

# *Legislative Council*

LC Paper No. CP 846/98-99

Ref : CP/G01/12

## **Subcommittee on Review of the Operation of the LegCo Redress System**

### **Minutes of meeting held on Tuesday, 22 December 1998 at 8:30 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 Martin LEE Chu-ming, SC, JP  
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 David CHU Yu-lin  
Hon NG Leung-sing  
Hon Andrew WONG Wang-fat, JP

**Member Absent** : Hon Andrew CHENG Kar-foo

**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. Further consideration on the proposal to extend the Legislative Council (Powers & Privileges) Ordinance as raised by Members at the House Committee meeting on 27.11.98**

(Appendix I to LC Paper No. CP 648/98-99)

The Chairman remarked that Mr Andrew WONG and some other Members had expressed reservations at the House Committee meeting on 27 November 1998 about the Subcommittee's proposal to extend the privileges and immunities conferred under sections 3 and 4 of the Legislative Council (Powers & Privileges) Ordinance (the Ordinance) to cover meetings conducted under the LegCo Redress System (the Redress System). He invited Members' views.

2. Mrs Sophie LEUNG reiterated her views that the existing system for receiving and handling complaints from the public was well-established and had been operating smoothly. Moreover, no such privileges and immunities were available in most other redress systems. She therefore did not consider it appropriate or necessary to extend such privileges and immunities to cover meetings conducted under the Redress System. She opined that Members should exercise self-discipline when speaking in public and should not rely on privileges and immunities.

3. Mr Martin LEE maintained his view that as the privileges and immunities sought were no more than those conferred on Members at meetings of Panels and other committees of the Council, the proposal should be accepted for Members' freedom of speech at meetings conducted under the Redress System.

4. Mr Andrew WONG elaborated his views expressed at the House Committee meeting on 27 November 1998. He said that the LegCo Redress System had been in existence since the establishment of the Office of the Unofficial Members of the Executive and Legislative Councils (UMELCO) in 1963. There was no specific scope for the system and Members could receive complaints from the public on matters of government policy as well as government maladministration. Consideration of the establishment of an ombudsman modelled on the British Parliamentary Commissioner for Administration to assist Members to investigate complaints on government maladministration started as early as the inception of the UMELCO. The Office of the Commissioner for Administrative Complaints (COMAC) was established in 1989. Complaints about government maladministration were referred to COMAC by Members for investigation, and COMAC reported the findings of his investigation to Members. When it was necessary to disclose the report of COMAC to the public, names of individuals in the report would not be revealed. The Redress System was retained after the establishment of COMAC for its broader scope and flexibility in handling complaints in an informal manner. Where necessary, complaints could be handled in a formal

manner either by way of a petition or motion under Rule 20 and Rule 29 of the Rules of Procedure respectively. Meetings held under such circumstances were covered by the Ordinance. Mr WONG strongly advised that if the Redress System was to be retained, it should continue to operate in its existing informal manner and thus to preserve its inherent flexibility, which had enabled the system to work so well and successfully.

5. Mr Martin LEE stressed that without formalizing the Redress System, Members could not be regarded as handling complaints on behalf of the Council in compliance with the requirement of Article 73(8) of the Basic Law, but only in their capacity as individual Members. Mr Andrew WONG disagreed and responded that under the existing informal Redress System, Members received and handled complaints on behalf of the Council, although their decision could not be considered as the decision of the Council. The handling of a complaint could be escalated to the Council by way of a petition or motion as mentioned in para 4 above. It could also be referred to other formal bodies such as Panels for discussion as appropriate. Furthermore, he pointed out that much business dealt with at formal meetings of the Council or its committees had arisen from public complaints. Hence, it could not be said that without a formal redress system, the Council was not receiving and handling complaints from Hong Kong residents. Mr WONG had strong reservations about making every meeting between Members and complainants a formal meeting of the Council or its committees. An informal Redress System should be preserved. Mr Jasper TSANG was of the view that generally members of the public could decide whether to complain to individual Members at their offices or Duty Roster Members (DRMs) of the Legislative Council. In seeking an interview with DRMs, they did so with the intention of bringing their cases to the Council rather than individual LegCo Members. In the same way, the Administration regarded case conferences with DRMs as meetings with the Council, rather than with individual Members. He envisaged that the Administration would not attend case conferences with individual Members in their offices.

6. Mr David CHU was concerned about abuse of the powers and privileges by Members if these were extended to cover meeting conducted under the Redress System. He pointed out that at meetings of the Council and its committees, the chances of abuse were slim as there were rules and procedures governing such meetings, and a Chairman presided over each of these meetings. Nevertheless, at meetings conducted under the Redress System, there were no such rules. Mr NG Leung-sing agreed with Mr CHU and considered that with the proposed immunities and privileges, Members would tend to be less restrictive in making comments and speeches which might cause undesirable effect to the society and to the matter under discussion. Mr Martin LEE did not agree to this and maintained that the proposed extension of the immunities and privileges was necessary for protection of freedom of speech at meetings conducted under the Redress System. If any Member abused the powers and

privileges, he would have to be responsible for it. Mr Jasper TSANG commented that with the proposed immunities and privileges, Members could express their personal views more freely without the worry of incurring legal liabilities; and this might help Members to pacify complainants in certain cases. Mr LEE Kai-ming also held the view that such immunities and privileges were necessary, as Members were frequently asked by deputations about their personal views on the matters they complained about in the presence of the mass media. In response to Members' enquiry, SALA advised that if Members made responses based on the complainant's statements but was not stating the complainant's statements, the Court was not likely to judge that the Members had committed the offence of defamation. CAS(C) advised that so far no Member had been sued for remarks and speeches made in meetings conducted under the Redress System.

7. Mr NG Leung-sing asked whether the handling of complaints at a Member's office could be regarded as exercising the power and function under Article 73(8) of the Basic Law; and if so, whether the powers and privileges sought would cover Members' interviews with complainants at their offices. SALA advised that Article 73 prescribed the functions and powers of the Legislative Council as a whole rather than individual Members. Receiving and handling of complaints at Members' individual offices would not be exercising the power and function under Article 73(8) by the Council as a whole, and at the highest it could only be regarded as an initial step which led to the exercise of this power and function by the Council. In response to Ms CHOY So-yuk's enquiry about whether Members' contacts with the complainants at forums outside the LegCo, e.g. in the streets, would be covered, the Chairman replied that the proposal was to cover formal meetings only.

8. Mr Andrew WONG stressed that the point was whether every meeting conducted under the Redress System should be regarded as a formal meeting. He repeated his disagreement that such meetings should be made formal meetings. He further pointed out that the beauty of the existing system was that DRMs did not represent other Members in handling a complaint case. Hence, it was not necessary for them to report or refer each case to the Council or the House Committee. If all meetings were made formal meetings of the Council involving all Members, there would be operational as well as workload difficulties for both Members and staff of the LegCo Secretariat. Ms CHOY So-yuk shared Mr WONG's concern. However, Mr Martin LEE considered it necessary to formalise the meetings conducted under the Redress System. He commented that the formal manner of handling a complaint by way of a petition under Rule 20 of the Rules of Procedure was impractical and would not be applicable to all cases. Indeed, a petition had never been presented to the Council.

9. In response to the Chairman's question about whether it would comply

with Article 73(8) of the Basic Law to keep the meetings conducted under the Redress System informal meetings, SALA advised that the Basic Law did not specify the procedures for the LegCo to receive and handle complaints but had empowered the Council to make its own procedures. Members might decide whether the existing informal system should be maintained or modified as appropriate.

10. While Mr David CHU, Mr NG Leung-sing, Mrs Sophie LEUNG, Mr Andrew WONG and Ms CHOY So-yuk considered it more appropriate to keep meetings conducted under the Redress System informal meetings and as an initial step to receive and handle complaints, Miss Cyd HO and Mr Martin LEE held a different view.

11. The Chairman summarised Members' views and concluded that apparently there were two alternatives :

- (a) Meetings conducted under the Redress System should be informal meetings, where DRMs would only listen to complaints without making a decision on how to follow up except to refer them to appropriate bodies such as The Ombudsman, a Panel, or even to a select committee; and
- (b) Meetings should be formalised with the establishment of a committee of the Council (Committee on Redress) to receive and handle complaints. These meetings would then be automatically covered by the Ordinance with the powers and privileges for Members. The committee would follow through cases as appropriate. The drawback of this alternative, as some Members had pointed out, was that the formalities of a committee to receive and handle complaints might cause excessive workload to both Members and staff of the Secretariat. Mr Andrew WONG further pointed out that the committee might also by-pass Panels in handling complaints about government policies, hence creating duplication of work and upsetting the existing smooth arrangement of the Panel system.

LegCo  
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12. The Chairman requested the LegCo Secretariat to prepare a paper listing the pros and cons of the two alternatives for the Subcommittee's further consideration at the next meeting.

## **II. Date of next meeting**

13. The date of next meeting was to be decided in consultation with the Chairman and Members.

14. There being no further business, the meeting was closed at 10:30 am.

(Post-meeting note : The next meeting was arranged to be held on 2 February 1999 at 11:00 am in Conference Room B of the Legislative Council Building)

Legislative Council Secretariat  
2 February 1999