 1992.

The Corporation continued to maintain a strong financial position in 1992. Operating revenue stood at \$2.15 billion, an increase of 16.3% over 1991. Including income from property development, the net profit for the year was \$526 million, 17% higher than 1991. A dividend of \$150 million was paid to the Government after considering the Corporation's long-term cash flow requirements and investment needs. The dividend has had no effect on this year's fare revision. The fact that the Corporation has been able to pay a dividend to the Government reflects the confidence we have in the Corporation's financial strength. I would like to remind Members here that for a railway to be not just financially self-sufficient, but able to provide a modest return to its investor is rare in the world today, and is a tribute to the

management of the Corporation. It is also a positive signal to future potential investors in Hong Kong's railway infrastructure.

At the end of 1992, the total assets of the Corporation stood at \$6.7 billion, and borrowings at \$894 million. The year-end debt to equity ratio was 1 to 5.1. Cash generated by the operating divisions was sufficient to cover ongoing capital expenditure and debt repayment.

The Kowloon-Canton Railway carried 198 million passengers in 1992, an increase of about 5% over 1991. Of these, 35 million travelled to and from Lo Wu, an increase of 13%. Through train traffic between Kowloon and Guangzhou rose by 8% to 2.7 million. A new through train service between Kowloon and Foshan was inaugurated in January this year.

Major improvements were made during the year to enhance customer services. Punctuality was improved, with a daily average of 95% and 98% of trains arriving on time for KCR and the Light Rail Transit System (LRT) respectively.

On the KCR, all trains were operated in 12-car sets, a new station entrance/exit was opened at Kowloon Tong and work began on additional entrances/exits at Fo Tan and Tai Wai stations. Under the escalator replacement programme, 17 new escalators have been installed at Kowloon, Fo Tan and Tai Po Market stations.

Inbound freight traffic faced keen competition resulting in a decline of 11% in inbound freight volume to 2.8 million tonnes. However, outbound freight increased by 14% to 1.2 million tonnes.

The Light Rail Transit System carried 106 million passengers in 1992, an increase of 10% over 1991. The three regional links in Tuen Mun were all commissioned by February 1992. LRT service was further extended to Tin Shui Wai in January this year. Nine of the 30 new vehicles were added to the fleet during 1992, and all 30 new vehicles will have been put into service by August this year. The programme to upgrade vehicle air-conditioning was completed early this year.

Over the next five years, the Corporation plans to invest a further \$5.3 billion in infrastructure and service improvements. Major projects include redeveloping the Ho Tung Lau Depot and Maintenance Centre to provide better maintenance and more stabling area for the KCR fleet; improving the signalling system and station facilities; expanding the Kowloon Goods Yard for better cargo handling; and providing noise abatement facilities. This substantial investment clearly demonstrates the Corporation's continued commitment to upgrading its systems to provide high quality customer services.

To conclude, the Corporation has continued to operate successfully. I would like to thank the Chairman, the Managing Board, the management and the staff of the Corporation for their hard work and achievements in the past year.

Hospital Authority Annual Report 1991-1992

SECRETARY FOR HEALTH AND WELFARE: Mr President, I am pleased to introduce the Hospital Authority Annual Report for the year ending 31 March 1992.

Between the bright blue covers of this Annual Report is the record of a major breakthrough in the history of healthcare development in Hong Kong. With the setting up of Hospital Authority as an independent statutory body, all public hospitals hitherto operating under two systems are now integrated to facilitate the introduction of management reforms.

The work of the Hospital Authority in the reporting period can be classified into three broad areas: the setting up of a new corporate infrastructure to support 37 000 employees from 16 different organizations, the preparation for management transfer of 36 public hospitals and 56 specialist institutions, and the planning of clinical service improvements.

In order to establish a corporate infrastructure capable of assuming effective control of the various institutions under its common management, the Hospital Authority has successfully developed a new unified system catering for personnel, accounting and procurement functions. A great deal of time and efforts have been dedicated to achieve management transfer and reforms.

Crucial to the smooth transition was the co-operation between the Government and the Hospital Authority on details of financial arrangements, operational relationships and the unified remuneration package for all existing staff working in public hospitals. As at 31 March 1992, 54% of the 34 000 eligible staff had opted for Hospital Authority employment terms, including 93% of former subvented hospital staff and 30% of civil servants.

A determined start has been made on management reforms through the identification of eight candidate hospitals for the introduction of these reforms and the setting up of Hospital Governing Committees to enhance community participation in public hospital management. Additionally, a comprehensive strategy has been formulated for the long-term development and application of information technology to improve the effectiveness and efficiency of service delivery.

The past year has been a productive and dynamic one for the Hospital Authority. However, much remains to be done to prepare our public hospital system for the challenges posed by an ageing population, for example, rapid advancement in medical technology and rising consumer expectations. Through

greater community participation and public accountability, the Authority will be able to respond swiftly to changing community needs and deploy resources with flexibility to those areas of need.

I would like to congratulate the Chairman, Sir S Y CHUNG, and members of the Hospital Authority and their staff on their achievements in the past year. I also thank Honourable Members in this Council and the general public for their invaluable support for our mission to improve the quality of patient care in Hong Kong.

Oral answers to questions

Senior Citizens Day

1. MR HUI YIN-FAT asked (in Cantonese): *In order to show our appreciation of the elderly's contribution to the community and to promote greater public respect for the aged, will the Government consider designating as "Senior Citizens Day" the third Sunday of November each year, that is the day on which the traditional "Festival for the Elderly" has been held annually by the voluntary social service agencies in the past 14 years?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, there is a discernible trend of increasing awareness within the community to promote greater respect for elderly citizens. Non-governmental organizations have been organizing a "Festival for the Elderly" on the third Sunday of November for many, many years. The Administration's policy is to encourage the organization of such community involvement projects so as to promote respect for elderly citizens.

On many special occasions, for example, Valentine's Day, Mother's Day, Father's Day and Children's Day, programmes are organized to celebrate the meaning of love and respect. We feel that to do the same for elderly citizens is highly appropriate. Since, in practice, the "Festival for the Elderly" has for many years been falling on the third Sunday of November, the marking of a "Senior Citizens Day" is a befitting expression of the community's recognition of the contribution made by elderly citizens. The Administration will continue to support non-governmental organizations to organize activities on this meaningful occasion.

MR HUI YIN-FAT (in Cantonese): *Mr President, the Secretary indicates in her reply that the marking of a "Senior Citizens Day" on the third Sunday of November is a benefitting expression of the community's recognition of the contribution made by elderly citizens. Will the Administration inform this Council whether that would mean it has agreed and accepted that the third*

Sunday of November be designated as "Senior Citizens Day" from now onwards?

SECRETARY FOR HEALTH AND WELFARE: Mr President, it is considered that declaration of a Senior Citizens Day is chiefly to arouse public attention; that being so, it need not be declared separately as a statutory day. It is somehow similar, for example, to the Smokeout Day of 31 May, the World Health Day of 7 April and the Environmental Protection Day of 5 June and the World AIDS Day of 1 December. The question of statutory declaration does not arise. I believe different countries adopt different days to honour senior citizens; for example, I believe, in Japan, they have adopted 15 September as its Senior Citizens Day — which happens also to be my birthday — but, in Hong Kong, the festival for the elderly is annually held on the third Sunday of November. Now, reasons for this choice are manifold; for example, during that time of the year the weather is normally very fine and academic examinations are fewer such that more students can free themselves for volunteer service. It is agreed that the third Sunday of November can be appropriately described as the Senior Citizens Day. In so saying, I would like to suggest that our respect and love for elderly citizens should be always in our hearts and minds and not specifically confined to a particular day.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, for the purpose of arousing public attention and to show our appreciation of the elderly for their contribution, will the Government further consider designating the "Senior Citizens Day" a statutory holiday?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I think Hong Kong's reputation is manifold, one notable feature being its hardworking people. It is a place full of workaholics, one can say. Another feature is that Hong Kong is also a place known for its many, many different holidays. If one looks up the Holidays Ordinance (Cap. 149) one will find a very impressive schedule — a handsome list, so to speak — of holidays which combine both western holidays and eastern holidays and those that come in between. So, we are one of the few places in the world with so many holidays. As I said in reply to an earlier supplementary by the Honourable HUI Yin-fat, the declaration of a day is mainly to arouse public attention and it does not need to be statutory. The declaration of a holiday, however, does require statutory declaration by way of an amendment to the schedule of the relevant Ordinance. And I think that any statutory declaration should not be lightly considered or lightly agreed.

MR FREDERICK FUNG (in Cantonese): *Mr President, the Secretary suggests that our respect and love for elderly citizens should be always in our hearts and minds. I think that is an important consideration. Furthermore, as mentioned in the second paragraph of the reply, non-governmental organizations have been*

providing a lot of services to the elderly, and I consider that equally important. My question is: if the Government is in support of a "Senior Citizens Day", will it give some substantive support such as increasing the subvention to social centres for the elderly from the present 75% to 100%, the same as that given to youth centres?

SECRETARY FOR HEALTH AND WELFARE: Mr President, the festival for the elderly has received subvention since 1991-92; for example, \$231,000 and \$137,000 were provided by the Social Welfare Department specifically for the organization of activities for the elderly to mark that particular Sunday. Any funding for any other form of support must be carefully considered, properly justified and will be considered in the normal course, if given priority.

MRS PEGGY LAM (in Cantonese): *Mr President, the Secretary has said that the Government greatly supports the "Senior Citizens Day" but that would not be in a form of monetary support. May I ask the Secretary what other actions the Government has in mind to show its support for the "Senior Citizens Day"?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, support for respecting the elderly in our community is not confined to the Government. It should be in the hearts and minds of every single person in the community; the community will make up the whole structure of societal support. We will do what we can in the Government but we have certain procedures in terms of funding. If Members would like to have a project funded by the Government then they are free to put up a proposal and let us consider it in due course.

MR WONG WAI-YIN (in Cantonese): *Mr President, the Secretary reiterated in her reply that the Administration would encourage and support non-governmental organizations to do the job. We can see that they have already done a lot on this and in fact many families are going out with the elderly for tea on that particular day. Just now Mrs Peggy LAM also raised the question of funding support. Will the Administration seriously consider what sort of initiative it will take in support of the "Senior Citizens Day" or the "Festival for the Elderly" rather than just giving verbal support? I said this because there had been actual efforts made by the Health and Welfare Branch and the Social Welfare Department in addressing the mentally retarded issue recently.*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I think I have covered that in my answers to earlier supplementaries. Community support for the elderly is neither confined to the money spent nor confined to government support alone. It must rest in the hearts and minds of the people who respect the elderly. If there are projects where support is sought, then the Social

Welfare Department and the Health and Welfare Branch will be happy to entertain applications, consider them and allocate funds accordingly when given the right priority.

MR JIMMY MCGREGOR: *Mr President, will the Government do everything possible to persuade all public transport companies and private sector entertainment companies to reduce or eliminate their charges and fees for senior citizens? And will the Government set up an appropriate committee for this purpose?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, we will continue to do our best. The introduction of various transport concessions is a manifestation of the support from the community, with such concessions cleared with the Government through various channels. The other day we were talking about the idea of issuing a card to elderly persons. The Administration has undertaken to examine the feasibility of implementing this idea, but again, the card is only a card, unless it has overall community support.

Zhuhai-Tuen Mun bridge

2. MS ANNA WU asked: *Will the Government inform this Council whether its consent and co-operation had been sought on the proposed construction of a bridge connecting Zhuhai and Tuen Mun before the plans were reported in the press, and the steps it is taking to ensure that authorities in China understand that Hong Kong's agreement has to be obtained before such projects can be carried out both before and after 1997?*

SECRETARY FOR TRANSPORT: Mr President, we have not received any proposal from the Chinese authorities for the construction of a bridge connecting Zhuhai and Tuen Mun. Clearly such a bridge could not be built without the agreement of the Hong Kong Government or the SAR Government after 30 June 1997. This is understood by the Chinese authorities.

MS ANNA WU: *Mr President, I thank the Secretary for a very short answer and to compensate for that, subject to your permission, Mr President, I would like to ask a long supplementary question. In view of the need for co-operation and co-ordination between southern China and Hong Kong in the region's development, has the Government taken any step to seek information on the matter? And would the Secretary provide details on the channels of communication for matters of this type generally and the level of contact involved, such as whether it is through the central government or the provincial authorities?*

PRESIDENT: It is a very broad question on a very narrow original question. Do you have the answer for this, Secretary?

SECRETARY FOR TRANSPORT: Mr President, I will try to answer that. There is at present a formal liaison channel between Hong Kong and China on border matters. There is an annual full liaison meeting between Hong Kong and the border authorities in China plus quarterly meetings on transport matters between the two territories. These cover a wide range of cross border issues such as infrastructure, customs, immigration and other matters of mutual benefit and concern. In addition, there have been numerous exchanges of visits throughout the year. If I recall correctly, there were over 100 delegations from Hong Kong and China at various levels, both formal and informal, which served the purpose of exchanging information and ideas to each other's benefit. I am sure these can continue to develop. I cannot of course give full details on each and every one of these but I can supply that in writing if Miss WU so wishes.

MR STEVEN POON (in Cantonese): *Mr President, situated to the east of the mouth of the Pearl River, Hong Kong has a certain economic role to play in relation to the cities on the east coast of the Pearl River, and in return has obtained economic benefits from them. But for the cities on the western coast, as there is the River that separates the two lands, Hong Kong has really only very little to offer to them. So it follows that the economic gains from them are also very small. In view of this geographical factor, does the Administration consider that a high speed bridge connecting Zhuhai and Hong Kong will bring enormous benefits to Hong Kong's economy; if so, will the Administration take the initiative to discuss the issue with the Chinese authorities concerned?*

PRESIDENT: Are we talking about the same bridge, Mr POON? (*Laughter*)

MR STEVEN POON: *Yes, Mr President.*

SECRETARY FOR TRANSPORT: Mr President, an overall long-term plan for Hong Kong's future development is in place. This is covered by the Territorial Development Strategy under the Secretary for Planning, Environment and Lands. Development covers a wide range of options for future integration of transport and land use planning in Hong Kong and its neighbouring territories. The Administration is always conscious of the fact that we must keep ourselves fully informed of developments in the Pearl River Delta and beyond and we must take the information into account when updating our assessment of Hong Kong's infrastructural requirements. So I am sure Mr POON's point is very well taken by the Administration.

MR ALBERT CHAN (in Cantonese): *Mr President, will the Administration inform this Council what has been done since the announcement of the plan for the Zhuhai bridge to find out the details about the plan; and how it will ensure that there is good co-ordination in respect of the roads in the area concerned and the infrastructural development in Tuen Mun and the northwest New Territories when the bridge is built?*

PRESIDENT: The first part of the question is clearly in order; the second part may be hypothetical. But if you have a problem, please let me know, Secretary.

SECRETARY FOR TRANSPORT: Mr President, we have not, as I said before, received any official proposals from the Chinese authorities. If I again recall correctly, we have heard from press reports that such a proposal was made by the Zhuhai authorities. It has not yet proceeded to the provincial level even for endorsement or consideration. So we believe that it would be premature for the Hong Kong Government to raise any proposal with the Chinese at this stage. As and when the Chinese authorities are ready to raise it with us, we will be very happy to listen to them on this particular project and the details concerned.

MR MICHAEL HO (in Cantonese): *Mr President, the construction of the Zhuhai bridge may have positive or negative effects on the economic and transport situations of the western New Territories, but the Secretary said just now that it would be premature to raise any proposal with the Chinese authorities at this stage. Meanwhile, is the Administration going to seek more information from the Chinese authorities?*

SECRETARY FOR TRANSPORT: Mr President, I think I have said that because the proposals from the local authorities in Zhuhai are no more than preliminary, it would not be proper for the Hong Kong Government to raise the matter with the Chinese authorities at the present stage. Having said that, we are always open to any ideas put to us through various channels and I believe such channels are open at the moment and we did receive some preliminary ideas from the individuals concerned. But at this stage I cannot say how far these ideas are authorized; so I cannot comment on such ideas.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, will the Administration tentatively assess whether there is any technical difficulty in building such a bridge at the location concerned and whether such a plan is feasible?*

SECRETARY FOR TRANSPORT: Mr President, as I said, I think that we have not got the details. So I cannot really comment on what is likely or not likely to happen. But generally speaking, when considering this project, even as a

concept, we must consider the transport and land use implications for Hong Kong in general and the western New Territories in particular. But until and unless we receive such details, I really cannot speculate on the implications.

DR CONRAD LAM (in Cantonese): *Mr President, the Secretary has many years of experience in this regard. I would like to know what the priority of the construction of this bridge will be when compared with the priorities of the existing projects of the Administration, particularly in the light of competing demands for our limited resources?*

SECRETARY FOR TRANSPORT: Mr President, I wish to thank Dr LAM for his compliment on my experience in transport. I cannot, however, reciprocate by being more forthcoming in replying to his question. As I said earlier, I have not got the details and I cannot speculate on the priority of this project in relation to Hong Kong's own priorities.

MR LEE WING-TAT (in Cantonese): *Mr President, it is a very surprising move of the Zhuhai authorities to announce unilaterally the construction of the Zhuhai bridge, because if every province and county announces its plan to construct a bridge to Hong Kong, Hong Kong will then be like a centipede with many "legs". Does the Administration consider this a strange and sudden move? Will the Administration take this up with the Joint Liaison Group or the Border Liaison Group, and express our wish that there will be discussions with the Hong Kong Government before the Chinese side makes any official announcement?*

SECRETARY FOR TRANSPORT: Mr President, the question of whether and why the proposal was made should be addressed to the one who made the proposal, not to the Hong Kong Government. Really, I cannot comment on the implications underlying this particular proposal. We will of course be happy to listen, as I said before, and then to consider as and when we receive a proposal.

PRESIDENT: I do not think that was the question though, Secretary. I think the question was: Will this be brought up at the Joint Liaison Group or the joint border meetings?

SECRETARY FOR TRANSPORT: Mr President, as I said, we have not yet raised this issue, because the issue as reported in the press was only a local level issue raised by Zhuhai. It has not even proceeded to the provincial level for consideration or endorsement. So, it would be improper for the Hong Kong Government to raise this matter on an official level.

PRESIDENT: I think the question was: Is the policy of unilateral announcements something which the Hong Kong Government will take up with the Chinese authorities? Is that right?

SECRETARY FOR TRANSPORT: I am not sure, Mr President, that we can stop anyone from making announcements to the press about their ideas. I do not think that this is a matter which it will be appropriate for us to raise in the Joint Liaison Group.

Seafood contamination

3. MR STEVEN POON asked (in Cantonese): *In view of recent reports from various sources revealing that the seafood available in Hong Kong is contaminated, with shell-fish containing excessive levels of Escherichia coli and heavy metal and that some fishmongers and restaurants may even be keeping marine fish in contaminated sea water, will the Government inform this Council:*

- (a) *whether extensive and systematic tests are being conducted on a regular basis to ensure that all kinds of seafood for daily consumption of the general public meet the food safety standards;*
- (b) *whether it is an offence to keep fish for consumption in unclean sea water, if so, what penalties can be imposed for such an offence and whether prosecution can be instantly initiated against the fishmongers and restaurants concerned, whether consideration will be given to strengthening inspection and introducing heavier penalties; and*
- (c) *if the above practice does not constitute an offence, whether consideration will be given to amending the relevant legislation so that the authorities can prosecute the persons concerned?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the Hygiene Division of the Department of Health conducts a food surveillance programme on foodstuffs including seafood. Food samples are taken from various wholesale and retail outlets and points of import for laboratory examination. The tests include bacteriological examination for total bacterial count, faecal coliform and food poisoning organisms, chemical analysis for heavy metals, and toxicity test for biotoxins.

At present there is no legislation to regulate the use of seawater for keeping live fish in restaurants or by fishmongers in the market place. The operation of any food business is governed by the Public Health and Municipal Services Ordinance and an operator of any food business is required to obtain a

licence from either one of the municipal councils before he conducts business. It is an offence to sell food unfit for human consumption. Both the Food Business (Urban Council) Bylaws and the Food Business (Regional Council) Bylaws also require persons engaged in the food business to take all necessary steps to protect the food from risk of contamination. The two Food Business Bylaws also prohibit collection of shellfish, for sale for human consumption purposes, in the waters of the Victoria Harbour, the harbour of Aberdeen, Kwai Chung and Tsuen Wan bays. The two municipal services departments ensure that food business operators comply with the relevant statutory provisions and licensing conditions governing their business.

Live fish, live animals and live birds as well are not defined as food in law. Only after killing and other processing does it become food intended for human consumption. At that point, common food controls apply. The keeping of live fish in restaurants and the market place is relevant to the environmental hygiene aspect which is looked after by the two municipal services departments. They have taken active steps to advise seafood restaurant operators and seafood sellers not to draw seawater from suspected sources for use in fish tanks. A code of practice on shellfish hygiene to guard against contamination of shellfish in wet storage has been also distributed to food handlers.

To ensure food safety, the Department of Health and two municipal services departments organize regular education programmes on good hygiene practice for general public as well as food handlers. Good personal, environmental and food hygiene, such as thorough cleansing and cooking of food before consumption, is no less important than carrying out sample tests on food in ensuring food safety.

MR STEVEN POON (in Cantonese): *Mr President, a lot of Hong Kong people of our age used to swim in the New Territories when they were young. When our mother taught us how to swim, she invariably told us: "You must go under water if you want to learn swimming and you must have drunk several mouthfuls of sea water before you can swim well!" Today the waters of Hong Kong are extremely contaminated. We no longer dare take our children and grandchildren to the sea for a swim, not to mention telling them to drink a few mouthfuls of sea water. Therefore when we saw on television that some bad guys were collecting water from the sea and delivered them by truck to restaurants for the purpose of keeping live fish, we were totally shocked. May I ask the Administration if it is possible to introduce legislation to provide for water being used for keeping live fish in restaurants must be taken from waters far offshore, for example, to the east of Hong Kong or in the vicinity of Ninepin Group to the south, and whether it will consider allowing only approved contractors to undertake such a task?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, as far as I am aware, there is no international standard regulating the quality of water in fish tanks. However, as regards whether or not there should be legislation or bylaws or other codes of practice, I would duly refer Members' concern to the municipal councils and related departments. As regards protection of water quality in general, I believe discharges of effluents in water control zones are strictly controlled under the Water Pollution Ordinance via a licensing scheme administered by the Director of Environmental Protection. At present, over 90% of the territory's waters have been declared water control zones. Two more water control zones will be declared this year with the final one, which is Victoria Harbour, scheduled to be declared in phases by 1997. The Government has also embarked on a comprehensive sewerage improvement programme to ensure that all significant effluents can be collected, treated and properly disposed of. I believe also that the Director of Environmental Protection is also empowered under the Waste Disposal Ordinance to control the disposal of waste. Enforcement of the legislation in relation to livestock waste, however, is held in abeyance in most areas pending completion of a review of the Livestock Waste Control Scheme by the Government. In brief, Mr President, I share the Honourable Member's concern.

PRESIDENT: Is there a part of your question not answered, Mr POON?

MR STEVEN POON: *Mr President, I take it that the Secretary would refer that to the two Councils and I just accept that answer. But really, my question was: Would regulations be set up to ensure that water from a clean sea is delivered into Hong Kong for putting in a fish tank? Anyway I will accept that the Secretary will put it to the municipal councils for consideration. Thank you.*

SECRETARY FOR HEALTH AND WELFARE: Mr President, yes.

DR TANG SIU-TONG (in Cantonese): *Mr President, at present surveillance on seafood is conducted by the Department of Health in conjunction with the two municipal councils. May I ask if there are organizations making comments that cause panic, will they be held legally responsible?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I am not aware of any organization causing any panic. What I am aware of is that the Department of Health acts as a hygiene advisor for the two municipal councils in enforcing food safety under the Public Health and Municipal Services Ordinance. It conducts food surveillance programmes on food samples collected from the wholesale and retail outlets and points of entry. The health inspectorate of the two municipal councils also monitors the operation of various organizations and these three agencies work hand in hand.

DR HUANG CHEN-YA (in Cantonese): *Mr President, although we have laws on food inspection to ensure food safety, will there be practical difficulties in implementation? Will the Administration inform this Council of the number of vendors that were prosecuted for selling fish unfit for human consumption over the past year, and whether the contamination or poisoning is caused by bacteria, cyanide or others?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, as regards fish, perhaps I could cite some statistics for 1992. A total of 231 samples of fish and fish products had been taken under General Food Surveillance Programme for analysis. About 5% of the sample sent for bacteriological testing and about 4% of sample sent for chemical analysis were found to be unsatisfactory. All tested samples passed the toxicity test. As regards shellfish, I refer to my reply to Question 13, which is my written reply in which I have described in some detail the levels of tests and samples we have taken.

DR HUANG CHEN-YA: *Mr President, I was asking whether any of these people who sold fish that failed the test were actually prosecuted.*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I think prosecution will be taken as a matter of course but whether it is specifically related either to food poisoning or samples taken in restaurants requires a written reply. I do not have the statistics in hand. But certainly where there are reasons to suspect food poisoning and contravention of the law, action is taken very swiftly. I think, off the cuff, there were five prosecution cases and I think in my written reply to Question No.13 I gave a range of fines of between \$600 and \$5,000. But I do not know whether that in itself is sufficient answer to Dr HUANG's question. If not, I would be supplementing that with a further written reply. (Annex I)

MRS ELSIE TU: *Mr President, is the Secretary aware that the Urban Council recently sponsored an investigation by the University of Hong Kong into the ill effects of this kind of water on fresh fish and that the result was negative — that is to say, there was no ill effect — and that further tests will soon be made on shellfish? If the Secretary was not aware of that, would she like to check on it?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I would like to check on it. I thank Mrs TU for this.

Electric vehicles

4. MRS PEGGY LAM asked (in Cantonese): *In order to further reduce the environmental pollution caused by exhaust gas from motor vehicles, will the Government inform this Council whether it would consider adopting vigorous measures to encourage members of the public to use power-driven vehicles instead, such as, reducing the First Registration Tax and licence fees for such vehicles?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, a four-phase strategy to tackle vehicle emissions was laid down in the 1989 White Paper on Pollution. It included introducing unleaded petrol, requiring new light duty vehicles to meet the most advanced international emission standards, stepping up control of smoky vehicles and, if feasible, implementing measures aimed at reducing reliance on diesel engine vehicles.

In a recent review of the strategy, the need for the development of a broader approach to vehicle emission control has been identified. This includes recognition that the wider application of electric vehicles in Hong Kong could be one of the longer-term solutions to our vehicle emission problem. Mr President, I shall explain shortly why electric vehicles may be a longer-term solution.

The subject of electric vehicles and their possible use in Hong Kong is being examined by an interdepartmental working party convened by the Planning, Environment and Lands Branch. The working party is looking into areas such as the environmental benefits and energy efficiency of electric vehicles, their availability on the market, their suitability for use in Hong Kong's climate and topography, as well as measures to encourage their wider use. Ideas such as the reduction of first registration taxes, and licence fees, and so on are being considered. And the working party is aiming to submit its report to the Environmental Pollution Advisory Committee in June this year.

In the course of the working party's deliberations, it has become clear that, contrary to popular belief and despite recent work on electric vehicles in Europe and the United States, the electric vehicle option is still at the development stage. As most of the electric vehicles developed are still prototypes, there is only limited scope for considering such vehicles for practical use in Hong Kong at present. Nevertheless, we do see zero emission vehicles or the like as part of the long-term solution to Hong Kong's problem and we will continue to explore ways and means to bring about their use in Hong Kong.

MRS PEGGY LAM (in Cantonese): *Mr President, the Secretary indicated that the use of electric vehicles might eventually help solve the environmental pollution problem. To our knowledge, some large organizations in Hong Kong, such as the China Light and Power Company, are using electric vehicles and the result is very satisfactory. May I ask the Administration if it would take the lead by purchasing some electric vehicles so as to encourage the use of such vehicles?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, there are registered or licensed, as at 31 March 1993, 46 electric vehicles in Hong Kong. One of these is a private car, six are goods vehicles operated by the China Light and Power Company and 39 are special purpose vehicles. They are, as I have said earlier, very much prototype vehicles and they are not available, as one might think, for commercial operation. As far as the Government taking a lead is concerned, on the recommendation of the Working Party on Electric Vehicles, a trial scheme is being considered for implementation shortly to replace one or two existing government vehicles, that are normally due to be replaced, by electric vehicles. The performance of these vehicles in operation will be closely monitored by the Government Land Transport Agency in order to evaluate their possible wider application within the Government.

MR VINCENT CHENG: *Mr President, I refer to the first paragraph in the Secretary's reply relating to smoky vehicles. Could the Secretary inform this Council of the number of prosecutions the Government has taken against smoky vehicles over the last 12 months and its plans for reducing reliance on diesel engine vehicles?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I do not have the statistics that Mr CHENG is seeking readily available but I think it will be quite a simple matter to make them available in writing. As far as other measures are concerned, the broad government policy on vehicle emission control to meet air quality objectives is, firstly, to reduce emissions from vehicles on the road by, for example, introducing inspection and maintenance requirements and converting small diesel vehicles to petrol uses — these measures are to some extent already in place and the question, of course, is whether inspections need to be more frequent and more stringent; secondly, to bring in as soon as practicable the most up-to-date international vehicle emission standards and we have so far kept up reasonably well with international vehicle emission standards and we propose to move forward as quickly as we can to keep up with such changes as will follow; thirdly, to facilitate the use of low emission vehicles, such as electric vehicles which I have already talked about at some length; and finally to manage and meet transport demand as far as possible by taking into account practical considerations and economic factors as well as the use of off-road types of transportation for passengers and freight.

MR STEVEN POON (in Cantonese): *Mr President, electric vehicle is not only environmental friendly but also a very quiet form of transport. If all the vehicles in Hong Kong are power-driven, they will in a way take away some of the noises from our overcrowded city. Furthermore, the batteries of such vehicle are charged at night and that makes the use of it more cost-effective. Will the Administration consider requiring the two power companies to allocate funds each year under the schemes of control for the purpose of promoting the use of electric vehicles in Hong Kong?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, may I respond by agreeing that this idea along with many other good ideas — and some of them not so good — will be put forward to the working party which I have described for consideration within the Government.

DR SAMUEL WONG: *Mr President, using electric vehicles does not necessarily improve the environment since it merely shifts the air pollution problem individually at street level to the chimneys at the power stations centrally. Has the Administration carried out an environmental audit to ascertain that by using electric vehicles there would be a net environmental gain globally?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the simple answer is that the Administration has not carried out such an audit. And indeed from my earlier remarks, I think it will be quite clear that the Administration does have regard to the prospect of the widespread introduction of electric vehicles in Hong Kong, replacing the existing vehicle fleet. The possibility of that being a rather a long-term option means that I believe we have sufficient time to consider the sort of idea which Dr WONG has raised.

MR MICHAEL HO (in Cantonese): *Mr President, in the first paragraph of the Administration's reply it was mentioned that measures that were found to be feasible would be implemented, and then some other measures were also mentioned in a supplementary answer a while ago. Would the Administration inform this Council how the feasibility of such measures will be assessed and whether any feasibility studies are being carried out at the moment?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, all these matters are, as I think I have said, the subject of consideration by the working party which I mentioned. And the need for studies, should it arise, will be considered after the working party has itself studied matters. Feasibility studies and so on, of course, require funding and these would have to be placed in the priority assessments which we do every year for new projects which cost.

DR LAM KUI-CHUN: *Mr President, in conjunction with the last paragraph of the Government's reply which states that the working party considers electric vehicles being only prototypes at present, would the Administration inform this Council whether alternatives to electric vehicles are also being considered to reduce atmospheric pollution, such as kerosene driven vehicles that are widely used in South America?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the working party is considering a very wide range of ideas and amongst these are, of course, ideas such as the replacement of diesel vehicles by petrol vehicles, electric vehicles and indeed the kerosene driven vehicles that have just been mentioned.

Urban renewal review

5. MR JAMES TO asked (in Cantonese): *In response to a motion on Redevelopment of Private Buildings passed by this Council in July last year, the Government indicated in October that a review group had been set up to examine the urban renewal process with particular regard to the role of the Land Development Corporation and that the group would complete its initial task by the end of last year before the activities of private developers in the redevelopment process would be looked into. Will the Government inform this Council:*

- (a) why the review group has placed its emphasis on the Land Development Corporation instead of the private developers in the acquisition of buildings as referred to in the motion;*
- (b) whether the group has completed its initial task and when its preliminary report will be submitted to this Council; if not, why not; and*
- (c) whether a time schedule has been fixed for the review on the acquisition of buildings by private developers; if so, what the specific details are; and if not, why not?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, my answers to the seven parts of this question are as follows:

- (a) The review currently being carried out of the Land Development Corporation's role and experience in the urban renewal process has focused on the Land Development Corporation (LDC) for two main reasons. First, it was decided before the motion was passed last July that such a review should be carried out to examine the problems experienced by the Corporation since it was set up in 1988. Second,

we believe that the lessons which will be drawn from this review will be relevant in large measure to the operations of private developers other than the LDC. Although the Corporation's operations may be different from other private developers in some respects, it faces similar problems in such matters as land acquisition and dealing with owners and tenants affected by redevelopment. The Administration therefore believes that it should complete this review and draw conclusions which will have a bearing on future operations of the LDC as well as other developers. Thereafter, it can consider what other areas of study remain to be covered before continuing.

- (b) The review group has not yet completed its work. Because the subject is a complex one, the review has taken longer to complete than originally envisaged. We are now aiming to complete it by the middle of this year. Any changes in policy relating to the LDC in particular or to urban renewal or redevelopment in general which may emerge from the review will be made public rather than being submitted formally to this Council.
- (c) Because of the way we are approaching the current review, which I have already explained, no time schedule has yet been set for the possible review of the processes through which private developers carry out redevelopment.

MR JAMES TO (in Cantonese): *Mr President, the Secretary has mentioned just now that the operations of the Land Development Corporation and most private developers are more or less alike when it comes to redevelopment procedures and approaches. May I ask why more emphasis has not been placed on redevelopment by private developers as they account for the majority of redevelopments in the territory? Is the Administration trying to delay the review to the extent that it is disinclined to even set a time schedule, thus driving the residents to the wall? We know that development is in full swing now; may I ask if the Administration intends to stall the matter until it has driven all the residents affected onto streets or into bedspace apartments and until all the buildings have been demolished, so that the whole matter will naturally come to an end and the whole review is then complete?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think the simple answer to Mr TO's direct questions in all cases is no. We do not intend to delay and I think what I have said in my main answer indicates that not only are we not delaying but we have in fact adjusted the target of our review to try to take aboard some of the considerations and problems as regards private developers which have been raised with us over the past year or so in the context of the review which we have already started in

respect of the Land Development Corporation and the urban renewal process that it is engaged in.

MR ALBERT CHAN (in Cantonese): *Mr President, the Secretary has mentioned in his reply that the focus of the review is on the Land Development Corporation, and I think that would be too narrow in scope. In reviewing the question of urban renewal, will reference be made to certain cases in the past? (For example, in the case of Hoi Pa Resite Village in Tsuen Wan, the Government invoked the Crown Lands Resumption Ordinance to resume land and then put it under public auction.) Has the Government drawn any lesson from such incidents? As redevelopment will lead to a host of problems different in nature, should the scope of review be extended? Could the Administration assure us that such incidents will not recur in future?*

PRESIDENT: I think your question goes outside the main question and answer, Mr CHAN. Would you like to rephrase it?

MR ALBERT CHAN (in Cantonese): *Mr President, my question is on redevelopment which involves private interests in lands and therefore it should come under the review on redevelopment of private buildings. Just now I cited the case of Hoi Pa Resite Village to illustrate that there are a lot of problems encountered in the process of land resumption and to explain the reasons for the delay in the hope that the Administration will take the past incidents into consideration and conduct a comprehensive review on redevelopment. Will the Administration enlarge the scope of the review, taking into account different experiences and circumstances so as to better serve the needs of the residents concerned?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, perhaps I should begin by pointing out that the case to which Mr CHAN referred is not a case of urban renewal. It is a case of new town development and it is related to the resumption of land for such development. I think I have already said in my main response that the extent of the review which began in relation to the experiences of the Land Development Corporation has already been, in effect, extended to take account of the experiences which will relate not only to the operations of the Land Development Corporation but to redevelopment and urban renewal undertaken by private developers. And I believe that that review, which is already a good way down the track, will give us a great deal of information as to how we should proceed and I think that it would be counter productive and likely to cause delay if we were further to change the terms of reference of that review.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, the Secretary stressed in his reply that the review group has not completed its work. Continual criticisms and adverse comments from the public since the inception of the Corporation in 1988 is sufficient proof that its operations warrant review. Will the Administration look at the Crown Lands Resumption Ordinance (Cap 124) again and amend it accordingly?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think insofar as this review is related to the effect of the Crown Lands Resumption Ordinance, if the review produces recommendations that that Ordinance should be amended, then the Administration will put those recommendations to this Council.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, since the supply of private flats is dependent upon factors like government's land supply, the smoothness of the resumption process and the number of redeveloped units produced by private developers, will the Administration conduct an in-depth review on the adequacy of current policies and legislation so that due regard is paid to the needs of our economy and the community at large?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, as far as the relative importance of government land and land produced by private developers is concerned, I think it is interesting to note that in the three-year period from 1989-90 to 1991-92 land exchanges and lease modifications which are in effect largely redevelopment cases produced 69 hectares of land. During the same period land for the same sort of development produced and disposed of by the Government through the land disposal programmes was 28 hectares. In the same period, or roughly the same period, approximately 50 000 flats were produced through redevelopment and these were produced in exchange for just over 8 000 flats which were demolished and on the basis of a rough indication of 3.5 persons per flat. Whereas just under 30 000 people were displaced, almost 190 000 people were reaccommodated so that I think, in considering the arrangements for urban renewal and redevelopment, we should not lose sight of the fact that these processes are extremely important in maintaining the supply of new accommodation for our community.

Decoration contractors approved by Housing Department

6. MR PANG CHUN-HOI asked (in Cantonese): *Under the Housing Department's present system of using approved decoration contractors to carry out pre-occupation decoration for tenants of newly completed public housing estates, there are complaints from time to time that tenants who choose to carry out decoration work by themselves are subject to harassment and intimidation*

by approved contractors or their agents. Will the Government inform this Council of:

- (a) what improvement measures will be taken to overcome such problems faced by tenants; and*
- (b) what measures will be taken to ensure the integrity of the contractors and that they respect the tenants' right to carry out decoration by themselves?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, it was indeed to combat criminal activity relating to decoration work in new housing estates that the Housing Authority, with the co-operation of the police and the ICAC, introduced the approved decoration contractor system in 1982. Under this system, the Housing Authority maintains an approved list of such contractors. Only contractors on the list or tenants themselves are allowed to carry out decoration work in new estates.

Contractors on the approved list are required to supply the names and other particulars of their subcontractors and employees to the Housing Department for transmission to the police for detailed screening. Before signing a contract with the Housing Authority, contractors are clearly advised that tenants are free to decorate their flats themselves and must not be coerced to use the services of a contractor. As well as non-compliance with contract conditions, evidence of criminal activities in procuring work will result in termination of contract, suspension of eligibility to tender for a specified period, or removal from the approved list.

To date, there have been no confirmed cases of an approved contractor or his employees being involved in harassment. According to a survey commissioned by the Housing Authority in early 1992, 53% of the public housing tenants decorated their own flats or were assisted by their relatives to do so. The survey also showed that 2% of tenants in new housing estates claimed to have been intimidated or harassed by triad elements during the decoration period. No connection between these cases of harassment and approved contractors or their employees has been established.

The Housing Authority will continue to monitor the work and behaviour of approved contractors rigorously. In addition, the police are alert to the need to strengthen their ground patrols and surveillance during new flat intake periods.

All complaints and reports of criminal activity are investigated. Public housing tenants are advised during intake briefings to report to the police any incidents of harassment. This message is reinforced in newsletters, notices and information handouts.

The Housing Department is currently reviewing the existing arrangements and practices under the approved decoration contractor system to identify possible areas of improvement. This review will take into account tenants' comments on the system and should take about three months to complete.

MR PANG CHUN-HOI (in Cantonese): *Mr President, the Housing Authority has noted that during the new flats intake period, some tenants are intimidated or harassed by undesirable elements in respect of decoration works to be carried out. The contractor or sub-contractor and his employees of course have their part to play and which is to provide information to the police. But may I ask the Secretary whether provisions can be made to require the police or the Housing Authority to issue to approved contractors or sub-contractors identity cards bearing the names and photos of their employees so as to prevent harassment by triads in new housing estates?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I am not, of course, clear as to whether the provision of the sort of information in recorded details which Mr PANG is suggesting is feasible or would help. But I am certainly happy to put the idea forward to the Housing Authority for consideration in its current review.

DR TANG SIU-TONG (in Cantonese): *Mr President, in the third paragraph of the main reply, the Secretary mentioned that the survey showed that 2% of tenants in new housing estates were harassed and that there was no connection with approved contractors in these cases. May I ask the Administration how many of these cases have led to prosecution by the police and the reasons for saying that there was no connection with approved contractors?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, taking the second part of the question first, what I have said is that no connection has been established. In other words, there has been no proof of a connection and as far as I am aware from the material and statistics available to me, there have been no successful prosecutions as a result of tenants reporting intimidation or harassment. But I would like to check that particular piece of information and advise Dr TANG of the outcome of that as soon as I can in writing.

PRESIDENT: Perhaps the Secretary for Security may be able to help.

SECRETARY FOR SECURITY: Yes, Mr President. Perhaps I could say that the police do not keep statistics of offences specifically related to harassment in the case of decoration. That is not a category of offence that is listed. The police do obviously have statistics relating to intimidation and other triad crimes concerning tenants in newly completed housing estates. I believe that in 1992 there were seven such cases concerning 18 offenders but it is not clear and we do not know whether those were related to decoration work or not. They concern triad offences in general in newly completed housing estates.

MR FRED LI (in Cantonese): *Mr President, the survey by the Housing Authority in 1992 revealed that 2% of tenants claimed to have been intimidated or harassed. In fact how many tenants did they represent? Given that a number of tenants claimed to have been harassed yet no cases had been established, has the Administration looked into them and ascertained whether they were due to reasons like failure to report, misunderstanding or exaggeration on the part of tenants, or the skilful tactics of triads to outwit the Administration, making it impossible for them to do anything about it or to substantiate the case?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the outcome of complaints of this kind — and this is the information I have been given — is the product of a survey conducted by the Housing Authority of a sample of households moving into new estates. So this was not a total survey of all households moving in. I am just trying to put my finger on the precise number of households included in this survey — if Members would bear with me for a moment — and I now have it that just over 1 470 households responded to the survey of a rather larger number — which again I am afraid I cannot put my finger on just at the moment. So it is 2% of 1 470 in this case and I might say that further information from this survey indicated that those who were or claimed to have been harassed by triad groups took the following action: 44% of them paid money to avoid trouble, 34% of them did not take any action at all, 12% of them reported to the police and 7% took on non-approved decoration contractors, whilst 3% informed the estate office. So I think on the one hand we are talking about a relatively small sample and on the other hand, we are talking about a very, very small percentage from that sample. Secondly, I think, as is indicated from the survey, that possibly what is required — and we can feed this into the Housing Authority's review — is a redoubling of the effort to advise people moving into estates that they do not need to respond to this kind of situation in the way that they do and that they are like the other 53% who are perfectly entitled to have redecoration carried out under their own arrangements if they wish to.

Written answers to questions**Nomenclature of government departments**

7. MR GILBERT LEUNG asked (in Chinese): *Given that Hong Kong will become a Special Administrative Region of China in 1997, will the Government inform this Council whether it will consider altering the names of government departments and departmental emblems and logos that have colonial implications, such as those of the Royal Hong Kong Police Force; if so, what time-frame and details have been drawn up for implementation; if not, why not?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, nomenclature of government departments, departmental emblems and logos, uniforms, badges and insignia which are not compatible with the provisions of the Basic Law and the future status of Hong Kong as a Special Administrative Region of China will need to be adapted. The Administration is examining the changes that are necessary and suitable arrangements will be made in due course.

Consumer Council's purview

8. MR LAU CHIN-SHEK asked (in Chinese): *Certain organizations listed in the Schedule to the Consumer Council Ordinance fall outside the purview of the Consumer Council. Will the Government inform this Council of the reasons for having the Schedule and provide, for each organization, details of the channels available to consumers for lodging complaints and of the legislative provisions that are in place for monitoring the relevant procedures in handling complaints, so as to ensure the protection of consumers' interests?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, the Schedule to the Consumer Council Ordinance lists the organizations which are already subject to some form of government control or public monitoring and therefore fall outside the purview of the Consumer Council. The following paragraphs describe in some detail the channels available to consumers for lodging complaints against these organizations and the legislative provisions that are in place for monitoring the relevant procedures in handling complaints.

Television and radio broadcasting licensees

(including Asia Television Limited, Hong Kong Commercial Broadcasting Company Limited, Hutchvision Hong Kong Limited, Metro Broadcast Corporation Limited and Television Broadcasts Limited)

Any person wishing to lodge a complaint against a television and radio broadcasting licensee may do so by writing to the Broadcasting Authority or by calling the Authority's complaints telephone hotline. Under sections 10 and 11

of the Broadcasting Authority Ordinance (Cap. 391), the Authority will refer these complaints to the Broadcasting Authority Complaints Committee which will make recommendations concerning the complaints to the Authority.

In addition, a complainant may lodge complaints direct to the broadcasters concerned. As a condition of licence, all terrestrial broadcasters are required to receive and consider complaints and to maintain a complete and up-to-date complaints record for submission to the Broadcasting Authority on a regular basis and on demand.

Hong Kong Housing Authority

Tenants may lodge their complaints direct or through established channels with Housing Managers in charge of respective estate offices or the Housing Authority. In all cases the complainant will receive from the Housing Department a reply explaining the situation or reviewing a previous decision. If he is not satisfied with the reply, he may put his case to the Complaints Committee, set up under section 7(1) of the Housing Ordinance (Cap.283), for decision.

Under section 20(1) of the Ordinance, tenants may also appeal in writing to the Appeal Panel, established under section 7A(1), against tenancy decisions made by the Department.

Public transport and tunnel companies

(including China Motor Bus Company Limited, The Cross Harbour Tunnel Company Limited, The Hong Kong and Yaumatei Ferry Company Limited, Hong Kong Tramways Limited, Kowloon-Canton Railway Corporation, Kowloon Motor Bus Company (1933) Limited, Mass Transit Railway Corporation, New Hong Kong Tunnel Company Limited, New Lantao Bus Company (1973) Limited, The "Star" Ferry Company Limited and Tate's Cairn Tunnel Company Limited)

Public complaints in respect of services provided by the public transport and tunnel companies may be made to the companies themselves, the Commissioner for Transport and the Transport Complaints Unit of the Transport Advisory Committee.

The eight public transport operators listed in the Schedule have all established channels for handling public complaints. The most common ones are passenger hotlines and customer service centres. Most of the public transport operators also conduct passenger surveys from time to time to gauge consumers' opinion on their service standard.

The China Motor Bus Company Limited is required under its new franchise to establish passenger liaison groups to liaise, communicate with and receive the opinions of the public. The Hongkong and Yaumatei Ferry Company Limited and the Kowloon Motor Bus Company Limited have also

taken initiatives to establish such groups. We shall consider making this a requirement in the franchises of public transport operators when these are due for renewal.

Telecommunication companies

(including Hong Kong Telecom International Limited and Hong Kong Telephone Limited)

Consumers may lodge complaints against the Hong Kong Telephone Company (HKTC) and Hong Kong Telecom International (HKTI) with the Telecommunications Authority.

Under section 22 of the Telephone Ordinance (Cap. 269), HKTC is obliged to "provide and maintain to the satisfaction of the Telecommunications Authority a good, efficient and continuous service of public telephonic communication with modern appliances, including all reasonable modern inventions". More specifically, under section 24 of the said Ordinance the Company is obliged to provide service on request and, under section 30, to supply to the Government details of persons who have requested connections "and with whose request the Company has not complied".

Under clause 7 of HKTI's licence, the licensee is obliged to "operate, maintain and provide in a manner satisfactory to the Telecommunications Authority, the services specified in the First and Second Schedules hereto".

Fish and vegetable marketing organizations

(including Fish Marketing Organization and Vegetable Marketing Organization)

Section 17 of the Marine Fish (Marketing) Ordinance (Cap. 291) provides for review of decisions of the Fish Marketing Organization. Any person adversely affected by a decision of the Organization may notify the Director of Agriculture and Fisheries in writing to request such decision to be reviewed. The request will be referred to the Fish Marketing Advisory Board which may hold an inquiry to hear the complaint and will submit its advice to the Governor for final decision.

As for the Vegetable Marketing Organization, a channel of appeal to the Director of Marketing is available under Regulation 8(5) to the Agricultural Products (Marketing) Ordinance (Cap. 277) and Rule 53 of the Administrative Rules of the Cheung Sha Wan Wholesale Vegetable Market.

Power companies

(including China Light and Power Company Limited and the Hong Kong Electric Company Limited)

The China Light and Power Company Limited operates a customer telephone service and customers services centres with which customers can

lodge complaints. Its Customer Consultative Group monitors the handling of complaints.

Similarly, the Hong Kong Electric Company Limited operates a customer service centre, an emergency reporting centre and trenching work complaints hotline to which customers can direct complaints. The company also receives complaints from its Customer Liaison Group.

Both power companies are subject to the provisions in the Electricity Ordinance (Cap. 406). Section 42 of this Ordinance provides that a person aggrieved by a decision/action of the companies in relation to the powers and obligations under sections 13 to 18 may appeal to the Director of Electrical and Mechanical Services. In addition, customers may also lodge complaints with the Director against the companies for failure to comply with the safety requirements for electricity supply set down in the Electricity Supply Regulations made under the Ordinance or on any other technical aspects of electricity supply.

Hong Kong Air Cargo Terminals Limited

Customers may lodge their complaints direct with the Hong Kong Air Cargo Terminals Limited (HACTL) or channel them through their trade bodies, namely the Carrier Liaison Group and the Hong Kong Association of Freight Forwarding Agents.

In addition, clause 2 of the Franchise Agreement signed between the Government and HACTL provides that the Company shall operate in accordance with international air industry standards to the general satisfaction of its customers and the Director of Civil Aviation. Where a customer feels that the standards required by the Director are not met by HACTL, he could complain direct to the Director, who would then take up the matter with HACTL under the terms of the Franchise Agreement.

Hospital Authority

At the individual hospital level, public complaints are handled by the relevant Hospital Chief Executive or Medical Superintendent assisted by a Patient Relations Officer. At the central level, appeal cases and referrals from other bodies are handled by a Public Complaints Committee established under the Hospital Authority Board. Separately, the trends of complaints relating to individual hospitals or specialties are monitored by the Patient and Community Relations Committee under the Board.

The Health and Welfare Branch of the Hong Kong Government scrutinizes the quarterly reports prepared by the Hospital Authority on the incidence of complaints or expressions of appreciation, based on the statistics supplied by individual hospitals. Regular visits are made by Justices of Peace to psychiatric hospitals at monthly intervals and to other hospitals at three-monthly

intervals. Their comments and observations are taken up by the Hospital Authority and monitored by the Health and Welfare Branch for necessary improvements.

General

In addition to the specific channels of complaints described in paragraphs 2 to 20 above, consumers may also lodge their complaints with other bodies like Office of Members of the Legislative Council, Office of the Commissioner for Administrative Complaints and District Boards where appropriate.

Funding for sports promotion

9. MR CHIM PUI-CHUNG asked (in Chinese): *Will the Government inform this Council of:*

- (a) *the amount of public funds spent on sports over the past five years; the main recipients of such funds and the standard of performance of local athletes in international competitions during the period; and*
- (b) *the relationship between the Government, the Amateur Sports Federation and the Olympic Committee of Hong Kong; and the Committee's role in the promotion of sports?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, public funds for the promotion and development of sports are mainly channelled through:

- (a) direct government subventions, before 1990 given direct to the Amateur Sports Federation and Olympic Committee (ASF&OC) and National Sports Associations (NSAs) on the advice of the Council for Recreation and Sports, and after 1990, to the Hong Kong Sports Development Board (SDB) who then provides financial assistance to the ASF&OC and the NSAs;
- (b) expenditure by the Urban Council (UC) and Regional Council (RC) on sports programmes and sports events organized by the two Councils for the general public; and
- (c) expenditure by the Education Department on school sports programmes and competitions.

Excluding staff and administration costs, funds spent on sports programmes and activities through each of the above channels over the last five years are:

(a) Government subventions

<i>Year</i>	<i>\$Million</i>		<i>Remarks</i>
1988-89	10.35	}	to ASF&OC & NSAs on advice of the Council for Recreation and Sports
1989-90	12.10	}	
1990-91	26.89	}	to SDB
1991-92	30.01	}	
1992-93	33.14	}	

(b) Expenditure by UC and RC

<i>Year</i>	<i>\$Million</i>	
	<i>UC</i>	<i>RC</i>
1988-89	11.49	7.69
1989-90	14.57	8.89
1990-91	15.69	9.08
1991-92	21.26	12.87
1992-93	23.34	13.75

(c) Expenditure by Education Department

<i>Year</i>	<i>\$Million</i>
1988-89	7.52
1989-90	7.61
1990-91	8.63
1991-92	9.96
1992-93	10.75

The performance of Hong Kong's sportsmen and sportswomen has greatly improved in recent years, particularly in a selected number of sports such as table tennis, badminton, squash, swimming, rowing, windsurfing, soccer and sports for the disabled. Many medals were won in regional and international competitions and Hong Kong's own records were broken. A table showing the medals won particularly in these selected sports by Hong Kong athletes at regional and international competitions over the last five years is at Annex.

The ASF&OC, as its name implies, is a federation of the governing sports associations of Hong Kong as well as the territory's Olympic Committee. It is legally registered as an autonomous and independent body and is responsible for the running of its own affairs without any government representation. However, it maintains close relations with the SDB, and the President of the ASF&OC is an *ex officio* member of the SDB. It is also financially assisted in its activities by government subventions given to it through the SDB.

The ASF&OC is recognized by the International Olympic Committee as the National Olympic Committee of the territory. It is also recognized by the Asian games Federation (now, the Olympic Council of Asia) and the Commonwealth Games Federation. As such, it is the accreditation body for Hong Kong's participation in these international games. It plays an important role in the promotion of sports in Hong Kong by organizing and encouraging participations in international competitions. The ASF&OC places great emphasis on sports education. It sponsors training programmes for sports leaders, administrators, coaches, technical officials and athletes held overseas or in Hong Kong. It organizes local courses on sports leadership, sports administration, sports medicine and sports science as well as courses on sports management and sports coaching in conjunction with the United States Sports Academy. Together with the NSAs and the municipal councils, it also organizes the annual Hong Kong Festival of Sport, which attracts wide public participation.

Annex

Medals won by HK Athletes
at International Competitions 1988-93

<i>Sports</i>	<i>1988-89</i>	<i>1989-90</i>	<i>1990-91</i>	<i>1991-92</i>	<i>1992-93</i>
Badminton	1G	1G		2G	
	1S	1S		2S	1S
	1B	1B			
				2B	1B
Windsurfing			2G	2G	4G
			1S		3B
Squash		1G		4G	3G
	3S	5S	1S	4S	1S
	1B	2B	1B		
Table Tennis	4G	4G	7G	1G	1G
	2S	3S	7S	3S	
	4B	6B	5B	4B	1B

<i>Sports</i>	<i>1988-89</i>	<i>1989-90</i>	<i>1990-91</i>	<i>1991-92</i>	<i>1992-93</i>
Swimming	8G 20S 24B	10G 43S 41B	11G 15S 23B	1G 6S 8B	3G 8S 13B
Rowing		1B		1G 4S 5B	1S 2B
Soccer	-	-	-	-	-
Disabled sports	1G 2S 5B	3G 1S 6B	2G	3G 4S 4B	

Notes (a)

G = Gold Medal
S = Silver Medal
B = Bronze Medal

(b) The Games in which medals were won in these sports include:

Commonwealth Games (Badminton)
Asian Games (Windsurfing, Table Tennis)
Olympic Games (Badminton - Exhibition)
Commonwealth Championships (Table Tennis)
World Championships (Table Tennis, Disabled)
World Double Cup (Table Tennis)
World Cup Meet (Swimming)
World Rowing Championships
Grand Prix Meet Dumfermline (Swimming)
East Asian Championships (Squash, Rowing)
Asian Championships (Squash, Swimming, Rowing, Table Tennis, Windsurfing)
Asian Rowing Championships
Asian Cup (Table Tennis)
Asia Pacific Age Group Invitation Meet (Swimming)
Asia Age Group Swimming Championships
Asia Pacific Age Group Swimming Meet, Jakarta
Asia Pacific Age Group Championships (Swimming)
East Asian Regatta
IBSA Open Asian Championships (Rowing, Windsurfing)
6th Asian Regatta (Windsurfing)
China Open (Badminton, Table Tennis)
Canadian Open (Badminton)

Singapore Open (Windsurfing)
Japan Open (Table Tennis, Squash)
Finland Open (Table Tennis)
French Open (Badminton)
Silver Bowl, Melbourne (Badminton)
German Open (Disabled Sports)
Sweden Open (Table Tennis)
Benawi Cup (Table Tennis)
Dianshan Hu Cup, Shanghai (Rowing)
Hong Kong — Singapore Meet (Swimming)
Tokyo Open Championships (Table Tennis)
Samaranch Cup (Table Tennis)
Australian Age Group Championships (Swimming)
Arafura Sports Festival Australia (Badminton)
Qantas Meet, Sydney (Swimming)
Australian National Games (Disabled)
Bellinzona Int'l Meet, Switzerland (Swimming)
British Age Group Championships (Swimming)
British National Swimming Championships
Tokyo International Swimming Competition, Tokyo
Tokyo Excellence Meet (Swimming)
Welsh National Swimming Championships
Penang Open Sailing Regatta (Windsurfing)
Singapore Quantas Speedcrossing (Windsurfing)
Singapore Boardsailing Championships (Windsurfing)
Oita International Wheelchair Marathon
1989 FESPIC Games
1992 Paralympic Games

Localization policy

10. DR LEONG CHE-HUNG asked: *Will the Administration inform this Council:*

- (a) *of its targets and time tables for the continued implementation of the localization policy in those government departments which are not yet fully localized; and*
- (b) *whether it has set targets and time tables for promoting this policy among major public bodies which are financially supported by the Government, for example, the Hospital Authority; if so, what these are; if not, why not?*

SECRETARY FOR THE CIVIL SERVICE: Mr President,

- (a) The localization policy applies to all civil service appointments in all departments. Preference is given to suitably qualified local candidates and overseas officers are only appointed if qualified local candidates are unavailable. Since early 1985 overseas officers have only been appointed on agreement (contract) terms. The contract of an overseas officer will not be renewed if a qualified local officer is available to take his place. Promotions however are based solely on merit.

The localization policy has been broadly successful and the rate of progress has accelerated with the expansion of tertiary education, the widening of opportunities for obtaining professional qualifications locally and the achievements of the Government's own training schemes. In 1952 the percentage of overseas officers in the Civil Service stood at about 4.5%. On 1 January it stood at 1.2%. More significantly however, 64% of the directorate is now localized and just over half of the Secretaries and Heads of Departments are now local officers. These figures are expected to increase further in the near future as more and more local officers move up through the ranks of the Civil Service. Current localization statistics are attached.

There is however no general target or timescale to phase out deliberately all overseas officers. Indeed the Joint Declaration and the Basic Law make specific provision for the continued employment of overseas officers, with one exception. These are the future Principal Official posts which must be held by Chinese nationals who are Hong Kong residents without foreign right of abode. Using our present terminology we believe that the future Principal Official posts correspond to our existing posts of Chief Secretary, Financial Secretary, Attorney General, Secretaries, Commissioner of Police, Commissioner ICAC, Commissioner of Customs and Excise, Director of Immigration and Director of Audit. We are in the process of developing a sufficiently large pool of qualified local officers to fill all these posts in good time before 1997.

- (b) Turning to major public bodies and organizations outside the Civil Service, Mr President, I would like to stress that these organizations were established to carry out specific functions and are self-governing insofar as personnel practices and policies are concerned. There is no government imposed localization objective and these bodies are free to select whoever they consider the best person for the job. That said, the Government certainly likes to see these bodies giving priority to suitably qualified local candidates where available

and I understand that many of these organizations now follow such a policy themselves.

Statistics on Localization

	As at 1 April 1988			As at 1 January 1993		
	Local	Overseas	Total	Local	Overseas	Total
STRENGTH OF THE CIVIL SERVICE	180 203 (98.6%)	2 640 (1.4%)	182 843	187 207 (98.8%)	2 175 (1.2%)	189 382
Directorate	588 (55.6%)	469 (44.4%)	1 057	889 (64.4%)	487 (35.4%)	1 376
Senior management/ professional	1 322 (70.4%)	557 (29.6%)	1 879	2 443 (78.7%)	661 (21.3%)	3 104
Others	178 293 (99.1%)	1 614 (0.9%)	179 907	183 875 (99.4%)	1 027 (0.6%)	184 902
ADMINISTRATIVE SERVICE	284 (66.0%)	146 (34.5%)	430	355 (76.3%)	110 (23.7%)	465
Directorate	120 (58.0%)	87 (42.0%)	207	143 (65.3%)	76 (34.7%)	219
AO & SAO	164 (73.5%)	59 (26.5%)	223	212 (86.2%)	34 (13.8%)	246
POLICE INSPECTORS AND ABOVE	1 848 (67.2%)	901 (32.8%)	2 749	2 048 (71.6%)	814 (28.4%)	2 862
Assistant commissioner and above	4 (18.2%)	18 (81.8%)	22	8 (32.0%)	17 (68.0%)	25
Superintendents	149 (33.4%)	297 (66.6%)	446	195 (41.8%)	271 (58.2%)	466
Inspectors	1 695 (74.3%)	586 (25.7%)	2 281	1 845 (77.8%)	526 (22.2%)	2 371
CROWN COUNSEL	99 (40.2%)	147 (59.8%)	246	119 (47.8%)	130 (52.2%)	249
Directorate	3 (7.0%)	40 (93.0%)	43	10 (18.5%)	44 (81.5%)	54
Assistant Crown Counsel, Crown Counsel and Senior Crown Counsel	96 (47.3%)	107 (52.7%)	203	109 (55.9%)	86 (44.1%)	195

The disabled's means of access

11. MR HOWARD YOUNG asked: *Will the Government inform this Council whether, in order to provide a barrier-free physical environment for the disabled, it will consider making it mandatory for:*

- (a) *access and other special facilities for the disabled to be provided in all new buildings, including private domestic buildings; and*
- (b) *such access and special facilities to be provided in existing buildings when they are refurbished?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the provision of access to and special facilities for disabled people in buildings is governed by Regulation 72 of the Building (Planning) Regulations. Where a building is one to which disabled persons have or may reasonably be expected to have access, it should be designed in accordance with specified standards to facilitate the access to and use of the building and its facilities by disabled persons. The types of buildings covered under Regulation 72 include hotels, places of public entertainment and schools, and so on. Alteration and addition works to existing buildings which are subject to Regulation 72 should comply fully with the statutory requirements. At present, private domestic buildings are not covered by the Regulation.

In the Green Paper on Rehabilitation published in March 1992, it has been recommended that consideration should be given to extending the requirements under Regulation 72 to private domestic buildings. The Administration is considering the way forward on this and other recommendations in the Green Paper in the light of public views.

Private homes for the aged

12. MR WONG WAI-YIN asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the progress of preparing legislation to regulate private homes for the aged and the timetable for it to be introduced to this Council; and*
- (b) *whether difficulties have been encountered in the drafting of the relevant legislation which have repeatedly delayed its introduction to this Council?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) The drafting of the Residential Care Homes (Elderly Persons) Bill has been accorded high priority in the legislative drafting programme by the Health and Welfare Branch. The drafting work is now at an advanced stage. We intend to introduce the Bill to the Legislative Council in the 1993-94 Session.
- (b) The drafting of the Residential Care Homes (Elderly Persons) Bill is now near completion. There are no longer any drafting difficulties.

Food hygiene

13. MISS CHRISTINE LOH asked: *In view of the public concern over contamination in seafood and vegetables, will the Government inform this Council:*

- (a) *of the reason for adopting less stringent standards for heavy metal contamination for foodstuff, as set out in the Food Adulteration (Metallic Contamination) Regulations, than those of neighbouring countries such as Malaysia, Singapore, and Australia;*
- (b) *of the number of each type of samples of crustaceans, molluscs, and fresh vegetables tested by the Government in the past 12 months, and the number found to contain an unacceptable degree of bacterial, metallic or pesticide elements by Hong Kong standards;*
- (c) *of the number of prosecutions against suppliers or vendors of contaminated seafood and fresh vegetables in the past 12 months, and the penalties involved;*
- (d) *whether it will inform consumers about all contaminated foodstuff on a regular basis; if not, what the reasons are; and*
- (e) *what measures it will take to control the quality of the water in which fish, crustaceans and molluscs are bred and, in particular, whether it will consider legislative amendments to facilitate effective control of the water quality of oyster breeding beds?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) The maximum permitted concentrations of heavy metals are set out in the Food Adulteration (Metallic Contamination) Regulations with reference to guidelines including the Provisional Tolerable Weekly Intake recommended by the World Health Organization. The standards spelt out in our law are considered appropriate and in line with WHO guidelines.

It is not correct to say that our standards are less stringent than those of Malaysia, Singapore or Australia. There is no single international standard. The maximum permitted concentrations vary from place to place, taking into account local considerations.

- (b) The bacteriological, metallic and pesticide content in our food is monitored through the food surveillance programme by the Department of Health.

The relevant statistics for the period between 1 April 1992 and 31 March 1993 are as follows:

Testing on Crustaceans

	<i>No. of samples completed examination</i>	<i>No. of samples not complying with standards</i>
Bacteriological	161	5
Metallic	46	1
Pesticide residue	-	-

Testing on Molluscs

	<i>No. of samples completed examination</i>	<i>No. of samples not complying with standards</i>
Bacteriological	367	42
Metallic	61	12
Pesticide residue	-	-

Testing on Fresh Vegetables

	<i>No. of samples completed examination</i>	<i>No. of samples not complying with standards</i>
Bacteriological	-	-
Metallic	-	-
Pesticide residue	885	15

(c) In the past 12 months, there were 14 prosecutions taken, all against suppliers of pesticide-tainted vegetables. Eight of these cases secured conviction and the remaining six are pending judgment. The penalties imposed ranged from \$600 to \$2,000.

(d) The Urban Services Department, the Regional Services Department and the Department of Health regularly conduct health education

activities including health exhibitions, distribution of leaflets, Announcements of Public Interest in the media and at the market places and food establishments to publicize the importance of adhering to good personal hygiene and food hygiene practices.

During an outbreak of diseases, we will, through special announcements and arrangements, not only inform consumers immediately but also intensify efforts of publicity and control. For example, a special interdepartmental committee is immediately activated to address the problem.

Shortly, we will publish on a regular basis reports on the results of food testing for the information of the general public.

- (e) For protection and regulation of culture of marine fish (including crustaceans and molluscs but not oysters), the Marine Fish Culture Ordinance (Cap 353) empowers the Director of Agriculture and Fisheries to take prosecution action against any person who pollutes the water in any fish culture zone.

As regards protection of water quality in general, discharges of effluent in water control zones are strictly controlled under the Water Pollution Ordinance via a licensing scheme administered by the Director of Environmental Protection. At present, over 90% of the territory's waters have been declared as water control zones. Two more water control zones will be declared this year with the final one, Victoria Harbour, scheduled to be declared in phases by 1997. The Government has also embarked on a comprehensive sewerage improvement programme to ensure that all significant effluents can be collected, treated and properly disposed of.

The Director of Environmental Protection is also empowered by the Waste Disposal Ordinance to control the disposal of waste. Enforcement of the legislation in relation to livestock waste, however, is held in abeyance in most areas pending completion of a review of the livestock waste control scheme by the Government.

Of all oysters consumed in Hong Kong, about 10% are bred locally. Of these 10%, the majority are imported from China and kept in local waters for a short period for fattening before sale. The only significant local breeding beds are in Deep Bay which is already a water control zone. Statutory means are in place to control discharges of effluents and disposal of waste. However, the major contributor to pollution in Deep Bay is livestock waste and Deep Bay is one area in which the enforcement of controls over livestock waste disposal is currently suspended pending review.

Volatile solvent abuse

14. REV FUNG CHI-WOOD asked (in Chinese): *Will the Government inform this Council:*

- (a) *whether the problem of sniffing volatile solvents from substances like thinner by teenagers is becoming increasingly acute;*
- (b) *what measures are being taken by the departments concerned to rectify such an undesirable situation; and*
- (c) *whether consideration has been given to the ways by which the public should be educated on the pernicious effects of such behaviour and to introducing legislative control on the sale of these substances?*

SECRETARY FOR SECURITY: Mr President,

- (a) Information received by the Government's Central Registry of Drug Abuse reveals that solvent abuse among teenagers is increasing although the numbers involved are still very small. In 1990 there were three reports involving young people under 21; in 1991 there were 17; and in 1992 there were 25.
- (b) The principal measure to reduce solvent abuse is publicity and preventive education. In all such programmes undertaken by the Action Committee Against Narcotics, the danger of solvent abuse is included.

A number of initiatives are being taken to educate youngsters, parents, educators and others who have an interest in the matter, about the danger of drug and substance abuse. These include a new series of Announcements of Public Interest, for TV and radio broadcast, and an accompanying poster and leaflet. Drug education talks to parents whose children are attending secondary schools are being launched with the assistance of schools. Workshops and seminars for final-year students of colleges of education are also being conducted, so that they are more aware of the danger of drug abuse and the resources available to help teachers deal with the problem. In September, a new drug education talks programme will be introduced to help Primary VI students understand the proper use of drugs and the dangers of abusing drugs; and learn correct attitudes and life skills.

- (c) Given the limited extent of solvent abuse and the widespread, legitimate, industrial, commercial and household uses of solvents, we have no plans to introduce legislative controls on their sale. Instead, preventive education and publicity will be continued; the harmful effects of drug and substance abuse, including solvents, will be explained; and parents and schools will be alerted to detect signs of their abuse at an early stage so that appropriate remedial action may be taken.

Target and Target Related Assessment

15. MR ERIC LI asked (in Chinese): *As the Education Department is planning to introduce the "Target and Target Related Assessment" Scheme to all Primary IV classes in Hong Kong in May this year, will the Government inform this Council:*

- (a) *whether the Education Department has issued guidelines to local textbook publishers on how the contents of textbooks and exercise books should be revised to tie in with the scheme; if not, when such guidelines will be issued to allow the publishers sufficient time to make the necessary revision; and*
- (b) *what assistance the Department will offer should the publishers have doubts in revising the contents of the textbooks and exercise books?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Education Department (ED) considers it unnecessary to make major changes to textbooks in order to introduce Target and Target Related Assessment (TTRA). For this reason, it has not issued any formal guidelines to local publishers on how textbooks should be revised to tie in with the TTRA scheme. At the moment, ED is reviewing the May 1993 timetable for introducing TTRA to Primary IV, in the light of the outcome of the pilot project. This review will cover the need for textbooks and support materials. If it turns out that substantial changes to existing publications are warranted, suitable guidelines will be issued and ample time will be allowed for their preparation and production.

In the meantime, publishers are kept informed of developments on the TTRA. The Education Department briefed publishers on the TTRA and answered their queries at a meeting in January 1993. It will maintain a dialogue with publishers through regular meetings and periodic briefing sessions.

Strategic landfill projects

16. MR TAM YIU-CHUNG asked (in Chinese): *Will the Government inform this Council:*

- (a) *how the conditions in the contracts to commission private contractors to undertake the strategic landfills projects are worked out and how the bids for such contracts are processed; and*
- (b) *whether such contracts will go beyond 1997; if so, whether the Chinese Government would be consulted?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The contract documents for the strategic landfill projects were developed by consultants commissioned by the Government specifically for the task. In the course of their work, the consultants drew on professional and specialist expertise from various fields including waste management, engineering, legal and financial. They also examined practices followed elsewhere in the world and where appropriate adapted them as necessary to suit Hong Kong. The process was supervised by a steering group consisting of representatives from government branches and departments.

Bids for strategic landfill projects are evaluated in accordance with procedures established by the Central Tender Board. The evaluation criteria are drawn up and agreed by a Tender Selection Panel consisting of representatives from government branches and departments and approved by the Central Tender Board before tenders are received. The consultants assess each tender against these criteria and put forward their evaluation for consideration by the Tender Selection Panel. The Panel then makes recommendations to the Central Tender Board for approval.

- (b) The contracts for the strategic landfill projects will go beyond 30 June 1997. The Chinese are being consulted on them.

Community halls

17. MR LEE WING-TAT asked (in Chinese): *As the management of community halls has been handed over to district boards since 1 April 1993, will the Government inform this Council whether the community halls will be renovated or refurbished, so as to provide proper facilities for the holding of cultural and recreational activities and meetings, while making such facilities available to the disabled at the same time?*

SECRETARY FOR HOME AFFAIRS: Mr President, as from 1 April 1993, district boards will be fully consulted on operational and management matters affecting the 34 community halls. This is intended to enable district boards to have a greater influence over the operation and management of these facilities while City and New Territories Administration District Officers will continue to be responsible for the day-to-day operation of the halls.

The Architectural Services Department (ASD) has a rolling programme for maintaining the external facade of the community halls. For community halls within housing estates, the Housing Department has a similar maintenance programme.

Internal maintenance and improvement works are also carried out by ASD. Improvements to community halls take place as and when appropriate. Recent improvements have included installation of air-conditioning in all halls, upgrading flooring, and enhancement of security installations.

Since 1987, community halls have included facilities for the disabled such as special access, toilets and emergency escape routes. Where technically feasible, such facilities have also been introduced in the older halls.

The present schedule of accommodation for community halls includes a multi-purpose hall with a stage and dressing rooms for holding cultural and recreational activities as well as a conference room for meetings.

In future, district boards will be invited to advise the District Officers on how these facilities should be operated to meet the needs of their community. This will include advising on upgrading the standards of maintenance, the introduction of new or different uses for these facilities, booking arrangements, operating hours and so on. District Officers will act on the advice of district boards whenever it is practicable to do so.

Contaminated grapes from the United States

18. MR ALBERT CHAN asked (in Chinese): *In view of recent reports that grapes produced in the United States have been contaminated by toxic pesticides which may lead to cancer, will the Government inform this Council:*

- (a) *how it will ensure that imported fruits, especially grapes from the United States, meet the necessary health standards to safeguard public health;*
- (b) *whether it has examined grapes imported from the United States; if so, how many random samplings were made over the past year and how many of them were found to have failed in the health standards tests; and*

- (c) *how those grapes which do not meet the health standards are disposed of?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) The Department of Health maintains close liaison with countries exporting food to Hong Kong and requires from the exporting authority food test reports on the export items. Under its food surveillance programme, the Department regularly takes samples of imported food, including fruits, from points of entry and retail or wholesale outlets for examination. Any food item considered unfit for human consumption will be denied import.
- (b) 16 samples of grapes, 15 of which were imported from the United States, were taken for examination in 1992. No pesticide residue was found in any of the samples taken.
- (c) There has not been any case of grapes found with pesticide residue. If there had been, the grapes would have been destroyed.

Caseworkers' workload

19. DR CONRAD LAM asked (in Chinese): *With regard to a recent inquest in which the lack of care has been returned as the cause of death of a baby girl, will the Government inform this Council:*

- (a) *how many cases, on average, each caseworker of the Social Welfare Department has to handle concurrently; whether the present workload of the caseworkers has exceeded the level that is considered reasonable by the Government; and*
- (b) *whether there are any specific measures and plans in hand to rationalize the workload of the caseworkers; if so, what the details of such measures and plans are; if not, why not?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) Child abuse cases are handled by the Child Protective Services Unit of the Social Welfare Department. At present, the average caseload of a caseworker in the Unit is 39. This caseload is in line with the approved manning ratio of one child protective caseworker to 40 child abuse case, and is considered reasonable.
- (b) The Social Welfare Department has strengthened the Unit by deploying more experienced social workers to it. Since January

1991, the establishment of the Unit has been increased from eight to nine caseworkers, and the ranking of the caseworkers has been upgraded from the Assistant Social Work Officer rank to the Social Work Officer rank, in view of the increasing complexity of the cases handled and the need for outreaching investigation duties. The Department will continue to monitor the caseload of the caseworkers.

Duty on cosmetic products

20. MR HENRY TANG asked: *Will the Government inform this Council whether it is aware of the reasons why the abolition of 30% duty on cosmetic products will only result in a reduction of the retail prices of such products in the current year by an average of 10-20%; and will it ask the Consumer Council to look into the matter to see whether the small reduction is justified?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, in his 1993 Budget speech, the Financial Secretary announced that he would introduce legislation to abolish the 30% duty on cosmetics. He also mentioned that he had received an undertaking from the cosmetics trade associations that, if the duty were abolished, retail prices of cosmetic products would be reduced in the coming year by an average of between 10-12%.

The abolition of a 30% duty can only be translated into a lesser percentage reduction in the retail prices because the duty on cosmetic products was based on the imported price of the products or, in the case of locally manufactured cosmetics, on the production value, and not on the retail prices. The imported or production value of cosmetics is, of course, less than the retail price because it does not include costs for local distribution, advertising, sales promotion and so on; nor does it include a profit element.

The proportion of the sale price of cosmetics previously represented by the 30% duty ranged from about 3% to 13%. It was on this basis that we negotiated the promised price reductions of 10-12% with the cosmetics trade. In the circumstances, we do not see the need to ask the Consumer Council to look into the matter.

Motions

MARINE FISH (MARKETING) ORDINANCE

THE SECRETARY FOR ECONOMIC SERVICES moved the following motion:

"That the Marine Fish (Marketing) (Amendment) Bylaw 1993, made by the Fish Marketing Organization on 28 January 1993, be approved."

She said: Mr President, I move the motion standing in my name on the Order Paper.

On 15 July 1992 this Council passed the Marine Fish (Marketing) (Amendment) Bill 1992 which amended the Marine Fish (Marketing) Ordinance so that the Fish Marketing Organization might, instead of prescribing its rate of commission in its bylaws, prescribe the rate by notice in the Gazette, after consultation with the Fish Marketing Advisory Board. The purpose of the amendment was to streamline the procedure for prescribing the rate of commission, while ensuring that any decision to change the rate was taken only after consultation with representatives of those who buy and sell fish through wholesale fish markets.

On 28 January 1993, the Fish Marketing Organization made the Marine Fish (Marketing) (Amendment) Bylaw 1993 enabling it to prescribe a rate of commission by notice in the Gazette. The Bylaw has been submitted to the Governor pursuant to section 15(3) of the Marine Fish (Marketing) Ordinance. This subsection also provides that the bylaw shall be subject to the approval of this Council.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

MAGISTRATES ORDINANCE

THE SECRETARY FOR THE TREASURY moved the following motion:

"That the Magistrates (Fees) (Amendment) Regulation 1993, made by the Chief Justice on 14 January 1993, be approved."

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

Under section 134(1) of the Magistrates Ordinance, the Chief Justice may, with the approval of the Legislative Council, make regulations fixing a scale of fees payable at the magistrates' court in respect of any proceeding or the issuing, service or execution of any process. The purpose of the amending regulation is to increase the fees by about 60%. This takes into account inflation since the last fee revision in April 1988.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

MATRIMONIAL CAUSES ORDINANCE

THE SECRETARY FOR THE TREASURY moved the following motion:

"That the Matrimonial Causes (Fees) (Amendment) Rule 1993, made by the Chief Justice on 14 January 1993, be approved."

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

Under section 54 of the Matrimonial Causes Ordinance, the Chief Justice may, with the approval of the Legislative Council, make rules prescribing the fees payable under the Ordinance. The purpose of the amending rule is to increase the fees by about 60%. This takes into account inflation since the last fee revision in April 1988.

The opportunity has also been taken to update the Schedule by introducing three changes. First, the fee relating to appointment before a registrar is proposed for repeal, because it is no longer necessary to make an appointment before a registrar. Secondly, it is proposed to introduce a single fee to replace the two-tier fee on the taxation of a bill of costs. Thirdly, a new fee will be introduced on filing an election to take fixed costs under the District Court (Fixed Costs in Matrimonial Causes) Rules.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

INLAND REVENUE (AMENDMENT) BILL 1993

ESTATE DUTY (AMENDMENT) BILL 1993

ENTERTAINMENTS TAX (REPEAL) BILL 1993

STAMP DUTY (AMENDMENT) BILL 1993

DUTIABLE COMMODITIES (AMENDMENT) BILL 1993

MOTOR VEHICLES (FIRST REGISTRATION TAX) (AMENDMENT) BILL 1993

ROAD TRAFFIC (MISCELLANEOUS AMENDMENTS) BILL 1993

CROSS-HARBOUR TUNNEL (PASSAGE TAX) (AMENDMENT) BILL 1993**INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1993****INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1993****EDUCATION (AMENDMENT) BILL 1993****SEWAGE TUNNELS (STATUTORY EASEMENTS) BILL****COMPANIES (AMENDMENT) (NO. 3) BILL 1993**

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

Second Reading of Bills**INLAND REVENUE (AMENDMENT) BILL 1993**

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Inland Revenue Ordinance."

He said: Mr President, I move that the Inland Revenue (Amendment) Bill 1993 be read the Second time.

This is the first in a series of 10 Bills which I will be introducing this afternoon, in order to give effect to the revenue-related proposals in this year's Budget. Since these proposals were fully covered in the Budget speech, I will keep my introduction to these implementing Bills reasonably brief.

The Bill now before Members seeks to make two major concessions in respect of salaries tax.

Clause 2 of the Bill widens the second and third marginal tax rate bands from \$20,000 to \$30,000, applicable from the 1993-94 year of assessment.

Clause 3 of the Bill amends the 4th Schedule of the Ordinance in order to increase substantially salaries tax allowances, again with effect from the 1993-94 year of assessment. Specifically, basic and married persons allowances will go up by nearly 22% to \$56,000 and \$112,000, respectively, while allowances for dependents will be increased by between 10% and 48%.

We estimate that the cost to the general revenue of these concessions will be nearly \$2.6 billion in 1993-94 and about \$17 billion over the period up to 1996-97.

Mr President, as indicated in the Budget speech, the combination of these concessions will result in reduced tax bills for over three quarters of salaries taxpayers, while more than a quarter of a million other taxpayers will fall out of the tax net altogether.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

PRESIDENT: As you have got so many Bills to move, you may wish just to keep on.

FINANCIAL SECRETARY: Thank you, Mr President.

ESTATE DUTY (AMENDMENT) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Estate Duty Ordinance."

He said: Mr President, I move that the Estate Duty (Amendment) Bill 1993 be read the Second time.

The effect of this Bill would be to change the levels at which estate duty is levied so as to reduce the impact which this tax has on relatively small estates. The level below which no duty is payable would be raised from \$4 million to \$5 million. Above that level, the Bill would reduce the rates of duty payable on estates valued between \$5 and \$7 million.

The cost of this concession to general revenue will be \$50 million in 1993-94 and approximately \$220 million up to 1996-97.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

ENTERTAINMENTS TAX (REPEAL) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to repeal the Entertainments Tax Ordinance, the Entertainments Duty Regulations and the resolutions by the Legislative Council made under that Ordinance."

He said: Mr President, I move that the Entertainments Tax (Repeal) Bill 1993 be read the Second time.

The purpose of the Bill is to abolish the tax on the entrance to race meetings which was previously collected by the Royal Hong Kong Jockey Club on behalf of the Government. This concession follows the abolition in the 1992 Budget of the entertainments tax on cinema tickets.

Since no other taxes are collected under this Ordinance, the Bill repeals the Ordinance altogether. The cost to revenue will be about \$50 million in the period up to 1996-97.

Mr President, I can confirm to Honourable Members the Financial Secretary's earlier statement that the Jockey Club has kindly agreed to donate to the Community Chest an amount equivalent to the tax which was previously payable every year. The donation will go, in the first instance, towards the Chest's operating expenses and will therefore ensure that every dollar of the donation to the Chest will in future directly benefit the charity for which it was intended.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

STAMP DUTY (AMENDMENT) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Stamp Duty Ordinance."

He said: Mr President, I move next that the Stamp Duty (Amendment) Bill 1993 be read the Second time.

The effect of this Bill will be to reduce the rate of stamp duty payable in respect of the sale and purchase on transfer of stock from 0.4% to 0.3%.

This concession is designed to ensure Hong Kong's continued competitiveness in international stock trading, and I am confident that the industry will pass on the full benefit of this concession to investors.

The cost of this measure to the general revenue will amount to approximately \$800 million in 1993-94 and nearly \$4 billion over the period up to 1996-97.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

DUTIABLE COMMODITIES (AMENDMENT) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Dutiable Commodities Ordinance."

He said: Mr President, I move that the Dutiable Commodities (Amendment) Bill 1993 be read the Second time.

This Bill has three purposes. First, it abolishes the duty on cosmetics. This concession will cost approximately \$400 million in 1993-94, or \$1.7 billion up to 1996-97. As the Financial Secretary stated in his Budget

speech, the cosmetic trade associations have undertaken to reduce the retail price of cosmetics by an average of 10% to 12% during the year.

In view of recent queries from some Members, I should perhaps take this opportunity to clarify that the previous *ad valorem* duty of 30% was levied on the imported price of cosmetic products or, in the case of locally manufactured cosmetics, on the ex-factory price. The actual cost of cosmetics to consumers of course also includes incidental costs incurred in the selling process, as well as the profit element. The proportion of the sale price of cosmetics previously represented by duty ranged from about 3% to 13%. It was on this basis that we negotiated the promised price reductions with the cosmetics trade.

Secondly, clause 5 of the Bill would increase the duty rates on liquor, tobacco and fuel. I should emphasize that these are nominal increases designed simply to maintain the real value of the duty imposed in line with inflation. I have deliberately avoided any increases in real terms. For this reason, those duty rates which are set on an *ad valorem* basis have remained unchanged.

Thirdly, Mr President, I am today introducing a series of three Bills, the effect of which will be to provide additional tax concessions to disabled drivers, the total cost of which will be about \$25 million up to 1996-97. Clause 5 paragraph (h) of the present Bill is part of this package of concessions. It has the effect of exempting from duty on fuel for disabled drivers of motor cycles or tricycles, up to a limit of 100 litres a month.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

MOTOR VEHICLES (FIRST REGISTRATION TAX) (AMENDMENT) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Motor Vehicles (First Registration Tax) Ordinance."

He said: Mr President, I move that the Motor Vehicles (First Registration Tax) (Amendment) Bill 1993 be read the Second time.

The effect of this Bill would be to amend the Ordinance to provide that First Registration Tax will not be payable in respect of a motor cycle or motor tricycle registered by a disabled person, regardless of the vehicle's taxable value. This Bill is one of three Bills which I will be introducing this afternoon to extend to drivers of motor cycles and motor tricycles the same tax exemptions that already apply to disabled drivers of cars.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

ROAD TRAFFIC (MISCELLANEOUS AMENDMENTS) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Road Traffic Ordinance and a number of Regulations made under it."

He said: Mr President, I move that the Road Traffic (Miscellaneous Amendments) Bill 1993 be read the Second time.

This Bill would extend to disabled drivers of motor cycles and motor tricycles the exemption from vehicle and driving licence fees now applicable to disabled drivers of cars.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

CROSS-HARBOUR TUNNEL (PASSAGE TAX) (AMENDMENT) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Cross-Harbour Tunnel (Passage Tax) Ordinance."

He said: Mr President, I move that the Cross-Harbour Tunnel (Passage Tax) (Amendment) Bill 1993 be read the Second time.

This is the third Bill in the Financial Secretary's package of concessions in relation to the disabled. The Bill would provide that any disabled person who can satisfy the Commissioner for Transport that he requires, as a driver of a motor cycle or motor tricycle, to make use of the Cross-Harbour Tunnel, will be exempt from the payment of the tunnel tax.

Mr President, I should take this opportunity to remind Members that in parallel with this Bill, the Commissioner for Transport has exempted all disabled drivers from paying tolls when using government tunnels since 1 April 1993. This concession does not require separate legislation.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Inland Revenue Ordinance."

He said: Mr President, I move that the Inland Revenue (Amendment) (No. 2) Bill 1993 be read the Second time.

The purpose of the Bill is to introduce a system of Composite Tax Returns, or CTRs, with effect from 1 April 1994. A CTR will be a single

return covering all taxes levied under the Inland Revenue Ordinance. Its introduction will simplify procedures for taxpayers who now have to fill in two or more tax returns for the Inland Revenue Department, as well as allowing redeployment of resources within the department to help to combat tax avoidance and evasion.

Mr President, I should like to repeat the assurance given in the Budget speech that the introduction of CTRs will affect neither the rates of tax nor the amounts payable. Its purpose is simply to make life easier for all concerned.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Inland Revenue Ordinance."

He said: Mr President, I move that the Inland Revenue (Amendment) (No. 3) Bill 1993 be read the Second time.

The Bill before Honourable Members relates to section 21A of the Inland Revenue Ordinance. In essence, this section now provides that only 10% of certain sums received by a person, such as royalties for the use of intellectual property, are treated as assessable profits.

Some Hong Kong companies are exploiting this provision by entering into arrangements with overseas associates to reduce their profits tax liabilities. A Hong Kong company can, for example, sell a trademark to an overseas associate and then, in exchange for a royalty payment, continue to use the trademark in Hong Kong. The Hong Kong company's royalty expenses would be tax-deductible but only 10% of the royalty received by the overseas associate would be liable to profits tax.

The Bill would provide that where a relevant payment is derived from an associate, the full amount (rather than the present 10%) would be treated as assessable profits. To prevent revenue loss, the Bill would take effect from the day following the Budget speech, that is to say from 4 March 1993.

During the Budget debate, some Members of this Council suggested that the Bill could adversely affect the legitimate importation of technology into Hong Kong. I believe that, for two reasons, this would be unlikely. First, the amendments are only directed at arrangements where associated parties are involved. Second, the measures should not result in any general increase in costs to non-resident technology exporters or technology users in Hong Kong. This is because Hong Kong tax paid by a non-resident will generally give rise to a foreign tax credit in his home country.

Following the Budget debate, certain Members of this Council and professionals within the financial community also expressed reservations over the use of the term "associate" in the Bill. They suggested that the term as used in the Bill was not specific enough, and could discourage genuine transactions involving the transfer of patents or trademarks within *bona fide* multi-national companies with branches in Hong Kong. The Bill now before Honourable Members has been amended to address this concern.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

EDUCATION (AMENDMENT) BILL 1993

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Education Ordinance."

He said: Mr President, I move the Second Reading of the Education (Amendment) Bill 1993.

The Education Ordinance was enacted in 1971 on the basis of an earlier (1952) Ordinance. The present Bill seeks to remove out-of-date provisions and redundancies and to propose additions to take account of more recent developments in the education field.

Regarding the general tidying up of provisions, the Bill proposes to delete section 4 which sets out the responsibility of the Director of Education to superintend matters relating to education in Hong Kong. There are two reasons for this proposal. First, separate bodies or authorities have been created to be responsible for some specific sectors of the education system, such as the Vocational Training Council for technical education and vocational training, the University and Polytechnic Grants Committee for the funding of the tertiary education institutions and the Hong Kong Examinations Authority for public examinations. Secondly, it is not the normal practice to set out the functions of a head of department in legislation.

The move towards more division of labour within the education community has also made it necessary to make minor amendments to the provisions in section 7 of the principal Ordinance relating to the Board of Education, to take account of the present functions of other advisory bodies within the education field.

Section 14 of the Ordinance sets out the grounds on which the Director may refuse to register schools. Some of these grounds are repetitive and we propose to streamline them. Others, such as the provision enabling the Director to refuse registration for political reasons, are no longer appropriate. Similarly, the provisions under sections 68 and 69 which give the Director and the Governor in Council additional or special powers to refuse or cancel the

registration of teachers are no longer necessary. We propose to repeal these provisions.

The Bill also proposes to streamline the system for registering school managers under sections 23 to 26. At present applicants have to be accepted as approved school managers first before they can apply for registration as such. This procedure was originally intended to provide a pool of persons suitable to be managers (somewhat akin to the Jury List), but has proved to give rise to unnecessary work in practice, because no one applies for approval unless he or she wishes to be registered as a manager of a particular school. A single stage process is therefore proposed instead.

The Bill proposes new definitions for different levels of education to accord with the usual age of entry and duration for nursery, kindergarten, primary and secondary education.

Under section 17 of the Ordinance, there is a provision that the Director shall not, without the consent of the Governor, register any school which provides post-secondary education. The involvement of the Governor is no longer necessary and the Bill proposes to delete this requirement.

Turning to clarifications and new provisions, the Bill proposes to give the Director new powers to inspect and remove documents from suspected unregistered schools. At present he has the power to do so only in respect of registered schools. Removal of this lacuna will enable the Director to tackle more effectively the problems posed by unregistered schools. The Bill also seeks to empower the Director to take action against unregistered schools which claim falsely to be registered schools in advertisements. The absence of such a provision now has hampered attempts to exercise proper control over illegal schools.

Experience has shown up another lacuna. The Director has the power to refuse, at the time of registration, a school name that he considers inappropriate or too similar to that of an existing school. However he does not have this power when registered schools wish to change their names. The Bill proposes to fill this gap.

The Bill also seeks to introduce a new provision to strengthen school management. In the subvented sector, each school is operated by a registered association or company commonly referred to as a sponsoring body, which holds title to the land and school building. At present, the Ordinance only provides for school management committees which run the schools on behalf of the sponsoring bodies. The Bill proposes to give sponsoring bodies appropriate powers in appointing and dismissing school managers and supervisors. By formalizing the role of the sponsoring body in the school management hierarchy, this amendment will help to facilitate the implementation of the School Management Initiative.

The Bill also proposes to add to the definition of a "school". At present, an operation providing education to less than 20 students during any one day is not required to be registered as a school. There is increasing public concern that private tutorial centres which make use of this opportunity by operating in small domestic premises in high-rise buildings do not sufficiently safeguard the safety and the interests of students. We propose to limit the number of students who can be taught in such circumstances at any time during the day to less than eight while retaining the present provision of not requiring operations involving less than 20 students on any one day to be registered. This change will not affect interest groups, such as those run by voluntary agencies, which offer courses of a non-academic nature.

Mr President, the Administration has consulted the Board of Education, the Private Schools Association Advisory Board and the Hong Kong Association of Sponsoring Bodies of Schools on the relevant parts of the Bill. They have indicated their support.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

SEWAGE TUNNELS (STATUTORY EASEMENTS) BILL

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the Second Reading of: "A Bill to provide for the creation of easements and other rights over land in favour of the Crown for the purpose of the construction, maintenance and operation of sewage tunnels; and for connected matters."

He said: Mr President, I move the Second Reading of the Sewage Tunnels (Statutory Easements) Bill. I beg your pardon, Statutory Easements Bill. Please excuse that slip, Mr President, due possibly to the subconscious feeling that I have given Members their money's worth this afternoon. The Bill seeks to empower the Government to construct and operate deep underground tunnels which will pass beneath private land. These tunnels are required as part of the long-term strategy for sewage collection, treatment and disposal to transport sewage to major treatment works before disposal through an oceanic outfall.

Under common law, the Government has no power to construct or operate tunnels under private land unless either the owner agrees or the rights to do so have been reserved by the Government in the lease. An alternative would be to provide through legislation for the resumption of underground strata but because the sewage tunnels will be very deep underground, usually more than 100 metres below the surface, resumption is not necessary. Given existing tunnelling technology, the actual effect of the tunnels on private property or private development rights should be minimal or nil. We therefore propose that the Government should be provided with the necessary powers through legislation to permit the construction and operation of the tunnels.

The system provided for in the Bill involves four main aspects. The first is the preparation and gazetting of plans. A plan will be prepared showing the proposed route of a sewage tunnel and the land situated on the route in respect of which easements and other rights in favour of the Government may be created. Notice of the plan, together with details of, for example, the land affected and the right to object will be published in the Gazette. If there are no objections, an order creating the easements will be made and gazetted.

Second, as regards objections, the creation of easements might be seen as reducing the value of land. People having an interest in land situated on the route of a tunnel and registered in the Land Registry should therefore have the right to object to the route. And if there are objections, the possibility of changing the route should be explored. Unwithdrawn objections will be put to the Governor in Council for decision. If the objections are not upheld, an order creating the easements will be gazetted. The Governor in Council may also order that the plan be modified before easements are authorized and gazetted.

On the basis of current engineering knowledge and experience, the indications are that the tunnel works should cause little or no damage. Nevertheless, it would only be fair to provide for compensation in cases of proven loss or damage. Thus the third aspect of the Bill relates to compensation. Any person who claims to suffer loss or damage to property beneath which an easement has been created or a tunnel constructed by virtue of the provisions of the Bill may seek compensation. The grounds for possible claims, as well as the procedures for and timing of claims, are provided for in the Bill. In general, these provisions are along the lines of other legislation which provides for compensation for reduction in the value of land.

Finally, as regards protection of the tunnels, the Bill amends the Buildings Ordinance to empower the Building Authority to refuse approval or impose conditions in respect of building works which are incompatible with tunnel works under the Bill. A decision of the Building Authority may provide grounds for claiming compensation under the Bill.

Mr President, the sewage tunnels are an integral part of our sewage strategy and will contribute significantly to our solution to the water pollution problem, particularly in the central harbour. The Bill is an essential step prior to the commencement of the construction of the tunnels in late 1994. I commend it to Members for favourable consideration.

Thank you, Mr President.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

COMPANIES (AMENDMENT) (NO. 3) BILL 1993

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: "A Bill to amend the Companies Ordinance."

He said: Mr President, I move the Second Reading of the Companies (Amendment) (No. 3) Bill 1993.

This Bill repeals the existing provisions of the Companies Ordinance on disqualification of company directors and introduces provisions that are more extensive and more readily enforceable. It also contains a few minor provisions to streamline the operation and administration of the Ordinance.

The concept of disqualifying directors and persons involved in the management of companies is not new to the Ordinance. The existing sections 157E and F stipulate circumstances under which the court may disqualify such persons for up to five years from participating either directly or indirectly in the management of a company. The relevant circumstances include those where a person has been convicted of an indictable offence in connection with the promotion, formation or management of a company; has been persistently in breach of his obligation under the Ordinance, or it appears to the court, in the course of a winding up, has been guilty of fraud or any breach of his duty as an officer of the company. Under section 157F, a person who has been a director of two companies which have gone into liquidation within five years of each other and that person's conduct as a director of those companies makes him unfit to be concerned in the management of a company may also be disqualified.

These existing sections are modelled on provisions in United Kingdom legislation which have since been superseded by the Company Directors Disqualification Act 1986. This Act was introduced to provide measures which were more effective and more readily enforceable against company directors who abused their office or who paid little regard to their statutory obligations. The existing provisions in the Companies Ordinance suffer from the same inherent weaknesses as the earlier United Kingdom legislation in that, for example, they provide the court with the maximum discretion but little guidance as to the specific circumstances that would merit disqualification, and they set preconditions for action to be taken that are unnecessarily stringent. Since the Company Directors Disqualification Act was introduced in the United Kingdom, however, there have been a considerable number of disqualification orders made under it and the United Kingdom Insolvency Service firmly believes that the legislation has had a beneficial effect in impressing on officers of companies the need for vigilance and diligence in complying with their statutory and common law duties.

The new provisions in the Companies (Amendment) (No. 3) Bill are based upon the Company Directors Disqualification Act. They represent a significant advance on the existing provisions by prescribing more specific measures to deal with the problem of directors' misconduct. In relation to insolvencies, for

example, it will no longer be a precondition that a person must be involved as a director in two insolvent companies within five years before a disqualification order may be made. Instead, it will be mandatory that an order be made by the court if a person is or has been a director of one company which has become insolvent and if, in the opinion of the court, his conduct as a director of that company either alone, or taken together with his conduct as a director of any other companies, makes him unfit to be concerned in the management of a company. An application for an order under this particular section may be made by the Financial Secretary or if he directs, in the case of a company being wound up by the court, by the Official Receiver. The Bill also introduces a separate schedule outlining matters to which the court should have regard in determining the unfitness of directors. These new provisions should help to prevent unscrupulous directors from simply starting up again in a similar vein without any concern for creditors who may be subsequently left empty-handed as a result of their irresponsible or cynical conduct.

The Bill also provides that the Financial Secretary may apply for a disqualification order to be made if it appears from an inspector's report under section 146 of the Ordinance or from documents or information obtained under sections 152A or B, that it is in the public interest that a person should be disqualified.

While other provisions of the Bill parallel more closely the grounds for disqualification under the existing sections 157E and F, they are more sharply focussed and provide greater assistance to the court. It is, for example, made clear that where a court may make a disqualification order in the course of prosecution of an offence, the court may itself take the initiative to make such an order without waiting for an application.

Under the various provisions of the Bill, disqualification orders may range from one to 15 years depending upon the seriousness of the misconduct. Such orders may be made not only against persons who are named as office bearers but also against persons who are acting as shadow directors. This concept is not new. The existing sections 157E and F already apply to persons in accordance with whose directors or instructions the directors of a company have been accustomed to act. It is clear that such persons should not be immune from disqualification.

Acting in contravention of a disqualification order will be a criminal offence, as it is under the existing sections, but the Bill also provides that a person who becomes involved in the management of a company while disqualified or who is involved in the management and who follows the instructions of a person whom he knows to be disqualified, may be held personally liable for any debts of the company incurred during the relevant period. Furthermore, the Registrar of Companies will be required to keep a register of disqualification orders which will be accessible to the public upon payment of a suitable fee.

The proposals have been recommended by the Standing Committee on Company Law Reform after consultation with a number of professional and trade bodies.

The office of a company director is a position that carries considerable influence and, often also, considerable power. The duties attaching to that position are weighty and the public expects quite rightly that directors should accept and discharge the responsibilities of their office conscientiously. This legislation will help to ensure that effective regulatory action may be taken against those who choose to ignore or disdain these responsibilities.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

COMPUTER CRIMES BILL 1992

Resumption of debate on Second Reading which was moved on 1 April 1992

Question on Second Reading proposed.

MR STEVEN POON: Mr President, the Computer Crimes Bill 1992 seeks to amend three Ordinances in order to make certain forms of computer misuse criminal offences. This includes adding a new section to the Telecommunication Ordinance to make it an offence to gain unauthorized access to a computer by means of telecommunication. A new section is also added to the Crimes Ordinance to make it an offence to gain access to a computer with dishonest intent. The Bill further seeks to amend provisions in the Theft Ordinance and the Crimes Ordinance relating to burglary and criminal damage to properties respectively in order to cover such acts in relation to a computer, its data or any programme held in a computer. Other provisions in these two Ordinances are also amended to make it clear that offences of false accounting, forgery and making a false entry in a bank book apply to information stored in a computer.

The Bill was introduced into this Council on 1 April 1992. A subcommittee of 13 members was formed on 9 October 1992 to study the Bill. Altogether we had eight meetings, including five with the Administration. We met representatives from the banking, accounting and computer professions and considered submissions from 10 interested organizations. As chairman of the subcommittee I would like to take the earliest opportunity to thank my colleagues in the subcommittee for the time and effort they put into the discussion, the Administration for their co-operation, and the interested organizations for submitting their views and taking part in our deliberations.

Mr President, I now come to the major issues considered by the subcommittee. The main question about the Bill, which has been thoroughly considered by the subcommittee, is whether the term "computer" should be defined. Some organizations favour defining "computer" to remove possible

ambiguity. They consider that an appropriate definition can make the law more easily understood and assist in prosecution. Accordingly, a number of definitions are proposed. On the other hand, views against defining "computer" in general centre around the difficulty in finding a suitable definition which can adequately and accurately define a computer and can withstand the test of time.

In particular, the Administration considers that the definition is not only unnecessary but also undesirable for the following reasons: (a) The meaning of a computer is reasonably easy to understand. It would be risky to tie it down at the time of drafting legislation as the speed of new development in computer technology will quickly cause any definition to become outdated; (b) By defining "computer" unnecessarily this will place a constraint in every case and a definition will be used by the defendant to attempt to raise a doubt. If it is not defined the court can refer to its common meaning and seek expert advice if necessary; (c) The Computer Crimes Unit of London Metropolitan Police in New Scotland Yard has confirmed that they have not experienced any difficulty in prosecution due to the lack of a definition of the term in the Computer Misuse Act 1990; (d) There are practical difficulties in finding an appropriate definition. All the proposed definitions vary in one way or another and it will be difficult to find a satisfactory one to embrace the essence of all these definitions.

After detailed discussion the subcommittee considers it preferable to leave it to the court to decide whether a particular device in the circumstances of the case is a computer or not and agrees with the Administration that the term "computer" should be left undefined.

Another question which has been actively pursued by the subcommittee is what constitutes unauthorized access. The subcommittee holds the view that unauthorized access to computers should not include accidental access such as dialing a wrong number or mistyping a key scenario. To address the subcommittee's concern the Administration has agreed to amend the relevant section by building in an element of intent to the effect that only a person who intentionally obtains access to a programme or data held in a computer without authority will be penalized. The necessary amendment will be moved by the Administration at the Committee stage.

Some organizations have raised the point as to whether the sending of junk fax and electronic mail constitutes unauthorized access. The Administration explains that as fax machines are not normally regarded as computers, the sending of junk fax to fax machines would not be an offence. Neither would the sending of electronic mail to a computer in a public network as there is no restriction on access and consequently no question of authorization will arise. The subcommittee is satisfied with these explanations.

The different levels of penalty have also been discussed. Some organizations consider that the penalty of a fine for unauthorized access is somewhat low and should be brought in line with other offences, such as access

with criminal intent, by imposing a custodial sentence. The Administration explains that the former offence is created to protect the privacy of legitimate computer users and should be regarded as a regulatory offence for which a custodial sentence will be inappropriate. Access with criminal intent is a more serious offence and will warrant a custodial sentence.

As regards computer related offences of criminal damage and burglary some organizations are concerned that the maximum penalty for such computer misuse is too heavy as the result of "force-fitting" them under the existing offences of criminal damage and burglary. The Administration explains that the level of penalty is appropriate as the criminal nature of the computer related crimes is no different from similar offences under the Crimes Ordinance and the Theft Ordinance. The subcommittee accepts these explanations.

One further point that the subcommittee has expressed concern is the time limit for prosecution. The subcommittee is worried that the provision for the six months time limit for initiating prosecution is unfair to the defendant as the period will be counted from the date on which the Attorney General is satisfied that there is sufficient evidence to warrant prosecution. As the investigation process prior to that period can be rather lengthy, fading memory will put the defendant in a vulnerable position. I am glad to say that the Administration has agreed to amend the relevant section to the effect that the proceedings can be brought any time within three years of the commission of the offence or within six months of its discovery, whichever period expires first. The Administration will move the amendment at the Committee stage.

Apart from the amendments mentioned above the subcommittee has agreed with the Administration on other amendments which are purely technical but are considered necessary for improving the drafting of the relevant provisions. These amendments will be moved by the Administration at the Committee stage.

Finally the subcommittee has suggested that the Bill, if enacted, should be reviewed on account of the following factors: (a) The statutory offences created by the Bill are new; (b) It is necessary to keep pace with rapid technological changes in the computer and telecommunications fields; and (c) Certain aspects of the Bill are related to matters being studied by the Law Reform Commission. We have been given to understand the Secretary for Security will respond to our suggestions in his speech this afternoon.

Mr President, with these remarks, I support the Bill.

SECRETARY FOR SECURITY: Mr President, I should like to thank Mr Steven POON and members of the subcommittee for their thorough and careful study of the Computer Crimes Bill. The Committee stage amendments which I am going to move are the agreed outcome of detailed discussions in the subcommittee.

I should like first to make some general points on the proposals in the Bill. One question which was raised was why, instead of the present approach of amending a number of existing Ordinances, we did not choose to enact a separate piece of legislation to deal with computer misuse. Both approaches were in fact considered before the present Bill was drafted. Our conclusion was that the present approach has distinct advantages. By fitting computer misuse into existing criminal legislation the existing case law can be applied. The offences we are concerned with are essentially offences of dishonesty or criminal damage and are better dealt with as such.

The question was also raised whether the term "computer" should be defined in the Bill. As Mr POON has explained we believe that to do so would probably cause more problems than it would solve and that it is best left to the prosecution to prove as a matter of fact the device concerned is a computer.

There was also discussion in the subcommittee of the intention behind the new offence of access to a computer with criminal or dishonest intent, proposed in clause 6 of the Bill. This offence is aimed at penalizing access to a computer for acts preparatory but falling short of the commission of a fraud. Examples would include someone obtaining access to computerized bank records to obtain details of credit balances for later fraudulent use or an employee writing instructions to a computer that will result in due course in the computer making automatic payments to his account. Currently such activity would not amount to an offence. Once the fraud is put into effect this section would no longer be relevant as other provisions of the Theft Ordinance will apply.

There has been some concern expressed that this offence could be used to prosecute copyright related activities. The offence has not been designed to tackle copyright related activities, which are regulated under separate legislation. It is the Administration's intention to continue to keep the copyright regime separate and not to use this provision for the prosecution of copyright offences.

I would now like to turn to the amendments which I will move at the Committee stage. The first amendment relates to clause 2 of the Bill. This clause creates an offence of unauthorized access to computer by telecommunication. Some consider it too wide as it covers any unauthorized access including accidental access. Others feel that the time limit for bringing a prosecution under this provision may not be fair to the accused. I accept these comments. In the amendment to be moved we propose to add an element of intent to obtain access to a computer programme or data so that accidental access will be excluded. We also propose to change the time limit for bringing a prosecution, thus shortening the time gap between commission of the offence and prosecution.

In respect of clauses 3 and 7, it has been suggested that the meaning of the criminal act of causing the computer not to function normally is not very clear and that the link between this act and the proviso is difficult to comprehend.

We intend to rectify this in the amendments to be moved in respect of clauses 3 and 7. The amendments will make it clear, among other things, that destroying or damaging property in relation to a computer includes causing it to function other than it has been established to function, even if this does not impair the operation of the computer.

We also propose to delete clause 4 of the Bill because this clause is no longer necessary. As a result of an amendment to the Crimes Ordinance which became law in June last year, the definition of "document" has already been incorporated into the definition of "instrument" for forgery offences.

The amendment to clause 6 of the Bill concerning access to a computer with criminal or dishonest intent will modify this provision so that it covers access to obtain data in transit in any part of a computer system, with dishonest or criminal intent.

Finally, Mr President, the subcommittee has asked that this legislation should be reviewed after one or two years in the light of experience. Given the rapid advances being made in computer technology I agree that it will be necessary to review this legislation regularly and we certainly intend to do so in the light of experience of its operation. Thank you, Mr President.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

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

CRIMES (AMENDMENT) (NO. 3) BILL 1992

Resumption of debate on Second Reading which was moved on 11 November 1992

Question on Second Reading proposed.

MR ANDREW WONG: Mr President, the Crimes (Amendment) (No 3) Bill 1992 was introduced in the Legislative Council on 11 November 1992. The purpose of the Bill is to remove capital punishment from our statute books.

On 26 June 1991 this Council voted in favour of the introduction of legislative measures which would abolish the death penalty and replace it with life imprisonment. The Crimes (Amendment) (No 3) Bill 1992 makes adjustments in two Ordinances. First, the Crimes Ordinance and second, the Offences Against the Person Ordinance to the effect that the death penalty is abolished and substituted with the mandatory sentence of life imprisonment.

In Hong Kong, capital punishment is currently the mandatory penalty for murder, treason and piracy with violence. The death penalty may also be provided for by the Governor in Council under the Emergency Regulations. A Bills Committee was set up to study the Bill. The Bills Committee, chaired by me, has held a total of four meetings only, two of which were with the Administration. The Bills Committee also received written representations from the Hong Kong Bar Association, the Law Society of Hong Kong, and a group called the Hong Kong Citizens Alliance.

The two legal bodies made written representations to the Bills Committee and commented on the aspect of penalty only. Both subscribe to the view that the death penalty ought to be abolished. The Hong Kong Bar Association considers that the only offence for which there should be a mandatory life sentence is that of murder, while the Law Society of Hong Kong is of the view that life imprisonment should only be the maximum sentence, rather than the mandatory sentence, for all three crimes. The Hong Kong Citizens Alliance, on the other hand, is totally against the abolition of capital punishment.

After the first three meetings the Committee arrived at the following conclusions: (1) Capital punishment should be abolished and the substitution should be life imprisonment; (2) For the crime of murder the Committee agrees the substituted penalty should be a mandatory sentence of life imprisonment; (3) The Committee holds no strong views as to whether (a) the existing review procedure for long-term prison sentences, on the basis of a report from the trial judge, should be retained or, (b) the court should be allowed to attach a rider in open court recommending the minimum period to be served prior to the consideration being given to the question of the release of the person sentenced; (4) For the crimes of treason and piracy with violence the Committee is, however, of the view that they are offences of a category entirely different from murder and hence a discretionary life sentence should be the preferred substitution.

By virtue of Article XV of the Letters Patent, the Governor may grant to any offender, convicted of any crime or offence, a pardon or any remission of the sentence passed on such offender. The Board of Review of Long Term Prison Sentences is an administrative body set up to review sentences of all prisoners in the categories prescribed by Prison Rule 69(a) and to tender advice to the Governor on the exercise of prerogative. The paramount function of the Board is to examine the circumstances pertaining to a prisoner at the time of the review to determine whether any change to his sentence would be justified. Currently for prisoners aged 21 or over at the date of conviction, and who have been sentenced to life imprisonment or for a prison term of 10 years or more, the review of sentence will be conducted initially after five years and subsequently every two years thereafter. Members of the Bills Committee felt strongly that provision for the formalization of the Board of Review of Long Term Prison Sentences should be included in legislation with the Board's composition and duties clearly spelt out.

Now these views of the Bills Committee were conveyed to the Administration, which after reverting to the Executive Council, responded in March to the points raised by the Bills Committee. The Administration agrees that the penalty for treason and piracy with violence should be changed to a discretionary life sentence and agrees to support two amendments to be moved later today at Committee stage by me. The Committee also accepts the Administration's recommendation that the existing review system should continue to operate for the mandatory sentence of life imprisonment for the crime of murder and also for other long-term sentences. The Administration agrees that the Board of Review of Long Term Prison Sentences should be made a statutory body but considers it inappropriate to effect the change in the current Bill, which deals with the abolition of the death sentence rather than the review and remission system. The Administration, however, has undertaken to make a public commitment to the effect that necessary legislative provision would be made in a separate Bill to be introduced in the 1993-94 Session.

Mr President, I now wish to finally say that I am an abolitionist and I am proud to be one. I do not intend to bore Members with a long exposition of my views, which can be found in Hansard for 26 June 1991. This Bill is long overdue. I am indeed honoured to be the Member to help steer it through.

Mr President, with these remarks, I commend the Crimes (Amendment) (No 3) Bill 1992 to Honourable Members.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, death penalty is one of the issues which Hong Kong people have shown deepest concern. Death sentences have been meted out in our courts from time to time but then commuted without exception. We, both as members of the community and Legislative Councillors, have to understand that the Bill of Rights, which was enacted not long ago, protects our human rights. Yet, with the abolition of the death penalty, the human rights of offenders are safeguarded but not their victims. This is actually in breach of the Bill of Rights. That is to say, the abolition of the death penalty is in principle against the Bill of Rights. What comes to your mind when you see an awe-inspiring criminal wielding an AK47 rifle on the street? Will you support the abolition of the death penalty?

Secondly, China is pursuing an open policy and apparently social development will lead to an increase in crimes. If the death penalty is abolished in Hong Kong, offenders across the border would certainly regard it as an invitation to them to come and commit crimes in the territory. As representatives of the Hong Kong people, we always ask China's public security authorities to assist Hong Kong and co-operate with our law enforcement authority to curb these criminal activities before the situation gets out of hand. However, we, on the other hand, ask for the abolition of the death penalty. This is in fact indirectly encouraging the criminals and enticing offenders of serious crimes to challenge our law which we want to maintain.

Thirdly, as we all know, some so-called liberal Members are quite inclined to learn from foreign countries, especially the United States. In this connection, I would like to draw their attention to the fact that the United States carried out an execution last year. This clearly demonstrates, by the example of such a world leader, that the abolition of the death penalty is not necessarily a common feature in a land of freedom or democracy.

Fourthly, we will later have a debate on Mr SZETO Wah's motion to see whether we should hold a referendum on the electoral arrangements. In fact, the death penalty is even of greater immediate concern to all Hong Kong people. I personally think that it would be more appropriate to hold a territory-wide referendum on the abolition of the death penalty so that we can know whether Hong Kong people support or oppose the death penalty. This seems to be more practical than just leaving a matter of our people's immediate concern to be decided by any lawmaker or any of our Members. For this reason, I think "whether we should abolish the death penalty" is a much worthy topic for a referendum.

Fifthly, whatever happens, Hong Kong will become a Special Administrative Region of China after 1997 when it is returned to China (at least in terms of sovereignty). So far capital punishment is still carried out in China (what happens in the future is another story). With this in mind, I see no point to challenge our future sovereign state through this piece of legislation. In what way will it benefit Hong Kong people? I think it is futile if one wishes to make political capital out of such a piece of legislation.

Mr President, some Members may turn a deaf ear to the five points I just now cited because they have already made up their mind when it comes to casting their vote. Yet, if they really work in the interests of the people, it is, in any case, never too late to change their mind at this moment. As a matter of fact, Mr President, I share the view that death penalty should be abolished ultimately. But, given the present situation, the abolition of capital punishment will only spawn confusion in Hong Kong during the transition period. We should really think twice about this matter. Some Members have asked me to mention their names in my speech to show that they support my opposition against the Bill. These Members include Mr TAM Yiu-chung and Mrs Peggy LAM.

Mr President, with these remarks, I oppose the abolition of the death penalty.

MR SIMON IP: Mr President, the Crimes (Amendment) (No. 3) Bill is a very important Bill making a significant amendment to the criminal law. While I am strongly in favour of the abolition of the death penalty, I am doubtful whether a mandatory life sentence is most appropriate.

Nobody will deny that murder is a most serious crime for which the penalty should carry unequivocally the most serious social denunciation of the offence. Nor should the deterrent effect of the penalty be diminished given our recent concern for deteriorating law and order. However, even after taking these considerations into account, I doubt whether a mandatory life sentence is indeed the appropriate punishment for murder, for it runs against two cherished principles of our criminal justice system.

Foremost, to impose the identical penalty upon all persons convicted of an offence — irrespective of their different circumstances, motives and intention — can create injustice. Mercy-killings do not carry the same culpability as callous robbers killing an innocent pedestrian on a crowded street. To put these two situations on the same par deprives the vital discretion available to a judge to hand down a sentence that fits the crime.

Secondly, a mandatory life sentence imposed by a judge coupled with a review and remission of the sentence carried out by the executive will blur the separation of powers between the judiciary and the executive.

If we rely on remission to mitigate the harshness of a mandatory life sentence, we are in effect asking the executive to perform a function which properly falls within the jurisdiction of the courts. Judges in murder cases will have little say in how long the prison term should be, other than submitting a report on the case together with their recommendation on the minimum period of imprisonment which will form part of the consideration of the Board of Review. It will primarily be the executive, through the Board of Review and the Governor in Council, who will exercise the function of sentencing by determining when convicted prisoners should be released.

Because these two important principles are at stake, it seems to me that a better alternative is simply to have a discretionary life sentence. The Law Society is of a similar opinion.

Subject to the reservations mentioned, I support the Bill.

DR LAM KUI-CHUN (in Cantonese): Mr President, the few crimes that attract the mandatory sentence of capital punishment in Hong Kong have all along been regarded as heinous crimes, whatever their gravity. Nowadays, social attitudes have changed significantly. These crimes can no longer be lumped together to come under a blanket definition of heinousness. Among these crimes which attract capital punishment, treason, for example, has as its objective the change of government and the leadership. As such it is a right of the people in a democratic context, unless it involves the now rare collaboration with outside forces in acts of subversion. In many countries, it is a fundamental human right provided for under the constitution. In presentday Hong Kong, attempted treason normally means no more than the holding of a different political opinion. It is a manifestation of the diversified thinking of the community as

well as a healthy social phenomenon. The so-called acts of "treason" in the past should be legalized today. Some people in Hong Kong harbour the fear that the future government of Hong Kong might one day invoke this statute to persecute people holding a different political opinion. The abolition of capital punishment by this Council today for the crime of treason is welcomed by many Hong Kong people.

Piracy with violence in the presentday world is no different from robbery with violence on land or in the air. Recently, all cases of robbery at sea committed on vessels inbound for or outbound from Hong Kong happened outside Hong Kong's jurisdiction. To maintain different penalties between robbery with violence at sea and on land will be out of keeping with the times. I am in favour of the maximum penalty for robbery with violence at sea or in the air being made equivalent to that for robbery with violence on land. Capital punishment for these crimes will not be necessary. The keeping of life imprisonment as maximum penalty, especially when the courts are prepared to exercise it, will achieve an appropriate degree of deterrent effect.

The general public of Hong Kong and many Members of this Council however hold contradictory views about murder. While I do not intend to extend here the exhaustive debate Council Members had conducted on this matter in the last Session, I should like to raise three points for the record. Firstly, from the angle of the criminal, in the absence of capital punishment as a deterrent, it would be safer and more to his benefit if he were to kill the victim so as to remove a principal witness after he had committed the crime of wounding or robbery, especially if he was at a stand-off with the police. It is reported that the going rate charged by triads in Hong Kong for taking out a contract for murder is cheaper than that for wounding. That killing the victim so that a dead person cannot talk would be more to the benefit of the criminal would lead to more innocent people such as hostages being killed. Regardless of the statistical data of European countries and the United States, we should do our best to minimize the probability of murder in Hong Kong society through legislation. Secondly, from the angle of the victim, especially a hostage held captive, the absence of capital punishment would remove his/her last and only line of protection in saying: "If you kill me, you will pay with your life". A number of victims have told me that the realization that the murderer would have to pay with his life was their only consolation at the most dangerous and helpless moment. Thirdly, to the Hong Kong community as a whole, it is regarded right and proper that a murderer has to forfeit his life, whatever the laws of other countries may otherwise provide. It is utterly unfair for a murderer not having to pay with his life. The law sees to it that justice is done, but it must also see to it that justice is being seen to be done. It would constitute a major threat to the safety of witnesses having testified in court if the murderer were to have the opportunity of revenge on release after serving his sentence. In recent years, the execution of capital punishment has been restored in many civilized countries such as the United States. The general public of Hong Kong will feel that the abolition of the death penalty for murder is a piece of unfair and retrogressive legislation. In view of the current public opinion in

Hong Kong, we need to restore the execution of capital punishment rather than abolishing it, if we are really to practise democracy.

Mr President, I think that: (1) the death penalty should be abolished for acts of treason which should eventually be legalized if they do not involve collaboration with outside forces and the crime of treason should be dealt with the way murder is dealt with if it involves the killing of political personalities; (2) the death penalty can be abolished for piracy with violence, but the punishment for robbery with violence at sea, on land and in the air should eventually be the same; (3) as to murder, I share the opinion of the majority of Hong Kong Chinese that the death penalty should not be abolished and that execution of capital punishment should be restored.

Mr President, I so submit.

MRS PEGGY LAM (in Cantonese): Mr President, first I would like to thank Mr CHIM Pui-chung for expressing my cherished views in his speech. I did ask him to speak for me but later I thought that such an issue was too important. If I only relied on Mr CHIM alone without personally voicing any support, it would be unfair to many Hong Kong people. A lot of people in Hong Kong have often told me that law and order here is getting worse and worse. Criminals commit armed robberies and wound people with firearms. They ignore the law of Hong Kong and are totally indifferent to the police. Such a situation makes the people of Hong Kong very worried. We do have a very brave and excellent Police Force who are willing to undertake all risks in maintaining law and order in Hong Kong. Yet we are not giving them enough support in terms of laws to facilitate the effective discharge of their duties. The police arrest culprits and murderers after a painstaking effort but the courts let them get off lightly. Is this a correct way to maintain law and order, prosperity and stability of a society? Capital punishment is the only penalty which will have some effect. If we abolish this penalty, what else will the culprits be afraid of? I think if the present Bill to remove capital punishment is passed here this afternoon, many people will be celebrating this like mad somewhere else.

Hong Kong is generally described as a shoppers' paradise; yet there are also many people telling me that Hong Kong is no longer so. It is because prices here are not low any more while there are many other places which have lower prices than Hong Kong. However, Hong Kong today is still a paradise. What kind of paradise is it? It is the paradise for criminals. They can come to Hong Kong to "pull a job" but do not need to receive the penalty they deserve. We need democracy, we heed human rights. I think nobody will deny that the United States is the most democratic country, and it is also a country which most emphasizes human rights. Nevertheless, at present among the 52 states of America, 37 of them, which means over half of the total number, have capital punishment on their statute books and have also carried it out. Can we then say that since the United States carries out capital punishment, it is therefore not a democratic country, and does not respect human rights?

Criminologists believe that the death penalty has a certain degree of deterring effect. The Chinese have a philosophical saying that "All murderers have to die". We are nurtured in the Chinese culture. Despite the fact that Hong Kong is a British colony, 99% of our population is Chinese. We Chinese all believe in Chinese philosophy. However, today in this Council, public opinion is being totally ignored. If we conduct a questionnaire on the street about whether the public supports the abolition of capital punishment, I believe that the result will be that nine out of 10 or over 90% of the interviewees will say, "How can capital punishment be abolished?" If this is so, how can we still live in Hong Kong? We do not need any other reasons for our leaving Hong Kong or migrating elsewhere, because just this point is more than enough to make us fainthearted and dare not continue living in Hong Kong. Therefore, Mr President, I have to deliver these words today at this eleventh hour because I earnestly hope that our colleagues can think carefully before they cast their votes later on. The abolition of capital punishment is definitely unfavourable to Hong Kong. We who shall continue to live in Hong Kong without migrating to other countries have to think for the 6 million population. We need to have stability and prosperity. I hope later on Members will follow their conscience in casting their votes.

Mr President, I am opposed to the abolition of capital punishment absolutely.

SECRETARY FOR SECURITY: Mr President, the Administration supports the amendments to be moved by Mr Andrew WONG to clauses 2 and 4 of the Bill. We agree that the offences of treason and piracy with violence are different in nature from murder and that a discretionary rather than a mandatory life sentence is the appropriate penalty for these two offences.

I also accept the wish of the Bills Committee that the Board of Review of Long Term Prison Sentences should be made statutory and that its duties, procedures and guidelines be set out clearly in legislation. It would not, however, be appropriate to provide for this in the present Bill which deals with the abolition of the death penalty. Instead I will seek to introduce a separate Bill in the next Session of this Council to establish a statutory board. The functions of such a board will be same as those of the present Board of Review, that is, to review the sentences of all prisoners aged 21 or above at the date of their conviction and serving prison sentences of 10 years or more; of all prisoners under 21 at the date of their conviction serving determinate sentences; and of all those under 18 at the time the offence was committed detained at Her Majesty's pleasure. The board will advise the Governor on the exercise of his prerogative to remit in these cases.

Thank you, Mr President.

Question on the Second Reading of the Bill put.

Voice vote taken.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I claim a division.

PRESIDENT: Council will proceed to a division. The division bell will ring for three minutes.

PRESIDENT: Would Members now please proceed to vote?

PRESIDENT: Are there any queries? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Dr LEONG Che-hung, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr Steven POON, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Mr Roger LUK and Ms Anna WU voted for the motion.

Mr Stephen CHEONG, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mrs Peggy LAM, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Dr Philip WONG and Dr TANG Siu-tong voted against the motion.

Mrs Miriam LAU and Mr LAU Wah-sum abstained.

THE PRESIDENT announced that there were 40 votes in favour of the motion and nine votes against it. He therefore declared that the motion on the Second Reading of the Bill was carried.

Bill read the Second time.

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

PROTECTION OF WOMEN AND JUVENILES (AMENDMENT) BILL 1992**Resumption of debate on Second Reading which was moved on 8 April 1992**

Question on Second Reading proposed.

MR WONG WAI-YIN (in Cantonese): Mr President, as the convenor of the ad hoc group to examine this Bill, I have to thank all the group members for having spent a considerable amount of time and provided many valuable opinions. I am also grateful to the Administration for the many assistances provided during the examination of the Bill, even though our views diverged in some matters. As I said, the group and the Administration were divided on some matters; so I will explain in detail where the differences lay, such that Members of this Council will have more information for consideration during the Committee stage.

The Bill before us has two main objectives. One is to widen the coverage of situations where children or juveniles are regarded as in need of care or protection, to the effect that the authorities concerned can issue care and protection orders under the amended Protection of Women and Juveniles Ordinance in cases of mental abuse and lack of care. The other is to add into the Ordinance a provision for a child assessment procedure, which requires the Director of Social Welfare to arrange for a medical or psychological examination on the child concerned whenever the Director is in doubt as to whether or not the child needs care or protection, and to consider the report of the examination before deciding whether or not to issue a child protection order. The Bill also requires the Director to make application to a court within 48 hours of the removal or detention of a child or juvenile under the Ordinance.

This Bill was introduced to this Council on 8 April 1992. The ad hoc group responsible for studying the Bill has had eight meetings to discuss the content of the Bill with the Administration. The group has also examined six submissions and met with five outside organizations including those of the legal and welfare professions for exchanging views on the Bill. The group and these outside organizations in general support the main purpose of the Bill, but there have been fundamental differences between the Administration and the group on matters like how to protect children. This explains why it has taken a whole year for the group to discuss with the Administration in the hope of reaching a consensus on those contentious matters.

Our existing laws for the protection of children have a shortcoming, which is that the relevant provisions are scattered in different Ordinances. The welfare and legal sectors have for years expressed concern at this problem. The ad hoc group thought that in order to better serve the purpose of protecting children, Hong Kong should have an "omnibus" Ordinance which included all the provisions relevant to the protection of children, like the Child Act 1989 of

the United Kingdom. However, the Administration's response to this proposal was that it was not feasible because the relevant Ordinances covered different matters, so that it would be very difficult to extract only the provisions relevant to children and combine them into a separate Ordinance. Besides, it would take a lot of time for the relevant review, and it would be a very difficult task both in terms of time and resources. Nevertheless, the Administration agreed in principle that a consolidation Ordinance for the protection of children should ideally be enacted, and it would study this possibility. The ad hoc group was not fully satisfied with the explanation by the Administration, but we understood that such a study would take a long time, and could be conducted separately later. So we accepted the Administration's views in order to avoid delaying the passage of this Bill.

Mr President, I will now report to this Council the views of the ad hoc group on the two most controversial provisions of the Bill.

The first one is clause 6(c), which lists the four preconditions for deciding whether a child can be regarded as being in need of care and protection. In these preconditions, the word "significantly" has been added before the word "neglected". The ad hoc group thought that the word "significantly" was too subjective and might cause confusion during enforcement. Furthermore, neglecting a child was a very serious matter, and the addition of "significantly" would pitch the minimum criteria at much too high a level for deciding that a child needed care and protection such that the interest of children might not be fully protected. To avoid any possible uncertainty in the meaning of "significantly", the ad hoc group suggested the deletion of the word. The Administration's explanation on this point was that the word "significantly" was to describe the extent of the lack of care and prevent the Director of Social Welfare and the police from having too much discretionary power. So the deletion of the word would render the proposed section 34(2) applicable to all the lack-of-care situations, regardless of their seriousness. The Administration pointed out that such situations might even include leaving children unattended at home. If the Ordinance empowered the law enforcement bodies to exercise, in the case of children being unattended at home, the power under the Ordinance by removing such children, that would obviously be contrary to the public's views, since the public consultation conducted earlier by the Administration showed that the public was not supportive of penalizing the parents who had left their children unattended at home. The Administration also cautioned that the over expansion of coverage caused by the deletion might also lead to the problem of abuse. The ad hoc group found the explanation of the Administration unconvincing, since members were generally worried that the word "significantly" might lead to the criteria being pitched at too high a level, which was not instrumental in ensuring children's interest. The ad hoc group thought that the Administration's worry of abuse of power was groundless. Generally speaking, the public has confidence in the professional ethics of our social workers. The ad hoc group had suggested to the Administration to consider defining that word in the Bill, but the Administration explained that any definition was liable to a subjective

interpretation and therefore turned down the suggestion. In these circumstances, the ad hoc group thought that the most ideal and feasible way was to delete the word "significantly". Members of the group believed that the relevant personnel would adopt a reasonable and sensible attitude in enforcing the Ordinance. Moreover, if the Director of Social Welfare finds it necessary, he may issue a directive to the relevant personnel as to the spirit and enforcement criteria of this Ordinance.

The other point of difference concerns clause 8(b). According to the child assessment procedure proposed in that clause, the power of removing a child to a place of refuge cannot be exercised before the assessment report by a medical practitioner or clinical psychologist is made available. In this regard, many social welfare organizations, including the Hong Kong Council of Social Service, have been deeply concerned about social workers being unable to take part in the child assessment procedure prescribed under the law. They said that social workers had received professional training in children welfare and were therefore eligible for conducting the assessment required. Besides, to have an even more flexible arrangement, it should be provided that social workers will have the same footing as the medical practitioners and clinical psychologists in that they will also be qualified to conduct the assessment under the Ordinance. The social welfare sector also thinks that the exclusion of social workers from the assessment procedure will be detrimental to their professional status.

The ad hoc group had exchanged views with the Administration on this point, but the Administration was steadfast in not including social workers in the assessment procedure, and not allowing them to take part on an equal footing with the medical practitioners and clinical psychologists in the child assessment procedure prescribed by the Bill. The main explanation by the Administration was that the role of the medical practitioners and clinical psychologists was to provide supplementary advice, or a so-called "second opinion", for the reference of the social workers who handled the cases concerned whenever they had any queries. The final decisions still rested with the social workers. The Administration also stressed that in handling cases where abuse was suspected, social workers were already the frontline workers who initiated actions. So if the social workers were also to provide the second opinion in the child assessment stage, abuse of power might arise, which would then defeat the purpose of seeking supplementary advice.

Despite the many meetings, the ad hoc group has not been able to reach an agreement with the Administration on these two points. At the Legislative Council House Committee meeting on 27 November last year, the group submitted a report on the Bill and mentioned the group members' views and worries on these two points. Members who attended the meeting were generally sympathetic with the worries of the group and suggested that the group should continue to sort it out with the Administration. On the advice of the House Committee, the ad hoc group held another meeting in the hope of reaching an agreement with the Administration on the two points concerned. However, although the ad hoc group had reiterated the members' worries, the

Administration still took a firm stand in refusing to delete the word "significantly" from the Bill and to include social workers in the child assessment procedure. After a further discussion, most members of the ad hoc group found that the explanation and decision of the Administration were not well justified, and decided that amendments would be moved by the group members themselves. Later on, Dr YEUNG Sum, a member of the group, will move the amendments concerned during the Committee stage.

Although the ad hoc group and the Administration were severely divided on the two points concerned, the two parties have generally been able to reach a consensus in other aspects of the Bill. For example, the Director of Social Welfare may under clause 6(g) or section 35(1B)(ii) require the guardian to furnish in certain circumstances the photographs of the child or juvenile concerned or that of himself. In this connection, the ad hoc group thought that the photographs might easily be taken under special arrangements so as to show only the best condition of the person concerned. The Administration fully understood the worries of the group, and agreed to amend the relevant provisions to the effect that the furnished photographs could not be taken six months before the date when the guardian was informed of the requirement of photographs to be furnished. As regards section 41 which provides for the power of recapturing wards or persons escaping from detention in place of refuge, members found it inappropriate to use the word "recaptured", which had a punitive connotation, in the Protection of Women and Juveniles Ordinance. After discussion with the authority concerned, the ad hoc group agreed to substitute the word "retaken", which had a neutral meaning and therefore more appropriate. The necessary amendment concerning this section will also be moved during the Committee stage.

I now would like to explain the ad hoc group's views on the two-week requirement under clause 8(b). The existing Ordinance provides that unless the child concerned has been assessed in the preceding two weeks, the Director of Social Welfare cannot exercise the power of taking the child to a place of refuge. Regarding this requirement, members were generally of the view that the Ordinance should provide that the Director of Social Welfare must, within the stipulated two-week period, make a decision on the case concerned and take any necessary action, in order that cases of child abuse can be dealt with at as early a stage as possible. And the parents should be informed of the decisions as soon as possible. The authority concerned pointed out in its reply that there were many uncertain factors in the assessment work and so the enforcement personnel should be given great flexibility in exercising their power in order that they could discharge their duties smoothly. The authority also stressed that this requirement was set up to cope with any contingencies. In fact, the Director would take swift actions when necessary. After careful consideration, the ad hoc group agreed with the Administration's proposal that an internal guideline would be issued by the Director of Social Welfare to his staff, stating clearly the necessary procedures for conducting child assessment, so as to ensure that every case would be dealt with as soon as possible. Besides, the guideline would also ensure that the parents would be notified of the decisions of the

Director and any future developments. The ad hoc group has already examined the draft guideline and has been satisfied with the assurances of the authority. In this regard, I hope that the Secretary for Health and Welfare can reiterate in her reply later the commitment in relation to the issue of the guideline.

As far as resources are concerned, the Administration has assured the ad hoc group that sufficient resources will be allocated after the passage of the Bill for undertaking the work under the new Ordinance, but when it learnt that the group would move to delete the word "significantly" during the Committee stage

The buzzer sounded a continuous beep.

PRESIDENT: You must stop, Mr WONG.

MR WONG WAI-YIN (in Cantonese): I will submit a written report on this in due course.

PRESIDENT: Thank you.

MRS SELINA CHOW (in Cantonese): Mr President, colleagues of the Liberal Party support the amendments to the Bill passed by the ad hoc group. Concerning Mr WONG Wai-yin's proposal of deleting the modifier "significantly", we think that the law need not and should not pose a barrier to the authorities in coming to a decision on what kind of action to take, since the words "significantly" and "insignificantly" themselves do not have clear definitions. If the word is to remain, we are worried that the department and the people concerned would evaluate the cases based on their subjective judgement. They may even become overcautious about applying the clause, resulting in their reluctance to take action or avoiding as much as possible to take action. Therefore, we support the deletion of that word.

Moreover, we are of the view that the department had been too stubborn about members' responses as regards this issue. After a number of discussions had been conducted and numerous requests made, members hoped that the Government could accept their views which reflected the consensus we had reached. However, the officials time and again insisted on taking their own stand on this issue. In the end, they were still unwilling to amend. Actually, the department only has to lay down clear guidelines and there should be absolutely no problem in the implementation. The attitude adopted by the officials this time does not appear to have contributed much to the co-operation between this Council and the executive branch of the Government.

With these remarks, I support the motion.

DR YEUNG SUM (in Cantonese): Mr President, I welcome the fact that the Protection of Women and Juveniles (Amendment) Bill 1992 can eventually come before this Council for its Second Reading and Third Reading.

The legislative spirit of this Bill is mainly to protect children from abuse. With the industrialization and urbanization of Hong Kong in recent years, some children have been subject to unreasonable treatment by their families. Some have even lost their lives after being neglected or abused for a long time. It is true that children are born by their parents but, as individuals, children have their own personal dignity and rights. If the rights of children are unprotected, society has the responsibility to take action to protect them.

Mr President, the spirit of the Protection of Women and Juveniles (Amendment) Bill 1992 is worthy of our support. However, since some of the Administration's proposed amendments are made from the perspectives of departmental administration, departmental powers and utilization of resources, most members of the ad hoc group think it necessary to further amend part of the Bill. Mr President, in line with the spirit of the Protection of Women and Juveniles (Amendment) Bill 1992, I shall move amendments to clauses 4, 6, 8 and 17 of the Bill. I hope Members of this Council will support the amendments to protect the rights of children.

SECRETARY FOR HEALTH AND WELFARE: Mr President, I would like to thank members of the Legislative Council ad hoc group chaired first by Professor the Honourable Felice LIEH MAK and then by the Honourable Zachary WONG Wai-yin for scrutinizing the Protection of Women and Juveniles (Amendment) Bill with such care and thoroughness. I am very grateful.

The Administration held eight meetings with the ad hoc group from April 1992 to December 1992 to discuss the Bill. We have agreed on a number of amendments and the issue of a set of operational guidelines for the implementation of the provisions of the Bill. I am also particularly grateful for the support for and confidence in the Administration as expressed in the Honourable Zachary WONG's speech. The Administration, however, is concerned over one amendment proposed by the ad hoc group concerning the inclusion of "approved social worker" in the child assessment procedure stipulated under clause 17.

Child abuse is a complex area of social work. The assessment of children involved requires a multi-disciplinary approach. The original intention for including medical practitioner and clinical psychologist in the child assessment procedure is to ensure that we can have multi-disciplinary professional advice in protecting a child. Such advice, a second opinion, should not be confined to the social work profession. The Administration has no intention whatsoever of undermining the professional status or role of social workers. In fact, the final decision of whether or not to remove a child suspected of being abused would

always rest with the social worker handling the case. The child assessment procedure which involves other professionals will assist the frontline social worker in making such a decision.

In the context of this Bill, I am pleased to inform this Council of my decision to reconvene the Working Group on Child Abuse very shortly. The Working Group will be chaired by the Director of Social Welfare. It will have new terms of reference, and membership will include non-governmental organizations, social workers, psychologists and medical practitioners. This will emphasize the importance of a multi-disciplinary approach in dealing with the problem of child abuse.

With these remarks, Mr President, I beg to move.

Question on the Second Reading of the Bill 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.

COMPUTER CRIMES BILL 1992

Clauses 1, 5 and 8 were agreed to.

Clauses 2 to 4, 6 and 7

SECRETARY FOR SECURITY: Mr Chairman, for the reasons explained in my speech on the Second Reading, I move that the clauses specified be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 2

That clause 2 be amended —

- (a) in the proposed section 27A(1) -
 - (i) by deleting "obtains" and substituting "knowingly causes a computer to perform any function to obtain";

(ii) by deleting "a computer" and substituting "any program or data held in a computer".

(b) in the proposed section 27A(2) -

(i) by deleting paragraph (a) and substituting -

"(a) the intent of the person need not be directed at -

(i) any particular program or data;

(ii) a program or data of a particular kind; or

(iii) a program or data held in a particular computer;"

(ii) in paragraph (b), by deleting "a computer" and substituting "any program or data held in a computer";

(iii) in paragraph (b), by deleting "the computer" where it first appears and substituting "the program or data held in the computer";

(iv) in paragraph (b)(i), by deleting "the computer" and substituting "the program or data held in the computer".

(c) by deleting the proposed section 27A(4), (5), (6) and (7) and substituting -

"(4) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings for an offence under this section may be brought at any time within 3 years of the commission of the offence or within 6 months of the discovery of the offence by the prosecutor, whichever period expires first."

Clause 3

That clause 3 be amended, by deleting the proposed section 59(1A) and substituting —

"(1A) In this Part, "to destroy or damage any property" in relation to a computer includes the misuse of a computer.

In this subsection, "misuse of a computer" means -

- (a) to cause a computer to function other than as it has been established to function by or on behalf of its owner, notwithstanding that the misuse may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer;
- (b) to alter or erase any program or data held in a computer or in a computer storage medium;
- (c) to add any program or data to the contents of a computer or of a computer storage medium;

and any act which contributes towards causing the misuse of a kind referred to in paragraph (a), (b) or (c) shall be regarded as causing it."

Clause 4

That clause 4 be amended, by deleting clause 4.

Clause 6

That clause 6 be amended, in the proposed section 161(2) —

- (a) by deleting paragraph (a);
- (b) in paragraph (b), by adding "not" after "extending" where it first appears.

Clause 7

That clause 7 be amended, in the proposed section 11(3A) —

- (a) in paragraph (a), by deleting "not to function normally" and substituting -

"to function other than as it has been established by or on behalf of its owner to function, notwithstanding that the unlawful action may not impair the operation of the computer

or a program held in the computer or the reliability of data held in the computer";

(b) in paragraph (c), by deleting the comma at the end and substituting a full stop;

(c) by deleting everything after paragraph (c).

Question on the amendments proposed, put and agreed to.

Question on clauses 2, to 4, 6 and 7 as amended, proposed, put and agreed to.

CRIMES (AMENDMENT) (NO. 3) BILL 1992

Clauses 1, 3 and 5 to 24 were agreed to.

Clauses 2 and 4

MR ANDREW WONG: Mr Chairman, the amendments which I am moving this afternoon are set out under my name in the paper circulated to Members.

In a gist, clauses 2 and 4 are to be amended so that the relevant provisions shall be, and I quote, "..... shall be liable on conviction on indictment to imprisonment for life". Now mark the words "liable to imprisonment for life", meaning discretionary life sentence. These amendments are needed to give effect to substituting capital punishment for the offences of treason and piracy with violence with a discretionary life sentence rather than a mandatory life sentence.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended, by deleting ""death" and substituting "life imprisonment"" and substituting ""on conviction upon indictment shall be sentenced to death" and substituting "shall be liable on conviction on indictment to imprisonment for life"".

Clause 4

That clause 4 be amended, by deleting ""death" and substituting "life imprisonment" and substituting ""on conviction upon indictment shall be sentenced to death" and substituting "shall be liable on conviction on indictment to imprisonment for life"".

Question on the amendments proposed, put and agreed to.

Question on clauses 2 and 4, as amended, proposed, put and agreed to.

PROTECTION OF WOMEN AND JUVENILES (AMENDMENT)**BILL 1992**

Clauses 1 to 3 and 7, 10, 11, 13 to 16 and 18 to 20 were agreed to.

Clause 4

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 4 be amended as set out under my name in the paper circulated to Members.

The amendment is to rectify cross references in the Bill.

Proposed amendment

Clause 4

By deleting everything after "amended" and substituting "by repealing the definitions of "infant" and "probation officer".".

Question on the amendment proposed, put and agreed to.

DR YEUNG SUM (in Cantonese): Mr Chairman, I move that the clause specified be amended as set out under my name in the paper.

The proposed amendment to clause 4 of the Bill will give a definition to the term "approved social worker", specifying that the social worker has to be one who has been approved by the Director of Social Welfare as possessing the appropriate qualification and experience, before he can make an assessment pursuant to section 45A.

Proposed amendment

Clause 4

That clause 4 be further amended, by adding —

"(c) by adding -

""approved social worker" means a social worker approved by the Director of Social Welfare as possessing the appropriate qualification and experience to make an assessment of a child or juvenile pursuant to section 45A;".

Question on the amendment proposed, put and agreed to.

Question on clauses 4, as amended, proposed, put and agreed to.

Clause 5

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 5 be amended as set out under my name in the paper circulated to Members.

This amendment is to rectify cross references in the Bill.

Proposed amendment

Clause 5

That clause 5 be amended, by deleting everything after "amended -" and substituting —

"(a) by repealing "unmarried female infant or any young person or child" where it twice appears and substituting "child or juvenile"; and

(b) by repealing everything after "2 years" and substituting a full stop."

Question on the amendment proposed, put and agreed to.

Question on clause 5, as amended, proposed, put and agreed to.

Clause 6

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 6 be amended as set out under my name in the paper circulated to Members.

This is a minor technical amendment to rectify cross references in the Bill.

Proposed amendment

Clause 6

That clause 6(c) be amended, by deleting everything from "in subsection (2)" up to and including "child or juvenile -" and substituting —

"by repealing subsection (2) and substituting -

"(2) For the purposes of this Ordinance, a child or juvenile in need of care or protection means a child or juvenile -".

Question on the amendment proposed, put and agreed to.

DR YEUNG SUM (in Cantonese): Mr Chairman, I move that the clause specified be amended as set out under my name in the paper.

In moving that clause 6(c) be further amended, my purpose is to delete the term "significantly", wherever it appears, before the term "neglected" in the text of the Bill, so that any child who is not receiving care or is being neglected can be considered as being in need of care or protection. Here I would like to emphasize that, in considering whether a child is really not receiving care or is being neglected, the Director of Social Welfare still possesses a considerable amount of discretionary power. Before the Director of Social Welfare exercises his discretionary power, he should judge and assess the case appropriately. Therefore, I think that the deletion of the term "significantly" would only make the clause more flexible without in any way giving the Director of Social Welfare too much power. In fact, it would ensure that children who are in need of care and protection would not be denied help because of the term "significantly".

Moreover, the term "significantly" virtually provides no real help in the protection of children. Its unclear definition would only create unnecessary confusion in the enforcement of the law.

*Proposed amendment***Clause 6**

That clause 6(c) be further amended —

- (a) in the proposed subsection (2)(a), by deleting "significantly".
- (b) in the proposed subsection (2)(b), by deleting "avoidably impaired or significantly neglected" and substituting "neglected or avoidably impaired".
- (c) in the proposed subsection (2)(c), by deleting "avoidably impaired or significantly neglected" and substituting "neglected or avoidably impaired".

Question on the amendment proposed, put and agreed to.

MR WONG WAI-YIN (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

I have already explained why I moved amendments to the clauses specified when the Bill was resumed for debate on Second Reading. Since section 6C and 9A are interrelated, I am proposing the relevant amendments at one go. In a nutshell, amendments to section 6C and 9A aim at ensuring, as far as possible, all photographs (including the photographs of children or youths concerned in any cases) required by the Director of Social Welfare under these two sections would contain the recent and genuine image of the parties concerned. The clauses, after amendment, shall provide for that the photographs should be taken not earlier than six months prior to the date of submission.

Mr Chairman, with these remarks, I move the motion.

*Proposed amendment***Clause 6**

That clause 6(g) be further amended, by deleting the proposed section 34(5)(b)(ii) and substituting —

"(ii) furnish photographs of the person endangered and of himself, such photographs to be taken not earlier than 6 months prior to the date of being so required."

Question on the amendment proposed, put and agreed to.

Question on clause 6, as amended, proposed, put and agreed to.

Clauses 8 and 17

DR YEUNG SUM (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper.

The aim of amending clauses 8B and 17 is to enable the approved social workers to participate in the child assessment procedure as specified in the Ordinance. According to the proposed procedure under the existing Ordinance, the assessment shall only be made by medical practitioners or clinical psychologists. That is to say, approved social workers have no role whatsoever to play in this regard. Such a provision is indeed an affront to the professionally trained social workers. In response, social workers have made their outrage known. Equipped with professional training in child protection and a lot of relevant working experience, approved social workers are capable of making the aforesaid assessment. Furthermore, in case they feel doubtful and are in need of professional opinion of a medical practitioner or a clinical psychologist, they can certainly make the necessary arrangements to seek the advice. For this reason, it is absolutely advantageous to allow the social workers to make the assessment, in addition to medical practitioners and clinical psychologists. Such a move will also bring about positive effects on resources deployment and make the assessment mechanism more efficient and flexible.

Any misgivings about the abuse of power by social workers is basically groundless. In fact, ever since the KWOK Au-nui episode, the community has begun to show much concern about similar cases and been watchful of similar cases. And social workers, when handling sensitive cases, are much more careful and prudent.

Mr Chairman, I would like to reiterate that the aforesaid proposed amendments are meant to give more protection to children and juveniles under the amended Ordinance. Although the Government has expressed reservations about the amendments and the availability of resources, I still hope that the Government could put the interests of children and juveniles before anything else and support the proposed amendments.

*Proposed amendments***Clause 8**

That clause 8(b) be amended, in the proposed subsection (1A)(a), by deleting "a medical practitioner or clinical psychologist pursuant to section 45A" and substituting "a medical practitioner, clinical psychologist or an approved social worker pursuant to section 45A".

Clause 17

That clause 17 be amended —

- (a) in the proposed section 45A(1)(a), by deleting "a medical practitioner or clinical psychologist" and substituting "a medical practitioner, clinical psychologist or an approved social worker".
- (b) in the proposed section 45A(3), by deleting "the medical practitioner or clinical psychologist" and substituting "the medical practitioner, clinical psychologist or approved social worker".
- (c) in the proposed section 45A(5), by deleting "the medical practitioner or clinical psychologist" and substituting "the medical practitioner, clinical psychologist or approved social worker".
- (d) in the proposed section 45A(6)(b), by deleting "medical practitioner or clinical psychologist" and substituting "medical practitioner, clinical psychologist or approved social worker".
- (e) in the proposed section 45A(7), by deleting "a medical practitioner or clinical psychologist" and substituting "a medical practitioner, clinical psychologist or an approved social worker".

Question on the amendments proposed, put and agreed to.

Question on clauses 4, 6, 8 and 17, as amended, proposed, put and agreed to.

Clauses 9 and 12

MR WONG WAI-YIN (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper.

During the Second Reading debate on the Bill, I had already explained the reasons for making the amendments. Just now I have also expounded why clause 9A should be amended. Now I would only like to add a few words on the amendments to clause 12.

The amendment to clause 12 is aimed at repealing the word "recaptured" in the original provision and substitute the word "retaken" because "retaken" is more neutral in meaning, which is more suitable for clauses pertaining to the protection of children.

Mr Chairman, with these remarks, I propose to move.

Proposed amendments

Clause 9

That clause 9(a) be amended —

- (a) in subparagraph (iii), by deleting "and" at the end.
- (b) by adding -

"(iia) by repealing paragraph (b)(ii) and substituting -

"(ii) to furnish photographs of the person endangered and of himself, such photographs to be taken not earlier than 6 months prior to the date of being so required;" and".

Clause 12

That clause 12 be amended, by deleting everything after the section heading and substituting —

"Section 41 is amended -

- (a) by repealing "female, juvenile or child" wherever it appears and substituting "child or juvenile"; and
- (b) by repealing "recaptured" and substituting "retaken".

Question on the amendments proposed, put and agreed to.

Question on clauses 9 and 12, as amended, proposed, put and agreed to.

New clause 8A. Detention in hospital

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 8A as set out in the paper circulated to Members be read the Second time.

This is a consequential amendment resulting from the various rectifications of the cross references as set out in the paper circulated earlier.

Question on the Second Reading of the clause proposed, put and agreed to.

Clause read the Second time.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 8A be added to the Bill.

Proposed addition

New clause 8A

That the Bill be amended, by adding —

"8A. Detention in hospital

Section 34F(1) is amended by repealing "subsection (1)(a), (b) or (c)" and substituting "subsection (1)(a) or (b)".

Question on the addition of the new clause proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

COMPUTER CRIMES BILL 1992

CRIMES (AMENDMENT) (NO. 3) BILL 1992 and

PROTECTION OF WOMEN AND JUVENILES (AMENDMENT) BILL 1992

had passed through Committee with amendments. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

Members' motions

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches and Members were informed by circular yesterday. The mover of the motion will have 15 minutes for his speech including his reply and another five minutes to reply to proposed amendments. Other Members, including movers of amendments, will have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

INDEPENDENCE OF COMPLAINTS AGAINST POLICE OFFICE

MR JAMES TO moved the following motion:

"That this Council urges the Government to set up an independent body to receive and investigate complaints in relation to police officers with a view to replacing the existing Complaints Against Police Office under the Police Force."

MR JAMES TO (in Cantonese): Mr President, I move the motion under my name in the Order Paper.

Mr President, everybody recognizes the very important role that the police plays in our community; the public is also generally appreciative of the Police Force's good records in fighting crimes. For the maintenance of law and order, it is essential that the police be given effective power. At the same time, however, an effective supervisory and investigative system is needed, so as to prevent any abuse of power. Over the years, I, like some board/council members at various levels and some front-line social work groups, have discovered one phenomenon: More and more of the cases where members of our society seek assistance or air grievance have been cases involving alleged abuse of power or even brutality on the part of police officers. This observation tallies with the statistics released by the Complaints Against Police Office (CAPO), which indicate a rising trend of complaints alleging police assault. In 1986, complaints against police assault accounted for 27.5% of all the complaints against the Police Force. That proportion kept rising and it stood at 53.8% in 1991. Any responsible Legislative Councillor will raise this phenomenon for discussion. We have to deal with the few black sheep in the Police Force. In Hong Kong, the rule of law matters. We cannot adopt the approach of "redeeming one's sins by good deeds". We must not let the few black sheep taint the reputation of the Police Force. Nor should the good record of the Police Force as a whole blind us to the wrong-doings of individual police officers. We must see to it that the Police Force continues to win public support.

Let us look at the findings of the investigations of the past four years into complaints about police assault, which were endorsed by the Police Complaints Committee (PCC). In 1992, for instance, a total of 1 611 complaints were withdrawn or unpursuable, and 195 were classified as "no sufficient evidence" or "termination of investigation." Together, these two categories of complaints accounted for 98.9% of all the complaints received for investigation. Fourteen of the remaining complaints, accounting for 0.8% of the total, were found to be false allegations. Only one was found substantiated. In other words, only one out of nearly 2 000 complaints was found substantiated. I feel that I must ask Members of this Council and members of the general public: Do these findings agree with our observations in real life? It is no wonder that the above statistics were hotly contested by the public and their release by the relevant department prompted this Council's security panel to seek to meet officials concerned for explanations.

Legislative Councillors from the United Democrats of Hong Kong (UDHK), including myself, have conducted some painstaking researches into, and in-depth discussions on, CAPO's operations. We find that CAPO, being under the Police Force, begs the question of whether or not it is institutionally fit to play the role of a body that conducts independent investigations along principles of fairness and justice. An analysis shows the following main problems:

Investigator's identification

CAPO is a part of the Police Force. Its staff are seconded from the police establishment. They normally serve with CAPO for a certain period and then go back to the regular police force.

Under the circumstances, the investigators would regard their service with CAPO as a temporary posting. They are first and foremost police officers. The structure, culture and mentality of the Police Force are such that CAPO investigators are disposed, in spite of themselves, to show sympathy for, and be partial to, their subjects. This impedes their playing of an independent and unbiased role. It also impedes their efforts to uncover the truth.

Even if they want to be fair and just, CAPO investigators are under tremendous pressure for subjective and objective reasons. I mean pressure that comes partly from their relations with their colleagues under investigation and partly from the prospect of working with these colleagues after they leave CAPO.

CAPO investigators, who are seconded from the Police Force, are really under tremendous pressure. The existing system affords them no relief from such pressure. My second point is:

Public confidence

A representative of the Police Force once noted at a security panel meeting that several thousand complaints were received by CAPO each year and cited this as proof that the public had confidence in CAPO. He said that CAPO would not have received so many complaints if it had not had the confidence of the public. I want to take an exception to his reasoning. As we all know, CAPO is now the only body for receiving complaints against the police. There is no other channel. The fact that the public lodges complaints with CAPO, which is their only choice, does not lead to the conclusion that they have confidence in CAPO. I want at this point to say something from my community work experience with regard to complaints against the police. In my office, I received members of the public seeking assistance or having grievances to air. After listening to some assistance seekers' detailed descriptions of police excesses or even brutality, we advised them to take their complaints to CAPO. But they would not do so; they did not trust CAPO for it was part of the Police Force. Some people, particularly those from the lower social strata, such as street sleepers and ex-convicts, were treated badly by the police when stopped for questioning. Yet they wrongly supposed that they deserved this as "members of the lower classes" who are not in a position to challenge the police officers. If they were punched or kicked, they would feel that they were unlucky, that was all. They chose not to complain because they were afraid that, if they did, the consequences would be even worse. These are the realities, which, as we can see, are not reflected by the complaint statistics. Clearly, the existing system does not ensure that members of the general public will complain against the Police Force without having to look over their shoulders.

In addition, under the existing system, even if CAPO investigators disregard the pressure and do their best to handle complaints, the public still will not trust them, given CAPO's subordinate position in the system.

Therefore, the Government should accept the establishment of an independent CAPO. Even if the findings of complaints produced by this independent CAPO are similar to those shown by the present statistics, the public will find the findings convincing, coming from an independent body. The public will support the independent CAPO, which will then have public credibility for dealing with complaints against the police.

In addition to the above arguments, other Members from UDHK will be giving our analysis of the real situations at district level and the present conditions of PCC later in their speeches.

UDHK thinks that, under a new system or a reformed system, a new CAPO with investigative power, which is independent of the Police Force, should be set up. It will be independent of the Police Force and of other channels of complaints. It will be a statutory body charged specifically with the investigation of complaints and the making of recommendations on actions to be taken. It will not be a body handing down the rulings.

The new independent body will have the power to decide what forms of investigation it should use. When investigations into complaints are complete, it will make recommendations on what actions should be taken. For misconduct or violation of discipline which are not serious, it will be left to the Commissioner of Police to caution the offenders as appropriate. Where disciplinary action is recommended, an independent adjudicating body will hold hearings and make decisions. Where criminal prosecution is recommended, the Legal Department will prosecute the cases in the court for a fair ruling. This means that the investigators of the independent CAPO will concentrate fully on the investigation of complaints.

Summing up UDHK's reasons for proposing the establishment of a CAPO independent of the Police Force and the aforesaid proposals, I must stress once again that my motion has nothing to do with whether the existing system is fair or not but to restore public confidence in the Police Force and the police complaints system. Where the independent CAPO finds a complaint to be a false accusation, the integrity of the Police Force will become better established in the eyes of the public. And the public will accept the finding as more convincing. This will be better than the system that we have today, which provides those making false accusation with an excuse for not being treated fairly while denying the police officer, if he is wronged, any opportunity to clear his name.

Finally, some say that an independent CAPO will hurt police morale. I find this suggestion really surprising and perplexing.

Colleagues may remember that during the 1970s, before the Independent Commission Against Corruption (ICAC) was set up, corruption was quite widespread in the Police Force. It affected all levels from the top downwards. The establishment of ICAC indeed dealt a blow to police morale. Still, for the good of the community as a whole, the Government showed great courage and resolve by finally setting up ICAC, an independent body, to investigate police corruption. Corruption was much more widespread in those days than police excesses and police brutality are today. How, then, can the establishment of an independent CAPO hurt police morale? Do some people believe that police excesses and brutality are not the doings of a few black sheep, that they are quite common in the Police Force? Such a belief is indeed an insult to our police officers; nor does it reflect the real situation in the Force.

Also, if an independent CAPO will hurt police morale, then, can police morale remain high or be boosted with the condoning of police excesses? I absolutely refuse to accept or believe that this is in the culture of our Police Force. We are in the 1990s. Our community is advancing steadily in the direction of civilization and respect for human rights. Our Police Force, too, should head in such a direction. The mere weeding out of wrong-doers is not the larger aim of the new system. More importantly and at a deeper level, the new system aims to help the police in becoming a more rational Force and in building the right kind of culture for the Force.

Mr President, my motion today is not intended to find fault with the Police Force or to hurt its morale. Any impact that it has will be targetted at the promotion of a police culture marked by its respect for law and for human rights. Therefore, I hope that Members will deeply understand the wishes of the public, notice the deficiencies of the present CAPO and support my motion.

Lastly, I will quote a verse from the Bible for the inspiration of all of us: "But let justice roll on like a river, righteousness like a never-failing stream".

With these remarks, I beg to move.

Question on Mr James TO's motion proposed.

PRESIDENT: Mrs Peggy LAM has given notice to move an amendment to the motion. Her amendment has been printed in the Order Paper and circulated to Members. I propose to call on her to speak and to move her amendment now so that Members may debate the motion and the amendment together.

MRS PEGGY LAM moved the following amendment to Mr James TO's motion:

"To delete all the words after "That this Council urges the Government to" and insert the following:

"introduce measures to improve the existing system for monitoring and investigation of complaints against the Police in order to make it more transparent and improve public confidence, such as:

- (a) making the Police Complaints Committee a statutory body;
- (b) allowing the Police Complaints Committee to have access to complainants;
- (c) requiring the Commissioner of Police to report back and explain to the Police Complaints Committee any disciplinary or other action taken in respect of police officers;
- (d) posting some non-police personnel to the investigating teams in the Complaints Against Police Office, with a view eventually to heading the Office with a non-police officer;
- (e) improving publicity about the Complaints Against Police Office and the Police Complaints Committee; and
- (f) conducting a public opinion survey on the existing system for handling complaints against the Police."

MRS PEGGY LAM (in Cantonese): Mr President, I do not dispute the logic and the reasons behind Mr TO's motion. Like him, I think that the existing system for monitoring and investigating complaints against the police needs to be improved. But I am afraid that I am not persuaded by his argument that setting up an independent, non-police body to receive and investigate complaints is necessarily the best way to do so. I am speaking here as a Member of this Council, not in my capacity as Vice-Chairman of the Police Complaints Committee (PCC).

Last year I attended an international conference on the monitoring of complaints against the police, and found that such complaints are investigated by police officers in many other countries. It was considered by many representatives at the conference that there is a good reason for this: Police officers have the knowledge and expertise which are necessary to do the job. If we were to attempt to bring in outsiders who knew nothing of police procedures, we might not achieve much as a result. I firmly believe that, as long as the necessary mechanism safeguarding against unfairness and abuses of police powers are built into the system, police officers investigating complaints against the police is the most effective way of dealing with such complaints. In my view, there are safeguards in the present monitoring system. PCC is an independent body consisting of members appointed by the Governor to monitor the handling of complaints against the police. It examines each complaint case thoroughly, so as to be fair to both parties.

I am seriously concerned about the adverse effect which Mr TO's motion, if passed, would have on police morale. We have a very good Police Force. Members of the Force carry out their duties in a professional and dedicated manner. Setting up an independent unit to investigate complaints against the police would be a blow to police morale; they would regard it as a vote of no confidence. At a time when public order in Hong Kong is deteriorating, the last thing we want to see is our Police Force conducting their business in a half-hearted manner because it would obviously have an adverse impact on law and order and would be disadvantageous to our prosperity and stability during the transition period.

I firmly believe that the improvements set out in my amendment can address the concern raised by Mr TO, and yet preserve police morale. Let me deal with them one by one.

- (1) Statutory body — As far as I am aware, the PCC in Hong Kong seems to be the only one of its kind in the world which is not a statutory body. This lack of statutory backing does not hinder it from discharging its duties. However, I believe that setting out its functions and powers in ordinance would have definite advantages. It would make the functions and powers of PCC more clearly defined and better understood by the community, thus enhancing public confidence in the police complaints system as a whole. A statutory body, supported by an ordinance, would also have the

necessary legal and political backing to enable it to conduct its business without fear of interference; it would underline the independence of PCC, both now and in the future.

- (2) Interviews with witnesses — PCC is one of the few police complaints monitoring bodies in the world which does not have direct access to the complaints. Similar bodies are entitled to interview witnesses or attend as observers. The terms of reference of PCC are silent on whether members are entitled to interview witnesses. I believe that empowering PCC to interview witnesses will enable it to clarify directly with witnesses any ambiguities or discrepancies in their statements and it would therefore be in a better position to assess the truthfulness of these statements. This would also minimize the risk that the content of the written statements is influenced by the way in which the Complaints Against Police Office (CAPO) officers phrase their questions.
- (3) Report by the Commissioner of Police — I also consider it important for the Commissioner of Police to report to PCC on what disciplinary or other action he has taken against officers involved in complaints which have been substantiated. If the action taken is contrary to that recommended, the Commissioner of Police should be required to explain why.
- (4) Posting non-police personnel to CAPO — Mr President, Mr TO's motion is based on the unfounded worry that police officers investigating complaints against their colleagues will not be impartial and may be biased. In order to remove this worry, I propose to post non-police personnel to the investigating teams in CAPO, with a view eventually to have a non-police officer heading the office. This arrangement would ensure that investigations benefit from the input of non-police personnel and help expose any partiality or injustice during an investigation. It would be another monitoring measure. I very much hope that this would pave the way for CAPO to be eventually headed by a non-police officers in the future. There is both practical and symbolic value in doing so. It would retain police expertise in conducting investigations, and enable them to be carried out under the guidance of a non-police officers who would not have pre-conceived ideas, so that CAPO will be accepted by the public as an impartial organization. There is precedent for this. The Police Force already has a number of non-police officers in senior positions. It should, therefore, be possible for the Commissioner to consider posting non-police officers to CAPO.
- (5) Stepping up publicity over CAPO and PCC — From what I have observed, very few people know how CAPO operates, and this applies also to some Members of this Council; even fewer are aware

of the PCC. This is a real problem. If the public do not know that these organizations exist, how can we expect them to make full use of them and have confidence in them? The Government has not done, and is not doing, enough by way of publicity and briefings on these two organizations and in particular, their systems and procedures in dealing with complaints against the police. I urge the Government to do more in this respect, through announcements of public interests, pamphlets, the Police Community Relations Officers and probably the Junior Police Call. The public should know that they can complain to CAPO and that an independent PCC exists to make sure that the complaints are handled fairly.

- (6) Opinion survey — Despite Mr TO's motion, we do not know how the public feel about the existing system for handling complaints against the police. How then can we make an accurate assessment of what improvements should be made? Therefore, I urge that a public opinion survey be conducted on the subject as soon as possible to find out the public views on the inadequacy of the present system. This will then form a good basis on which we can develop proposals for improvements.

This speech is only the starting point for improvements to our present system. I believe that we should keep the system under constant review, in particular, in the light of the outcome of the opinion survey which I have proposed.

Mr President, I am convinced that my approach to the problem, which is to build on the existing system and to improve it, is both practical and pragmatic. It can achieve the purpose of the original motion, without making drastic overhaul to the system. Therefore, I think that this Council should urge the Administration to make these changes first, see how they fare and assess how the public view them. The overall interest of the community will be better served by this sensible and gradual approach.

With these remarks, Mr President, I move an amendment to the motion and hope that Members of this Council will support my amendment. Thank you.

Question on Mrs Peggy LAM's amendment proposed.

MR STEPHEN CHEONG (in Cantonese): Mr President, Hong Kong's present prosperity and stability owes much to the contributions of the police. The Police Force's toils and good records in maintaining law and order are visible to all. In the days to come, Hong Kong will continue to need an efficient and highly motivated Police Force.

In moving his motion today, Mr James TO seeks to establish an independent Complaints Against Police Office (CAPO). Will such a CAPO gain

the confidence of the public? Will it be definitely more effective and fair in dealing with complaints? If anybody thinks so, then I want to ask him: Is the existing system ineffective? Have we found enough evidence to show that the police is practising favouritism? Is the existing supervision mechanism a rubber stamp? I hope that Mr James TO does not think so. But the truth is that his motion indeed seems to propagate such views.

Of course, before going into the pros and cons of today's motion, I hope that one would have a clear idea about CAPO's work before drawing a conclusion. Nobody should jump to a conclusion merely on the basis of some statistics and some specious arguments.

CAPO is under the Police Force and handles public complaints against the police. Though such complaints are investigated by police officers, yet I trust that they would handle the cases justly and that they will investigate all complaints professionally. I never doubt police officers' professionalism or integrity in their dealing with such cases as in other kinds of investigations.

I can say so because I served for three long years as a member of the now-defunct UMELCO group on complaints against the police. This UMELCO group was the predecessor of the present Police Complaints Committee (PCC). Its principal responsibility was to oversee CAPO's operations and to review its handling of public complaints. Every month, CAPO submitted to the UMELCO group a full report on the cases that it had completed its investigations. The UMELCO group would study the report and conduct a random review of the cases by re-interviewing complainants, officers under investigation and witnesses. As far as I can remember, these reviews established that the police was correct and impartial in its conclusions about the cases that it investigated.

What is regrettable is that some people are now misleading the public with some over generalized and illogical arguments. They conclude that an independent CAPO is needed. I doubt that their conclusion is supported by any hard facts, analyses, sound arguments and convincing evidence. They note that only a few of the more than 2 000 complaints lodged each year have been found substantiated. They then conclude that they suspect that the existing police complaints system is totally futile. I wish to remind them of one point and they should bear this point firmly in mind. A police officer who is the subject of a complaint has the same rights as any citizen. In other words, he is presumed to be innocent until the complaint against him — that he has broken the law or done something improper — is investigated and fully substantiated. We should never have the misconception that the existing police complaints system must be ineffective unless a large percentage of the 2 000 complaints are found substantiated. There is one point that we must take note of, that is, how many of the complaints were lodged as a challenge to police authority? Young people tend to be rebellious. If we examine the complaints carefully, we will easily find that there are cases in which hot-headed youths rushed to complain against police officers with whom they had just exchanged heated words. Therefore, we should not become obsessed with figures. We should not make such a

proposal rashly in total disregard of the realities in our community. Also, there is a dangerous tendency on some people's part to exploit the popular demand for an administration which is accountable to the public by trying to make all existing institutions and mechanisms independent, to substantially revamp systems that are basically effective. Admittedly, no system is perfect in this world and our police complaints system is no exception. In fact, PCC should, as its predecessor the UMELCO standing group on complaints against the police did, from time to time review the operating procedures of the Police Force and make recommendations. CAPO usually is receptive to such recommendations. The system has been effective despite its minor flaws. To try to replace it with an unproven system is inviting troubles. It may be good publicity, but our main concern should be a meticulous and judicious review. Nor will an independent CAPO make the system better; instead, it will have the effect of creating institutional redundancy and duplication.

Hong Kong is now at a delicate moment in the latter half of the transition period. Unwarranted major changes are not advisable because their negative effects are really hard to assess. To say this is not to mean that we should do nothing. What we should do is simply to continue improving the existing police complaints system, making it more open and therefore more credible to the public.

Mr President, with these remarks, I oppose Mr James TO's motion and support Mrs Peggy LAM's amendment motion.

MRS SELINA CHOW (in Cantonese): Mr President, the Liberal Party Councillors support Mrs Peggy LAM's amendment motion. Analysis reveals that complaints against the police can be broadly grouped into two categories: the first category involves complaints made by suspects in criminal cases usually against police officers about physical assaults in the course of investigation. Such kind of complaints are so complicated that it must be handled by police officers who are professionally trained and conversant with investigative procedures in criminal investigation. Some lawyers told me that many of these complaints were strategic means commonly employed by the accused as a defence in court. No matter whether such complaints are genuine or not, the investigators must be those who have police officers' confidence. In view of this, the only viable alternative to the existing system is to set up another disciplinary body to handle such kind of complaints. Yet, is this really the best solution? Is this indeed necessary? Is this the public wish? Is this arrangement better than the existing system? All these questions call for our careful deliberations before making a decision. We paid a visit to the Complaints Against Police Office (CAPO) the day before yesterday. It was found that its organizational structure is sound. But the fact that it regards itself as a through and through investigation body makes it less attentive to its accountability to the public. As a result, its operation is not highly transparent. And this surely warrants improvements.

The second category of complaints are lodged against "trivialities" which irritate the general public such as poor demeanour, foul language and inaction on the part of police officers. All these complaints normally arise during police officers' daily handling of minor incidents. If the policemen can be more tactful, such kind of complaints are certainly avoidable. For some less experienced young police officers in the force, they may easily get annoyed when they deal with people who are a bit hostile to the police and such kind of complaints may easily ensue. I am happy to learn that CAPO is facing the matter squarely. In order to forestall complaints of such a non-criminal nature, some internal training and guidance have been provided to the force. It is hoped that noticeable achievements can be made soon so that the public know that we not only have a professional and clean police force, but also a force that is on the people's side, polite, compassionate and sympathetic.

We have a very important consideration before us, that is the view of the force and the police officers on turning CAPO into an independent body. According to my understanding, the police officers generally have a mixed feeling about CAPO. They hold it in awe and veneration. And they generally recognize CAPO as a fair and unbiased body. On the other hand, they strongly resist the idea of an independent CAPO for fear that it will be turned into a weapon to attack the police. Of course, some may say that this matter does not require serious consideration because this is groundless fear. However, we hold that it is essential to consider the matter also from the force's viewpoint. We want a force which is willing to risk their life to ensure that Hong Kong remains to be a safe city in which we can live and work. It is necessary to take into account their views and feelings while on the understanding that this would not compromise our principles. The general public acknowledges that we need a force with high morale and self-confidence to uphold law and order effectively.

Mr TO assured police officers just now that they need not worry and then cited many reasons why they should not worry and should not feel frustrated if it is decided that CAPO goes independent. He said that the number of cases lodged with CAPO is on the decline. This indicates that the officers in question are merely a few black sheep. The majority of the officers have nothing to worry. Such an argument is actually specious because every single police officer may be named in a public complaint, thus putting them under enormous psychological pressure. Any person who has the chance to talk with various ranks of police officers about this matter will understand that their worry is a very real one. Mr TO simply ignored this fact. All in all, we support Mrs Peggy LAM's proposals and hope that the Police Complaints Committee would play a more effective role in the monitoring of CAPO.

MR HUI YIN-FAT (in Cantonese): Mr President, I believe our colleagues still remember clearly that the Governor first floated the idea of introducing "performance pledges" to various government departments in his policy address last year. The objectives of these performance pledges are to improve the quality of public services and evaluation standards. Yet, more significantly it

implies that the top echelon of the Hong Kong Government finally realize the need for the Government to increase transparency, to receive complaints and to be monitored by the public so as to enhance its accountability to the public at a time when Hong Kong is developing into a democratic and modern society. Failing to do so, the Government will not be able to keep abreast of the developments and the aspirations of the public in this new age.

In my opinion, "performance pledges" should go beyond setting service standards and establishing channels for public monitoring. For large departments which have frequent and close contact with the public, independent bodies with its own staff should be specially set up to receive and handle public complaints against these departments. Unfortunately, the Police Force, which is the No. 1 government department both in respect of the number of its staff and the number of public complaints received, has all along adopted a semi-covert approach in handling public complaints. Evidently, it runs counter to the spirit of the "performance pledges" promoted by the Hong Kong Government.

By semi-covert approach, I mean that never mind the Police Complaints Committee (PCC) is independent of the police force and, for the purpose of demonstrating its accountability to the public, a report is submitted to this Council every year, what counts is that the Complaints Against Police Office (CAPO), which is responsible for carrying out investigations and submitting reports to PCC, is a section under the Police Force. What is more, PCC's ruling on each complaint is final and the complainants have no other recourse to lodge their appeals. In fact, none of my many previous referrals for such kind of cases has received a satisfactory and convincing ruling.

It is definitely not my intention to make light of PCC's monitoring power and intelligence, or to cast doubt on the impartiality of CAPO. Yet, the existing system indeed easily induces doubts as to whether the police officers would shield their colleagues under investigation. As a result, the system has failed to win public confidence. For this reason, although the figures provided by PCC show that only a very small number of complaints (less than 1%) were substantiated in the past and that an overwhelming majority of the cases were either withdrawn, not pursuable or without sufficient evidence and so forth, we really doubt whether the figures provided by PCC is the true picture as the impartiality of CAPO has long been open to question. In fact, how can we expect the man in the street who is no legal expert to collect evidence for complaint purpose in future on the scene when the incident in question is unfolding? And for some reason, they may also give up the chance to lodge complaints afterwards.

The Complaints Division under the Office of Members of the Legislative Council and the Office of the Commissioner for Administrative Complaints are bound by their terms of jurisdiction and cannot handle public complaints against the police. I think the only way to win public trust is to make CAPO independent of the Police Force. While I do see the merits of Mrs Peggy LAM's proposed amendments to introduce various improvement measures to

the existing system, I suppose it is still better to adopt the more drastic and confidence-boosting approach of making CAPO an independent body, no matter how the existing system is to be revamped.

In view of the huge structure of the Police Force and its wide contact with the public, I think the taxpayers will find it worthwhile if the Government allocates a bit more resources to the establishment of a complaint redress system with greater credibility. I certainly understand the merits and efficiency of a system in which the investigation duties are taken up by people familiar with the internal operation of the Police Force. In this connection, I propose that some of the investigators may be recruited from the group of experienced police officers who have retired from the force, when CAPO has acquired its statutory independent status. As the neutrality and efficiency of these officers are beyond doubt and, what is more, they will continued to be monitored by PCC, I believe we can expect to see remarkable results within a short time.

Mr President, with these remarks, I support the motion.

MR MARTIN LEE (in Cantonese): Mr President, I am very glad that both bridegrooms in this Council support the motion today.

I will speak only from the angle of relations between the police and the public.

A good relation between the police and the public is the prerequisite to public confidence in the Police Force. We surely hope that members of the public will have full, or even overflowing, confidence in the Police Force. This is because the role of the police ought always to be getting rid of bullies, bringing peace to law-abiding people and maintaining law and order. Today, when violent crimes are on the rise and when people's lives, property and safety are coming under increasing threats, we of course would like to see every member of the Police Force do his utmost to protect us. As a TV Announcement of Public Interest (API) puts it, this is "our police officers". Mr President, confidence takes time to nurture and is built in the course of practical work. But it takes only a few black sheep to ruin everything and do serious harm to the image of the Police Force.

There is no doubt that the present system for investigating complaints against the police does not have the support of the public. I believe that all the directly elected Legislative Councillors would share this view. We have come into contact with many ordinary people including ones who have lodged complaints against the police. Their personal experience and impressions have made them very unhappy with the system. And they have found that there is enormous room for improvement. In 1992, there were 1 827 complaints of police assault. Only one of them, or 0.054% (rounded off to 0.1% in the report) of the total, was found substantiated. The finding is miles apart from the public's perception. It begs the question: Are there loopholes in the system?

Are police investigations self-servingly biased? If the situation is allowed to continue and the questions in the minds of the public remain unanswered, it will be very difficult for the public to have confidence in the complaints system. In fact, the point in having a police complaints system at all is to provide a proper channel for the effective and fair handling of public complaints and to let the police know where improvements are needed. However, these appear to be very distant goals in Hong Kong.

One argument put forward by the police against reforming the complaints system is that "the police is already fair and impartial". And the investigation findings confirm precisely such a point. If this is the case, then we really must congratulate our Police Force on its being the finest police force, or at least one of the finest, in the world. Since our Police Force is honest and upright, why then is it opposing the reform so strongly?

Another argument often advanced by the police is that "the reform will undermine the morale of the Police Force". Some Members of this Council make the same argument. It is a fallacious argument. If the police's own investigations are already above-board, the reform will not result in a higher rate of substantiation. Yet, people will have greater confidence in the Police Force in the belief that the findings come from an independent investigative mechanism. Conversely, if the present investigations are not above-board, then this is all the more reason why the system must be reformed. Not only must police officers be punished if they are found to have abused their power, but, more importantly, we must stop a few bad apples from tainting the good name of the Police Force.

No matter from whichever angle one looks at it, I think that the reform will be useful and constructive to the police and to the public in the long run. It will only be good to police morale.

If we are not forgetful, we may recall the self-same two arguments advanced by the police 20 years ago, during the anti-corruption campaign of that time. The Blair-Kerr Report recommended that to wipe out corruption, decision had to be made to set up an Independent Commission Against Corruption (ICAC) to carry out investigations that until then had been conducted by the Anti-Corruption Branch within the Police Force. Arguing against this recommendation, the police was already saying at the time that "only police officers know how to conduct investigation into cases that involve their colleagues", and that "the reform will undermine the morale of the Police Force".

Twenty years have lapsed. Is anybody still saying that ICAC hurts the morale of the Police Force or of the Civil Service? Is anybody still saying that ICAC does not know how to conduct investigations? The public has been in all praise of the Government for fighting corruption and for becoming a more or less clean government. This has enhanced the Government's credibility and

boosted the morale of the Civil Service. Looking back, we must give the Government credit for the wise and firm decision that it made in those days.

Mr President, since the public and so many Legislative Councillors think that there are problems with the system, we should resolutely proceed with the reform and not be content with making such surface-scratching changes as those set forth in the fourth point of the amendment to the motion. We must set up an independent investigative body.

Mr President, we must also pay particular attention to the preliminary investigation. The first statements are the most important. Under the existing system, staff with the Complaints Against Police Office (CAPO) can be partial to their colleagues in the Force, by accident or by design, in the taking of the first statements from the relevant parties. If CAPO continues to take or handle the first statements in a manner that is unfair to the complainants, then it will not be of much help to pass the amendment and authorize the Police Complaints Committee (PCC) to interview complainants. If a complainant's first and second statements are inconsistent, then it will be difficult for either statement to be accepted or for the complainant to win on appeal, if any.

Summing up, I hope that the public will not lose confidence in the Police Force because of its dissatisfaction with the police complaints system. If the dissatisfaction remains unabated, there will very probably be social disturbances like those in Los Angeles over the police assault on a black man. Mr President, the United Democrats of Hong Kong is convinced that the reform called for by the motion will certainly have a positive impact on the quality of the Police Force, enhance public confidence in the Police Force and let us and the general public feel real pride in having "our police officers" as we watch the police's API.

Mr President, with these remarks, I oppose the amendment motion and support the motion.

MR TAM YIU-CHUNG (in Cantonese): Mr President, we often hear through various channels public comments as regards police officers using excessive means during the course of investigation to interrogate persons under investigation. In recent months, three cases have been brought to my attention of alleged assault by the police against persons under investigation. Although the complainants in these cases have sought assistance from the Complaints Against Police Office (CAPO), they have no confidence in the Office. According to the figures released by the authorities concerned, every year there are quite a number of complaints made by the public against the police. But for various reasons, the great majority of these complaints have not been thoroughly investigated, giving people the impression that they will languish into oblivion.

The helplessness and discontent of the public, especially the victims in the cases concerned, are obvious and must not be overlooked. I think it is no longer in question that there are problems with the present complaint mechanism, and reform of the mechanism can no longer wait.

From the public's point of view, the existing complaint mechanism is both too restricted and secretive. Most members of the public know little about the procedure of CAPO in handling complaints. Furthermore, the investigation of the complaints is conducted by the police themselves. It is therefore understandable that the public lacks confidence in such a complaint mechanism. It is without doubt very important to strengthen the role of non-police personnel involved in the process of handling complaints, in order that public sentiments can be more fully reflected.

Viewed from the angle of the public's rights, making CAPO independent of the police establishment will help avoid the conflict of roles encountered by the officers handling complaints and thereby enhance the safeguard for and the confidence of the public. Such independence should therefore be welcomed. But is it definitely sure that the independence of CAPO can solve the existing problems? Is that the only institutional safeguard for the public interests? Will it be effective? And will it bring negative consequences? All these need to be analysed on the operational level.

Besides, we have to take into account the views, sentiments and worries of our police officers. The appointment of some non-police personnel to investigate complaints will give rise to biased opinion out of unfamiliarity with the working procedures of the police. This will be really unfair to the police and will undermine their drive. But is such unfamiliarity with the work of the police insurmountable? Is it impossible to find people who are familiar with the work of the police to undertake investigation in this respect? Has there been sufficient assessment as to such possibility in this regard?

The reform of CAPO put before us is apparently headed for two different directions. But I hope that the supporting reasons for either direction can be fully considered before a conclusion is reached. We should not treat the issue as a matter of principle, but should instead make practical analysis. I also hope that practical reviews can be conducted of the shortcomings in the existing complaint mechanism in order to find out the fundamental problems and finally come up with a suitable scheme after considering the views of the various parties concerned and the relevant experience of other countries.

I think that the prime prerequisite for a successful reform of the mechanism for complaints against the police is the sincere co-operation between the police and the public. It will therefore be useful to strengthen the communication between the two to enable the public to understand more about the work and the sentiments of our police officers, as well as the procedures for handling complaints, in order that an impartial complaint mechanism can be set up on the basis of mutual respect.

Mr President, the amendment moved by Mrs Peggy LAM has itemized some improvement measures for the complaint mechanism against the police. Her amendment is, I think, constructive. But there are still a number of problems that need clarification. For example, if the Police Complaints Committee is to become a statutory body, what will be its relationship with CAPO? What will be their respective duties, powers and responsibilities? Are such improvement measures pertinent in addressing the shortcomings of the existing complaint mechanism? Can such measures solve the fundamental problems? I reiterate that reforms should not start without first conducting a practical study and should not end in some simplistic improvement measures like the ones before us now. However, as the amendment of Mrs LAM does not exclude the possibility of further reforms in the future, it will have my support.

MRS MIRIAM LAU (in Cantonese): Mr President, while it is important to have a police complaints system that is credible to the public, we must not forget that such a system also needs the trust and support of the Police Force. The criticism levelled at the existing system is mainly based on complaint statistics. In each of the past few years, complaints were maintained at the level of 3 000 or so. The number did not rise. Instead, the trend has been downwards. Complaints that were found substantiated are few and far between. They accounted for a very small percentage of the total. Some have deduced from these statistics that the public's confidence in the existing system is declining steadily. They have further deduced that there are serious problems with the system. I do not think that the number of complaints must increase with each year in order for us to be able to say that the system is sound and has public confidence. Nor do I think that a high percentage of complaints must be found substantiated in order for us to be able to say that complaints have been investigated impartially. Still, the critical comments have made it clear that the public does not fully understand the existing mechanism for handling complaints against the police or fully understand the relevant system of supervision. Indeed, there are deficiencies in the existing system, especially with regard to supervision. Improvements are needed. These are matters that we must look at squarely.

The Complaints Against Police Office (CAPO) now carries out all its investigative work in accordance with a stringent procedure. Its findings and the related data must all be submitted to the Police Complaints Committee (PCC) for perusal. As a former vice chairperson of PCC, I can give assurance that PCC always took an above-board and unbiased approach to, and reviewed, all cases objectively. Still, governed by its terms of reference, PCC can only unearth truth by examining the investigation reports and related files submitted by CAPO; it is not empowered to interview witnesses or make direct contact with complainants. Under such circumstances, when the affidavits of the two sides are equally persuasive, it is very difficult for PCC to decide which side tells the truth. Since the principle is that a guilty verdict can be returned only if the evidence is beyond reasonable doubt, such cases can only be put in the "lack of evidence" category. Even if PCC can directly take testimony from witnesses,

the results will not necessarily be different. Of course, if PCC has some investigative power, it will be able to play a more active role as a watchdog body by taking a more direct and more effective approach to make right from wrong.

Mr James TO may be well-intentioned to propose that the present CAPO be replaced with an independent body. He probably hopes that the establishment of this independent body will help to enhance public confidence in the Police Force. However, we must ask ourselves whether his proposal is going too far and will subsequently backfire. I believe that Mr TO, as well as others who support the establishment of an independent body to investigate complaints against the police, is well aware of the Police Force's misgivings about his proposal. It is worried that investigations will be conducted by persons not familiar with police work or police procedures. The police officers are also worried that this independent body will reverse the low rate of substantiation of complaints by being deliberately hostile to police officers and will be biased against them. In fact, there have been complaints against the police which were later found to be fabricated or malicious. No matter whether we agree with the police or we share their worries, the irrefutable fact is that they are indeed worried. I think that any attempt to change arbitrarily the existing system before removing their worries is bound to hurt police morale. Morale is hard to measure. I do not think that the Police Force will admit that their morale will be affected by such an independent body. We have more than 20 000 police officers in the force. Every day, they find themselves in situations where they may clash with the public, for instance, when they stop pedestrians and demand to see their ID cards, write traffic tickets, or serve court summonses. Each such encounter is a potential occasion for complaint against police officers. If only some police officers, afraid of being complained against or over-cautious because of the existence of the independent body, take a reactive approach in an attempt to avoid any trouble, I am afraid, effective law enforcement by the police is bound to be affected. Ultimately, it is the public who will suffer.

Clashes between the police and the public are not unique to Hong Kong. Foreign experience shows that a fair resolution of such clashes does not necessarily depend on having an investigative department independent of the police force. Under the systems adopted by the United Kingdom, Canada, Australia and the United States, complaints against the police in many cases are investigated by the police department and then monitored by an independent body. In almost all cases, such independent bodies are statutory bodies. In most cases, they have the power to initiate investigations on their own when necessary. For instance, in Britain and Wales, all complaints against the police are investigated by the police department. The findings are then reviewed by a Police Complaints Authority, which also monitors the investigations of all serious complaints. In Canada, complaints against the Royal Canadian Mounted Police (RCMP) are first handled by RCMP itself. If the way a particular case is handled is not to the satisfaction of the RCMP Public Complaints Committee, this committee has the power to conduct separate investigations on its own. In various parts of Australia, including West Australia, South Australia and

Queensland, there are statutory bodies overseeing how complaints against the police are handled. However, all complaints against the police there are generally investigated by the police department. The statutory bodies' main role is one of monitoring and evaluation. In New York, complaints against the police are looked into by the police department. The findings are then reviewed by a Civilian Complaint Review Board. From these systems used in foreign countries, we can see that there are indeed merits in leaving it to the police department to handle the preliminary investigations of complaints against the police. There may be practical needs to do so or the systems are adopted probably in consideration of their impact on police morale. Every country and every land set great store on law and order and on the morale of the police force.

Mr President, Hong Kong's law and order situation has not been good in recent years. And this has become a public concern. This Council, too, has held many debates on matters pertaining to law and order. Every time we did so, Legislative Councillors spoke with one voice as they noted the importance of boosting police morale. Their words are still ringing in one's ears. Now that the Police Force has voiced its concerns over, and raised strong objections to, an independent investigative body, which, in its opinion, will undermine police officers' morale, should we turn a deaf ear? Should we disregard its objections and insist single-mindedly on promoting a system with an independent investigative body? I would like to beseech colleagues to think again before making up their mind.

The amendment moved by Mrs Peggy LAM takes the deficiencies of the existing system into account and proposes some measures for improvement. I think that the measures she proposes will enable the Police Force to remain confident in the police complaints system and will enhance the system's public credibility. Given Hong Kong's present political and social circumstances, that appears to be the better course of action.

Mr President, with these remarks, I support Mrs Peggy LAM's amendment motion.

MRS ELSIE TU: Mr President, according to CAPO statistics, less than 1% of complaints against police are substantiated.

If these results are correct, why do we spend \$56 million a year on a Complaints Against Police Office (CAPO), and why do we waste the time of busy citizens on the Police Complaints Committee (PCC) for such a minor problem? Indeed, why do we even waste forests of paper preparing documents about non-events? In fact, if thousands of people every year make false or unsubstantiated complaints against police, there would be a case for setting up a Police Complaints Against the Public Office instead, to protect the police against the public.

Of course I am aware that some guilty persons will try to escape punishment by saying that the police used force to make them confess. But what about those who say they have been forced to confess to a crime they did not commit, and their acquittal in court has proved this to be the case? Even they cannot get justice by making complaint, but are told that while there is no evidence to prove their guilt, there is also none to prove their innocence.

I know that officialdom will tell us that an allegation must be proved by evidence — but there lies the crunch! If a complainant is beaten up in a police station, who is going to be his witness when the only persons present are police? Even if he is beaten up on the street, how will he find a bystander to come forward as a witness? We do not have too many guardian angels on our streets to do that!

Let me give you an example to show that a genuine complainant has little or no hope of proving his case. I dealt with this case myself.

A young man with a reasonably good job and no past police record was running down a street to buy something. Unluckily he was stopped and searched and he had left his identity card at home. He explained that his home was nearby, but the police squad took him to the police station where they made him strip off all his clothes and kneel down for a drug search. Knowing his rights, he insisted that a senior officer should be present during the search. Nothing was found on him, and he was charged with going without an identity card. In court he pleaded guilty to that charge, though arguably he might have been acquitted if he had explained to the magistrate that he was only a few yards away from his home.

Incensed by the injustice of the humiliating drug search, the young man complained to CAPO. The case dragged on for more than a year. I wrote several letters to CAPO and finally complained to the Governor (Lord WILSON). As expected, the complaint was found to be unsubstantiated. How could it be otherwise? He had no independent witnesses in the police station, and PCC, if it saw the documents at all, would never see the complainant as a nice young man with no axe to grind but shocked at his treatment by police.

Why waste time and money on these fruitless procedures?

It is totally unacceptable that police should judge police, especially when the only likely witnesses are also police. Even for the protection of their own good name, the investigations of complaints against them should be independent of police. Otherwise how can anyone believe the results?

I think I should emphasize that my criticism is not levelled at PCC. I know that they are expected to read volumes of documents, even on the most petty complaints. How can they do justice to the job by merely reading documents prepared by police? Any good judge will say that he bases his judgment not only on the facts of the case as presented in court, but also on the

attitude, the replies, the gestures and reactions of the accused and of the witnesses. But if the judge never sees the accused, how can he judge fairly? Yet this is what less experienced members of PCC are expected to do. Their job is Mission Impossible!

I am sure that the police will argue that outsiders do not understand police procedures and techniques, and that an independent body could not do the job. They will also say that setting up an independent body would damage police morale. I challenge the claim that an independent body cannot do the job. At the very least, the complainants should be heard in person by an independent judicial body which could include ex-magistrates and lawyers to provide some independent input into the investigations. The claim that this would damage police morale can only raise suspicions that they have something to hide, and I very much doubt the validity of this claim.

One further point I should like to make is that too much time and effort is spent on petty complaints such as using bad language. While I believe that police should be trained not to use bad language to members of the public, I do not think such complaints need lengthy investigations by CAPO, and could probably be dealt with by the divisional commander or senior staff. But when it comes to complaints of physical assault, humiliating treatment, false charges, or denial of the rights of an accused person, independent investigations are essential.

During my 30 years of dealing with cases in my ward office, I have heard many complaints against police. I am convinced that some, though not all, are injustices that the system does not allow to be substantiated. My battle for many years was a solitary one with little joy of success. I am therefore happy to see some younger colleagues now corroborating what I have been saying for so long. I trust that our appeal will not fall this time on deaf ears.

Mr President, I find the amendments helpful but inadequate and so I support the motion.

MR ALBERT CHAN (in Cantonese): Mr President, I believe that, more than any other government department, the Royal Hong Kong Police Force arouses extreme feelings among the people of Hong Kong. The public has mixed feelings for the Police Force. I believe that this is due to the nature of police work. Police work has very much to do with law and order. Everyone in Hong Kong wants to be able to live and work in peace, not bothered or encroached upon by others. So we are in great need of police protection. On the other hand, in the Police Force, there may be a small handful of bad apples who disregard law and violate discipline or who knowingly break the law, thus tarnishing the reputation of the force as a whole. Some people even find police officers detestable. The police has power under law to restrict people's freedom in specific situations, so as to be able to maintain law and order, to prevent and investigate crimes, to protect law-abiding people's lives and property and even

to direct traffic. Occasional clashes between police power and personal freedom are inevitable in our community.

Last year, my office received a case of public complaint. The complaint, which reflected some of the problems of the Complaints Against Police Office (CAPO), can be regarded as a typical case of alleged abuse of power. The complainant was a skinny young man. He was often stopped by police demanding to see his ID card. Perhaps it was something to do with his not-so-good looks. One morning in April last year, at the business district in Tsuen Wan, police stopped him and demanded to see his ID card and also to make a body search on the spot. He refused and requested that the search be made in a police station instead. According to the complainant, the police officer thereupon abused him with foul language. Eventually, a police van was summoned to take him to the nearby neighbourhood police unit. Inside the van, the officer dealt him with fist blows. Later, the complainant asked to see a doctor for an injury examination, but the police officer who had beaten him claimed that it was the other way round, that it was the man who assaulted him. Arrangements were then made for both persons to undergo injury examinations. Finally, the complainant was charged with assaulting the police officer. He therefore brought his case to CAPO. People at CAPO told him that as the incident took place inside the police van and there was no witness, without evidence, it would be difficult for them to investigate his complaint. They even went so far as to advise him to plead guilty to the charge of assault on the police. This incident shows us clearly the true nature of CAPO.

In my work at district level during the past years, I received a number of public complaints against police for abuse of power and violation of human rights. I conclude from these complaints that, very often, when there were no third parties present, situations would arise in which police officers did plant incriminating evidence on innocent parties, use torture to obtain confessions or violate human rights. Given that the complainants, who were then charged, were simply unable to produce witnesses to testify for them, even if they brought their cases to CAPO, their complaints would in the end not be pursuable for lack of evidence. People in CAPO sometimes would even dissuade complainants from formally lodging complaints.

We all know that police officers, too, are human and have emotions. Occasionally, we heard about police officers who made mistakes or even committed suicide under the stress of work or for other reasons. This shows that police officers can make mistakes when they are momentarily subject to emotional instability. Under the present arrangement, when a member of the public wishes to complain against a police officer who has made a mistake, his principal channel for complaint is one of the several complaints offices under the Police Force. The public is sceptical about the neutrality of such a system. In addition, over many years, only a shockingly low percentage of complaints have been found substantiated. Therefore, people cannot but wonder if the existing system still works. A moment ago, several Members talked about this problem. In the past few years, many people called for a reform of the existing

system, but the police and the Government refused to make the institutional reform. They said that the existing system was working well or that the reform, if carried out, would weaken police power and hurt police morale. In the absence of reform, the efficiency and effectiveness of the existing system has been declining steadily. I am convinced there is no other alternative but to introduce some well-thought out reform to the existing police complaints system. Such a reform is sure to be welcomed by the people of Hong Kong.

Recently, some police organizations have raised objections to the reform of the complaints system, particularly CAPO. The principal argument against the reform is that investigators who are not police officers do not understand the operations of the Police Force. We cannot but want to ask: Why is the police afraid to be investigated by non-police personnel? Is it because the police has too many "skeleton in the cupboard", too many secrets that it does not want others to know?

A few years ago, when the Government proposed establishment of the Office of the Commissioner for Administrative Complaints (OCMAC), many people supported and welcomed the move. This was mainly because OCMAC would be able to conduct independent investigations. As a member of the Regional Council, I share the view that the Regional Council should be brought under OCMAC's jurisdiction.

When Lord MacLEHOSE proposed establishment of ICAC during the 1970s, it was said that one of ICAC's tasks would be to wipe out corruption in the Police Force. Thereupon, some police officers reacted strongly and took drastic actions. They petitioned and later tried to force their way into the office of ICAC. They said ICAC had too much power and that its investigations would undermine their morale. Now, thanks to ICAC, people have confidence that the Police Force can operate independently and it is a force free of corruption. This past lesson shows that the present worries expressed by the police are unwarranted. For this reason, I support Mr James TO's motion.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

MR MARVIN CHEUNG: Madam deputy, I wish to state at the outset that I have the greatest admiration for, and confidence in, our police force which can rival any other force in the world in terms of its integrity and effectiveness. The total number of complaints lodged against the police is only just over 4 000 each year, whereas the total strength of the force is over 30 000. The low number of complaints against the police is ample evidence of this fact.

In my view, the biggest single potential obstacle to a smooth transition of sovereignty in 1997 is deterioration in law and order. We shall need to place an even greater degree of reliance on our police force if we are to maintain, let alone improve, on the state of law and order in the final period before 30 June

1997. I am therefore conscious of the potential adverse impact on police morale if the motion proposed by the Honourable James TO is passed and implemented by the Administration.

My colleagues have advanced arguments for and against Mr TO's proposal to make the Complaints Against Police Office (CAPO) an independent body but I am sure all of us agree that improvements to the present system are called for, particularly in the area of transparency and accountability. I have no concrete evidence to indicate whether the present CAPO is effective or otherwise or whether it is free from bias. However, if the present CAPO is in fact ineffective or biased, then the radical changes proposed by Mr James TO must be supported. If, on the other hand, the present CAPO is in fact performing its work effectively and without bias, why should members of the police force have any fear that the proposed arrangements would be oppressive to them?

I recognize that a large proportion of complaints against the police may have been made by persons who themselves may have committed offences and may be abusing the system. If the proposal by Mr James TO is implemented, I think there should be some sanctions for making frivolous complaints on the second and subsequent occasions. At the very least, these persons should be made to pay for the administrative costs of dealing with their cases.

Also, the role of the proposed independent CAPO should be limited to fact finding. Any disciplinary or other action should continue to be undertaken by the Commissioner of Police.

I do not think the amendments moved by the Honourable Peggy LAM can be supported because in my opinion Mrs LAM's proposals will not be effective in making CAPO effective and unbiased if in fact it is not so. A statutorily constituted Police Complaints Committee (PCC) will still not have the required resources to function as an effective check on CAPO. A right to contact complainants is meaningless unless it is backed by appropriate and sufficient resources. There is no proposal to enable PCC to conduct its own independent review, even if it is evident that the original investigation had not been properly conducted.

All in all, it appears to be a half-hearted attempt to gloss over the issue. I therefore feel compelled to vote against it.

Finally, I believe that an independent CAPO would demonstrate to the public that our police force is an exemplary one. Far from damaging the reputation of the force, it will give a credible stamp of approval to a highly respected police force, with a very difficult task ahead of it to perform.

With these remarks, I support Mr James TO's motion.

MR CHEUNG MAN-KWONG (in Cantonese): Madam deputy, I was one of the young people who supported you many years ago, though I am no longer a young man now. Hong Kong is a community ruled by law, and everyone is equal before the law. Nobody, be him a member of the public or a police officer, is above and beyond the law. Police officers perform their duties by virtue of powers vested in them by law. If there is not a sound system for receiving and investigating complaints against any abuse of such powers and then taking disciplinary actions, the real victims will include not only the aggrieved individual complainants and the good name of the Police Force as a whole but also the rule of law and public confidence in law enforcement.

Democratic societies set great store on checks and balances. The checks and balances are intended to curb excesses. The statistics from the Complaints Against Police Office (CAPO) are such that people have become extremely sceptical about the effectiveness of the existing complaints system to check police power. It can even be said that people can no longer tolerate the situation. An oft-cited but extremely ridiculous figure will suffice to convince us of the gravity of the problem. Among the 1 827 allegations of police assault that were made in 1992, only one, just one, was found substantiated. One complaint survived; the rest perished. Should we congratulate ourselves on this single breakthrough or should we moan the demise of the other 1 826 complaints? Of course, not every complaint was justifiable. Still, the true picture is not likely to be so preposterous as to show that almost all of the complaints are false accusations, or attempts to harass the police. The police is like a tiger. Not everybody would dare to have the tiger by its tail.

Madam deputy, 1992 was certainly not an exceptional year where the complaints against the Police Force is concerned. Over the past four years, nearly 7 000 complaints of police assault were lodged. Only 12 of them, or less than 0.2%, were found substantiated. This shows that, if an ordinary member of the public, with neither power nor connections, wants to successfully lodge a complaint against the police, he will find this beyond the bounds of possibility. The indisputable fact is that the existing police complaints system must be radically and structurally overhauled. It does not help to do patchwork on the existing system, to change it a little bit while speaking well of it in a big way. The key to reform is to detach CAPO from the Police Force, making it an independent body which, like the Independent Commission Against Corruption (ICAC), reports directly to the Governor. This will restore public confidence in the police complaints system and in the rule of law.

Some say that making CAPO independent will hit police morale. Morale is not everything or something more important than truth. I wonder if those who put the morale above everything else have given any thought to the fact that, if the few power-abusing black sheep in the Police Force are placed beyond the reach of the law, then the sense of justice of the majority of the police officers, who are law abiding, and the sense of justice of the community will be undermined. If the fabled GUAN Yu were still alive today, he, too, would shake his head and heave a sigh of disapproval. One can say this: The rate of

substantiation of allegations in complaint cases is a yardstick of confidence. The public wants to put the Government to the test, to see if it is determined to uphold justice and to extend law and justice to every department, including the Police Force, which is responsible for the enforcement of law and the maintenance of the Government's effective rule.

It cannot be denied that the existing police complaints procedure has many inherent loopholes. The following are some examples: some people are too frightened to complain about verbal or physical abuses or intimidations suffered inside a police station. In some cases, the aggrieved party is beaten by a police officer when the two of them are by themselves and he cannot complain for lack of a witness. Worse yet, he may be counter-charged with assaulting the police officer and resisting arrest. Under such circumstances, he will have no energy or courage left to press his complaint after going through a lot of trouble just to get his name cleared. What is the most outrageous is that, if he turns to the Legal Aid Department for help, he will find that the department would only extend assistance to those who got severe beating and institute civil proceedings for them. Madam deputy, a person who has been severely beaten is probably too limp to pursue his complaint. We can imagine from this how many people are denied help because the beatings they allege do not meet the strict definition of severe beating. The existing system, I think, will only foster a kind of police culture that is irrational and a kind of police procedure that has no place in a civilized society. It corrupts those who had high aspirations when they first joined the Police Force, turning them into part of the system.

Meanwhile, limited by its powers, the existing Police Complaints Committee (PCC) cannot hold hearings, call witnesses or independently gather evidence. It is not an appellate body. Nor are its recommendations binding. PCC indeed does not live up to its name. It is toothless like a paper tiger that cannot play an effective supervisory role. In moving her amendment, Mrs Peggy LAM proposes to have some additional powers vested in PCC. But the proposed powers do not include the power to conduct independent investigations or the power to authenticate the complaints lodged. The amendment will merely elevate the paper tiger to a toothless tiger, which will still lack the power and authority to take action against power abusers, to change the irrational police culture and to promote the rule of law by ensuring that everyone is equal before the law.

Madam deputy, I support Mr James TO's motion, which seeks to make CAPO independent. Its most important spirit is the call to separate the power of law enforcement from the power of supervision and to set up an independent body which has its own staff to conduct independent investigations and arrive at independent decisions. An independent CAPO will let the public see more clearly fairness and justice in action in the area of complaints against the police. Such a reform will be extremely important. It will become a milestone in our progress towards building a civilized community where the rule of law is upheld.

Madam deputy, with these remarks, I support Mr James TO's motion. Should this motion fail to be carried, we will move it again next year.

MR FREDERICK FUNG (in Cantonese): Madam deputy and colleagues, I support the proposal that the Government should set up an independent body to receive and investigate public complaints against the police. It is mainly because this can boost public confidence in such an investigation body and make the public feel that the probes are truly fair and just. The public will no longer have to listen to some people's claim that the complaints are handled impartially. The present practice of having the complaints against police investigated by the police officers themselves is not necessarily unfair. Yet it arouses public concern that the police may handle the complaints in a you-scratch-me-and-I'll-scratch-you manner and be partial to their colleagues. This conception has a direct effect on dissuading the public from lodging complaints. According to the annual report of the Police Complaints Committee (PCC), there were over 3 000 complaints received each year from 1987 to 1991. But only less than 5% of these cases were substantiated. And less than 1% of assault cases, which, over the years, have accounted for the greatest number of complaints, were substantiated in 1991. I believe that man in the street, apart from using his precious time, also needs considerable courage and support if he takes the trouble to complain against the Police Force, a law enforcing authority. For this reason, I believe that among such cases, only some of them are practical jokes or frame-up, not to mention that frame-up is an offence liable to punishment. Given the 90%-odd complaints classified as unsubstantiated, we really feel doubtful of the initiative and neutrality of the Complaint Against Police Office (CAPO).

I also received some citizens' complaints against CAPO for malpractices. According to them, the staff of CAPO advised them to go back to the police station in question and to lodge their complaints with the superiors of the malpractitioner. They also tried to persuade them to withdraw the complaints they had brought to CAPO. In fact, it is precisely because the complainants had no confidence in these police officers that they lodged their complaints with CAPO but, to their dismay, CAPO advised them to go back to the police station in question. I think CAPO is very irresponsible. I wonder how many cases among the 60%-odd withdrawn or unpursuable cases in 1991 were withdrawn under such circumstances.

Earlier on the Junior Police Officers' Association expressed their concern that an independent CAPO would undermine the police's morale and invite malicious frame-up. I think, as long as the present operation is in good shape, an independent CAPO will only enhance the Police Force's fair image as well as public confidence in the policemen. What is more, opportunity could also be taken to get rid of the handful of black sheep in the force. All this ought to boost their morale. As regards the frame-up cases, the Association for Democracy and People's Livelihood and I propose that vigorous prosecutions and heavier penalties could be a deterrent.

According to what the Secretary for Security said recently, since the investigators need some inside knowledge of police policy and procedures, an independent CAPO made up of non-police personnel will have difficulties in recruiting the suitable staff to carry out the investigations. Yet, take the Office of the Commissioner for Administrative Complaints as an example, their investigators are also not former staff of the government departments under investigation but the Office can still train up its own investigators to have a good knowledge of the operation of various departments.

At present the staff of CAPO are deployed from the establishment of the Police Force. Generally speaking, they will be posted back to the force after working in CAPO for a certain period of time. In this connection, the investigators will regard their posting to CAPO as temporary duties and their jobs in the force permanent ones. It is not easy for them to maintain an independent and fair role structurally, culturally and psychologically. Police officers posted to CAPO, if handling the cases given to them impartially, may be in an awkward position and snubbed by their colleagues when they are posted back to the force.

As efforts should be made to forestall the blurring of the separation of the powers to enforce law and to monitor the police, I think there is a need to set up such an independent statutory body and recruit non-police personnel as investigators to receive and investigate public complaints against police officers. This will enable the investigations to be conducted in a more impartial manner and win public confidence. A feasible solution is to extend the jurisdiction of the Office of the Commissioner for Administrative Complaints so that it will be empowered to investigate the complaints against the police force.

For this reason, I support Mr James TO's motion. As for Mrs Peggy LAM's amended motion, I think it is evidently a step forward because the power of PCC to monitor CAPO will be enhanced, but the members of PCC are, after all, working on a voluntary basis and most of them are, just like Mrs LAM, not only busily engaged in public service but also have to take care of their own business. According to the amended motion, the investigations are still mainly left to police officers, who are also in possession of the materials of the cases they handle. It means that PCC can only play a curtailed role. I have reservations about this proposal.

MR SIMON IP: Madam deputy, the Government maintains that an independent Complaints Against Police Office (CAPO) will lack the necessary expertise to carry out the job and undermine the morale of the police force. What it seems to overlook, however, is that the issue at stake here is not just a question of efficiency or effectiveness. It involves far more important principles of constitutional significance.

Foremost, the central issue here is the abuse of state power. The powers of the police to use force and to deprive citizens of their liberty represent the use of state power in its most potent form. Of course, we need to bestow these powers on the police for legitimate and essential purposes. But if these powers are abused or exceeded in any way, it becomes a state encroachment of civil rights unacceptable in any free society.

So the issue here is not just about efficiency and effectiveness, though they are important, but about the credibility of the police force as an organ of the state, the transparency of procedures relating to investigation of complaints and the public's confidence in this powerful law enforcement agency. The present system does not inspire confidence. The substantiation rate of complaints has been consistently low.

If CAPO were an independent body vested with adequate powers and resources to conduct investigations effectively, a low substantiation rate would not cause alarm or adverse comment. As things stand, an observer can be forgiven for concluding that there is a flaw in the system caused by bias or partiality.

A completely independent CAPO must be the ultimate goal. The Government's objections to this are the usual bureaucratic defences of the *status quo*, which were also used years ago against the setting up of the Independent Commission Against Corruption (ICAC). Nobody now would deny the achievements of the ICAC in fighting bribery and corruption in the public sector in general and the Police Force in particular. Another useful example is the Commission for Administrative Complaints. Does anyone now seriously suggest that since the Commission was set up, investigation of government maladministration has not improved? Do these bodies lack expertise and do they undermine morale? The answer I think is "no".

Another argument advanced is that, as a profession, allegations of misconduct or abuse of powers should be investigated by the profession itself, similar to doctors, accountants and lawyers. While I accept that policemen are members of a profession, they are more importantly also public officers who exercise strong executive powers in their daily duties. When those powers are abused or exceeded, an internal professional investigation is plainly not sufficient.

Finally, it must be to the benefit of the Police Force as a whole as well as individual officers whose conduct is called into question for an independent body, after a full and proper investigation, to acquit them of wrongdoing. Such an acquittal would be much more credible and authentic than one following an internal investigation with the suspicion of bias hanging over it.

I now turn to Mrs Peggy LAM's amendment to the motion. I agree in general that we should strengthen the powers of the independent monitoring body, the Police Complaints Committee (PCC). Although the measures she proposes are an improvement, they do not go far enough.

While I shall advance my ideas on how the PCC can be improved, I should not like it to be thought that this is a better alternative to an independent CAPO.

To make the PCC an effective monitor of CAPO, there are three different but related aspects: First, the power of initial investigation; second, the power of reinvestigation and third, the enforcement of findings.

First, power of initial investigation

Experience overseas shows that serious allegations are usually investigated by a body independent of the internal investigative unit, such as the Ombudsman or an independent committee similar to the PCC in Hong Kong. The trend is to expand the jurisdiction of these independent bodies in the initial investigation, covering not only serious allegations but also complaints which concern the internal investigative unit itself, or complaints involving an officer senior to the unit.

Second, power of reinvestigation

The effectiveness of a monitoring body lies in its powers over the body it monitors. At present, the PCC may only ask CAPO to conduct further investigations in respect of a complaint and revise its conclusions based on any further evidence obtained. It has no investigative role.

One modest proposal which has enjoyed support is to grant the PCC direct access to complainants and witnesses. This would enable them to evaluate the evidence themselves, rather than to conduct paper reviews based on information supplied by CAPO.

Third, effective enforcement of findings

There are two ways in which the findings of the monitoring body may carry more force. First, its findings should be binding on the police. If it recommends that disciplinary action should be instituted, that recommendation should be followed. At present, the PCC cannot compel the police to take disciplinary action and may only comment in its report on the failure to do so.

Secondly, the Police Disciplinary Tribunal should contain an element independent of the police. For example, it should be chaired by a judicial figure with members drawn from the public. This would enhance public confidence in the system by ensuring impartiality and independence.

In conclusion, we need a far more radical, root-and-branch overhaul of the complaints and investigative system to allay the perennial misgivings, whether justified or not, that CAPO is biased. The public, indeed the police themselves, deserve better.

Nothing I have said is meant as a criticism of the Police Force for which I have great respect. On the whole, they do a fine job in a complex and changing socio-political situation. As in any field of human endeavour, some people fall below acceptable standards. In the case of the police, an independent body to investigate complaints would enhance its image, increase public confidence in its professionalism and integrity and ultimately lead to a greater respect for law and order.

With these words, I support the motion.

DR CONRAD LAM (in Cantonese): Madam deputy, it is in the nature of many people to want to manipulate power and to hide their defects. I think we should learn some lesson from the incidents taken place last year in Los Angeles where some police officers assaulted a citizen and in Shenzhen where public security personnel rode roughshod over citizens standing in line to buy shares. As the saying goes, "A big tree is bound to have withered branches". It is normal for there to be some bad elements in our huge Police Force. Still, the Commissioner of Police's reluctance to part with the No. 1 vehicle licence plate and the curtailment of district board members' freedom to join the local fight crime committees reveal some people's mentality as a self-righteous and self-centred "big brother". Hong Kong is not where "political power grows out of the barrel of a gun". Yet history shows that even the highest echelon of the local Administration has been very accommodative to the police. People who have vested interests, out of selfishness, naturally resist any system that promotes justice and limits the abuse of power.

Many will agree that, while the steady improvement of the quality of the Police Force is a contributory factor to the public trust enjoyed by the Force today, another important reason is the Government's establishment of the Independent Commission Against Corruption (ICAC) in the wake of the GODBER incident. Some regard the establishment of ICAC as the historic turning point of the police where the quality of service is concerned. We must not forget that the Police Force at the time was quite resistant to ICAC. But is there still any sceptic today, given the achievements of ICAC? We have never heard anybody propose the dissolution of ICAC or suggest that ICAC should turn over its investigations to the individual departments, letting them investigate themselves.

To further enhance public trust in the Police Force and improve the quality of the Force's service, the next historic turning point should be the establishment of an independent Complaints Against Police Office (CAPO) outside the police establishment.

As 1997 draws near, the relations between Hong Kong and China are getting closer. This is all the more reason why we must keep vigilance over any possible influence on the Hong Kong Police Force in terms of its operating style from their counterparts across the border. It is therefore all the more necessary to have an independent body to monitor police performance.

The arguments against such an independent body are quite weak. Firstly, there is the argument that outside investigators do not understand the operations and procedures of the Police Force. If this argument is valid, then ICAC, the Customs and Excise Department and even the Police Force itself should not be investigating the staff of other departments, should they?

Secondly, some argue that the independent body, in view of its job entry requirements and promotion prospects, may not be able to recruit needed staff in sufficient numbers. But, I think, recruitment will not be a big problem if the pay is attractive, the public image is good and the work gives greater job satisfaction. Also, staff may be seconded from other government departments.

Thirdly, some express worries that an independent CAPO will put pressure on the Police Force and hurt police morale. But I believe that such a reaction from police officers will be short-lived as it was immediately after the establishment of ICAC. Besides, genuine gold stands the test of fire. If one acts properly, why should one fear investigation? At the end of the day, the establishment of an independent CAPO should have positive impact on police morale, not negative.

With regard to administrative expenses, if we want to save this "economic cost", then we must pay a high "social cost". The latter means that justice will not be upheld and the public will become alienated from law enforcement bodies. We must be ready to pay a price for a just society, no matter how high it is. We must not forget that, in some parts of the world or under some administrative systems, social justice is beyond people's reach though they are willing to pay. In this regard, the people of Hong Kong may consider themselves very fortunate.

I appeal to the Government to seek public views on this issue and to make the final policy decisions in line with the wishes of the public. It is worth noting that, according to the records kept by my office, the number of complaints against the Police Force is second only to the number of complaints against the Housing Department. From my dealing with the police and the complainants in such cases, I think two points are worth noting: (1) The circumstances at the scene are very disadvantageous to the complainants; and (2) Police officers are much more loyal to their own department than they are anxious to serve the public.

Madam deputy, with these remarks, I support the motion and oppose the amendment motion.

MISS EMILY LAU (in Cantonese): Madam deputy, my office has recently published a newsletter and the headline of one of the front-page articles is "Nowhere to Complain". The article is about complaints against two kinds of people: policemen and medical practitioners. This indicates that my office has received many complaints from the public against these two kinds of people. We have tried to lodge these complaints through various channels, but our efforts have been totally fruitless. My voluntary workers and I, as well as many members of the public, are very unhappy with this.

Madam deputy, some people say that Hong Kong is a police state. In discharging their duties, some police officers would abuse their power by using violence, some would use foul language, behave impolitely and occasionally would even lay charges that are not based on facts. All these are very serious allegations. We hope that an independent body can be set up to make impartial judgements in the investigations concerned. Last year, the Complaints Against Police Office (CAPO) received some 3 200 complaints. There being now some 27 000 police officers in total, this means roughly that one in every eight police officers has been the subject of complaint by the public. I believe that this figure deserves our attention. But as a matter of fact, the number of complaints against the police has been dropping. From the peak period of 1986 when there were 4 000-odd complaints, the figure dropped to some 3 000 cases last year. We cannot, however, say merely from the decrease in complaint cases that the public is satisfied with the police. I believe that the situation is in fact just the opposite. If one takes a look at the complaints received by the offices of Members of this Council, one will find that the public is increasingly dissatisfied with the CAPO for failing to make impartial investigations. I am therefore very supportive of Mr James TO's motion, and I hope that the Administration will be determined in undertaking sweeping reforms as far as the matter of complaints against the police is concerned.

Madam deputy, I agreed very much with Mr Marvin CHEUNG when he said, "During this transition period, what is the most important is to maintain the rule of law". I believe that nobody will disagree with this statement. It is definitely not our intention to deal a blow to the morale of our police, but we would like our citizens to have confidence in our Police Force and also to respect them. As many Members have said, there is a small number of black sheep in the police who do things which tarnish the public's impression of the Police Force. That is something that we would not like to see, and rectifying measures must be taken as soon as possible.

As many colleagues have already mentioned, the biggest problem with the CAPO is to have the police investigating themselves. This is also a point for repeated criticisms by the public who says that the police are shielding their own colleagues. This may not be true. But I believe that when justice is done, it must also be seen by the public to be done. As many colleagues have said, if there is nothing wrong, why afraid of letting an independent body make the investigations? I will have to hear what the Secretary for Security has to say to

us later by way of explanation. Therefore, I support the original motion. I sincerely call on the Administration to seriously consider setting up an independent body which will operate in accordance with the principles of fairness and impartiality and offer an equal opportunity to the complainant and the police officer complained against to present their case to the other party. This body should also be seen by the public to be playing the role of an objective and neutral arbitrator who will definitely not side with either side. Besides, the process of investigation should be as transparent as possible, and most importantly, the final outcome of investigation should be clearly made known to the public, rather than like the present situation of muddling through with it.

As regards the amendment moved by Mrs Peggy LAM, I cannot lend my support to it, because she has only proposed a tiny reform of giving statutory status to the Police Complaints Committee or extending its power a little bit. I think that this cannot fundamentally solve the institutional problems referred to by Members. Furthermore, I am in grave doubt as to whether this Committee, with only 10-odd committee members and some 20 persons working in its secretariat, can have the means and resources to monitor the investigations of around 3 000 to 4 000 complaints a year. Even if the Committee is to become a so-called statutory body with the power of summoning witnesses, I still doubt whether it can really do what we expect it to.

Madam deputy, I saw and heard it last night on the television that the police told a press conference that they had set up a "Complaints Prevention Committee". I was astounded on hearing that. Will it forbid the public to lodge complaints? Of course not. This Committee is in fact set up in the hope of making it unnecessary for the public to lodge complaints. Such public relations techniques are, I think, really lousy. The most effective way of stopping the public from lodging complaints is to get things right so that nobody will need to complain. Mr HUI Yin-fat has mentioned just now the idea of making performance pledges. Although the police have made one or two, I think those are not enough. I hope that under the direction of the Chief Secretary, more performance pledges can be made. Only by so doing can the problem of public confidence be solved.

THE PRESIDENT resumed the Chair.

MISS EMILY LAU (in Cantonese): Mr President (it is now the President and not the President's deputy who chairs the meeting), I therefore hope that Members will support Mr James TO's motion. I also hope that the Administration can understand that our action is out of good intentions and definitely not meant to deal a blow to police morale. We hope to strengthen the

public's confidence in the police and enhance the authoritative standing and credibility of the police. If the Administration is willing to consider setting up an independent investigation committee, I believe that will be helpful in achieving those ends.

With these remarks, I support the original motion.

MR FRED LI (in Cantonese): Mr President, before I deliver my prepared speech, I would like to play the part of Mr James TO as if I am the mover of the motion and give some response to Councillors who support the amendment to the motion. I hope that these Councillors will not portray other Councillors who support an independent body to be ones trying to crush police morale, or paying no heed to the performance of the Police Force and its hard work for Hong Kong's stability and prosperity. I hope that such a perception does not exist. We feel that the Councillors, whichever of the two views they subscribe to, indeed have the interests of the public and the credibility of the Police Force in their hearts.

A moment ago, Mr Stephen CHEONG talked about his experience of several years ago. He referred to there being some 2 000 complaints. Actually, his figures are an error. I think he should bring himself up to date with regard to the Complaints Against Police Officer's (CAPO's) current workload. In 1992 alone, there were 3 250 cases. Complaints involving police assault still account for the bulk of them. There were more than 1 800 of them, or more than half of the total. This indicates a rather serious situation.

The Commissioner for Administrative Complaints (CAC), who deals with departmental malfunctions and administrative irregularities, oversees almost all government departments, including all disciplined forces except the police and, of course, the Independent Commission Against Corruption (ICAC). Disciplined forces which fall within CAC's jurisdiction, such as the Customs and Excise Department (CED), are engaged in work which is similar to that of the police. And these officers often risk their lives in operations. If anyone has a complaint against CED, he can lodge it with CAC, and the latter will then investigate CED. The police is beyond the scope of CAC's jurisdiction. And CAPO is a department under the Police Force, not outside it. The question that I want to ask is: Why is the Police Force so special? Why is the Police Force subject only to in-house monitoring? Why can it not be overseen by any outside body? The police, of course, explains that they know their own affairs the best and that they can investigate themselves the most effectively. Many Councillors also mentioned this point a moment ago. They have confidence in the Police Force to conduct its in-house investigation and believe that police officers under investigation will co-operate with their colleagues. However, have they given any thought to public perceptions? Among all disciplined forces, police officers clash the most often and have the most extensive direct contacts with the public. They are naturally an easy target of public complaints. My office, for instance, recently received many complaints alleging planting of incriminating evidence

and assault by the police. I could not tell whether their allegations were true or false, so I advised them to take their complaints to CAPO. Regrettably, they ended up so frustrated that they wanted to complain against CAPO as well. I do not know what to do. If a person wants to complain against CAPO, he may have to take his case to Police Complaints Committee (PCC). I feel that the public basically does not have full confidence in the Police Force's in-house investigation. This is the reality that we must accept. The question is not simply one of morale. A moment ago, many colleagues said that the police knew its own operations the best. I think that this is true. But it is also true that, if we legislate and set up an independent department or independent body, it could recruit its staff from the Police Force. This happened to ICAC at the time of its establishment. ICAC hired many excellent and experienced police officers. The independent body may do the same. Mrs Peggy LAM is now proposing ways to improve PCC. One of her proposals is for PCC to hire some non-police personnel as officers in charge. This shows, or does it not, that she too thinks that some non-police personnel should be involved with PCC's front-line investigations. I feel that, it would be better to replace the existing mechanism with a new system than making some changes. To do less is to scratch the surface and will not really be the right way to deal with the problem.

I will not go into the morale issue here. But I do wish to point out that CAPO is not a statutory body. It is not established legislatively. It is a mere administrative body, an office within the Police Force. It is not an independent body at all. I have discussed this issue with some members of the law profession. They know from experience that, where a person complains to CAPO that a police officer has assaulted him or framed him with the planting of incriminating evidence, the police will do everything it can to prosecute him. To use a popular term, the police will try to "nail" him. Why? It is because the police wants to show that it has not done wrong as alleged. Generally speaking, where cases like assault, abuse of power and manhandling are concerned, such actions are usually not committed by a single black sheep but probably involves a group of detectives or a police squad. The police will surely try to protect its people, or their careers will be in jeopardy. Therefore, where a suspect, who happens to be a complainant against the police, is charged, the police will do everything to prosecute the complainant such as finding experienced crown counsels or even hiring lawyers in private practice, so as to make sure that the case will be won. In contrast, what support will the complainant, an ordinary citizen, receive? CAPO will tell him that it can do nothing for him while the case goes on trial in the court. Therefore, ordinary people do not receive comparable support. In sum, I feel that an independent body will enhance public confidence. I do not wish to go over the same grounds covered by many Councillors a moment ago. The four of us, Councillors from Meeting Point, support Mr James TO's motion and oppose the amendment motion.

Mr President, I so submit.

MR MAN SAI-CHEONG (in Cantonese): Mr President, at present the institutions responsible for investigating and monitoring complaints against the police are the Complaints Against Police Office (CAPO) and Police Complaints Committee (PCC) respectively. However, the majority of the public thinks that there are inadequacies in the existing mechanism for monitoring the police, and indeed there is a need for some radical changes to be introduced.

May I first give a real case as an example. As an elected Councillor, I received a complaint from a member of the public in my ward office. He told me that he went to CAPO to complain about the police making trouble at his home. Though a sergeant of Section A of CAPO was involved in the incident, the case was surprisingly dealt with by Section A, and the reference number of the case was changed on that night. A few months later, the case was rejected and was then transferred to another section. The case was eventually brought to an end through internal proceedings on the ground that the police officer complained against was off duty at the material time and he lightly got off with just a verbal warning. The said complainant had witness(es) who could prove that the police did go to his home to make trouble; yet CAPO did not call any witness to take statement. Though some may argue that this is only an isolated case, we can, however, notice from this particular case that in screening and classifying complaints, there are indeed instances of CAPO showing bias in favour of the police and protecting well-acquainted colleagues. Due to CAPO's lack of transparency and openness in its process of screening and classifying complaints, it is therefore highly probable that these black sheep who knowingly violate the law may have a chance to manipulate the complaints. Hence, if the said member of the public had not had the chance to lodge a direct complaint with me — which has enabled me to understand the true story thoroughly — it would simply have been impossible for me, as the chairman of PCC, to know that CAPO had received such a case.

PCC of course needs reform so that the mechanism for complaining against the police can be improved. However, I think that the most thorough overhaul is to make CAPO independent. An independent complaints office can avoid the double role of the police enforcing the law and investigating complaints against themselves. It will also avoid giving people the image of unfairness or cause for embarrassment. This will then increase the credibility of CAPO in the eyes of the public tremendously. If an investigating body is not a neutral one, and does not have enough credibility, how can the public have confidence in it? there are actually examples in other countries where a neutral investigating body is formed by non-police officers. For instance, Minnesota and Columbia of the United States are good examples in which the investigating bodies operate satisfactorily and enjoy public confidence. The independence of CAPO not only can avoid the police discharging a dual role of enforcing the law and carrying out investigation of complaints against themselves, which will then give credibility to the office in the eyes of the public. In the long run, with an unbiased and independent CAPO commanding wholehearted acceptance and respect from the public, public confidence in the police will actually increase, and police morale will be boosted instead of being undermined, as argued by

some people. Conversely, if CAPO does not turn into an independent body, this will render the public suspicious of whether the police are intentionally parrying the issue and hoping to cut "underhand deals" and to protect the interests of the Police Force unilaterally by controlling CAPO. In fact, members of the Police Force need not overreact to the proposed independence of CAPO, believing that its independence is a deliberate oppressive measure to them. A fair and unbiased independent body will not side with the interests of any party, and neither will it be particularly oppressive to the police who are enforcing the law. In the process of investigation, it will take into account both the plight and difficulties of the police in law enforcement.

Regarding PCC, I am of the view that reforms should be carried out immediately. This is to put in it sync with the independence of CAPO, enabling it to monitor the operation of CAPO and function as an effective check on complaints, hence safeguarding both the police and public. In the circumstances, the police need not overreact by establishing an internal organization to prevent complaints by the public against them. This will only give the public the impression that the police only want to protect their own interests and do not actually have the sincerity or determination to solve the existing problems of CAPO. After independence, CAPO can in fact still have police officers to assist some neutral parties, in the course of their investigations, in understanding the general mode of operation of the police. This will then eliminate worries of the police in the course of enforcing the law. Therefore, members of the Police Force should be relieved and need not be over anxious. Whether PCC can operate well and fully perform its monitoring function depends, to a large extent, on whether CAPO can be fair and unbiased and be sufficiently independent. This is because complaints are primarily handled by CAPO itself. I therefore support the original motion of Mr James TO.

MR WONG WAI-YIN (in Cantonese): Mr President, over the years, the number of complaints against the police has been maintained at more than 3 000 a year. Allegations of police assault have accounted for more than half of all complaints each year. Less than 1% of the complaints each year have been found substantiated. As a result, public confidence in the Complaints Against Police Office (CAPO) has declined by and by. The community has also been calling for the establishment of a CAPO that is independent of the Police Force. Recently, this demand of all sections of society has grown stronger. They, including colleagues in this Council, think that the existing CAPO must be revamped, so as to regain public confidence. For this reason, Meeting Point fully supports Mr James TO's motion today which calls for the establishment of an independent CAPO. Meeting Point also welcomes the amendment moved by Mrs Peggy LAM, who proposes measures to reform, and give more authority to the Police Complaints Committee (PCC). But we do not support the amendment, for the reason that a reformed PCC is no substitute for the establishment of an independent CAPO.

The police has always been adamantly opposed to the establishment of an independent CAPO, arguing against it along three lines as follows:

- (1) We have an independent PCC that can sufficiently monitor CAPO's operations. But the truth is that the existing supervisory mechanism does not have sufficient power. We know that the existing system has many flaws which are basically of a structural nature and which cannot be remedied by tinkering and patchwork. We badly need a new structure, that the public can trust, to replace the existing CAPO, in which the public generally has no full confidence. Meeting Point thinks that the reform of CAPO is more important than the establishment of a better system of supervision and that, in any case, the two should proceed simultaneously. Both are indeed important.
- (2) The police argues that it is the most appropriate and most effective for it to investigate its officers, since the police knows its own operations the best. PCC and the police have argued repeatedly that, if a police officer is investigated by outsiders who are not familiar with police work, their investigative capability and efficiency will not be high. In fact, such an argument reflects a misunderstanding of a central flaw of the existing system. The greatest problem with the existing system lies in the establishment. An independent CAPO, if our proposal is accepted, can recruit investigators from among experienced police officers. Its investigative capability consequently will not be undermined. On the contrary, it will have more choices when recruiting its staff. In contrast, the existing CAPO is part of the Police Force. Its staff are seconded from the police establishment. Generally speaking, they serve with CAPO for a certain period and then go back to the regular police establishment. For these investigators, service with CAPO is a temporary tour of duty. They are, after all, permanent staff with the Police Force. Structurally, culturally and psychologically, it is difficult for them to play an independent and unbiased role. Though CAPO investigators may want to be as fair and just as possible, they are subject to all kinds of pressure. The pressure comes partly from conflict between themselves and the police offices under investigation. On the other hand, they must cope with the perceptions of a distrustful public. People in Hong Kong generally think that members of the Police Force cover up for one another. For this reason, we have received many public complaints. They all alleged that, when they took their complaints to CAPO, the duty officers there made all kinds of remarks to deflate their confidence and dampen their desire to pursue their complaints. Such impropriety on the part of CAPO's staff does not help to boost the citizens' confidence in CAPO.

- (3) The police argues that an independent CAPO will hurt police morale. This point was mentioned a moment ago by many Councillors who oppose the establishment of an independent CAPO. It seems that they are casting a vote of no confidence in the Police Force before we make a try at the proposal. We feel that, for the short term, it is understandable that the police should feel doubts about the reorganization. However, we know that a more independent complaints body is better able to monitor, and effect improvements in, the use of police power in response to the overall needs of the community. In the long run, it will enable the Police Force to operate more sensibly and in a manner that is more responsive to the needs of the public, thus winning the greater trust of the public.

Some Councillors expressed concern just now that the police might take a reactive approach in order to avoid being complained against. It seems that these Councillors, too, have cast a vote of no confidence in the Police Force. I hope that the Secretary for Security will, in his reply later on, clarify whether the police will indeed "go slow" because of the establishment of an independent CAPO.

Lastly, Mr President, the existing CAPO is like a person who is seriously ill and seems beyond cure. A major surgery is needed to save his life. But can we cure him the by strengthening the position and power of the consulting physician? Apparently not. Therefore, I appeal to all Councillors to support the establishment of an independent CAPO, thus performing a major surgery to save CAPO in which the public apparently has no confidence.

Mr President, I so submit to support the motion.

8.00 pm

PRESIDENT: It is now eight o'clock and under Standing Order 8(2) the Council should adjourn.

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

Question proposed, put and agreed to.

DR TANG SIU-TONG (in Cantonese): Mr President, the Complaints Against Police Office (CAPO), since its establishment in 1973, has always been an object of public denunciation. This is understandable. We do not have to look far before getting the answer. In 1992, of the 3 200-odd complaint cases against the

police, the successful rate is only 0.7%. And of the 1 827 cases of police assault complaints, only one case was found to be substantiated after investigation. Such a low rate is really disappointing. Take for an example, regarding the letters I referred to CAPO over the past six months, apart from some "standard" formal acknowledgements, there was no reply whatsoever in the form of an investigation report. It really makes me very upset. As an elected Member of this Council, I have often heard of complaints against the police but it is a pity that all these complaints end up with nothing definite. The most common excuses given by CAPO are insufficient evidence, withdrawal of complaints, unable to pursue or complaints unable to be substantiated. The public have no way to find out how such investigations are conducted nor have any idea of the grounds on which the conclusion is reached. The public could be forgiven to suspect that the officials are shielding one another. This also explains why CAPO lacks credibility.

The motion debate today is approaching the end. Allow me to make a general conclusion here. The drawback of CAPO's operation lies in the fact that investigations into public complaints against police officers are carried out by police officers. The public would think that the investigators would be partial to their colleagues under investigation. Besides, some of the investigators are deployed from the Police Force and after a certain period, they would return to their original posts. Chances are that they may work with officers whom they once investigated. Under such circumstances, how can we expect them to handle the complaints impartially?

Secondly, the successful rate of complaints is very low. Take for an example, in 1992, the substantiation rate for police assault cases is 0.05%. Why is it so low?

Thirdly, lack of transparency. The complainants have no channels through which they could know the process of the investigation or reverse the police's decisions. They do not know what sort of punishment imposed on, or disciplinary action taken against, the accused police officers. The Police Complaints Committee (PCC) does not have any real power either. It cannot summon witnesses nor hold hearings and has no investigative power and own staff, just like a "toothless tiger" which looks powerful but, in fact, toothless.

The police are not in favour of an independent investigative body. This is understandable. They stress that an independent CAPO would undermine their morale and outsiders may not understand the police's administrative and law enforcement procedures. And this would easily lead to misunderstanding. Furthermore, most of the police's information must be kept confidential. And such information may leak out if outsiders are brought in to carry out the investigations. Moreover, experience in the past shows that the substantiation rate of complaints is very low and does not justify the efforts to set up a separate investigative body. After all, these arguments are not invalid. Both sides indeed have their case. While it is essential to maintain law and order, yet

such job can easily lead to abuse of power. How can we strike the right balance?

Perhaps we may work out a feasible solution if we sum up the views from different sectors. The complaints handled by CAPO are mostly those concerning the police officers' attitude when they carry out their daily duties. They are not serious and grave offences like those handled by the Independent Commission Against Corruption. Therefore, perhaps a slight restructuring of CAPO will solve the problems and it is not necessary to set up an independent CAPO. One alternative is to put CAPO directly accountable to the Commissioner of Police. And the investigators are to be chosen from experienced police officers. A separate grade should be created for these officers, who, as a departure from the existing arrangement, would not be posted back to their original units to resume their previous duties after serving in CAPO for a certain period. This may put a stop to any half-heartedness on the part of the investigators in their investigation, who are in fear of the embarrassment to be encountered when they are posted back to the force. In complaint cases where senior police officers are involved, officers of even higher rank or appointees by the Commissioner of Police should be assigned to take charge of the investigation.

To enhance transparency, we could allow non-police officers to be appointed to CAPO's investigative teams so that non-police officers could have access to the whole investigation process. This will help in gaining public credibility. The outcome of the investigations and the subsequent disciplinary action, if any, should be made public so that the public and the complainants could be put in the picture. PCC should be given real power in the sense that it could summon witnesses and hold hearings or initiate re-investigation. And it should be turned into a channel of appeal. To forestall any abuse of this channel, if it is proved that the allegation is fabricated, the complainant in question is liable to legal responsibilities.

As a matter of fact, the law is no more than a reflection of human feelings. No matter how meticulous the law is being laid down, there could still be loopholes. If not so, lawyers will find it hard to exploit it. Good education is the most basic solution. The Government should give police officers more training and enhance the communication between the police and the public so that, by and by, police officers would strive to uphold the spirit of the rule of law and respect human rights as reflected in the way they carry out their duties in maintaining law and order in Hong Kong.

The Hong Kong Police Force have done a very good job and have been held in high esteem among the people. It is unfortunate that CAPO was unable to fulfill the people's aspirations for years and even became a target of public criticism. It is high time for CAPO to undergo an overhaul. Although it is yet to be proved that a CAPO independent of the police is beneficial to Hong Kong, a reform indeed brooks no delay. Fairer and more open investigations, the

provision of channels of appeal to the public and a monitoring committee with real power are all indispensable.

Mr President, with these remarks, I support the amendment motion.

PRESIDENT: Mr James TO, do you want to reply to the proposed amendment? You will be limited to five minutes.

MR JAMES TO (in Cantonese): Mr President, first of all I should like to thank Members for their concern about this motion which has a direct bearing on the day-to-day life of the people and on law and order. Just now I had an interesting observation, which is that those Members who spoke against my motion but in favour of the amendment, including Mr Stephen CHEONG, Mrs Peggy LAM and Mrs Miriam LAU, have all served with distinction on the Police Complaints Committee. They have used various terms and phrases such as "assure", "I firmly believe" or "from my experience" in their speeches. I believe that from their experience they do truly and honestly believe in the effectiveness of this monitoring system and the impartiality of officers of Complaints Against Police Office (CAPO) in getting to the truth of each and every case. This is their true and honest belief. But quite on the contrary, I as well as many other Members have found that many citizens truly and honestly believe that CAPO has not been impartial or they doubt its impartiality. Now we have two beliefs. Some people really believe CAPO investigations have been impartial, while the public definitely suspects that that is not the case.

I think this is a constitutional matter. Rightly as Mr Simon IP has put it, what is the held view of the Government in its handling of this matter and how will it strike a balance between these two schools of opinion? I believe this point is indeed very clear and specific.

On the other hand, I have another observation about police officers of CAPO. It is about their personal sentiments. One such officer told me saying, "Like several members of the Police Complaints Committee, I swear that I have been very impartial and done my job fearlessly. But I feel the pressure. It is because when I investigate my colleagues, there is indeed pressure. But I have been doing my job fearlessly. I will feel aggrieved if Mr James TO will say at the meeting I have been partial to my colleagues." I wanted to explain to him I would say publicly in this Chamber: It is precisely because you have done your job fearlessly despite the great pressure you are under in confronting your colleagues that the public believes and feels the pressure too. Within this system, the public's view is: "I understand you are under pressure. Therefore, I would not wish to have you do your job under pressure. I wish to have an independent system under which a team of independent investigators will be assigned to do the job. In the absence of pressure, both sides can put their hearts at ease." Similarly, some police officers have said to me: "Mr TO, when we go to CAPO our mood is different from that in going to an independent

institution. It is because CAPO officers after all have served in the disciplined service. They understand the style and methods of the Police Force. I would be pretty scared if I were to go to an independent investigative institution, for example, if the ICAC invited me for a cup of coffee without any apparent reason." We need to understand what kind of feeling this is. What does it imply? From the public's angle, this "relaxed and relatively less high-strung" mood of a police officer under investigation by another police officer is precisely the cause of public concern. Therefore, addressing this complex sentiment, I hope the Administration will give a positive response whichever motion is passed.

There are several points I wish to raise as well. Some Members who spoke earlier hold the view that police officers worry about the possibility of being framed up if they were to be investigated by non-police officers who are not familiar with police procedures. I believe, as many Members have suggested, we can recruit some police officers now serving in CAPO. I believe that the first batch of staff to be recruited by any new independent institution must be serving CAPO officers, the senior ones in particular. Moreover, I think that there will be no problem with training fresh graduates or recruits from the many disciplined forces which have experience in criminal investigation, such as Customs and Excise, Immigration Department, ICAC and even private investigators.

Besides, are the many complaints of beating really as complicated as those big frauds investigated by the Commercial Crimes Bureau? I believe that common sense, in addition to some basic knowledge about the police force, will be more than enough to enable the investigator to arrive at an absolutely clear analysis of a complaint.

As to the point raised by Mrs Selina CHOW that many of the complainants are themselves defendants of cases pending trial, I can give her some figures as reference. According to information given to me by the police, there were only 387 such examples out of 1 660 complaints last year. In other words, the complainants in more than 1 200 complaints of beating by police were not defendants in cases pending trial. In the end, only one case was substantiated. I think that was the result. Today, Members have advanced arguments for and against the motion. I hope the Secretary for Security can give a positive and comprehensive response.

SECRETARY FOR SECURITY: Mr President, I have listened carefully to the views expressed by Members in support of Mr TO's motion. But I do not believe that it is necessary or desirable to establish a separate independent body to investigate complaints against the police, although I accept that improvements can and should be made to the system for investigating and monitoring such complaints. That is our intention.

It should not be assumed that officers of the Complaints Against Police Office (CAPO) would naturally tend to protect their colleagues under investigation. During each of the past three years, an average of 320 police officers who were the target of complaints were, following a thorough investigation, the subject of criminal or disciplinary proceedings or warnings. That does not indicate bias or lack of objectivity in investigating complaints against the police. Rather the reverse. The maintenance of discipline, and of standards generally, is one of the prime concerns of the Commissioner of Police, as it must be for the head of any disciplined service. The need to uphold the standards and reputation of the Force is understood and accepted by officers at all levels, and they are not tolerant or forgiving of those who let the Force down.

It also should not be assumed that there is some minimum proportion of complaints which must be genuine and should, therefore, be substantiated. There is no objective basis for this. Statistics can be very misleading. The low rate of substantiated allegations must be seen against the background that some 60% of complaints received by CAPO each year cannot be pursued, because for example the complainant withdraws the complaint voluntarily. The substantiation rate of complaints which are investigated is about 7%. Another 9% are resolved informally after discussion and explanation, and with the agreement of the complainants.

There are very good reasons why the police, in the front line of law enforcement, will always attract a large number of unjustified complaints. Some who are prosecuted lodge complaints to try to discredit the arresting police officers as a means of defence. Some make complaints in the hope of avoiding prosecution altogether. Others may lodge complaints in the heat of the moment, for example after receiving a summons for a minor offence, but on calmer reflection decide to retract the allegation.

I have heard the suggestion that a person will not bother to go through the complaint process unless he has a genuine cause for grievance. That, at best, is another assumption. If it were to be accepted as a basis for believing a complainant's word, police officers would have little protection against malicious complaints. Police officers have a right to be presumed innocent unless there is adequate reliable evidence to the contrary. For serious allegations, the question whether there is adequate reliable evidence in a particular case is judged not by CAPO but by the Attorney General's Chambers.

In any case, the success or otherwise of a police complaints and redress system should not be judged just on statistics. What is more important is the benefit which society as a whole derives. Complaint cases enable the Police Force to improve its service to the public, to revise its procedures, and to impress upon all police officers the need to be courteous and considerate in discharging their duties.

It is of course important that independent, non-police members of the community are involved in the consideration of complaints against the police in order to ensure impartiality. This is the reason for the Police Complaints Committee. The Committee consists of people of high standing and integrity appointed by the Governor to monitor the investigation of complaints by the police. It is assisted by an independent secretariat. The Committee analyses and considers the result of each investigation. It can, and does, refer cases back to CAPO for further information and investigation where it considers this necessary to ensure that a complaint has been dealt with fully and fairly. In the final analysis, if not satisfied with CAPO's investigation, the Committee can draw a case to the attention of the Governor. This system imposes pressure on CAPO to ensure that complaints are investigated thoroughly and impartially.

The Administration remains of the view that, while monitoring should be done by an independent body, investigations should continue to be carried out by the police. There are good reasons for this. Complaints against the police usually allege breaches of the criminal law, or of police discipline or procedures. Some are straightforward crime reports which clearly should be a matter for the police; others require a knowledge of police procedures, and in the final analysis the exercise of professional judgement as to whether the action of the police officer under investigation was justified in all the circumstances of the case.

The viability of establishing an independent unit comprising non-police officers outside the Police Force must be questionable. It would be difficult to recruit and retain investigators of the right calibre. It would inevitably be a small organization with little variety in its work and with very poor career prospects, very different in nature and size from the Independent Commission Against Corruption which investigates all allegations of corruption in both the public and private sectors. It is for these reasons that in almost all jurisdictions comparable to Hong Kong, investigation of complaints against police officers is carried out by the police. The Administration is not convinced that an independent unit would be better or more effective in dealing with such complaints. We are supported in this view by the Police Complaints Committee which recommended in its recent review of the police complaints system that investigation should continue to be done by CAPO. This recommendation, I emphasize, was made on their own initiative by a group of independent members of our community, based on their years of close observation of the work of CAPO.

That said, the existing system is not perfect. I accept that it can, and should, be improved to make it more effective and transparent. The proposals of Mrs LAM's amendment to the motion are good suggestions to this end.

There would certainly be an advantage to making the Police Complaints Committee a statutory body. Its functions and powers would thereby be better defined and more easily understood. A statutory monitoring system would put

Hong Kong on a par with many other similar jurisdictions. We intend to make a start now on drawing up legislation for this purpose as soon as possible.

The Police Complaints Committee has also proposed that it should have access to complainants and witnesses. We accept this in principle. If the Police Complaints Committee is able to interview witnesses, this should enable the Committee to perform better its monitoring role. It will then be able to clarify with witnesses ambiguities and discrepancies and make a better assessment of the whole case. We are examining further this proposal in consultation with this Committee including the evidential aspects of statements made voluntarily by complainants to a member of the Police Complaints Committee; the rules and guidelines to be followed by members of the Committee in conducting such interviews; and the criteria which the Committee will follow in deciding when to conduct interviews.

The proposal that the Commissioner of Police should report back and explain to the Police Complaints Committee any disciplinary or other action taken in respect of police officers is, I believe, already largely existing practice. At present, CAPO send regular progress reports to the Police Complaints Committee on action taken in respect of complainees. The report also shows any internal action taken against officers who have been the subject of complaint, even though no specific action against them has been recommended by CAPO or the Police Complaints Committee. I agree that we should look at ways of strengthening this system along the lines suggested by Mrs LAM, and this we intend to do.

We shall also consider the suggestion that some non-police personnel should be included in the investigating teams in CAPO, with a view to boosting public confidence in the system. I will discuss this with the Commissioner of Police.

I also agree that, at present, publicity of the work of CAPO and the Police Complaints Committee is inadequate. This has helped to foster misunderstanding about our system for handling police complaints. We intend to improve publicity and public awareness, so as to correct misconceptions which may discourage members of the public from lodging complaints, and to assure complainants and complainees alike of the impartiality of the existing system.

I also agree that we would benefit from more reliable information on the views of the public about the existing system for handling complaints against the police. The secretariat of the Police Complaints Committee is planning to conduct a sample survey of complainants whose cases have recently been finalized. This should give us some indication of how the existing system might be improved further. The Administration will also discuss with the Police Complaints Committee how we should seek to gauge public opinion on other aspects of the system to see whether further changes are necessary.

Mr President, it is important that the system for handling police complaints should be, and be seen to be, open, fair and transparent. We should seek to build on the present system, not to overthrow it. The proposals in Mrs LAM's amendment to Mr TO's motion will, I believe, achieve real, worthwhile improvement, and form a basis on which further improvements can, if necessary, be made. This approach to improving the existing system is pragmatic and sensible. It will enable us and the community as a whole to review the need for further changes in future.

Mr President, I commend Mrs LAM's amendment.

Question on Mrs Peggy LAM's amendment put.

Voice vote taken.

MRS PEGGY LAM: Mr President, I claim a division.

PRESIDENT: Council will proceed to a division. The division bell will ring for three minutes.

PRESIDENT: Would Members now please proceed to vote?

PRESIDENT: Do Members have any queries? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Edward HO, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Gilbert LEUNG, Mr Eric LI, Mr Steven POON, Dr Philip WONG and Dr TANG Siu-tong voted for the amendment.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Mr Roger LUK and Ms Anna WU voted against the amendment.

THE PRESIDENT announced that there were 24 votes in favour of the amendment and 29 votes against it. He therefore declared that the amendment moved by Mrs Peggy LAM was negatived.

PRESIDENT: Mr TO, do you wish to speak further?

MR JAMES TO (in Cantonese): Mr President, first of all, I would like to point out that in his reply given just now, the Secretary for Security has evaded the question of whether the morale of the police would be damaged. If the original motion is carried, I hope the Secretary for Security would establish an independent unit to investigate complaints against the police. This will be good for the Police Force as it will help to preserve the morale of the police officers during the transition period and it will demonstrate to the public the Administration's commitment in this regard.

I am shocked by the remarks in the Administration's reply that it is not convinced that an independent complaint against police unit should be established. If the original motion is passed, I hope the Administration would act in accordance with the wishes of the majority of the people. Last Session, my motion on redevelopment was passed by a narrow margin of one vote. But action on my proposal has been delayed for 10 months. It is hoped that if my motion is passed this time, the Administration will not apply any stalling tactics and leave it on the shelf for two to three years. I hope the Administration will seriously consider Members' views.

Lastly, I would like to express our gratitude to Mrs Elsie TU for her effort in combating the problem of corruption and striving for the improvement of the Police Force over the years. I think credit should also go to her for making possible today's motion debate. And her effort in reflecting the grievances of the complainants is much appreciated.

Question on Mr James TO's motion put.

Voice vote taken.

PRESIDENT: Council will proceed to a division and the division bell will ring for three minutes.

PRESIDENT: Would Members now please proceed to vote?

PRESIDENT: Do Members have any queries? If not, the results will be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Gilbert LEUNG, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Mr Roger LUK and Ms Anna WU voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Edward HO, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Steven POON, Dr Philip WONG and Dr TANG Siu-tong voted against the motion.

Mr TAM Yiu-chung abstained.

THE PRESIDENT announced that there were 32 votes in favour of the motion and 20 votes against it. He therefore declared that Mr James TO's motion was carried.

REFERENDUM ON POLITICAL DEVELOPMENT

MR SZETO WAH moved the following motion:

"That this Council urges the Government to hold a territory-wide referendum on 1994-95 electoral arrangements to facilitate the Legislative Council to consider the relevant bills on such basis and to ensure that the decisions of the Council will be compatible with the principles of openness, fairness and acceptability to the people of Hong Kong."

MR SZETO WAH (in Cantonese): Mr President, this is a historic and critical moment, this is a historic and critical sitting, and this is a historic and critical motion. The Sino-British talks will resume tomorrow. It was arranged by lots that my motion on the holding of a referendum was to be moved today. This is a coincidence. But it is a very meaningful coincidence. The timing is just right.

The Governor Mr Chris PATTEN put forth three principles for Hong Kong's political reform: openness, fairness and acceptability to the people of Hong Kong. Mr LU Ping, Director of the Hong Kong and Macau Affairs Office of China, also approves of these three principles. To hold a referendum on 1994-1995 arrangements for the three-tier board/council elections and to

examine and pass the relevant bills in this Council on such basis is the best way to ensure that the three principles of openness, fairness and acceptability to the people of Hong Kong will be observed. Is there any other better way? No, there is no other way. In fact, to oppose the referendum is to oppose the application of the three principles to the resolution of Hong Kong's political reform issue.

Someone points an accusing finger at those who advocate a referendum that the attempt amounts to an advocacy of "independence or semi-independence". May I ask him, the author of such absurd sensationalism and deception, to read *The Basic Law of the Hong Kong Special Administrative Region (SAR) of the People's Republic of China (Draft)* passed by the Basic Law Drafting Committee in February 1989.

Item 3 of Appendix II, *Method for the Formation of the Legislative Council of the Hong Kong SAR Special Administration Region*, has this to say: "During the term of office of the fourth Legislative Council, the Legislative Council shall formulate a specific method to decide, through a referendum in the Region, whether all Members of the Legislative Council shall be elected by general election." Item 4 states, "If it is decided by the above-mentioned referendum that all Members of the Legislative Council shall be elected by general election, general election shall be held from the fifth term onwards. If it is decided otherwise by the referendum, referendum shall be held every 10 years in accordance with the provisions of Item 3 of this Annex."

True, the above items in the draft Basic Law were deleted from the final version of the Basic Law when it was passed. But they were deleted, as it was explained, not because they amounted to an advocacy of "independence or semi-independence". Throughout the discussion of "referendum" in the above context, from the origination of the idea to its adoption to its deletion ultimately, nobody said that holding a referendum would be akin to attempting "independence or semi-independence". When the draft Basic Law containing the provisions for a referendum was put to a vote, all Basic Law Drafting Committee members on the Chinese side voted aye. They included JI Pengfei, LI Hou, LU Ping and ZHOU Nan. Strange as it may seem, it was Mr Martin LEE and I who voted nay. If it can be said that to advocate a referendum is to attempt "independence or semi-independence", then the originator of such "an evil idea" was neither me nor the United Democrats of Hong Kong.

Some say that the holding of a referendum will further divide the people of Hong Kong, who are already split over the political reform issue. Well, if they all think in the same way, there will be no need for a referendum. Holding a referendum is the way to resolve differences over a major issue which stirs up much controversy. From the end of the 18th century to 1 September 1978, the world as a whole held 540 referendums. Switzerland led by holding 297 of them. Australia came second by holding 39. France held 20, and Denmark, 13. Recently, many countries held referendums on the Maastricht Treaty. These

countries have so far remained intact. Their people have not been divided, nor their territories split up.

Some hold that many public opinion polls have been conducted since the Governor Mr Chris PATTEN put forth his political reform package, so it is already known what the majority supports or opposes. For this reason, they think that there is no need to hold a referendum. I have this to say. Firstly, the outcome of a referendum is much more authoritative and credible and will be much more widely accepted than the findings of a public opinion poll. A series of public opinion polls with the same findings are no substitute for a referendum. Secondly, in every public opinion poll on whether a referendum should be held, the majority opinion supported the holding of a referendum to resolve the current political reform controversy. If people are really respectful of the findings of public opinion polls, they should respect these findings in favour of a referendum.

Some are of the view that they do not think that a referendum should be held because, constitutionally speaking, a referendum does not have binding force in Hong Kong. Actually, the majority of the motions carried in this Council constitutionally do not have binding force. They never did. They are mere expressions of popular wishes. Yet, Honourable Members never complained that the speeches they made or the votes they took on the motions in this Council constitutionally did not have binding force. The best example is the motion on "abolition of the Double Rent Policy". That motion was carried, but the Housing Authority and the Housing Department have been turning a blind eye to it. It is a motion that constitutionally does not have binding force. Yet Members voted in support of it. Why are some of these Members opposing the referendum now, raising an objection that they do not make in other cases? Are they applying double standards? Are they being inconsistent like the fabled YE Gong? Though a referendum will have no constitutionally binding force, yet it will unleash a great and insuperable moral force. Nobody (certainly nobody among the popularly elected Legislative Councillors) can ignore the outcome of a referendum. Each must adjust his position to the popular wish as revealed by the outcome of the referendum. Only those afraid of this moral force will oppose the motion on the ground that a referendum constitutionally does not have binding force under the current circumstances.

Some say that the political reform issue is too complex to be a matter for referendum. The Governor Mr Chris PATTEN put forth the constitutional package in his policy address of 7 October 1992. The people of Hong Kong have already been discussing it with zeal for six months. They are therefore not totally ignorant of what the issue is about. Many public opinion polls have been conducted on the political reform issue. In these polls, very few respondents said that they would not respond because they found the issue too complex to understand. In fact, the political reform controversy is focused on only two points: the composition of the Election Committee and the definition and classification of the nine new functional constituencies. There is only one

central question: Does Hong Kong want a political system with more public participation?

After my motion speech, Mr Allen LEE of the Liberal Party will reportedly try to move a motion for adjournment. Adjourn until when? I have no idea. Why adjourn? A probable reason, I guess, is that the Sino-British talks will resume tomorrow.

At the beginning of my speech, I said, "This is a historic and critical moment, this is a historic and critical meeting, and this is a historic and critical motion". Why do I say that it is "historic" and "critical"? I say so precisely because the Sino-British talks will resume tomorrow. The Sino-British talks will resume. The people of Hong Kong do not wish to be sold down the river. This is all the more reason why a referendum should be held. The referendum will tell the two sides what the people of Hong Kong want. They will have to accept and comply with the wish of the people of Hong Kong in the agreement that they reach.

The Liberal Party's motion for adjournment signifies the Liberal Party's view that the holding of a referendum will impede the Sino-British talks and the talks will be impeded by the wishes of the people of Hong Kong and by the fact that they are allowed to express their wishes. In others words, the Liberal Party thinks that the wishes of the people of Hong Kong do not have to be heeded during the Sino-British talks and that the two sides should agree to discard the principle of "acceptability to the people of Hong Kong". It is like holding a candle to the devil by helping to tie up the people of Hong Kong and put them in a pig cage before selling them down the river like pigs.

The Liberal Party seeks not only to put off the referendum but also to adjourn the motion debate on the referendum since it is considered that some people will be offended even by such a motion debate. Indeed, the Liberal Party is obsequiously circumspect and meticulously attentive. Is this not the mentality of a pig vendor?

I may not agree with other people's view. Still, I will fight for their right to express it. This is the minimum democratic spirit. The Liberal Party, wishing to stop the motion debate today, does not even show this minimum democratic spirit. Honourable Members, I do not care if you agree with my motion or not. But I hope that you will show the minimum democratic spirit.

Mr President, with these remarks, I beg to move.

Question on the motion proposed.

MR ALLEN LEE (in Cantonese): Mr President, in accordance with Standing Order 30(1), I propose adjournment of the debate on Mr SZETO Wah's motion.

Just now Mr SZETO Wah has said that my proposal for adjourning the debate was like selling the people of Hong Kong down the river. I believe, however, that he fails to see the point that it is definitely untimely to debate a motion about referendum on the eve of the Sino-British talks. The proposal of such a controversial referendum at this critical moment will only intensify the discord between China and the United Kingdom. The Liberal Party understand that reopening of the Sino-British talks is the result of painstaking efforts of both Governments. And the public have very great expectations for the talks. For this reason, we should now, instead of making our presence felt, try hard to exercise self-restraint. Otherwise we are just pouring oil on the flames, as it were, to further complicate the already difficult negotiations. After going through the uncertainties stemmed from the Sino-British row over the political reforms for more than half a year, Hong Kong people's desideratum is to see a successful settlement of the matter through negotiations by both sides. Anyone who has kept his finger on Hong Kong people's pulse should now be patient. The stance of the Liberal Party is that we will neither do nor support anything which is not conducive to the negotiations. The Liberal Party realize that the negotiations are far from easy but we still have confidence that the talks would come to a fruitful conclusion. We had visited London and Beijing to urge both Governments to, in the interests of Hong Kong people, reopen the talks on the basis of mutual respect and co-operation so that their row over political reforms could be settled. We did this because we, the Liberal Party, share the feelings of the general public that Hong Kong cannot enjoy a smooth transition without a co-operation between China and the United Kingdom. After all, the ones who suffer most would be Hong Kong people. With this in mind, we know that, to respect Hong Kong people's wish and act in the interests of Hong Kong, we have to stand firm to fight for the opening of Sino-British negotiations. Over the past few months we have been maliciously attacked and stigmatized. But we have still held fast to our position that a dialogue with the Chinese Government should be sought. We hope both Governments can, in the interests of Hong Kong, make positive response to the wishes of Hong Kong people and resume co-operation to ensure that Hong Kong will have a smooth transition in 1997. We will not lose heart despite the sneers and criticisms. For this reason, the Liberal Party oppose the United Democrats of Hong Kong's motion to hold a referendum at this juncture. We wish to ensure that China and the United Kingdom can hold talks smoothly and resume co-operation. Mrs Selina CHOW is going to explain why we only propose to adjourn but not scrap the motion.

Mr President, with these remarks, I propose adjournment of the debate on Mr SZETO Wah's motion.

RESIDENT: Standing Order 30 provides for a Member to propose without notice the adjournment of the debate. If the motion is negated, the debate on the question shall continue. If, however, the motion is carried, then the debate on the question shall stand adjourned.

I now propose the question to you which is: That the debate on the motion be adjourned. Does any Member wish to speak? Would you please keep your hands up for a minute so that the Clerk can note your desire to speak, not that you would be precluded from speaking if you should decide to speak at a later stage.

Mr SZETO Wah, do you wish to speak? If you wish to, then I think I should hear you first.

I would remind Members that they have agreed at House Committee that Members speaking on the motion for adjournment should limit their speeches to no more than five minutes. As this is not a recommendation under Standing Order 27A, the agreement is for Members themselves to observe. Members should, however, confine their speeches to the motion to adjourn.

MR SZETO WAH (in Cantonese): Mr President, Mr Allen LEE has just now mentioned that the public's desideratum at the moment is the resumption of the Sino-British talks. I think, however, their hope is not the resumption of talks but rather an agreement concluded after the talks in accordance with Hong Kong people's wish, which is acceptable to Hong Kong people. If talks resume and the outcome is unfavourable to Hong Kong people, how can it be their desideratum? What would be conducive to the talks? The answer is anything which would lead to a favourable outcome after the talks. The answer is that Hong Kong people's wishes can be represented in the talks. From the standpoint of Hong Kong people, they would only welcome such talks. If Hong Kong people's wishes are completely ignored and cannot be represented in the talks, it will be futile no matter how many rounds of talks are to be held.

Mr Allen LEE also mentioned that a referendum to be held at this juncture would intensify the discord between China and the United Kingdom. It is beyond my understanding why it would intensify the discord between the two countries. Both sides would not think that such a referendum would intensify their discord unless they ignore Hong Kong people's wishes and think that our views will disrupt their talks. If both parties do act what they preach, that is, they respect Hong Kong people's wishes, then they would find that the local public's wishes as expressed in the form of a referendum ought to facilitate a successful conclusion of an agreement.

To hold a referendum is by no means making our presence felt. My motion was scheduled to be moved today by lot. At that time, we knew nothing of the resumption of the Sino-British talks. Mr Allen LEE said that the we want

to disrupt the Sino-British talks. As a matter of fact, we did not have such an intention when we proposed to move the motion. This is purely mudslinging.

Mr President, these are my remarks.

MRS SELINA CHOW (in Cantonese): Mr President, I hope honourable colleagues will support Mr Allen LEE's motion to adjourn the debate. The Liberal Party supports the mechanism of referendum. I was, in fact, the first one to suggest the use of a referendum in early October last year after the Governor, Mr Chris PATTEN, put forth in his address the package of reforms to the political system. Later on, the United Democrats of Hong Kong also demanded a referendum and attempted to have a motion on the matter set down for 4 November. However, I must stress that the subject matter of the referendum demanded by them is entirely different from mine. I advocated at the time a referendum to be carried out subject to a major premise, that is, if the Chinese and British sides failed to reach an agreement on the package of political reforms, and hence unable to achieve the objectives of convergence and smooth transition, we should then conduct a referendum to let Hong Kong people decide whether or not to go ahead, in full knowledge of non-convergence, with the implementation of this package which has little prospects.

It must be noted that from the beginning of Sino-British talks on the 1997 issue of Hong Kong in 1982 to the unveiling of the PATTEN package, both sides have all along stressed that systems must converge, with a view to achieving the principal objective of smooth transition. This is a commitment by both sovereign governments to the Hong Kong people, as well as something Mr PATTEN always makes mention of. If by any chance this objective promulgated in the Basic Law cannot not be accomplished because of various developments, the British and Hong Kong Governments should honestly tell the people of Hong Kong and consult them if they wish to implement a package of political reforms that promises no future. In other words, when we come to the final and decisive stage, a decision must be made by all the people of Hong Kong on this important question, rather than solely through the mechanism of representative government or by some officials who will not be serving in the Hong Kong SAR government after 1997. Since this is a decision on the future of Hong Kong, all consequences shall be borne by Hong Kong people. If the purpose of conducting a referendum is to gauge public opinion, indeed we need not resort to a referendum — a tool that involves so many people and so much resources. It is because we have already had many other channels to collect and collate public opinions. Besides, after more than six months of argument between China and Britain, public opinion is now crystal clear today.

The Government has already issued a paper to consult the public on the political reform package. At the present stage, the majority of Hong Kong people are requesting the Chinese and British sides to sit down first and try to resolve the problems by way of talks. Given that the people's wish is such, why

then are UDHK adding new complications to the issue? That Mr SZETO Wah has moved a motion at this critical time will hinder the conduct of the talks. If UDHK had in the past, on their own initiative, put off moving a similar motion on the ground that the Chinese and British sides were still holding discussions, why could they not adjourn this motion today for the same reason? It must be noted that doing so is genuinely respecting the wish of the majority of Hong Kong people.

A while ago the Honourable Allen LEE stated explicitly the reasons for adjourning this debate on a referendum. The Liberal Party hopes that the Chinese and British sides will find by way of talks a satisfactory agreement which will be acceptable to Hong Kong people. Should the talks fail, we may then raise the old issue again to request for a debate on a referendum earlier advocated by us.

UDHK's repeated urging of the Governor in the recent past to gazette the political reform proposals and to introduce them to the Legislative Council has increasingly reduced room for compromise between the Chinese and British sides, which is detrimental to the conduct of talks. Whichever way one sees it, this action can hardly be regarded as caring for the wish of Hong Kong people. Nobody would wish to see damage done at this critical stage to the longed-for talks. I hope the UDHK will look after the collective interest of Hong Kong people and support the adjournment of the debate on this motion.

With these remarks, Mr President, I request that the debate on the Honourable SZETO Wah's motion be adjourned.

MR HUI YIN-FAT (in Cantonese): Mr President, I tend to agree with Mr Allen LEE that today's motion debate is untimely because it falls on the eve of the resumption of talks between the Chinese and the British Governments. But I disagree with his proposal that the debate should be adjourned. If a precedent is created, it can be used to prevent a debate from taking place whenever we do not want to discuss any Member's motion. Similarly, I now have to withhold the speech which I have prepared, pending the outcome of our discussion on whether the debate should be adjourned. I think it is very unfair and undemocratic. What I would like to point out is that if we do not support the motion, we should say so or reflect in our speeches the areas that we disagree with. I find it unacceptable to have no debate at all. I therefore object to the motion to adjourn the debate.

MR MARTIN LEE (in Cantonese): Mr President, Mr SZETO Wah's motion for a referendum seeks to provide an opportunity for colleagues in this Council, through discussion in a rational manner, to urge the Government to give members of the public, in the matter of the 1994-95 electoral arrangements, the right and the chance for full participation. No matter whether or not the motion is carried, the United Democrats of Hong Kong (UDHK) think that an

opportunity to enable those for and against the motion to discuss it thoroughly is a *sine qua non* in the process of arriving at a decision on this important matter. Since Hong Kong has entered the latter part of the transition period and is faced with the reversion of sovereignty in 1997, Legislative Councillors should have the courage to make commitments and strive for the best interests of Hong Kong people. If Members are not absent-minded, they should remember that when Governor Chris PATTEN delivered his policy speech last year, it was Mrs Selina CHOW of the Co-operative Resources Centre who first raised the issue of a referendum. At that time they believed that if the Chinese and the British failed to reach an agreement on the 1994-95 electoral arrangements, a referendum should be conducted before the relevant Bills were submitted to the Legislative Council. The reason behind this was that they had no wish to undertake responsibility for something as important as electoral arrangements. Now, when the subject of holding a referendum really comes up for debate in the Legislative Council, they again evade their responsibility by refusing to discuss it and ask for an indefinite adjournment of the debate. This is an irresponsible way of doing things. If they decline to take a view simply because they are afraid of expressing their wavering stance during the formal debate, I hope colleagues in this Council will think twice about adjourning the debate. Apart from hindering rational discussion in the Legislative Council, the adjournment will also set a bad precedent in the operation of this Council. As Mr HUI Yin-fat has just expounded this point, I do not wish to repeat it here. I only wish to add that should we adjourn the debate, we would create a precedent for "the big bullying the small".

Mr Allen LEE has stated the reason for his proposal to adjourn the debate. He opines that since the Chinese and the British have recently announced the resumption of talks, the Legislative Council should not debate the issue of a referendum at this stage, otherwise it will affect the talks. Or, in the words of Mrs Selina CHOW, it will even "damage" the talks. Although the Chinese Government has all along openly objected to the idea of a referendum, I have never heard them say that merely discussing it in the Legislative Council will affect the talks. So, one can say that to propose an adjournment now is to "waver even before the north wind blows" or "worry about other people's business". I think there is no necessity to evade debating the subject now. On the contrary, this is the opportune time to decide whether Hong Kong people should be given the right to fully participate in constitutional arrangements. Why? UDHK firmly believe that as far as talks on political matters are concerned, Hong Kong people have the right to know, to be consulted and to participate. And a referendum does provide a channel for the general public to participate in a certain matter. While members of the public welcome the Sino-British talks to be held soon, they are worried that the Chinese and the British sides may again sell Hong Kong people out in the talks. In such a situation, should we stand idly by and hand over to other people our due right to participate?

With the 1994 elections drawing near, the Legislative Council should clearly indicate whether it supports the referendum proposed by UDHK. This will give the executive ample time to prepare itself for the volatilities of the political situation. We need to have full public participation and an effective channel for Hong Kong people to voice their opinion, which will then serve as guidance for the Legislative Council as well as the Chinese and the British sides in dealing with political issues. What the man in the street needs are Councillors who do not evade problems, are decisive and are courageous enough to make commitments, not Councillors who dare not shoulder responsibility for important issues. Mr Allen LEE once said: "You may leave if you think the kitchen is too hot." Now I would like to add: "No matter how hot the kitchen is, we should not close it and start a new kitchen." In fact the date for this motion debate was fixed before the Chinese and the British sides fixed the date for their talks. The two sides would not have chosen such a date if they were worried that our debate today might spoil their talks. Instead, they would have chosen a date earlier than the date of this motion debate. I am therefore deeply puzzled by Mr LEE's argument.

With these remarks, I oppose Mr Allen LEE's motion to adjourn. I also urge Members to oppose his motion for adjournment.

MR NGAI SHIU-KIT (in Cantonese): Mr President, I raise strong objection to the motion of Mr SZETO Wah regarding the holding of a referendum on the 1994-95 electoral arrangements. The resumption of talks between China and Britain tomorrow is not only a general hope of all people but is also of great significance to the future of Hong Kong. We should try our best to create a good atmosphere for the talks. We should not let this debate on a referendum bring about any destructive effect. Neither, I believe, will the people of Hong Kong be willing to allow the United Democrats of Hong Kong to bring our flourishing economy, on which our livelihood depends, to the brim of collapse once again. So the motion for a referendum should be withdrawn.

Much hard work has been done to secure the resumption of talks between the two Governments. It is hoped that the resumption of talks tomorrow will bring about fruitful results. Such an important turning point should indeed not be annihilated by a controversial referendum. China has once again reiterated, during the process of negotiation between the representatives of the two sovereign states, that the "three-legged stool" shall not be allowed to appear. Mr Alastair GOODLAD, British Minister of State for Foreign and Commonwealth Affairs, is also aware of this point. According to a report on 15 April 1993, Mr GOODLAD has said to Chinese Ambassador to the United Kingdom, Mr MA Yuzhen, that the talk this time was only between the two sovereign states. In such a sensitive moment where both China and Britain are positively-set on eliminating differences between themselves, conducting a referendum in Hong Kong will only constitute a new adverse impact. This will be an obstacle to the unconditioned talks between China and Britain, and the door to negotiation may, as a result of the aiming of these disparate and

opinionated views, be closed up once again. Hong Kong will then certainly suffer another serious setback both socially and economically. Should such a situation really come to pass, will the United Democrats of Hong Kong be able to undertake the responsibility?

It is often argued by some that Hong Kong people should not be short-sighted, only emphasizing existing economic interests but neglecting the significance of future political development. However, Hong Kong is a business-led society, a stable economy is the basis of our livelihood. We will not allow the economy of Hong Kong to suffer a setback again because of the complication of conducting a referendum. In fact, during the past few months, the Hong Kong economy has shown signs of volatility. Judging from the performance of the Hong Kong Hang Seng Index, the market is extraordinarily sensitive to the Sino-British row. The index jumped solely because the Governor went into hospital and then plunged in response to the gazettal of the Bill on electoral arrangements, shedding as many as 200 points and leading to a loss of \$5 billion in terms of stock value. This marked the steepest plunge of the year and was also the fourth of such plunges since the row on political reform started. However, as soon as the two Governments announced the resumption of talks, the stock market immediately rallied and surged as many as 371 points. Whether the Governor's political package gains popular support, different people will have different views, but the above small clue has already given an answer to it. All these incidents prove that the economic development of Hong Kong cannot be separated from its politics. We have to ensure that the economy of Hong Kong will have a stable development. Any political gesture, which is untimely and has not undergone thorough study, will only aggravate social instability and lay down a time bomb for our economic development. The motion for a referendum is no exception to this either.

All in all, we should give priority to the Sino-British talks to be held tomorrow. We should not let the debate on referendum today create any new obstacle to the talks. This is the best way to maintain the existing economic stability of Hong Kong and to guide our political development back to its normal path.

Mr President, with these remarks, I oppose the motion of Mr SZETO Wah and support the motion for adjournment proposed by Mr Allen LEE.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, a referendum is a touchstone of democracy. Put to the test of the touchstone, and the true quality of an item, be it pure gold, non-24-karat gold or gold-plated, is revealed instantly.

The motion on a referendum moved by Mr SZETO Wah today is followed by another motion proposing an adjournment of the debate. The United Democrats of Hong Kong find it necessary to make a response.

It is the Liberal party who have proposed to adjourn the debate. I remember in last October, when they were called the Co-operative Resources Centre, they did say that if Mr Chris PATTEN's political package could not be accepted by the Chinese side by the following spring, then a referendum should be conducted to seek guidance from the public. Timing was the factor which prompted them to bring up the issue of the referendum. At that time the Co-operative Resources Centre agreed that a decision had to be reached by spring, otherwise there would not be enough time for the Legislative Council to carry out discussion. However, with the passage of time and given the tough stance of the Chinese side, the issue of the referendum is gradually fading, just like something plated with gold. Spring came and went. However, now we no longer hear voices calling for the referendum to be held. Instead, we hear voices advocating a postponement of the referendum. No matter what the real reasons are, one can always offer some excuses in order to have the referendum postponed. These excuses also allow those who dare not openly object to the referendum and those who dread the referendum to veto such exercise. Postponing the referendum is used as an excuse to deprive the public of any say in the Sino-British negotiations.

Mr NGAI Shiu-kit has just described the referendum as a "three-legged stool". In China there are indeed some utensils with three legs, such as tripods. It is precisely because a tripod has three legs that it stands so firmly. If a stool or a tripod has only two legs, it will certainly topple. So, if the referendum is one of the three legs of a tripod, its function is to make the tripod stand more steadily. Merely talking about the referendum will not bring about a collapse of the economy as alleged by Mr NGAI Shiu-kit, who has also suggested that the United Democrats of Hong Kong should undertake the political responsibility arising from our proposal for holding the referendum. In fact previous opinion polls indicated that the majority of Hong Kong people were in support of a referendum. If someone is to bear the political responsibility for the referendum, it is the majority of the local population who back the idea. And they are willing to shoulder such responsibility. On the contrary, for those who fail to hear the voices of over half of the local population and fail to realize the political aspirations of the public today, they are doing no more than assuming their own political responsibility.

Mr President, I would like to challenge the political organization which has moved the motion for adjournment. If the Liberal Party's purpose for so doing is to enable the Sino-British talks to reach a consensus on our political system but not to oppose the referendum itself, do they accept that a referendum should be held on the political aspect of any possible outcome of the talks in future?

"True gold fears no fire — a person of integrity can stand severe tests". It would be better for those having the quality of non-24-karat gold or a gold-plated item to admit honestly today that they are against the referendum. But please do not make an excuse to postpone the referendum, please do not proclaim to be pure gold and a supporter of democracy.

Mr President, in view of the above, I oppose the procedural motion proposed by Mr Allen LEE.

MR FREDERICK FUNG (in Cantonese): Mr President, motions moved by Members every Wednesday not only represent the substance of the motions *per se* but also a tacit agreement among Members of this Council. The tacit agreement was reached at our House Committee Meeting, whereby two motion debates would be moved in each meeting. In case there are more than two proposed motions, we will make a decision as to which two to be moved by drawing lots, holding discussions and negotiating. This is a "Gentlemen's and Ladies' Agreement". However, even though such a tacit agreement has been reached, we still have a problem today because somebody simply does not observe it.

Why is there a tacit agreement? It is because everybody knows that motions moved by Members, though carried, are not binding on the Government. Motion debate is merely a way to express views. As a matter of fact, the motion debates which are held every Wednesday provide us with a chance to air our views on social issues. Through the debates, we could have an opportunity to express our views.

Hong Kong has been boasting the freedom its people enjoy, even though the people are denied the power to rule the territory which is in want of democracy. But I find it very unfortunate that, to my surprise, it is a member of the Liberal Party who urges us to give up our freedom to discuss the motion today. Freedom of speech means that if one has the right to speak, he should be allowed to speak no matter what. Why does the Liberal Party move the motion to urge us not to speak on the topic? The fact is, I must stress, that even if the motion is carried, it still depends very much on whether the Government has the will to act on it. I am sure that it will do great harm to Hong Kong as a society with freedom of speech if we are advised to stop expressing our views.

Today if some are successful to stop a certain Member from moving his motion by citing this or that reason or the prevailing situation, or exploiting the procedure, or for some political reasons, it is not appropriate for Mr SZETO Wah to move his motion, then I wonder, next week, whether I would be urged not to raise the matter pertaining to the future financial arrangements of the Housing Authority for, say, housing or democratic reasons. If this situation is allowed to persist, I am afraid that one day the Legislative Council may come to a point where a certain political group or a group of people with similar outlook who have just a slim majority in this Council can stop any other Members from moving a motion debate. I think that would be a tragedy in the making. Colleagues may be aware that in western countries, there is usually a mechanism in place to forestall the majority party from exercising control over other parties' motion. And I did make a remark in the House Committee that we did not have any relevant mechanism in place and we could take today's motion debate as our first lesson and let us learn something from it. I am going

to propose to the House Committee that if any Member moves a motion to stop another Member from moving his motion, that adjournment motion would only be accepted if it receives the support of at least two thirds or even three quarters of the Members. This arrangement would ensure that the views of the minority can be sufficiently represented when Members exercise their rights and freedom to move motions.

For the reasons I have just mentioned, I do not support the adjournment motion.

MR LEE WING-TAT (in Cantonese): Mr President, Members from the United Democrats of Hong Kong (UDHK) have expressed various views against the motion for adjournment. Now I would like to point out the irregularities of this motion for adjournment in terms of procedure at meetings. Certainly, most of our colleagues are in support of democracy. Democracy manifests its importance in a majority resolution. But another important spirit of democracy lies in its respect for the views of the minority. It is common in many foreign legislatures that the ruling party seldom tries, or finds it difficult, to thwart the attempts made by the minority party or the opposition party to move any motions or debates to challenge the Administration or to criticize its policies. This is not only enshrined in their constitutions or their national laws, but also a time-honoured practice of democracy. It shows that the ruling party would respect every individual in the political arena and give the minority a chance to have their views debated in the legislature. The media and the public also have a powerful monitoring role to play in eliminating or stemming any attempts to gag the minority.

I share other UDHK Members' views about Mr Allen LEE's motion for adjournment. I also hold that we have not given such kind of motion sufficient thought. I am of the view that our Standing Orders and order of business governing how to move such kind of motions are very loose. Therefore, I agree with Mr Frederick FUNG that after this debate, we should carry out an internal review on the issue. It is necessary to hold more discussions about, and provide for, the manner in which a motion for adjournment to a debate is moved.

Mr President, I do not wish to waste Members too much time. With these remarks, I oppose the motion for adjournment.

MR FRED LI (in Cantonese): Mr President, before the "football match" starts, we have already witnessed an old timers match, a new chums match, or a friendship match, and it is even more exciting than the subsequent one. Meeting Point disapprove of Mr Allen LEE's move of proposing under the Standing Orders an adjournment of the debate of Mr SZETO Wah's motion. Members who support the motion to adjourn said that the debate on referendum would result in the collapse of the economy, spoil the atmosphere of the Sino-British

talks, create background music and so on. I think these were exaggerations. In fact, the Legislative Council has never been that important, particularly in the eyes of the Chinese Government. The Chinese side regards the Legislative Council as a consultative body only. The function it performs cannot even be the role of a "third leg". Insofar as the results of our discussion are concerned, we are not sure whether they would have any binding effect on the Hong Kong Government. But we are certain that whatever we discuss, it will neither send a strong message to the Chinese side, nor affect or disrupt the talks to be held tomorrow. I think if there are diversified opinions on a referendum and Members wish to make known their opposing views, we must let the "football match" take place instead of adjourning the debate. I think the adjournment will do no good, for this "match" will have to be played sooner or later, and it is the right time for such a match. Since the original motion complies strictly with the Standing Orders and is scheduled for debate today as decided by lot, the four Members of Meeting Point oppose Mr Allen LEE's motion to adjourn the debate.

DR YEUNG SUM (in Cantonese): Mr President, as regards the Sino-British talks, the United Democrats of Hong Kong demand three things, namely, the right to be informed, the right to be consulted and the right to participate. A referendum is the mechanism for the public to participate in making the final decision on our political system.

Mr President, I can hardly imagine that a motion debate on referendum would cause damage to our economy. If this is not an exaggeration, what else can it be? Mr President, if the Liberal Party do not support the motion, they can indeed vote against it or amend it. Adjourning the motion debate will set a very bad precedent in this Council. It will put small political groups or independent Members of the Council at a disadvantage. This is because major political parties can move a motion to block a debate whenever they do not want to discuss a particular subject. Members' right of moving motions in this Council will therefore be in jeopardy.

Honourable Members, I would like to call on you to vote against Mr Allen LEE's motion for adjournment whether you are for or against Mr SZETO Wah's motion.

At this point Mr Allen LEE indicated a wish to speak

PRESIDENT: You cannot speak again, Mr LEE.

PRESIDENT: There being no other Member wishing to speak, I shall put the question which is: That the debate on the motion be adjourned.

Voice vote taken.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members now please proceed to vote?

PRESIDENT: Has every Member registered his intention to vote? We seem to be one short.

MR NGAI SHIU-KIT: Mr President, it is me.

PRESIDENT: I see. All right. It is up to you, Mr NGAI.

PRESIDENT: Are there any queries? If not, the result will be displayed.

Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Gilbert LEUNG, Mr Steven POON and Dr Samuel WONG voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr Vincent CHENG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr Roger LUK and Ms Anna WU voted against the motion.

The Attorney General, Mr PANG Chun-hoi, Mrs Elsie TU and Dr TANG Siu-tong abstained

THE PRESIDENT announced that there were 16 votes in favour of the motion and 28 votes against it. He therefore declared that the motion to adjourn was negatived.

PRESIDENT: We shall now resume the debate on the Referendum on Political Development.

MR MARTIN LEE (in Cantonese): Mr President, since the United Democrats of Hong Kong (UDHK) began calling for a referendum, many people have expressed doubts and made hostile comments, some due to inadvertent misunderstanding, others based on deliberate distortion. I am very glad that an opportunity has finally come at 9.30 pm today for a rational discussion so that we can present clearly our position on the referendum issue. I will begin by explaining UDHK's understanding of the term "referendum", including the concept itself, its purposes and its legal status. After that, I will respond to the positions of the Chinese Government and the Hong Kong Government on the referendum issue.

Conceptually, UDHK always attaches importance to democracy, freedom and universal equality in regard to people's political rights. It is our strong belief that it is the basic political right of the people to be able to vote in a referendum. Some say: Hong Kong did not hold a referendum even on the important question of Hong Kong's future, so why must there be a referendum on the 1995 electoral arrangements? We must understand that, at the time when the Sino-British Joint Declaration was signed, all Members in this Council were appointed; nor were there directly elected Legco members in 1990 when the Basic Law was promulgated. Legislative Council, which was not yet a legislature with elected elements, did not move a motion on the holding of a referendum. That was understandable. Today, there are directly elected Members and the democratic awareness among the people of Hong Kong is rising steadily. Our calling for a referendum is consistent with Hong Kong's general trend of democratization. The fact that we did not hold a referendum in the past does not mean that we were right then or that we do not need to hold a referendum now or will not need it in future. Secondly, as to the point of holding a referendum, it will provide a channel for public participation in political arrangements for the future. If at all, it will give the highest degree of recognition to the decision or agreement finally reached between China and the United Kingdom. Thirdly, regarding the legal status of a referendum, some say that Hong Kong, not being a sovereign state, has no right to hold one. Undoubtedly, Hong Kong's existing constitutional documents — the Letters Patent and the Royal Instructions — have not assigned a constitutional or legal status to the referendum. This, however, does not mean that we cannot hold one at this time. The purpose of the referendum advocated by UDHK is not that it will have constitutional binding force but that it will be morally compelling. The referendum will provide this Council as well as China and the United Kingdom with a clear indicator of the wishes of the people. Any agreement or decision contrary to the outcome of the referendum will be morally censurable as opposed to the wishes of the people of Hong Kong. UDHK is ready to comply with the outcome of the referendum.

The Chinese and the British Governments have major differences over political arrangements. Regrettably, however, they are as close as two brothers in denying participation by the people of Hong Kong. The Governor Mr Chris PATTEN thinks that a referendum will divide the community. Mr ZHANG Junsheng of New China News Agency thinks that the idea of holding a referendum is laughable. As for Mr LU Ping of the Hong Kong and Macau Affairs Office of China, he goes so far as to think that holding a referendum is like turning Hong Kong into an independent entity. These remarks, if due to misunderstanding, show the shallowness of the speakers' political knowledge. If based on deliberate distortion, they reveal the speakers' genuine views towards democracy: Behind their statements paying lip service to the rights of the people of Hong Kong, they in fact have no regard for the wishes of these people at all.

Mr President, let us look first at how a referendum will divide the community. In any pluralist democratic state, nothing is more normal than for members of the community to have differences over major issues. It is precisely because there are differences that we need to hold a referendum to decide on the issues in question. If a referendum is not held on a major issue over which differences have arisen in the community, these differences surely will not go away. They will merely settle deeper in people's hearts and become the root cause of the next round of conflicts. Look, for instance, at the result of the French referendum on the Masstricht Treaty. Only 51% of the voters supported the treaty. Did this plunge the French society into a state of serious division? To say that a referendum is a root cause of social division is to confuse the cause and the effect. A referendum will not be divisive. On the contrary, it will help to mollify the people by letting them have their say. It will encourage the people to participate in political affairs enthusiastically.

Is the idea of holding a referendum laughable? I think that the person who finds it laughable is in fact afraid of it. He is afraid to face the outcome of the referendum. UDHK has made it clear that the referendum will not touch upon the issue of sovereignty; nor will it have anything to do with defence or foreign affairs. The 1995 electoral arrangements are an internal matter of Hong Kong, which have nothing to do with constitutional change. Neither has it anything to do with turning Hong Kong into an independent entity. Suppose that the State of California in the United States holds a referendum; will this mean that California will break away from the United States and declare independence? Such label bandying tactics actually betrays the inward fear of those who hold such view.

Since the Governor unveiled his political reform package, members of the Co-operative Resources Centre have kept insisting that a referendum should be held only if China and the United Kingdom cannot reach an agreement on the 1995 electoral arrangements. This is in fact an evasive attitude. I think that a referendum should be held regardless of whether an agreement is reached or not on political arrangements. A case in point is the recent referendum held in Canada on a constitutional proposal. It was a consensus proposal arrived at after one year of talks involving 10 provincial governments supported by the

three major political parties, the trade unions and the business community, all of which were satisfied. Yet it was rejected by voters in the referendum. This amply illustrates that, even in a democratic country, a decision of the Government may not meet the wishes of the people and there may still be a gap of understanding between political leaders and ordinary citizens. Therefore, a referendum must be held regardless of whether an agreement is reached or not between China and the United Kingdom. The holding of a referendum is not an expedient for resolving Sino-British differences. It will, as a matter of fact, give the people of Hong Kong the right to participate in political arrangements and to influence the decisions of China and the United Kingdom.

An survey conducted by *Hong Kong Economic Times* found that 59% of the respondents felt that a referendum should be held to resolve the political reform issue. Only 20% said no. Evidently, the public thirsts for the right to participate in political arrangements. UDHK is now doing its utmost to win for the people of Hong Kong, from China and the United Kingdom, the right to be informed of, to be consulted about and to participate in political arrangements. We would hold fast to our principles and promote them forcefully. And we would put our case to China and the United Kingdom, ask them to accept UDHK's proposal and appreciate the significance of holding a referendum.

In contrast, there are colleagues who are trying in a thousand and one ways to obstruct this Council's debate on the referendum issue and who are evading their responsibility, all because China is opposed to the referendum. In everything that they do, fear to offend China causes them to abandon their principles. They are submissive in order to be safe. How can they stand upright and take up the responsibilities of the times?

With these remarks, I support Mr SZETO Wah's motion.

MR NGAI SHIU-KIT (in Cantonese): Mr President, I already covered much what I intend to say just now but, in response to Mr CHEUNG Man-kwong's remarks, I would like to add one point. Just now he alleged that I had made the point that a referendum would deal a fatal blow to the economy of Hong Kong. But this is not what I said and it is he who put the words into my mouth. Actually I only raised the question as to whether it would be conducive or otherwise to Sino-British talks to move such a sensitive motion at this sensitive moment. He also said he represented the people and that only through a referendum could we gauge the views of the silent majority. Yet, will our economic activities be affected if we make use of such a sensitive means to collect public opinion at such a sensitive moment? I think the answer is yes. Just now I quoted several examples: the Hang Seng Index surged when the Governor was hospitalized and it plunged when the electoral bill was gazetted. These are examples which demonstrate how things would be affected by sensitive issues at sensitive moments. After all, what I mean is that it will bring about certain impact if we discuss a sensitive issue such as holding a referendum

at this juncture. Such an impact is the result of an interaction between political and economic matters.

Furthermore, Councillors of the United Democrats of Hong Kong (UDHK) always maintain (Mr SZETO Wah also mentioned it just now) that the Liberal Party are selling the people of Hong Kong down the river and scared of the referendum so that they oppose it. However, I listened very clearly to what they said. Their allegation is far from truth. Just now Mr Allen LEE did not put it that way. He merely said that it was neither appropriate for conducting a referendum nor holding a debate on such a referendum at this moment. He meant that we should hold a referendum only when China and the United Kingdom could not come to a consensus after the talks. This is entirely different from what the UDHK said earlier on. I think it is wrong to twist other's views like this.

Meanwhile, the UDHK always consider themselves voicing and representing the public opinion. They regard people who disagree with them as ones who try to sell the people of Hong Kong down the river. As they always think they represent the people, I cannot help asking how representative they are. They were returned through direct elections. But how many electors did vote for them? I think, if all of them posing themselves as opinion leaders all the time, the ones who, after all, sell the people of Hong Kong down the river are not the Liberal Party but probably these people. Now, I would not say any more. I think we should not hold any referendum at this sensitive moment and therefore I oppose the motion.

MR PANG CHUN-HOI (in Cantonese): Mr President, the Chinese Government, which has been practising socialism for over 40 years, maintains a one-party dictatorship rule and does not heed public opinion when it thrashes out its policy.

Hong Kong Government, similarly, is not returned through popular election. The Governor (the head of the executive) comes from the United Kingdom. Members of the Executive Council are appointed by the Governor whereas the majority of the Members in this Council join the legislature through appointment or functional constituency elections. Directly elected Members were first introduced to this Council in 1991.

Obviously, the drive to broaden democracy is a global political mainstream. However, it is worth noting that the overwhelming majority of the people in the world, who live in independent sovereign states, are leading a life very different from that of Hong Kong. Hong Kong is a colony, a "territory". Within distinctive limitations and under unique conditions, Hong Kong people's economic achievement obviously does not correspond to the political rights they enjoy. This can explain why Hong Kong people are so indifferent to politics as it is reflected in the past low registration rate and the lukewarm response in voting.

With 1997 drawing close, "politics" which Hong Kong people did not care about in the past seems increasingly important to them and their craving for democracy is getting stronger and stronger. However, it is still the case that only a few people actually stand up to express their views.

In principle, I accept the why and wherefore for conducting a referendum, that is, to decide an important question by general vote. This is a realization of the supreme goal of democracy and a chance for Hong Kong people to express their wish. However, if we are to hold a referendum which is meant for "all the people" in Hong Kong and yet the people who come to the voting centres are just a few in number, it will, I am afraid, backfire, not to mention achieving any desirable results.

I do not consider that this is the appropriate stage to hold a referendum in view of the low turnout rate in the past. Therefore, Mr President, with these remarks, I have reservations about holding a referendum now.

MR TAM YIU-CHUNG (in Cantonese): Mr President, theoretically speaking, a referendum, as a concept or mechanism, is a means by which a government employs to ask its people to express their views and make a decision on certain important issues. I am not at all against this notion.

Nevertheless, I would like to point out that a referendum, as a mechanism, is not provided for under the existing Hong Kong constitutional system, nor in the Basic Law adopted in 1990. During the latter half of the transition period, every single important issue affecting Hong Kong's transition should, through Sino-British discussions, be resolved through Sino-British discussions and negotiations in accordance with the Sino-British Joint Declaration. During the process, Hong Kong people may put forward various views and proposals for the two Government's consideration. There will surely be a lot of issues to be addressed and solutions to be worked out as a result of the change of sovereignty in the coming four-odd years. And we are blind to the reality and regardless of the consequences if we turn to a referendum whenever confronted with problems. Such a move will only throw Hong Kong into greater political turmoil.

Now that a Member moves a motion on referendum today, I would like to take this opportunity to express my reservations about the content of the motion. Mr SZETO Wah is of the view that it is necessary to hold a territory-wide referendum on 1994-95 electoral arrangements to form the basis for this Council's consideration of the relevant bills. In saying so, it seems that Members of this Council are not living in Hong Kong. They do not understand people's sentiment or put the finger on the pulse of the people and are at a loss when it comes to scrutiny of bills. Should it be the case, does it mean that Members of this Council lack representativeness? Furthermore, the motion mentions that a referendum should be held to ensure that the decisions of the Council on political arrangements will be compatible with the principles of

openness, fairness and acceptability to the people of Hong Kong. I have to point out that this Council made numerous decisions in the past without holding any referendum. Does it imply that all those decisions were not open, unfair and unacceptable to the people of Hong Kong?

In addition, the principle of "openness, fairness and acceptability to the people of Hong Kong" is the catch phrase employed by the Governor in selling his political reform package. This appears to be an apple-pie-and-motherhood principle. It is therefore quoted by the mover of the original motion who regards it as a guiding principle. However, a friend of mine who is an old hand in media industry pointed out to me the other day that the Governor's principle seemed to negate all Legislative Council elections since 1985 and the Basic Law. I hope that this is not the intention of the Governor to negate what have been *fait accompli*, including the status of all colleagues who became Members of this Council through various channels, so as to make his political reform package look prominent and grand.

Apart from what has been mentioned above, I would also like to look into the feasibility of a referendum from the technical perspective. Generally speaking, a referendum is held to request every voter to cast a yes/no or for/against vote on a question so as to reach a decision. However, it would be rather complicated if a referendum is held to decide on the 1994-95 electoral arrangements. It is because since the Governor's political reform package was unveiled, multifarious views on the 1994-95 elections have been expressed by different social strata. How can a complicated issue such as the one pertaining to electoral arrangements be decided in the form of a referendum? Would the outcome of the referendum be a fair one?

Furthermore, the unveiling of the political reform package has touched off a row between China and the United Kingdom, precipitating a strain in their relationship. Hong Kong people's views in this regard were very volatile. As a matter of fact, judging from several opinion polls conducted since last October, Hong Kong people's opinions often vary with changing political situations. Under the present political climate, is it fair to hold a referendum to urge the public to make a decision on the political reform arrangements within a certain time limit? Is it not a bit too reckless to urge the people to place their bets on this issue? Holding a referendum on the issue looks as if it is to seek people's views. But in essence, it is an irresponsible move.

Mr President, in the light of the said analysis, I hold that the motion should not be supported.

DR LEONG CHE-HUNG: Mr President, before I begin may I stress that I am speaking today representing the views of the functional constituency to which I belong and not the views of Meeting Point.

Mr President, Hong Kong people are now far from being healthy.

They suffer from chronic uncertainty, anxiety and frustration. The current political row sparks illness. For the last few months have been an emotional rollercoaster as they try to find a respite to the suffering from megaphone, political mudslinging and bullies over future election arrangements.

They were told different plots that made up the row. They saw some ugly faces, but many tried to pretend they do not have a problem.

Yet tensions are building up.

I am sure most of them know what they want from the two governments in the future elections and what they wish to see for continuous stability and prosperity. After all, they have been discouraged to give views. Some had given up, some were dejected and many more were silenced.

Mr President, this illness must be contained, if not to be cured, before that disgust is translated into violent purging.

A referendum may be the correct dose to relieve their tension and a high degree of respect, from both China and Britain, on their views is certainly good for their recovery.

I hope we will not be accused of playing yet a game of a three-legged stool, as Mr NGAI has mentioned just now. A referendum should be seen as the two governments showing their sincerity to really want to know what Hong Kong people want and it is a test run of fulfilling the over publicized concept of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy".

Mr President, a referendum also shows that the governments care for them rather than leaving them high and dry and occasionally "rape" them of their sentiments to the gains of the two governments.

For a long time both governments treated a referendum as taboo or a minefield and refused to navigate in. The beauty, of course, is that they could continue to manipulate public sentiments and exploit them to their own benefits. The downside is that it will leave them clueless as to what the public at large thinks.

There is a danger here, Mr President.

The fuse may lead to an inevitable bang, as had been experienced in the past. If that really happens it would deal a major blow to the authority of the two governments, a thing that both governments could hardly afford during this crucial period in history. It would also lead many to think that those high-toned concept of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" are but sugar coated poisons to dot their minds.

Mr President, amongst my honourable colleagues here tonight are academics in politics, experts in law including constitutional law. It is therefore pointless for me to dwell on the definition of referendum, especially on whether this referendum should be legally or morally binding.

What my honourable colleague, SZETO Wah, wants is a referendum with only moral binding power. For all of us would admit, I presume, Hong Kong not being a sovereign state cannot conduct one with legal binding commitment.

Some may argue that local, sporadic polls in the past have been done by random sampling from time to time to gauge what Hong Kong people want in relation to their future political system, but such are no comparison to a referendum, although such a referendum may be non-legally binding because every single citizen is involved by casting his or her own vote.

Others may argue that it is by no means an easy thing to conduct a referendum. But this does not mean impossible. Indeed, I have done a mini-referendum in my own constituency myself.

Last October I sent out a total of some 7 500 questionnaires to all members of my constituency seeking their views on six of the seven electoral proposals.

A total of over 1 100 replies were received by the end of December. The general support level was high. Between 70% and 90% of the respondents were in support of all the proposals except the one that seeks to retain the *ex officio* seats for the rural representatives in the New Territories District Boards and the Regional Council.

A separate exercise was done on a smaller scale for the proposals of the Election Committee.

But since the Governor's proposals on electoral arrangements were put forward, Hong Kong has been haunted with unprecedented political upheaval. Rightly or wrongly many will, and have, second thoughts on these electoral proposals. I have therefore committed to my own constituents that I will conduct another referendum after relevant Bills to effect the electoral package have been submitted to this Council.

I am confident that our Government is capable of holding a referendum. Indeed the current overheated political row makes a referendum even more imminent and necessary than ever before.

Mr President, the bone of contention of the past few months has been the Governor's electoral proposals. But whatever is the cause, this has now been laid along the wayside. Instead, the focus is shifted, at around the time of the announcement of holding Sino-British talks last week, to the issue of "through train". Does this signify that the British Government is throwing in the towel as

far as democracy in Hong Kong is concerned? Does this mean the British Government will backtrack to seek a safer haven in the "through train" concept of convergence? Have Hong Kong people been again sold down the river?

Mr President, yet the Beijing Government is not the one to be easily satisfied. For other than the "train", that is the system itself, we are now being told that one more aspect — the "passenger on the train" must also be qualified. We are at a loss as to what will be the crucial basis or bottomline for the two governments to start their talks.

The "opaque" veil of secrecy that surrounds the talks tomorrow will no way make things easy for Hong Kong people. We have been told that the talks will be kept in complete confidence. We will not know the chemistry between the two governments behind closed doors.

How can we express our views and preferences if we are not informed of the progress of the negotiations?

I appeal therefore to both China and Britain, and in particular the Hong Kong Government, that they must keep Hong Kong people abreast of the progress.

Mr President, with grave doubts on whether the two sovereigns will open up the process of negotiation it is therefore more imminent for the Government to conduct a referendum after the "agreed arrangement" has been tabled to the Legislative Council.

It is my view that a referendum has the merit of giving every elector a chance to take part in the decision. Similarly every elector is also given a chance to fulfill his or her civil obligation to cast a vote. For rights should not go alone without obligation. A referendum may perhaps be the most pragmatic way for the Government to fulfill the commitment.....

Buzzer sounded a continuous beep.

PRESIDENT: You have got to discontinue, Dr LEONG.

DR LEONG CHE-HUNG: so that our future electoral arrangements would be compatible.....

PRESIDENT: You have got to discontinue.

DR LEONG CHE-HUNG: I support the motion.

MR PETER WONG: Mr President, my position on the subject is based on the comments collected from my functional constituents since last October. I find the arguments put forth by the opponents of a referendum on the 1994-95 electoral reforms, specially at this time, to be rational and pragmatic. These arguments can be grouped into four categories.

Political reason

The overriding concern is that a referendum on Hong Kong's political reforms at this time would present an obstacle to the Sino-British negotiations due to begin tomorrow.

Mr President, I find the objective of the proposed referendum basically at fault. Surely, it cannot be the intention of the United Kingdom Government, the Administration nor this Council to amend the spirit and content of the Basic Law at this point in time when the two sovereign powers are trying to hammer out a solution to the problem.

Social reason

A big proportion of the comments from accountants are directed at Hong Kong people's political apathy and their lack of understanding of local politics. There is insufficient public debate on our political system and the Basic Law which, admittedly, are complex subjects unfamiliar to the general public. Social science researchers have warned that public opinion should not dictate public policy, especially when an issue has not been well explored. Hong Kong's public opinion, which is notoriously volatile, can easily be influenced by propagandists who are trying to achieve their political objectives.

A referendum at this stage could also be socially divisive by splitting up the community into two equal factions, which will inevitably bring adverse effects to Hong Kong's stability. The fluctuations experienced by the European stock markets prior to the signing of the Maastricht Treaty last September offer strong evidence of the negative effects of a referendum.

Economic reason

Further, there are technical problems to be ironed out — the design of a simple, effective, and neutral questionnaire; voters' turnout rate; promotional expenses and administrative costs. The final cost to the taxpayer of the 1975 British referendum on "United Kingdom joining the European Free Trade Common Market", estimated at HK\$132 million, provides an indicator of the high cost involved in a territory-wide referendum.

Technical reason

In my view, the biggest obstacle lies in the difficulty of setting the acceptance level of the referendum results. How can we be certain of clear

majority support? What are we going to do if the result turns out to be 51 against 49; or worse still, 50 against 50? What happens if the turnout rate is below 50%? Can we claim that we have the mandate of the silent majority?

Mr President, I believe that a referendum is not the most effective channel of soliciting public opinion on the 1994-95 electoral arrangements. Since last October, numerous opinions polls have been conducted by political parties, social pressure groups and the mass media, and it is still difficult to ascertain the true level of support for the proposals put forth by the Governor. The HKU Social Sciences Research Centre, which has been closely monitoring public opinion on the reform package, has pointed towards 35% "for", 15% "against" and 50% neutral. The Centre was quick to add that "50% of the respondents said they did not understand the proposals, and this level of ignorance makes one wonder how much knowledge the public has in deciding their opinion for or against the proposals as a whole".

More importantly, an analysis of the two compendiums of 93 proposals for the 1994-95 elections compiled by the Government reveals 30 "for", 38 "against" and 25 "irrelevant" (those seeking boundary revisions and new functional constituency seats). The proposals, coming from all sectors of the community and not prejudiced by poll questions, should provide a true reflection of Hong Kong people's views on the subject.

Decision making

These survey findings should provide a solid basis to facilitate this Council reaching its decisions on the 1994-95 electoral arrangements. Given a clearly divided public opinion on the issue, this Council must shoulder the responsibility of decision making from which we cannot abscond. American scholar Sherry BEBITCH-JEFFE, commenting on the 230 ballots that took place in United States in 1984, said: "People get tired of an assembly that doesn't work, a governor that won't lead, and problems that don't get solved." The general public does not wish to spend time getting involved in all public issues, and that is why we are here.

Mr President, Hong Kong people's strong desire for more democracy goes in tandem with their expressed desire for social stability. Due to the reasons I have listed, and with due respect for some people calling for a faster pace of democracy, I believe that the end does not justify the means. As a believer in stability and prosperity for Hong Kong, and I carry the accountancy profession with me on this principle, I cannot support the motion.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I originally planned to deliver a prepared speech on the referendum issue. But, in view of some new arguments that have come up in the course of today's debate, I want to respond to these arguments first. The first of them came up in Mr NGAI Shiu-kit's speech. He said that, in his opinion, the stock market would surge as a

result of the resumption of the Sino-British talks or because of various favourable factors (such as the Governor's hospitalization). The very strong impression that I got from his remarks is that the stock market seems to be the only indicator of how one's life is. I think that, while the stock market is a very important indicator of the state of Hong Kong's economy, it is not the sole indicator, least of all the sole indicator of how life is for the people of Hong Kong. We should not lose sight of the fact that many people in Hong Kong own no stock but they still have to live. What safeguard their lives? Their lives do not depend on Chris PATTEN's prolonged hospitalization, which causes the stock market to soar. Their lives depend on the safeguards of a democratic system which is capable of reflecting their wishes. There should be a good mechanism to take care of their daily lives and to safeguard their well-being. I think that these people are among the most important sectors of our community to whom attention should be paid. I read economics in university. I think that a stock market's ups and downs hinge on external factors as well as the state of the domestic economy. Mr NGAI Shiu-kit is an industrialist. Hong Kong has numerous industrialists like him. It is thanks to their hard work that Hong Kong's economy has a solid foundation, on which the stock market can rise. A short-term rise of the stock market due to somebody's hospitalization or due to somebody's encouraging remarks points to a "politically driven market". A politically driven market is characterized by sometimes rising like the temperature of a person running a fever and sometimes falling like a hypersensitive man. In any case, it is definitely not the sole or the absolute indicator of how one's life is.

Secondly, somebody (again I mean Mr NGAI Shiu-kit) says that Hong Kong is at a delicate moment and we should not seek the views of the people on a sensitive issue at this time. But a delicate moment is just another name for a critical moment. If we do not seek the views of the people at a critical moment, then when are we to do so? Today, we are moving a motion debate on the holding of a referendum. But is anybody suggesting that Hong Kong should hold a referendum today? The answer is no. If today's motion is carried, another debate will be held in due course. Those who say that moving a motion debate today will affect the Sino-British talks and nullify a hard-won gain actually got the timing wrong. I must say it is not the truth. I want to pose one question, the same that I asked a moment ago. Suppose that we reach agreement today on the holding of a referendum and then China and the United Kingdom reach an agreement. By that time, it would no longer be too delicate a moment for holding the referendum. Will Mr NGAI Shiu-kit or our friends of the Liberal Party then go to vote in the referendum? If you still decline to go, when will it ever be a moment that is not sensitive, in your opinion?

Thirdly, Mr TAM Yiu-chung said that we want to hold a referendum on everything and that we are unmindful of consequences. Sorry, we did not move any motion on holding a referendum in the past. We did not take such a move. As a matter of fact, we are rebuked when we try to make such a suggestion. When have we ever asked to hold a referendum until now? However, the idea

did cross our minds. But then Mr TAM Yiu-chung went on to say that nobody has asked for a referendum to confirm or support any of the numerous resolutions that this Council adopted in the past. This shows precisely that we have not asked to hold a referendum on any of the many previous occasions when this Council had decisions to make. When was a referendum ever held? How can it be said that we, who are asking for a referendum for the first time, want to hold a referendum on everything?

Fourthly, it is again Mr TAM Yiu-chung. He said that the political reform package is very complex. How is a referendum to be held on such a complex package which is beyond the general public's comprehension? Actually, the issue is not so complex. Miss Emily LAU, who is the straightest talker in this Council, has put forth a plan that is the least complex. It is that all 60 seats in this Council should be directly elected. If this proposal is made the subject of the referendum, it will not be complex at all. Can a referendum be held on such a proposal then? Suppose that we use this proposal when it is time to hold the referendum, I can guarantee that every sensible man will be able to vote yes or no on this plan of 60 directly elected seats. Well, why can we not put forth this proposal of 60 directly elected seats even though it is clearly a good plan? The simple reason is that some people have maximized the complexity of the words "returning the legislative body by election". They have made the word "election" more complicated by saying that there are functional constituency election and Electoral College election in addition to direct election. As the saying goes, "Fools create difficulties for themselves." Some people have turned a simple thing into a complex thing and then they do not want us to hold a referendum because it is too complex. They are putting the cart before the horse.

Mr Peter WONG made the remarks that a referendum held now will present an obstacle to the Sino-British negotiations. Has he given any thought to the fact that failing to hold the referendum will present an obstacle to the people's participation in a decision process affecting their future? Obstacles are not put up unilaterally. If we have eyes for the Chinese and the British governments only, but ignoring the interests of the people of Hong Kong, then the people of Hong Kong will be facing insurmountable obstacles. But look. We have five million people living here. Do they have an opportunity, a small channel or any channel at all to express their wishes, to make their voices heard? Is there any opportunity, no matter how small, made available to them so that they can walk upright with at least some rights? No. This is because we have eyes only for the Governments. How does a government come about? Will there be a government if there are no people? A government that does not derive its power from the people is a dictatorial regime.

The referendum motion moved by Mr SZETO Wah today takes only the first small step under circumstances where the people have broadly been deprived of many of their rights. But even this small step is being condemned as heresy. What democracy then is there for us to talk about? What high degree of autonomy is there for us to talk about? Mr President, in the prepared

speech that I originally planned to deliver, there are many cliches. Others have already uttered them. So I am just frankly responding to some colleagues' arguments.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, the motion moved by Mr SZETO Wah today includes two points, namely, the political reform in Hong Kong and a referendum.

First of all, I would like to put forward my views on the political reform. When he arrived in Hong Kong on 9 July 1992 to assume office, the Governor promised Hong Kong people a smooth transition in 1997. However, since he put forward his political reform package on 7 October, Hong Kong has gone through huge shocks over the last six months. The prevailing situation is entirely different from the one he promised us on 9 July last year. The community is polarized because people have diversified views on his package. I totally disagree with what Mr CHEUNG Man-kwong has said just now. It is our Honourable Members' rights to express their views and Mr CHEUNG Man-kwong should not make improper criticisms of others' views. He could only express his personal views. The Governor put forward his political reform proposals. What is his intention? Has the British Government ever put a high premium on the interests of Hong Kong people in its political reforms in the territory or on other fronts? I believe that Members present today and radio audiences of this live broadcast know that the answer is definitely no. The British Government has stripped Hong Kong people of their rights. From 1948 onwards, the British nationality status which Hong Kong-born people were granted automatically was taken away through four to five amendments to the relevant law. Does the United Kingdom care about the people of Hong Kong? The answer is obviously — no. Also, is the British Government courageous enough to confront the Chinese Government to the end, especially in striving for a few more directly elected seats, even at the expense of its economic or other interests? The answer is negative as well.

It is undoubtedly that, in the Sino-British Joint Declaration, the Chinese Government promises us "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". But we should bear in mind that the promises are made on the basis of the Basic Law. In other words, if Hong Kong people want to enjoy a high degree of autonomy and be our own master, we must abide by the Basic Law. If we want to go beyond the Basic Law, we can only wait until the Basic Law is put into effect in 1997. By then, we may put forward amendment proposals to the Standing Committee of the National People's Congress for its endorsement. During the two relevant motion debates held on 14 October and 11 November and the one moved by Dr Philip WONG, most of the Members expressed their support to Governor PATTEN's political reform package, especially during the first two debates. And we also found that the three Official Members in this Council opposed the notion of convergence. However, it is made known to us that the talks to be held in Peking tomorrow should strictly abide by the principle of convergence. Our debate here today is, after

all, a waste of energy and time and gives the impression that we are not doing serious business in this Council.

We should realize why the British Government put forward such controversial matters from time to time in order to distract this Council's and Hong Kong people's attention. As what I have suggested, Hong Kong people enjoy certain basic rights. The British Government takes alarm that Hong Kong people may apprehend its plot and ask for their deserved rights from it. For this reason, it frequently stirs things up to turn the attention of the media and even the whole world to other matters and hopes that Hong Kong people may forget the rights and benefits they deserve. I venture to say that Governor PATTEN will return to the United Kingdom in the near future, the soonest will be by the end of this year and the latest the end of next year. He is not going to make Hong Kong his home. The next British parliamentary election will take place in early 1997 the latest. If the Governor's term of office will not expire until 30 June 1997 as he disclosed himself, I am sure that he is going to miss the next general election. Yet his ambition is not a Governor of Hong Kong. He will try to make a comeback in the United Kingdom after the humiliating defeat in the last election at Bath. His future political career will entirely hinge on his performance after his return to the United Kingdom. He would not throw himself heart and soul into his job for the people of Hong Kong and serve until the expiry of his governorship on 30 June 1997 or even earlier. Therefore, why should we waste so much energy on such an impractical political reform package?

Now I come back to the question of a referendum. It is the right of the people of a free society to hold a referendum. I indeed realize that people have this right and I entirely support it. But the referendum proposed by Mr SZETO Wah today will not work at all. I would like to stress again that I have never said that my views are always right but I would not misguide Hong Kong people. To urge the public to do such a futile thing is like driving them into a corner. It is an irresponsible move which would cause them great misery. Mr SZETO Wah considers himself to be a very wise politician. Yet he wants the public to support him for what he cannot achieve by himself. It is nothing more than daydreaming. I would like to give a piece of advice to Members from the United Democrats of Hong Kong (UDHK): build up your confidence and not to be led by Mr PATTEN's impractical package; gather courage and serve the people. You should fight for a referendum on other matters, for example, against the execution of capital punishment (we have just endorsed the relevant bill) or even the abolition of the Double Rent Policy. To hold a referendum on the political reform package will get us nowhere. I hope that Members from the UDHK will come round soon and work hard for the future of Hong Kong.

MR FREDERICK FUNG (in Cantonese): Mr President, honourable colleagues, now that we are debating the motion on referendum, I would like to explain how the Association for Democracy and People's Livelihood (ADPL) and I

myself understand the term "referendum". I feel that a referendum is a political action taken by the entire population to make a collective decision. To make a referendum a success and to achieve satisfactory results, there are two prerequisites. Firstly, the regime concerned must be prepared to recognize the outcome of a referendum as the highest and final decision of the people and to comply with the outcome. If the outcome is not binding on the regime, then the people will have no confidence in the referendum. Secondly, the people must understand what the referendum is about. Preparatory work before the holding of the referendum is therefore very important. Before voting in the referendum, the people must know what they will be voting for or against. They must fully discuss both sides of the issue and find out how the community will be affected one way or the other. Recently, the University of Hong Kong held a simulated referendum. Only 20 000 people turned out for it, far fewer than the 80 000 people that had been anticipated. I think that there are two reasons for the low turn-out rate. (1) The outcome of the referendum will have no binding force. Whether the ayes or the nays have it will not be binding on the Government or affect it in any way. (2) Before the vote, the general public does not understand what the referendum is about. Therefore, we can say that inadequate preparation and advance discussion in the community will affect the voting result. Here is an analogy. Before we hold a board/council election, both the Government and the candidates will conduct publicity campaigns on a large scale. Only if sufficient preparations are made in advance can voters be interested in finding out about the candidates and about their political platforms. Then the election will stand a good chance of success. However, if it is known that the result of the election will not be final, that, for instance, the candidate winning the most votes may not be returned and that the voting result is merely to be used for the Government's reference in making its decision, then very few people, I think, will be interested in voting in such an election. Nor is it certain that the wishes of the voters will be truly reflected in subsequent government policy.

Coming back to Mr SZETO Wah's motion today, I find three points in its wording which are open to question. Firstly, it urges the Government to hold a referendum so that this Council may consider the bills for 1994-1995 electoral arrangements "on such basis". The words "on such basis" ought to be underlined. As far as I understand, "on such basis" does not have the connotations of something that is binding. The authorities will not be compelled to act in accordance with the outcome of the referendum. They need only acknowledge the moral values of certain Legislative Councillors. As I said a moment ago, the outcome of the referendum will not be binding. If even Legislative Council is not required to comply with the outcome, that will be a very bad precedent for the holding of referendums. When a referendum is held in the future, the public will no longer have any confidence in it.

Secondly, concerning 1994-1995 electoral arrangements, this matter is now left to be resolved through talks between China and the United Kingdom or between the two Governments. Very clearly, an agreement, if reached between the two countries, should, legally speaking, be honoured and observed by the

Chinese and the British Governments. The Administration of Hong Kong is the government of a territory under the British Government. Unless the British Government lays down in writing that the agreement this time will be presented to Hong Kong's Legislative Council or Executive Council for approval or be decided by a referendum in Hong Kong, I do not see any practical or legal basis for holding the referendum. Not unless we have the final say if we disapprove of the agreement.

Mr SZETO Wah's motion fails to urge the United Kingdom to give Hong Kong, as its local government, the power to make some decisions that are binding and to delegate this power to us the people of Hong Kong. Therefore, I do not see the outcome of the referendum as binding on the Government of Hong Kong. It will not even be binding on the factional Legislative Council. A referendum, which should be highly obligatory, would be downgraded to a public opinion poll. There are two points I wish to make if we conduct a public opinion poll in the form of a referendum. Firstly, it is already quite clear that the public favours democracy. The need is not to conduct another survey but to strive for democracy. Secondly, to go to all the trouble to obtain an outcome that does not have to be complied with by the Government is like giving adult clothing to an infant to wear. It will not fit. The wording of the motion says that the referendum is to be held on 1994-1995 electoral arrangements. But these arrangements refer to arrangements for the Legislative Council elections, the Urban Council and the Regional Council elections and the district boards elections, and the Legislative Council elections include direct election in geographical constituencies, functional constituency elections and Election Committee election. This means complex electoral arrangements. Of course, there are also Governor Chris PATTEN's package and the many plans from various sections of the community. If a referendum is to be held, its main feature will be a boiling down of all these complex ideas of the community to a simple "yes" and "no" choice.

Nor does the wording of the motion specify what the referendum will be about. Will it be about Governor PATTEN's package, the plan that will be agreed upon between China and the United Kingdom, ADPL's proposals or some other political group's proposals? Also, should the referendum be held before or after an agreement, if any, is reached between China and the United Kingdom? None of these is made clear. Given that the motion fails to specify that the outcome of the referendum should be binding on the Government and on the Legislative Council, and because it fails to clarify what the referendum will be about, I feel that I cannot support the motion.

However, ADPL and I have all along been supporting and striving for the holding of a referendum as the final and highest say of the people. In the past, when the Basic Law was being drafted, we tried to have the referendum, as an institution, written into the Basic Law. We will strive again after 1997 for having it written into the Basic Law. Then, under the "one country, two systems" principle and under the principle of "a high degree of autonomy", the Hong Kong Special Administrative Region will have autonomous powers in all

internal matters, that is, in all matters except defence and foreign affairs. And the holding of referendums will be an internal matter.

I wish now to respond to Mr SZETO Wah on his point of why Members in this Council should support this motion even though the referendum is not binding. My position is this. If the final voting result in this Council has an influence on the Government, we in this Council must strive to make this influence a reality. If the result of this motion debate has no bearing on the Government, then I will find it even more necessary for us to use this Council as a forum to express clearly our ideas and expectations. Therefore, I cannot support the holding of a referendum that, in essence, will be no more than a public opinion poll. I can only abstain from voting. Here, I would like to assure my colleagues that ADPL strove in 1987 for the holding of referendums, is striving for it now and will strive for it after 1997. Thank you.

MISS EMILY LAU (in Cantonese): Mr President, I rise to speak in support of the Honourable SZETO Wah's motion. But first of all, I should like to thank the Honourable CHEUNG Man-kwong for raising a question for me, which is: what the subject at issue should be if we were to hold a referendum. The answer is 60 directly elected seats. I am very gratified to learn that there are people of progressive thinking among the United Democrats of Hong Kong. I hope this thinking can spread extensively among them.

Mr President, I was returned to this Council by the Legislative Council election in September 1991. My first speech in this Council requested that a referendum be conducted. I said at the time that it was very sad for the people of Hong Kong not to have the right to decide their future. I mentioned that Hong Kong should have held a referendum immediately, so that Hong Kong people could decide their future, after the Chinese and British Governments promulgated the Sino-British Joint Declaration in 1984 spelling out the future of Hong Kong. Hong Kong should also have held a referendum in 1990 when the Chinese Government promulgated the Basic Law. We would not be asking too much if we demanded now for a referendum on the 1994-95 elections. I would be very much surprised indeed if such a very small request was opposed. I believe those who might oppose this have absolutely no knowledge of what Hong Kong people are thinking. Mr President, I attended many public forums over the last several months. On these occasions I very often spoke of the political reforms in Hong Kong. The attending audience's response to it might not have been too enthusiastic. But when asked whether or not we should hold a referendum to decide the pace wherewith to implement the political reform proposals and introduce democracy, the majority of them would raise their hands to support a referendum as a means to decide how to go about it. I hope the Government will pluck up courage to admit that the general public of Hong Kong aspires to deciding the future political system by means of a referendum. If the public is to choose between the Legislative Council and a referendum as the mechanism through which to arrive at a decision, which of the two will be more acceptable to the people? I hope the Government will

muster up the courage to admit that the people think a decision coming out of a referendum will be more readily acceptable to them. I have considered a number of times conducting a referendum in New Territories East (a constituency with some 700 000 population). But I can hardly have the resources to implement it. Therefore, I hope the Government will consider carefully the possibility of conducting a referendum in Hong Kong, thereby retaining what modest self-determination we have over our own future.

Mr President, members of the Co-operative Resources Centre were told by the British Foreign Secretary, Mr Douglas HURD, that the days of secret talks between China and Britain were gone forever when they visited Britain in January this year. The talks will begin tomorrow. I hope that in giving his reply later, Mr LEUNG Chin-man can tell us how the British Government will honour its promise in this latest round of Sino-British talks and how Hong Kong people can participate. Mr President, Mr Chris PATTEN has been urging for support for his package. But now here is a crisis, that is, he might end up in a one-man show. Why did I say a one-man show? It is because I believe Members of this Council and the 6 million people of Hong Kong feel that they have no way of participating in this formulation process. They can only stand on the sidelines, either clapping their hands or pointing accusing fingers. Is it the way the Government should have used in proposing a democratic political system for Hong Kong! Otherwise, he is only play acting, posing as a star. We have hardly any means of participation. I believe the Governor has completely failed to honour his promise made at the outset. I hope Mr LEUNG Chin-man, in his reply later, will tell this Council and the general public of Hong Kong how we may participate in deciding our future at this difficult time.

I should also like to respond to the Honourable NGAI Shiu-kit's remark on the Hang Seng Index earlier. The media have got into the habit of quoting the Hang Sing Index to reflect Hong Kong people's reaction. Every time a piece of news comes out, they would quote the index, thinking that it represents Hong Kong people's reaction to any development. I feel that the index represents only a group of speculators. It represents the reaction of a group of people eager to make money within a very short period of time. It cannot practically represent 6 million people's reaction to their future. I hope that colleagues of this Council and the media can refrain from quoting the Hang Seng Index again. It will be perfectly all right to say it represents the reaction of speculators. But I would be exasperated if it is quoted as representing the reaction of 6 million people.

A colleague raised a question: What is the wish of Hong Kong people? I believe we all can agree on three points: (1) prosperity and stability; (2) development of democracy; and (3) that someone would stand up to speak to China on our behalf, and not to be bullied and suppressed by China. These three points may indeed be contradicting among themselves. But this is the difficulty we are encountering. The question of the political system is so very complicated and important that we have to let Hong Kong people master their own future and let them make the decision, rather than leaving the decision to a

Legislative Council which has only one-third of its seats directly elected. I hope the Government will reconsider this although it has reiterated time and again that it does not approve of, will never initiate and does not tolerate holding a referendum in Hong Kong. But at this time of life and death, I urge the Government to reconsider it for many people lack confidence in a Legislative Council which has only one-third of its seats directly elected. I must admit that I hope the Government will present a 60-directly-elected-seat proposal or a change-of-tack proposal, as mentioned by Dr LEONG Che-hung, as the subject of a vote by the people.

With these remarks, I support the Honourable SZETO Wah's motion.

MR LEE WING-TAT (in Cantonese): I support Mr SZETO Wah's motion to hold a referendum to decide on our future political development. A referendum is the most direct and distinct means to give the people a chance to make a collective decision on the future political arrangements for their own land. Over the past 10 years, Hong Kong people were shut out from the Sino-British talks on the future of Hong Kong, the talks leading to the understanding on the new airport and the talks on 1994-95 electoral arrangements to be held soon. All these talks are entirely conducted between the Chinese and British Governments. How ridiculous it is to have two Governments which cannot represent Hong Kong people to hold talks to decide Hong Kong people's future political mode of living. As Hong Kong people, we should stand firm and get back and exercise the rights which should be ours. A referendum is the most concrete way to realize this.

Mr President, the opponents of such a referendum stated their case by citing some principles and also putting forward some specious arguments in technical and procedural context. Those views include:

- (1) A number of opinion polls were conducted over the past six months. It is not necessary to hold a referendum.
- (2) A referendum in Hong Kong does not have any constitutional binding on the Government. It is therefore not worth our while to hold a referendum.

As a matter of fact, the two points that have just been mentioned have obviously a great fallacy. A referendum is entirely different from an opinion poll. The former is a form of political participation on the part of the people whereas the latter is a means to gauge the public opinion. No matter how stringently organized, an opinion poll is bound to have loopholes. Furthermore, respondents to an opinion poll are aware that they are only expressing their views, not making a political decision. In this connection, an opinion poll is different from a vote.

The Chinese and British Governments often reach agreements on matters pertaining to Hong Kong without paying regard to the local people's opinions. People's sense of helplessness has been evident in our opinion polls. Among the various opinion polls on the 1994-95 arrangements, those who respond with "no comment" usually account for a high rate of 40%. A referendum is certainly not constitutionally binding in Hong Kong as it is pointed out by Mr TAM Yiu-chung and Mr Frederick FUNG. Yet the result of an open, fair and territory-wide referendum will definitely exert a strong political and moral pressure on the two Governments to compel them to follow people's wishes. Take the British system as an example. As in the case of Hong Kong, a referendum is also not binding on the British Parliament. Yet, a referendum was held in 1975 on whether the United Kingdom should remain in the European Economic Community and the Parliament had to make its decision in accordance with the result of the referendum.

As for the third point which concerns technicality, that is, the generally low turn-out rate of electors in Hong Kong renders it impossible for the result of a referendum to echo the sentiment of the public at large. First of all, I think a referendum gives each adult the right to decide on the future of this society. It is the fairest method of all. Some people may decide not to exercise their rights. But that does not mean that a referendum would not work. The presidential election in the United States last year had probably only half of the voters casting their votes and CLINTON only managed to gain the support of 30% of those who bothered to vote. In view of the low turn-out rate, could we say that President CLINTON cannot represent the people of the United States? This is preposterous. In the last British parliamentary election, only 70% of the electors cast their votes and the Conservative Party got the support of about 40% of the 70% voters. This represents, as a matter of fact, that less than 30% of the eligible electors supported the Conservative Party. Can we then say that the Government formed by the Conservative Party does not represent the people?

Lastly, those against a referendum say that a referendum is too complicated and we do not have enough time to make the preparation. Mr TAM Yiu-chung has mentioned this point. To hold a referendum and ask people to make a choice, in fact, is not at all complicated. It is at least much less complicated than the "Proportional Representation" proposed by the Democratic Alliance for Betterment of Hong Kong and Mr TAM Yiu-chung. If a referendum is to be held before any Sino-British agreement is reached, I should propose that there could be two possible options: (1) To vote for or against the Patten package or (2) To vote for the Patten package or the Chinese proposals or the proposals made by the liberal camps. If a referendum is to be held after an initial agreement is reached between both sides, the options for voting can also be two: (1) To vote for or against the initial agreement or (2) To make a choice among the initial agreement, the Patten package and the proposals made by the liberal camps.

The United Democrats of Hong Kong have an open mind with regard to the options and any other more constructive options are welcome. The public is well familiar with Mr PATTEN's package and the Basic Law after lengthy deliberations. As for other proposals, I am sure, the public will understand them as well if we do some vigorous promotion. Where the time factor is concerned, when the United Kingdom decided to hold the referendum in 1975, it took only four months to make the preparation. Hong Kong is a small place and we have experience in elections over the years. Together with our well-established system of polling stations and voting arrangements, I believe that preparation can be completed within four months or less.

Mr President, the matter before us is a cardinal question of right and wrong. Any excuse in terms of technicality and procedures cannot stand. In the 19th century, the British nobles used educational attainment as an excuse to deny the average workers and women of their voting right. And the whites in South Africa discriminated against the blacks and stripped them of their political rights. The excuses employed by certain Members to oppose a referendum are, in essence, no more convincing than those used by the British nobles and the whites. Some people try to use some sugar-coated excuses to achieve their objective of deciding and controlling the majority's future by a minority. I would like to appeal to my dear colleagues. I hope that they are courageous enough to dump such kind of dictatorial means which are against the wish of the people onto the rubbish heap in history.

With these remarks, I support the motion.

MR GILBERT LEUNG (in Cantonese): Mr President, the motion today is about referendum, which is pleasant to the ear but, in fact, useless. French writer Romain ROLLAND had a celebrated dictum, "Oh liberty, what crimes are committed in your name!" One may say that the truth shown in the remarks is indeed universally applicable. Beautiful political slogans are always sweet-sounding and, with appropriate package of ideology, they can even mislead and hoodwink people. Their actual social effects are more significant than their literal denotation. For this reason, the real yardstick to judge politicians' political proposals objectively is, in fact, the socio-political effects brought about by their deeds instead of their flowery language which may be sweet-sounding but not useful.

The Governor, Mr PATTEN, is a first-class politician. He suffered a political setback in the United Kingdom. Yet it is more than equal to a task for him as a superstar in politics with rich experience in performing political shows to pull one or two political tricks in his ruling of Hong Kong. He attended the swear-in ceremony in business suit, a departure from the tradition followed by the previous colonial governors. It was indeed a pleasant surprise for the people of Hong Kong. In his policy address, the Governor drew a number of post dated cheques and unveiled the apparently democratic reform package. He also initiated the unprecedented question sessions to field questions from the

public and other publicity activities. It seems that he ushered in a new phase in local politics. All of a sudden, democracy seems to be within reach. Hong Kong people were so elated and carried away that they had forgotten that the Governor is a colonial official no matter what. He took an oath of allegiance to Her Majesty the Queen and the British Government. He owes his authority to the United Kingdom and when all is said and done, would put the interests of the United Kingdom above anything else.

Yet, paper cannot wrap fire. Although the public may be fooled for one time but not forever. They, sooner or later, can discern between good and bad. For half a year, has Mr PATTEN's political reform package facilitated the democratic development in Hong Kong or is it a bargaining chip exploited by the United Kingdom in its negotiation with China? Is it conducive to social stability and prosperity or creating social unrest? Is it instrumental in ensuring stable transition and smooth convergence or intensifying conflicts and division among the people? I believe I need not waste my breath because it is crystal clear to all as to what is going on.

Although the high-sounding principle of being "open, fair and acceptable to Hong Kong people" should be upheld, actually what is the truth? The political reform package is worked out by Mr PATTEN and his think tank behind closed doors. The community at large was not consulted and perhaps even neither did Members of the Executive Council know anything about it beforehand. Even previous governors running a government with no transparency in the past colonial days had not resorted to such a practice. It is clear at a glance as who is democratic and who is autocratic, so how can it be regarded as "open"?

Functional constituency election is indeed a political monster, which is a product of Hong Kong's special historical factors. It is acceptable as an interim political arrangement during the transition period. However, to alter the electoral mode of the functional constituency by replacing functional bodies with individuals as electors may look democratic but in fact unfair. Under such a system, which is simply a monstrous monster, as many as 1 to 2 million people have the chance to vote twice. How can it be regarded as "fair"?

The Governor has kept on claiming that his package is just a proposal and he welcomes any counter proposal. However, he has turned a blind eye and a deaf ear to scathing criticisms and opposing views. After producing a stalemate, he, regarding the reopening of Sino-British talks, on the one hand said that he was willing to resume talks with China without any preconditions but, on the other hand, set a precondition by rashly gazetting his own package. One is dead wrong if one fully supports Mr PATTEN just because one thinks that the Governor has been taking a firm stand and holding fast to his view and he put forward three conditions when he reported on his duty in the United Kingdom, since not long after that, the British Government announced that it agreed to resume talks with China on the basis of the "three accords". How can such a

wavering approach which is characterized by making conflicting statements and telling bald-faced lies be acceptable to the people of Hong Kong?

Now Mr SZETO Wah has put forward a motion to urge the Government to hold a referendum to decide on the Legislative Council's stand regarding the Governor's political reform package. The motion seems to be a lofty and flawless proposal in line with the principle of democracy. In fact it is promoting the Patten package by holding a candle to the devil, as it were, and helping him to gain political assets. This will only hinder the progress of Sino-British talks, which is absolutely against Hong Kong people's wish of urging China and the United Kingdom to break the impasse as soon as possible. Indeed, if we decide to hold a referendum, I am afraid we have to first vote on the question of the Governor's representativeness and whether he should be removed from office. As a matter of fact, if the Patten package is voted down in the referendum, does it not mean that he should take the blame and resign? Yet it is common knowledge that this is virtually impossible. If the people of a colony can decide on the fate of their governor through a referendum, will a colony still be a colony?

Mr President, these are my remarks.

MR FRED LI (in Cantonese): Mr President, as regards the issue of referendum, Meeting Point is of the view that, as a mechanism for decision-making, it is open to us to probe and study it to see whether such a method should be introduced into the constitution of Hong Kong. In some other countries and regions, referendum is also used as a procedure for the public to come to and indicate its decision directly. Nevertheless, we all along believe that referendum should not be made too abstract. We should not regard it as the only most democratic method, nor should we regard it as the best and most appropriate way of decision-making in whatever circumstances. Many problems in a society, particularly those relating to the balance to be struck between public policies and public interests, usually involve considerations from various aspects, levels and perspectives. They have to be settled on the basis of comprehensive debate and have to be accepted by the majority of the population. Such a decision will then bring about greater good to society. A referendum with a simple answer of "Yes" or "No" is not necessarily the most effective or the most constructive way of deciding social policies. In fact, a democratic system of representative government building on parliamentary debates provides precisely a more extensive and thorough democratic mechanism to solve some important social issues. This is a major objective of our society in striving for a democratic political system for Hong Kong since the 1980s.

Of course, even with a representative government, there are times during which, in certain specific circumstances, the employment of a referendum is appropriate for solving some major controversial issues of society. However, before employing the mechanism of a referendum, we must set down clearly and carefully the criteria and procedures for the referendum. This is to ensure

that there is no abuse, and will not constitute any obstacle to the normal operation of the representative function of parliament. In our society, controversial issues come up nearly everyday, among which the more serious ones are: the repeal of capital punishment as passed by this Council today, boat people, labour importation, construction of the new airport, public housing rental for well-off tenants and so on. Should these issues also be decided by a referendum? Or should they be solved by a referendum first and then the Legislative Council will make the final decision according to the outcome of the referendum? In this way, what impact and influence will it have on the legislative body?

On the basis of the above various considerations, Meeting Point objects to the holding of a referendum before first undertaking a detailed and comprehensive study into the mechanism and operation criteria of a referendum. It is because it is still difficult to assess whether such a referendum will be favourable or unfavourable to the political development of Hong Kong.

Let us come back to the motion today moved by Mr SZETO Wah about conducting a referendum. Meeting Point would like to raise two points: (1) In our society, including this Council, up to this day there is not yet any earnest discussion of the constitutional implication of a referendum, nor about the merits and demerits of conducting such. (2) The present constitutional reality of Hong Kong (unless the Letters Patent and the Royal Instructions are amended), and also the future Basic Law of the Hong Kong Special Administrative Region, if unamended, basically do not allow the holding of a referendum carrying the import of a public decision or ratification. To conduct a referendum, the above constitutional documents have to be amended first.

Perhaps some will argue that they do not aim at getting a public decision out of a referendum but first organizing a referendum for reference purpose. As regards this argument, Meeting Point thinks that a referendum without the implication of getting a public decision out of it is not a referendum in its true sense. This will confuse members of the public who have participated in the voting. Such a so-called "referendum" is at most only an opinion poll or survey. Then, if a referendum is only for reference purpose, Legislative Councillors will be free to follow or not to follow its outcome. Such a referendum which does not have any binding effect will not help much in solving problems.

There are various means to reflect public opinion. Different sectors of society can express their views, collecting signatures, and conducting various opinion polls. The public opinion gathered in the past few months reflect that the public is inclined to support the further democratization of our political system. As for the representation of public opinion, our elected Legislative Councillors are public representatives in the political system. If all of our colleagues in this Council can honestly act according to public opinion, public opinion will receive attention and consideration. Should we turn our back on

public opinion, then a so-called "referendum" which has no binding effect will be after all useless.

Since, in terms of argument, the motion of Mr SZETO Wah fails to clearly define the purpose and effect of a referendum, Meeting Point cannot support it.

Mr President, I so submit.

DR YEUNG SUM (in Cantonese): Mr President, referendum is not at all a difficult concept to grasp. Any discussion on whether or not a referendum should be conducted does not need any contrived or affected reason. What we have to consider is indeed a very simple question, that is, whether or not Hong Kong people be given the right to participate in and to make a decision about the political reform package. It would only be an insular and misleading piece of comment if this very debate were regarded as political posturing or a prelude to independence. The wish of Hong Kong people to participate in deciding the territory's political system during the transition is an unquestionable fact. This is also Hong Kong people's fundamental right which is entirely in line with the high degree of autonomy promised in the Joint Declaration and Basic Law. It is therefore only sensible and natural for Hong Kong people to decide on the political reform proposals by means of a referendum.

We must understand the significance of the vote we are going to cast. If a Member votes against this motion on referendum, other than thus expressing his own political orientation, more importantly, he would be denying the several million people of Hong Kong their right to express their opinion about the development of Hong Kong's political system. This would be a kind of deprivation at the expense of Hong Kong people — a deprivation of their political right. In addition to depriving Hong Kong people of their political right, a negative vote would mean spurning the positive effect of a referendum in resolving the question of Hong Kong's political system. In fact, whatever the outcome of the Sino-British talks, the Legislative Council will have to consider the Bill on political reforms ultimately. On this important issue, a responsible Legislative Council Member should let the people's wish be expressed clearly. Two positive functions can be served this way: (1) to provide guidance for seeking a consensus for the disparate views among Members; and (2) to provide some sort of a moral backing to make the outcome of the talks on political reforms acceptable to the people of Hong Kong.

According to the existing constitutional arrangements, the outcome of a referendum will have no binding effect even if the Government decides to hold one. This point is fully understood by Members of the Legislative Council. That Mr SZETO Wah's motion has no binding effect is not out of his own design, rather a result of the existing constitutional arrangements. As a democratic group, we believe we should fight for Hong Kong people's right to

participate in deciding the political system within the existing constitutional constraints. If the Government accepts in principle the referendum arrangement, we could then hold technical discussions on the subject matter of the referendum. If we fail to agree upon this in principle, how could we make the technical arrangements? Therefore, the United Democrats of Hong Kong suggest that a referendum be conducted for the 1994-95 political reform package, so that the political right of Hong Kong people be exercised and clear guidance be provided for the Legislative Council in debating and deliberating the relevant Bill in future. In terms of factuality and rationality, we should all support Mr SZETO Wah's motion.

Mr President, we are of the view that in order to gauge the public's wish as regards this question of political reform, a referendum is the best method. Referendum is an open, comprehensive, direct, fair and effective form of exercise of the right of political decision-making. We need not be wholly subject to the confines of Mr PATTEN's package. Nor do we need to entirely succumb to any agreement coming out of the Sino-British talks in respect of the political system. A referendum can reduce considerably the possibility of public opinion being fabricated or twisted at will. Hence, it is especially suitable for deciding some very important public issues about which there are significant differences of opinion. One good example is this controversy over the political system. But issues such as the housing policy or the "well-off tenants" policy have yet to reach the level to justify the holding of a referendum. In other countries, referendum is a proven effective instrument that has a long history. A referendum was held the day before yesterday in Italy to decide on a reform to the political system.

Finally, I sincerely hope that Members can support Mr SZETO Wah's motion. If the motion should be carried, we could then urge the Administration to submit to this Council, in accordance with this Council's decision, a Bill on the holding of a referendum as soon as possible and to launch immediately the associated administrative and publicity efforts, so that people can express their wish and hence provide a clear and undistorted reference base for Members before they debate the political reforms.

With these remarks, Mr President, I support the motion.

DR TANG SIU-TONG (in Cantonese): Mr President, since Mr Chris PATTEN put forth his constitutional package on 7 October last year, Hong Kong's political and economic situations have become unsettled. China has strongly attacked his package for "three violations". Talks about "starting a new kitchen" have been incessant. The stock market has been plunging and surging like a roller coaster. The outlook on the coming four years is worrisome indeed. Mr PATTEN has made it very clear: if China and the United Kingdom fail to reach understanding on a political reform plan, he will table his constitutional package at this Council. This will be tantamount to shifting his responsibility onto this Council. The Governor himself, as well as the Members of the

Executive Council, will then wash their hands of this matter. What he does is not admirable.

Today, a colleague of ours is proposing a referendum on 1994-1995 electoral arrangements. A referendum will undoubtedly ease Members' psychological pressure. But is the idea of holding referendum feasible? This is a question worth asking. In a modern democratic political system, the recognized way of constituting a government is the direct election of legislators and of the chief executive. At the same time, I believe that an elected representative government will speak for the interests of the community as a whole. When a government is unable to hold public consultation through normal channels to decide on an important issue, a referendum may not be a bad idea. However, it is difficult for the public to fully understand such a complex issue as the political reform. Another flaw of a referendum is that no voting method is fair to all and acceptable to all. How those in office formulate the wording of the referendum or designs the voting method will affect the outcome of the referendum. For instance, if we hold a referendum on imposing heavier tax burden on the rich, I think the result is obvious and we will have a case where the majority dictates to the minority.

I think that a referendum is not the proper way of resolving the issue on the political reform package. Voters in a referendum are supposed to be the citizens of a sovereign state, not the people of a local community or a city. The people of a local community or a city can make decisions only on the affairs of this local community or city. As Mr CHIM Pui-chung has put it, issues like the Double Rent Policy and the abolition of capital punishment can be decided by a referendum. The row over the political reform package involves issues affecting Hong Kong's two sovereign states, one taking care of the territory before 1997 and one after 1997. Should we hold a referendum on such issues, it seems that we are indirectly encouraging Hong Kong to become an independent entity. This is not what the people really want. It will also be contrary to the interests of the sovereign states. At present, many people have been misled by vacuous democratic slogans into thinking that the people of Hong Kong can decide Hong Kong's future. They fail to see that, in 1997, Hong Kong will return to China's fold instead of becoming an independent entity. Miss Emily LAU's advocacy of self-determination by a referendum shows her failure to understand that China will resume the exercise of sovereignty over Hong Kong in 1997.

Though China and the United Kingdom have now broken the impasse and agreed to reopen talks, they still have many basic differences. No matter what the outcome may be if a referendum is held now, it will more or less put pressure on the parties to the talks. An outcome of the referendum that differs from the agreement, if any, reached between China and the United Kingdom will be embarrassing to both sides, directly affect the credibility of the Hong Kong Government and present difficulties to the future Special Administrative Region (SAR) Government.

Mr LEE Wing-tat said that the outcome of the referendum will put moral pressure on the Chinese and the British Governments. He is right. However, we must not forget that Hong Kong people will probably enjoy greater freedom and greater measure of democracy after 1997 than their cousins in China. Hong Kong will be a part of China but will enjoy a different degree of freedom. Is it fair? In principle, a referendum should be held only to decide a simple election-related issue, preferably a question that the public can answer with a "yes" or a "no". However, 1994-1995 electoral arrangements are matters about which multiple plans have been proposed. The choices will be complex. A voter may agree with one or two of the plans while disagreeing with another plan or two. If he is asked to make a "yes" or "no" judgment on the total package, the result will probably be wide of the mark.

Mr CHEUNG Man-kwong said challengingly that it will be the best to hold a referendum on a plan to have all the 60 seats in this Council returned by direct election. This is improper. He, too, does not understand who will have sovereignty over Hong Kong after 1997.

The political reform package in question will divide the community in Hong Kong. A referendum will be even more divisive and it will certainly affect Hong Kong's stability. We need only look at the City Forum at Victoria Park. Up stage, guest speakers throw verbal darts at one another. Down stage, spectators frown with anger and shake their fists. Imminent group fights are threatened. Gone are the days when people in Hong Kong showed the spirit of being in the same boat and getting over the difficult times together. This is Hong Kong's tragedy.

Hong Kong does not have any ready made mechanism for holding a referendum. If one is to be held hastily, many technical problems will have to be solved. Examples are: Who will be qualified to vote? Who will be responsible for monitoring the outcome? Will it be necessary to make voting mandatory?

The Government's decision to present the political reform package to this Council is intended to make a scapegoat out of this Council. As Members of this Council, we of course will have to take up this responsibility. If this Council shifts this responsibility onto the public, this will exactly be what the British Government wants, that is, to use public opinion as a bargaining chip. A referendum with no binding force is meaningless. As Mr Frederick FUNG has put it, such a referendum will only backfire by making the public think that it is a frivolous exercise. If the 1994-1995 electoral arrangements in Hong Kong can be decided by a referendum today, this will signify that post-1997 electoral arrangements can also be decided by a referendum. If so, can the constitution of the SAR's first and second administrations, as stipulated in the Basic Law, be changed in the same manner? If the answer is yes, then the Basic Law will be scrapped even before it comes into effect. Is this practical? How can we talk about the future and about confidence in the future?

Mr President, a harmonious relation between China and the United Kingdom is very important for Hong Kong's stability and prosperity. It is the cornerstone of Hong Kong's success. We sincerely hope that Hong Kong will make a smooth transition in 1997 and that the Pearl of the Orient will continue to shine and shine even more brightly after 1997.

With these remarks, I oppose the motion.

MR ANDREW WONG (in Cantonese): Mr President, I speak to support Mr SZETO Wah's motion of holding a referendum in respect of our political development. In fact, I already expressed my views at a forum organized by the University of Hong Kong on 9 March 1993. Mr SZETO Wah was also present at the forum. Earlier on I had mentioned that I had reservations about the referendum but at the forum I said I had changed my mind. Such a change is entirely attributed to the time factor or a matter of timing rather than the principle involved. As for the principle, I will go back to it in depth later. At that moment I already referred to the necessity of holding a referendum under the prevailing circumstances in order to gauge Hong Kong people's preference in an authoritative manner. For this reason, we have to hold an authoritative referendum. As there was no sign of any Sino-British negotiation or no such negotiation in progress at that time, if I had proposed to hold a referendum, it would have been, firstly, untimely and, secondly, almost to suggest that negotiation was no longer possible. Basically Hong Kong people hope that China and the United Kingdom can come to an agreement peacefully, harmoniously in compliance with Hong Kong people's wishes and interests. At that time we were still at the stage of talks about talks and talks about how to start the talks. Tomorrow marks the beginning of the Sino-British talks. Under such circumstances, we are all the more in need of upholding a most basic principle. On 11 November when I was moving my amendment motion, I already raised the basic point, that is, working in line with the wishes and interests of Hong Kong people. In this connection, it is indeed more necessary for us to hold a referendum.

Why is the referendum so important? One would realize, after some scrutiny, that any agreement concluded in the Sino-British talks is basically binding on Hong Kong. As we all know, even if we are not pleased at the result of the talks and make amendments to the agreement when it is put to us in the form of a piece of legislation, to the extent that it would be no longer the same agreement, the Governor virtually has no power to sign on the dotted line and turn it into a law. Furthermore, the United Kingdom can unilaterally legislate for Hong Kong through the Order in Council while China can also do so by adding an Annex IV to the Basic Law to formulate all the electoral arrangements. For this reason, it is necessary to take into account Hong Kong people's opinions by conducting an authoritative referendum before any agreement or conclusion is made. Even if this round of talks is successfully held with agreement and conclusion, we should still hold a referendum to solicit Hong Kong people's opinions before the agreement comes into force.

I will not go into unnecessary details with regard to some side issues and technical questions concerning referendum. During this debate, some people put forward principle-related arguments such as "a referendum would lead to social division". On the other hand, people supporting the referendum find that only this can put the spirit of democracy into full play because the people should be their own masters. In this regard, I think we should listen to some unbiased views and some academics' opinions. I must say I am not among them. I remember that the Basic Law Consultative Committee (BLCC) issued a pamphlet which touched on the subject of referendum at the beginning of 1989 at a time when I was the convenor of the Constitutional Development Panel. As far as I know, the statistics quoted by Mr SZETO Wah are from the pamphlet which is based on a book entitled *Referendum: A Comparative Study of Practice and Theory* co-edited by David BUTLER and Austin RANNEY. And BLCC left out some contents of the book. I think we must take note of four paragraphs in the book, which I think is relevant to our discussion. In fact, they are the last four paragraphs of the book. If one has no time to read all the four paragraphs in detail, then I would advise him to read the last two paragraphs. From these two paragraphs, one can see that there are two strong arguments in support of referendum as a matter of principle. First, I call it "effectiveness". Now I quote: "Referendums have often proved to be useful devices for solving or setting aside problems too hot for representative sides to handle. They have often given legitimacy and legitimation to new regimes or boundaries or constitutions that they would otherwise have lacked." I think this is a very important point. Whenever the public has serious disputes over a particular issue or there may be two groups of Members in this Council arguing with each other on certain issue of China and the United Kingdom have a great row in respect of the Hong Kong issue, the two Governments should display magnanimity and reach an understanding between themselves to consult the people of Hong Kong before the related agreement is put into effect. Our Colleagues in this Council should also be magnanimous enough to consult the public when the agreement is put before this Council, before any final decision is made. This is indeed the objective of a referendum, namely, enabling us to draw reference from, and solicit, the public's views. The second point is "inevitability". BUTLER and RANNEY said, "One thing is clear: referendums are here to stay; and they are almost certain to increase in number and importance in the years ahead." I think even if the Government refuses to hold a referendum, the present opinion samplings organized by local bodies would be gradually developed into a territory-wide opinion poll, which is exactly a referendum. A mock referendum organized by the University of Hong Kong is underway, which is in fact a territory-wide opinion poll. Even if the Government does not hold the referendum, the people can hold it by themselves. And how can we stop them from doing so? For these reasons, I think some people have exaggerated by saying in this debate that to hold a referendum will definitely lead to social division or that our society is not democratic simply if a referendum is not conducted. Both arguments simply cannot stand. In a

representative government, which follows a democratic policy, we are bound to encounter some issues which must be put to the people for a decision. This is a way to bring our society forward.

Mr President, with these remarks, I support the motion.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Mr President, whenever a community is faced with a major controversial issue, be it political, economic or social, it is always tempting to want to resort to a referendum. The appeal of such a step is obvious. For it offers the general public a direct means to express their wish on whether a particular decision should be taken. Thus, it is perhaps not surprising that there should be calls for a referendum to be held on the constitutional proposals announced by the Governor last October. The Administration, however, does not believe that a referendum is the appropriate vehicle to take matters forward. I shall explain why.

First, a referendum will have to be conducted on a firm legal footing if its process is to be proper, and its results credible. This requires a new piece of legislation to prescribe the questions to be asked, the electorate, the voting and counting procedures, and so on. This will involve rather complex legislation and will therefore take time. An expedient alternative is to establish a set of administrative rules, but without the necessary legal basis such rules are bound to be vulnerable to criticism and challenges. They would also be difficult to enforce.

Secondly, if a referendum is to be truly meaningful, it must allow for the widest possible participation by the public. On the face of it, the most straightforward option is to make use of the General Electoral Roll compiled for the various geographical constituency elections in our three tiers of representative government. However, only 1.9 million out of an estimated 3.69 million eligible electors are at present registered. The community would naturally expect, and reasonably so I should add, that the remaining 1.8 million eligible electors be given an opportunity to register, and thus to take part in the referendum. This will entail a special and comprehensive registration exercise involving considerable resources. It will be time consuming, too.

Some may say that we should not be deterred by technical hurdles. However, we do have to take account of the calendar if we are to get the relevant electoral legislation passed in time. As it is, the legislative timetable is already extremely tight. Any further slippage could well mean that there will not be adequate time to make the necessary practical arrangements for the 1994-95 elections.

Thirdly, even assuming we can overcome all the technical problems, we must remember that referendum is a blunt instrument. It is effective only in dealing with a choice between two alternatives. Usually this requires the voters to give a straight "yes" or "no" to a question couched in simple terms. Overseas experience is that the more complicated the question, the more confusing and difficult it would be in interpreting the results. This follows that no account can be taken of the range and quality of public views on a matter of great complexity. Nor can the voters quality choice by "if"s or "but"s. Precisely because of its bluntness, a referendum also carries the risk of being very politically divisive.

Electoral arrangement for 1994-95 is, of course, a complex as well as complicated subject. To try to reduce it to a simple, and, dare I say, simplistic "yes" or "no" approach will do grave injustice to this immensely important subject. Indeed, if such an approach were workable, the community would not have had such protracted discussion on the subject in the first place.

The fact of the matter is that arrangements will have to be made for the 1994-95 elections. We need to decide, and do so soon, what those arrangements should be. It will not do simply asking the public to indicate whether they are for or against the Governor's package. Instead, the public will have to be given the chance to choose between alternative sets of proposals. In this regard, we have seen during the past few months a whole range of alternative proposals emerging from the community, some being more controversial than others. There will therefore be enormous difficulties in framing a straightforward question to be asked and this must cast serious doubt on whether a referendum is practicable at all in our circumstances.

Which brings me to my fourth point: should such a referendum have binding effect? If the results were not to be binding on the Administration, it would raise the question of why a referendum is necessary at all. If it is to ascertain public views, there already exist other more subtle and sophisticated means to do exactly the same job. Indeed, the community has been widely consulted both before and after the announcement of the proposals. And since last October, various independent polling companies have conducted opinion surveys on different aspects of the Governor's package. This Council has also held three motion debates and one adjournment debate on the subject. Not to mention, of course, the large number of written submissions from various individuals and organizations, as contained in the compendium and a supplement published earlier this year. So the Administration is already keenly aware of the community's views in this respect.

The Honourable Emily LAU mentioned the point about public participation. Here I should like to point out that in the process of seeking an agreement over the 1994-95 electoral arrangements, the Chinese and British sides will certainly draw reference from these views, in order to ensure that these arrangements are acceptable to the people of Hong Kong.

If, on the other hand, the results of a referendum were to be binding, it would raise an even more fundamental question, viz. the roles of the executive and the legislature in Hong Kong's political system. Under our existing system, policies are drawn up by the Administration on the advice of the Executive Council. The Administration then implement the policies. Where implementation requires legislation and/or funding, draft Bills and funding proposals will come before this Council for approval. This Council also has the power to hold the Administration accountable by asking questions or seeking information on aspects of public policies. This is a proven system which, by and large, has served the community well.

Mr President, the issue before us today is the 1994-95 elections. It is the job of the Administration to propose legislation to provide for electoral arrangements which are open, fair and acceptable to the people of Hong Kong. It will then be the job of this Council, as representatives of the community, to scrutinize the draft legislation. In so doing, Members of this Council will obviously have regard to the wishes of the general public, expressed through various channels. At the end of the day, however, it is this Council which has the responsibility of passing, amending or rejecting the legislation. Whatever the political attraction of a referendum, it must not be allowed to distract this Council from properly discharging its constitutional responsibility.

For the reasons I have explained above, the three *ex officio* Members will vote against Mr SZETO's motion.

PRESIDENT: Mr SZETO Wah, do you wish to reply? You have 2 minutes 47 seconds.

MR SZETO WAH (in Cantonese): When I moved the motion, I made fleeting mention of the fable about YE Gong who was fond of dragons. Now I would like to elaborate somewhat on it.

YE Gong claimed to be very fond of dragons. Therefore he donned robes and hats patterned with dragons and had dragons painted on all the walls inside his house. Having learnt about this man, the genuine dragon in heaven descended to earth to visit him. But YE Gong, on seeing the genuine dragon, was scared to death and fainted away.

Referendum, which represents democracy, is like the genuine dragon. There are a number of "YE Gongs" among our colleagues in this Council. They claim to be in support of democracy. But what will they do when genuine democracy comes? The Honourable Frederick FUNG must be the most remarkable among these "YE Gongs". He did not have his wits scared out of him. But instead he criticized the dragon descended from heaven for having too long a beard and too sharp a pair of horns. He then threw a couple of tear gas

canisters at it. This is indeed a manifestation of "left in form but right in essence".

The Honourable NGAI Shiu-kit asked how many voters the United Democrats of Hong Kong (UDHK) had. In fact, this is a question which we should put to the Liberal Party. I myself had 58 000 voters who voted in my favour. I wonder how many voted for Mr NGAI? If we should add up all electors who voted for UDHK Members, I believe the number would be 100 times that of the Liberal Party.

Here I should like to take this opportunity to point out the Honourable TAM Yiu-chung's fallacious logic. He asked, "Is a resolution passed otherwise than through the holding of a referendum not fair, open and acceptable to Hong Kong people?" This is indeed a very simple question of "converse theorem". For example, your father has a beard, but anyone who has a beard is not necessarily your father.

I should like to thank the Honourable CHIM Pui-chung for his flattery when he said that I thought I had a high IQ. But I have never harboured such thought. I am sending this flattery back to him intact. If ever I am opinionated, then I must admit I am hard to budge.

I am very grateful to the Honourable Gilbert LEUNG for brining up the quote "Liberty, what crimes are committed in your name!" I just want to ask him on the quiet, "Is it because of this quote that you decided not to join a certain political party?"

I should like to add one more point here. The referendum conducted in the United Kingdom in 1975 on the question of joining the Common Market did not have any binding effect. It was only a consultative exercise.

Mr President, I so submit.

Question on Mr SZETO Wah's motion put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

MR MARTIN LEE: Mr President, may we have a division?

PRESIDENT: Yes. Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Do Members have any queries? If not, the results will be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr MAN Sai-cheong, Mr James TO, Dr YEUNG Sum and Ms Anna WU voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Gilbert LEUNG, Mr Eric LI, Mr Fred LI, Mr Steven POON, Mr TIK Chi-yuen, Dr Philip WONG, Mr WONG Wai-yin, Dr TANG Siu-tong and Mr Roger LUK voted against the motion.

Mr PANG Chun-hoi and Mr Frederick FUNG abstained

THE PRESIDENT announced that there were 18 votes in favour of the motion and 29 votes against it. He therefore declared that the motion was negated.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MRS ELSIE TU moved the following motion:

"That the Government Flying Service (Discipline) Regulation, published as Legal Notice No. 90 of 1993 and laid on the table of the Legislative Council on 31 March 1993, be amended -

- (a) in section 3(6):
 - (i) by adding "of" after "found guilty";
 - (ii) by adding "向法庭" before "承認" where it twice appears;

- (b) in section 11(7), by repealing "各" where it 3 times appears and substituting "個別", "該" and "該" respectively;
- (c) in section 11(11), by repealing "the member defending him may re-examine the member and his witnesses" and substituting "the member and his witnesses may be re-examined";
- (d) in section 16(2), by repealing "註銷" and substituting "刪除".

MRS ELSIE TU: Mr President, I move the motion standing in my name on the Order Paper.

This motion and the next one on the Order Paper which relates to the Government Flying Service (General) Regulation are moved under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) which empowers this Council to amend by resolution subsidiary legislation made under delegated authority and laid on the table of the Legislative Council.

The amendment proposed to section 11(11) is to avoid a possible construction that a member of the Government Flying Service charged with a disciplinary offence is deprived of the right to re-examine his witnesses at a disciplinary hearing.

Amendments proposed to the Chinese texts of the two Regulations are to achieve consistency in meaning between the Chinese and English texts of the two Regulations.

The Administration has agreed to the amendments proposed in the two motions.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MRS ELSIE TU moved the following motion:

"That the Government Flying Service (General) Regulation, published as Legal Notice No. 91 of 1993 and laid on the table of the Legislative Council on 31 March 1993, be amended -

- (a) in section 13(2), by repealing "穿上" and substituting "穿戴";
- (b) in section 13(3), by repealing "穿着" and substituting "穿戴".

MRS ELSIE TU: Mr President, I move the motion standing in my name on the Order Paper for reasons which I have mentioned in my speech for the motion I have just moved.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

Adjournment and next sitting

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Thursday 22 April 1993.

Adjourned accordingly at twenty-five minutes past Eleven o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of Sewage Tunnels (Statutory Easements) Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWER**Annex I****Written answer by the Secretary for Health and Welfare to Dr HUANG Chen-ya's supplementary question to Question 3**

In 1992, following testing under the general food surveillance programme, there were five prosecutions taken under the Preservatives in Food Regulations against people who sold fish or fish products. Another seven similar prosecutions were taken in relation to shell fish. The penalties imposed ranged from \$1,000 to \$3,000.

Prosecutions could also be initiated following complaints of the general public. In 1992, there were five such prosecutions taken under the Public Health and Municipal Services Ordinance against people who sold fish or fish products which were not of the nature, substance or quality demanded by the purchaser. The penalties ranged from \$1,000 to \$2,500.