

Legislative Council

LC Paper No. CP 1133/98-99

(These minutes have been
seen by the Administration)

Ref : CP/G01/12

Subcommittee on Review of the Operation of the LegCo Redress System

**Minutes of meeting held on
Thursday, 11 February 1999 at 10:45 am
in Conference Room B of the Legislative Council Building**

Members Present : Subcommittee Members
Dr Hon LEONG Che-hung, JP (Chairman)
Hon Cyd HO Sau-lan
Hon LEE Kai-ming, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon Jasper TSANG Yok-sing, JP
Hon CHOY So-yuk

Non-subcommittee Members
Hon NG Leung-sing
Hon Ronald ARCULLI, JP
Hon Andrew WONG Wang-fat, JP

Members Absent : Hon Martin LEE Chu-ming, SC, JP
Hon Andrew CHENG Kar-foo

**Attendance by
Invitation** : **Representatives from Administration**

Mrs Carrie YAU, JP
Director of Administration

Ms Miranda CHIU
Deputy Director of Administration

Clerk in Attendance : Mrs Anna LO
Chief Assistant Secretary (Complaints)

Staff in Attendance : Mr Ricky C C FUNG, JP
Secretary General

Mr LEE Yu-sung
Senior Assistant Legal Adviser

Mr Charles FOO
Senior Assistant Secretary (Complaints)⁵

I. Confirmation of minutes of last meeting held on 2.2.99
(LC Paper No. CP 949/98-99)

The minutes of last meeting were confirmed without amendment.

II. The Administration's response on the Subcommittee's proposal to extend the Legislative Council (Powers & Privileges) Ordinance to cover meetings conducted under the LegCo Redress System
(LC Paper No. CP 938/98-99)

2. The Chairman welcomed Director of Administration and Deputy Director of Administration to the meeting. He invited Director of Administration to comment on Members' proposal for the Government to introduce a bill to extend the Legislative Council (Powers & Privileges) Ordinance (the Ordinance) to cover meetings conducted under the LegCo Redress System (the System).

3. Director of Administration thanked the Chairman for giving her an opportunity to elaborate on the Administration's position on the matter. She said that she had seen all papers prepared by the LegCo Secretariat on the subject and minutes of all the meetings of the Subcommittee; hence fully understood the concern of those Members making the proposal. The stance of the Administration remained the same as stated in her letter dated 26 November 1998. She reiterated that the existing informal arrangement of the Redress System had been working well without the privileges and immunities (P&I) since the introduction of the System in 1963 and that Article 73(8) of the Basic Law did not require the System to be covered by P&I. As Members could handle a complaint in a formal manner with P&I by means of a committee, if necessary, the Administration did not see the need to introduce a legislative change as proposed which would inevitably change the modus operandi of a well-established system. Furthermore, the provision of P&I for Members and public officers but not complainants at such meetings might cause members of the public to perceive that they were placed in an unfair situation. On the other hand, the provision of P&I for complainants as well might result in frivolous

complaints or other abuses which would adversely affect the effectiveness of the System.

4. Mr Ronald ARCULLI shared the Administration's views and remarked that the existing effective arrangement for Members to resolve complaints at closed case conferences with the Administration would be disrupted if they were made open meetings with the extension of the Ordinance or sometimes tripartite meetings including the complainants, because the Administration would tend to be more careful to disclose information which it would otherwise be quite prepared to do at closed meetings.

5. The Chairman reiterated that the proposal was not meant to change the present practice or to encourage tripartite case conferences, which were presently held occasionally. The proposal was merely to extend the Ordinance to cover meetings conducted under the Redress System. The proposed provision of P&I for Members and public officers but not complainants at such meetings was in line with the present arrangements for meetings of the Council and its committees.

6. Director of Administration commented that the nature of the function of receiving and handling complaints from residents of Hong Kong was very different from the nature of the other functions of the Legislative Council provided under Article 73 of the Basic Law. Furthermore, there was no evidence locally or overseas to indicate that the availability of P&I was essential for the effective operation of a redress system. She therefore reiterated that the existing well-established informal arrangement of the LegCo Redress System, which had served Hong Kong well and was well known to the clients it served, should be retained without any change.

7. Mr Ronald ARCULLI agreed that the function of receiving and handling complaints from individual complainants or deputations was very different from the other functions of the Council in that the former dealt with the interests of a particular person or group of persons while the latter dealt with the interests of a much wider sector of the community. In sharing Mr ARCULLI's view Ms CHOY So-yuk added that Duty Roster Members had no choice of the cases which they handled and the agendas were set by the complainants. Premature expression of views to deputations before Members had a chance to study the matter in depth were not always helpful. She supported the retention of the existing arrangement without P&I.

8. Mr Jasper TSANG agreed that if Members but not complainants were provided with P&I at interviews with complainants, the complainants would naturally perceive that they were placed in an unfair situation because they were the main speakers at such interviews. If P&I were extended to complainants, the chances of abuse would be high, as they could openly attack any person at the interviews without fear of liability for defamation. He agreed that the issue

should be deliberated carefully in the light of this point.

9. Mr NG Leung-sing remarked that a complaint could seldom be resolved at the interview stage. The complaint was simply heard and taken up with the Administration afterwards. Therefore, it was not necessary for Members to comment on the complaint when it was first received. In view of the high possibility of abuse of P&I at such interviews, he agreed that the proposal of extending P&I to these meetings should be carefully considered.

10. The Chairman related the concern expressed by some Members who were absent from this meeting that Members making remarks in response to the complainant's statements, but not repeating the statements, might still be liable for defamation. Some Members had also expressed concern on the proposal of setting up committees under the Council to handle complaints in a formal manner with P&I because this would result in a great number of such committees. The Chairman reiterated that the proposal being pursued was simply to extend the Ordinance to cover the existing informal LegCo Redress System.

11. Director of Administration commented that the Administration was concerned about open accusations made at interviews with P&I. It would only be fair to modify the System so that the parties being accused against would be given a chance to defend themselves. In the circumstances, the System would become a forum for making and defending accusations rather than handling complaints. It would not be in the interest of the complainants who genuinely wished to seek redress from a constructive Redress System.

12. Miss Cyd HO pointed out that under the existing arrangement without P&I, complainants could still make open accusations against the government, government officials or other persons at interviews with Members. These persons were not given a chance to defend at such interviews. Director of Administration replied that so far the Administration had not seen any problem with the existing arrangement, but it was difficult to anticipate what would happen if P&I were extended to these meetings. The Administration therefore did not support any change to the existing system.

13. Mr Ronald ARCULLI added that P&I available to Members at meetings of the Council and its committees were to facilitate Members' discussion and debate on issues of public interest without fear of prosecution for making controversial remarks. They were not for protection of Members when hearing and discussing complaints with members of the public. Members should avoid using P&I unless it was well justified and really necessary.

14. Mr Andrew WONG reiterated that besides the setting up of select committees to investigate complaints, Members might refer cases to Panels, where P&I were available, for follow up as appropriate. He maintained the

view that P&I should not be extended to the existing Redress System. He considered that if the advantages of the existing System, i.e., being flexible, without a rigid definition for complaints and allowing Members to join and quit the handling of a complaint at any time etc, were to remain, the System must be retained in its existing form without P&I. He agreed with Mr ARCULLI that P&I were made available to Members to facilitate debate on government policies and legislation or conducting formal investigations, but not receiving and handling of complaints. He recalled that these P&I arose from the British Common Law System as a tradition of the Parliament and were subsequently enshrined in the British legislation for this very purpose. Hearing of complaints by the British Ombudsman was behind closed doors. When the LegCo (Powers & Privileges) Ordinance was enacted in 1984 in Hong Kong, there were heated arguments on whether such P&I should be given to the Council. He personally supported the enactment of the Ordinance although he was not a LegCo Member at that time, because it could preserve the very good practice of the British Parliament in Hong Kong beyond 1997. However, to extend the Ordinance to cover receiving and handling of complaints was entirely groundless.

15. Director of Administration shared Mr Andrew WONG's views that once P&I were extended to meetings conducted under the Redress System, the nature of the System would inevitably be changed. She reiterated her comments in para 11 above and anticipated that the number of tripartite meetings among Members, complainants and complainees (mostly government officials) would increase and the focus of these meetings would shift from resolution of complaints to making of accusations and defence. To avoid all possible undesirable side-effects, it was pragmatic not to introduce any change to the existing long-established and successful system.

(Director of Administration and Deputy Director of Administration left the meeting at this point.)

Conclusion

16. Miss CHOY So-yuk raised her concern that if P&I were extended to meetings conducted under the Redress System, these meetings might be used more frequently and extensively by some Members to pursue issues which were not supported by Panels.

17. Mr NG Leung-sing agreed with Mr ARCULLI that the present arrangement of case conferences behind closed doors had been working effectively. As the outcome of complaints together with the explanations given by the Administration at case conferences would be conveyed to the complainants, he did not consider it necessary to open these conferences; hence to extend the Ordinance to these meetings. As regards meetings with complainants, he also did not see the pressing need to extend P&I to these meetings, as there was no record of prosecution of Members for defamation in handling complaints under the Redress System.

18. Mr Jasper TSANG was of the view that the established practices in the existing Redress System would not be changed with the extension of P&I.

19. Mr Andrew WONG maintained that P&I should be for Members to facilitate their discussion/debate on public policies and legislation but not handling of public complaints.

20. Miss Cyd HO commented that if the proposed extension of P&I was an enhancement of the existing Redress System so that Members could speak more freely rather than purely an enhancement of Members' powers and privileges, it should be supported.

21. The Chairman concluded that as a view could not be reached, Members' diversified views would be submitted to the House Committee for deliberation.

III. Enhanced Productivity Programme in relation to LegCo Complaints Division

(LC Paper No. CP 868/98-99)

22. SG introduced the paper. He said that The Legislative Council Commission had decided, inter alia, to delete one post of Assistant Secretary and one post of Clerical Officer II from the Complaints Division in support of the Enhanced Productivity Programme. In considering the issue, Members of the Commission had expressed the following views for the Subcommittee's consideration:

- (a) Members should be encouraged to receive and handle complaints from members of the public directly without referring such cases to the Complaints Division;
- (b) The Redress System was being abused by some complainants, e.g. lodging the same complaint with different Members and/or different complaint channels. Duplication of efforts should be discouraged.
- (c) There was a growing tendency of Members holding cases

conferences, some with the Administration and the deputation(s) together, incurring substantial workload for the Complaints Division.

- (d) The feasibility of a queuing system to receive complaints should be explored.

23. SG drew Members' attention to the Subcommittee's recommendations to expand the scope of the Redress System to cover non-government bodies and to alter the existing practice of not entertaining the requests of complainants to meet different Members on ruled cases unless there were new evidence or facts. These recommendations might increase the manpower requirement of the Division.

24. The Chairman remarked that the views of the Commission aimed at enabling the Complaints Division to cope with the existing workload with reduced manpower. Point (a) had in fact been discussed at previous meetings of the Subcommittee. Members generally supported this view but they hoped that the Complaints Division would continue to help Members receive and handle relatively more complicated cases or cases involving a fairly large number of complainants.

25. Regarding point (b), Members agreed that it should be adopted as far as possible. Requests from such complainants should be handled flexibly, depending on the merits of each case.

26. Regarding point (c), Members generally agreed that case conferences should only be held when necessary or when there were no other more appropriate channels, such as panels, to follow up the cases.

27. Regarding point (d), the Subcommittee did not favour the idea of a queuing system to receive complaints. CAS(C) advised that normally an interview with Duty Roster Members could be arranged within a week or so. Depending on the urgency of the case and the availability of Members, a meeting could be arranged on the same day of the request. It was only when clients indicated that their cases were not urgent and insisted to meet certain invited Members who were not available shortly would it take a longer time to arrange an interview .

28. The meeting agreed that the Subcommittee's discussion on the views of the Legislative Council Commission would also be presented to the House Committee.

29. There being no other business, the meeting closed at 12:40 pm.

Legislative Council Secretariat
22 March 1999