

# *Legislative Council*

LC Paper No. CP 650/98-99

(These minutes have been  
seen by The Ombudsman)

Ref.: CP/G06/4

**Legislative Council Members' Meeting  
with Mr Andrew SO, JP, The Ombudsman  
at 11:00 am on Thursday, 17 September 1998  
in Conference Room A of Legislative Council Building**

- Members Present** : Dr Hon LEONG Che-hung, JP (Chairman)  
Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Hon NG Leung-sing  
Hon HUI Cheung-ching  
Hon Bernard CHAN  
Hon Mrs Sophie LEUNG LAU Yau-fun, JP  
Hon WONG Yung-kan  
Hon Howard YOUNG, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk  
Hon Andrew CHENG Kar-foo
- Attendance by Invitation** : Office of The Ombudsman  
  
Mr Andrew SO Kwok-wing, JP  
The Ombudsman  
  
Mr CHAN Ying-lun, JP  
Deputy Ombudsman  
  
Miss Viola CHAN  
Assistant Ombudsman  
  
Mr Michael LEUNG  
Assistant Ombudsman (Ag)  
  
Mr Alec KWONG  
Principal Executive Officer  
  
Mr Daniel CHAN  
Chief Investigation Officer
- Clerk in Attendance** : Mrs Anna LO  
Chief Assistant Secretary (Complaints)
- Staff in Attendance** : Ms Erin TSANG

Action

**I. Chairman's Opening Remarks**

The Chairman welcomed The Ombudsman and his colleagues to the meeting. He said that since 1994, regular meetings between Members and The Ombudsman had been held at the latter's request for briefing Members on his work and new initiatives and for exchanging views on issues of mutual concern. Members had found it a useful forum.

**II. Briefing by The Ombudsman**

(LC Paper No. CP 294/98-99(01))

2. At the invitation of the Chairman, The Ombudsman briefed the meeting on the salient points of the information note which set out the various aspects of his work. Members then raised several points for discussion with The Ombudsman. The gist of their discussion is summarized in the ensuing paragraphs.

Whistleblower Protection Legislation

3. Referring to the captioned subject which was raised at the last meeting with Members of the then Provisional Legislative Council on 26 March 1998, The Ombudsman advised the meeting that he had already examined the common object and protection available under the whistleblower protection legislation in two Australian states, vis South Australia and New South Wales, and was of the opinion that the existing provisions of The Ombudsman Ordinance were adequate to enable him to investigate into any allegation of victimization which was an act of maladministration, and to afford the necessary safeguards against possible victimization. He assured Members that there had not been any cases in which his complainants had suffered from victimization due to their lodging complaints with his Office.

4. In response to Mr Howard YOUNG, The Ombudsman reiterated that he did not consider it necessary to introduce whistleblower legislation as far as for protection of complainants lodging complaints against maladministration was concerned. As to whether it was necessary to introduce such legislation for protection of "whistleblowers" who disclosed information relating to criminal offences to other organisations, such as the Independent Commission Against Corruption

(ICAC), it was not within his ambit to comment.

### Workload and Staffing

5. In reply to Ms Emily LAU, The Ombudsman informed the meeting that the public's enhanced confidence in his Office had in part attributed to an upsurge of enquiries and complaints received by his Office. Nevertheless, his Office was largely able to meet the performance pledges introduced by his Office, whereby preliminary replies to written complaints would be issued to complainants within 10 days, simple cases would normally be concluded within three months and more complicated cases within six months. Compared to the five-year average prior to the introduction of the direct access system in June 1994, enquiries and complaints had augmented by 10 and 17 folds respectively. The monthly average number of enquiries and complaints received between May and August 1998 had increased by 38% and 40% respectively compared with the monthly average in the previous reporting year. In these circumstances, 10 additional posts had been sought by his Office in last year's Resource Allocation Exercise in order to cope with the increasing workload and to undertake more direct investigations into problems of potentially wide public interest and concern. Yet, only two posts were approved in the current financial year. Despite his repeated request for additional staffing resources, the Administration still had not provided his Office with sufficient manpower. However, The Ombudsman assured Members that notwithstanding the shortage of manpower, the quality of work of his Office would not be compromised in face of the mounting workload.

6. In response to Mr HUI Cheung-ching, The Ombudsman explained that the rising trend of complaints lodged with his Office did not necessarily signify the intensification of public grievances nor retrogression of the public service since the percentage of substantiated or partially substantiated complaint cases remained approximately the same in these few years. It was rather attributed to the enhancement of members of the public's awareness of their rights and the work of his Office, their readiness to approach his Office for righting individual wrongs, and their increasing expectation for an open, fair and accountable public administration. Other factors included the broader scope of public services which were now more customer-oriented and the booming of information through the mass media.

7. Ms Emily LAU then enquired on the staffing complement

The Ombudsman said that at present, two-thirds of his investigators were Executive Grade Officers posted to his Office from the government, whilst the remaining one-third were contract staff directly recruited by his office.

#### Direct Investigations

8. The Ombudsman indicated that the legislative provision, which empowered him to initiate investigations on his own volition, allowed his Office to take a more proactive approach to conduct self-initiated direct investigations into problems of potentially wide public concern and interest. He opined that it was conducive to eliminating the underlying causes of the problems and hence prevention of recurrence of repeated complaints. He stated that since 1994, his Office had completed 18 direct investigations into a host of problems. It was currently conducting five direct investigations. Apart from his Office's initiation, he also sought the advice of the Justices of the Peace (JPs) under the JPs Assistance Scheme on areas of concern and deficiencies in the public administration which might merit direct investigation.

9. In response to Mr Andrew CHENG, The Ombudsman advised that upon the direct investigation into the dispensary service of the Department of Health, the department had agreed to implement all the 28 recommendations made by his Office. Moreover, during the meeting of the Legislative Council Panel on Health held on 14 September 1998, the Administration had also undertaken to improve the professional competence, clinical supervision, clinical audit and quality assurance systems, risk management and the complaint management system in the public hospitals. Thus, The Ombudsman remarked that though conducting direct investigation was often lengthy and time-consuming, it was useful and effective in detecting and rectifying deficiencies.

#### The Ombudsman Certificates of Appreciation

10. The Ombudsman stated that in order to foster a positive complaint culture in Hong Kong and as a token of appreciation to those complainants who had made extra efforts to help identify problems in the public administration, bring about improvements in the quality of public service and promote fairness in society, starting from July this year, he had been awarding "The Ombudsman Certificates of Appreciation" to praiseworthy complainants selected from concluded complaints. In view of the secrecy provisions of The Ombudsman Ordinance, only the name of the complainant and the file

reference would be mentioned in the certificate.

### Homepage in the Internet

11. The Ombudsman informed the meeting that in order to utilize the internet superhighway in promoting the work of his Office, improving accessibility and enhancing the communication between his Office and members of the public, the homepage of his Office had been launched in the Internet on 7 September 1998. It was an independent website consisting of more than 30 webpages and the main theme of the Homepage was “fostering a positive complaint culture”.

12. In response to Mr Howard YOUNG's enquiry, The Ombudsman advised that his Office had a counting mechanism to check on the number of users accessing the website. On the second day when the Homepage was launched, 51 users, excluding his staff, had been recorded. In further response to Mr Howard YOUNG, The Ombudsman said that the primary objective for launching the Homepage was to allow individual citizens and organisations easy access to the updated information about his Office, such as The Ombudsman Ordinance, the procedures for handling complaints, the complaint form, the latest newsletters and publication, the services provided by and the performance pledges of his Office, as well as providing an effective and efficient channel to facilitate the exchange of information and views with ombudsman and kindred organisations worldwide. However, his Office would not accept complaints lodged by e-mail since it was difficult to verify the complainant's identity if the complaint was filed to his Office through the Internet and that the legislation restricted his Office from handling anonymous complaints.

### **III. Discussion Items Raised by Members**

(LC Paper No. CP294/98-99(02))

### The Administration's Attitude towards and Co-operation with The Ombudsman

13. In reply to Mr LEE Cheuk-yan, The Ombudsman advised that in general, the Administration's attitude towards and co-operation with his Office had been positive. These included the acceptance and implementation of his recommendations (more than 95% of the 385 recommendations made by his Office had been accepted by the Administration in the 1997/98 Reporting Year), furnishing support in areas such as provision of accommodation and allocating free Government air-time on

the electronic media to screen The Ombudsman's Announcement in Public Interests as well as active participation in the education and training programmes organised by his Office. However, The Ombudsman remarked that the Administration could have been more positive and forthcoming in other aspects, such as the allocation of resources and the readiness in supporting his Office's initiatives.

The  
Ombudsman

14. Concerning the recommendations to the Administration, The Ombudsman explained that broadly speaking, they could be categorised as those aiming at redressing specific grievances through apologies by the departments/organisations concerned or financial redress and those at achieving improvements in the public administration. At Mr LEE Cheuk-yan's request, The Ombudsman undertook to provide in writing details of the 5% of his recommendations which had not been accepted by the Administration in the 1997/98 Reporting Year for Members' information. In this connection, The Ombudsman informed Members that he had already submitted the 10th Annual Report to the Chief Executive in July 1998. Upon receipt of the annual report, the Chief Secretary for Administration would, normally in three months' time, inform Members in the form of a Government Minute as to whether his recommendations had been adequately implemented.

(Post-meeting note: The written reply to Hon LEE Cheuk-yan's question was forwarded to Members vide LC Paper No. CP 359/98-99(01) on 23.9.1998)

15. Miss CHOY So-yuk then asked and The Ombudsman remarked that although there was no major flaws in the existing government structure, further improvement could be made by the Administration in the areas of public consultation, inter-departmental co-ordination and communication, personnel and risk management.

#### Fulfilment of The Ombudsman's Mission

16. In response to Mr Andrew CHENG, The Ombudsman stressed that the present day Ombudsman was not someone who growled or ordered around. Instead, his mission was to serve the local community by redressing grievances and addressing issues arising from maladministration in the public sector, and to achieve the goal of underpinning good public administration through independent and impartial investigation and non-adversarial approaches as to explain to, discuss with and persuade the parties concerned. He indicated that the prevailing legislation had already conferred upon him sufficient

authority to fulfil his following roles:

- (a) Redressing individual grievances against maladministration in the public sector;
- (b) Making bureaucracy more humane;
- (c) Lessening the gap between the Government and the public;
- (d) Acting as the people's watchdog;
- (e) Preventing abuses;
- (f) Righting individual wrongs;
- (g) Indicating the facts when public officers were unjustly accused;
- (h) Improving the efficiency and quality of service in the public sector; and
- (i) Protecting human rights

The Ombudsman opined that since his role was to redress grievances, it would be more appropriate to adopt a flexible and pragmatic approach in working out solutions to the problems. In this light, The Ombudsman pointed out that although his recommendations were not legally binding, through reasoning with and persuading the departments/organisations concerned, a majority of his recommendations had often been heeded to by the Administration.

17. In response to Miss CHOY So-yuk as to whether the establishment of his Office was the Administration's window-dressing exercise, The Ombudsman commented that the enactment of the Commissioner for Administrative Complaints (COMAC) Bill in 1989 for the establishment of his Office and the major amendments made to the Commissioner for Administrative Complaints Ordinance (now known as "The Ombudsman Ordinance") in June 1994 had demonstrated the Administration's sincerity in establishing his Office to provide an additional and independent channel for furtherance of fairness and accountability in the public administration. Members of the public were now allowed direct access to his Office for lodging complaints; he was vested with the authority to initiate direct investigations and to make public anonymized investigation results and his scope of investigation was extended further to cover major statutory bodies. Moreover, The Ombudsman pointed out that although the operation of his Office was not covered by the Basic Law, the fact that his Office had transgressed 1997 to become part of the good governance of the Hong Kong Special Administrative Region also reflected the Administration's commitment in setting up the Office of The Ombudsman which was important to Hong Kong.

18. In this connection, The Ombudsman emphasized that his Office was an independent authority appointed by the Chief

Executive responsible for handling complaints against maladministration. It was an integral part of good governance rather than part of the government. The Ombudsman indicated that it was important for him to meet with the Chief Executive and have regular programmes of meetings with Legislative Council (LegCo) Members, Provisional District Boards and public sector organisations, with a view to keeping them up to date of the work of his Office. To this end, The Ombudsman advised that he had also written to the Executive Council (ExCo) recently proposing to have meetings with the Non-official Members of the ExCo regularly in order to have general discussions on his work and to exchange views with the ExCo Members.

19. Mr Raymond HO then enquired whether it was an opportune time to review the ombudsman system since the Office of the Ombudsman had been established for nearly a decade. In response, The Ombudsman said that although the review of the ombudsman system should be conducted by the Administration, his Office would provide assistance in all respects. Moreover, he advised Members that his Office had in fact been reviewing its system from time to time for further improvements. Take for instance, a strategic planning conference would be held in December this year to discuss about the necessary amelioration of the quality of services to be rendered by his Office in the new era. In addition, his Office was currently studying The Ombudsman Ordinance to see if any necessary legislative amendments had to be introduced to improve the ombudsman system in Hong Kong.

#### Investigation launched by the Office of The Ombudsman into the New Airport Fiasco

20. The Ombudsman expressed that since the operational problems of the new airport at Chek Lap Kok had attracted wide public concern over the preparatory work and management of the airport, particularly in its passenger and cargo operations and services, he had, in the interest of the public, decided to initiate a direct and independent investigation into the commissioning and operation of the new airport. He advised that like all other direct investigations conducted, his Office would focus on the administrative aspects, the root cause of the problems and the impact of the issues on the community during its investigation.

21. In reply to Mr Raymond HO, The Ombudsman said that since the investigation was in progress, it was inappropriate for him to disclose the details before the Investigation Report was issued. However, he informed the meeting that the



investigation was in good progress. Moreover, he assured Members that in spite of the parallel probing into the issue by his Office, the LegCo and the Commission of Inquiry headed by Mr Justice WOO Kwok-hing, his Office would endeavour to avoid duplication of resources in its scrutiny. In this connection, he stressed that his Office's investigation into the new airport fiasco would definitely not affect its work on other areas since his Office would continue to process complaints filed by members of the public. Moreover, his Office would optimise the resources available to meet the public demand.

Follow-up Actions on the Complaint Lodged by the Airport Noise Concern Committee about the Alleged Maladministration of the Civil Aviation Department

22. In reply to Mr Andrew CHENG, The Ombudsman reiterated that since information relating to any complaint received by his Office, including the complaint lodged by the Airport Noise Concern Committee about the alleged maladministration of the Civil Aviation Department, was confidential to the complainant, the complainee department/organisation and his Office, it was inappropriate for him to disclose information about the said complaint and the follow-up actions taken thereof. Nevertheless, he informed Members that generally speaking, complainants would be informed verbally or in writing of the progress of the case two months after the case was lodged with his Office if the case was not concluded by then. If there were special circumstances which affected the conclusion of the complaints, the complainants would also be duly informed.

23. In this connection, the Chairman asked and The Ombudsman advised that he and his staff had to maintain secrecy about the complaints in accordance with the secrecy provisions of the law. Hence, his staff would only conduct interviews with the complainants in strict observance of the confidentiality rule. Unless under special circumstances in which the complainants had valid reasons to request to be accompanied would his Office consider relaxing the rule.

The Government's Intervention in the Stock and Futures Markets

24. Mr Andrew CHENG remarked that the Government's recent intervention in the stock and futures markets in an attempt to defend Hong Kong dollar and to scatter market manipulators threatening the local economy had attracted much criticism. In this respect, he enquired whether The Ombudsman would, in the interest of the public, consider

initiating direct investigation into the issue. In reply, The Ombudsman clarified that his Office would only conduct an investigation if problems relating to maladministration and causing injustice were involved. If it was a policy issue, his Office was not empowered to investigate. However, The Ombudsman opined that there could be grey areas in distinguishing matters of pure policy from matters of administration and he would be very cautious in deciding whether or not to launch an investigation under such circumstances. In further response to Mr Andrew CHENG, The Ombudsman said that his Office had received a number of enquiries in relation to the issue.

#### Proposal to Combine the Office of The Ombudsman with the Audit Commission

25. In response to Mr NG Leung-sing, The Ombudsman indicated that unlike ombudsman of some countries, such as Israel, who were responsible for not only handling complaints against maladministration but also auditing and anti-corruption work, his Office, the Audit Commission and ICAC were established with their own ambit and responsibilities. He remarked that nowadays, the international trend for ombudsmanship also inclined towards division of responsibilities. Moreover, the existence and success of ombudsmanship were attributable to its independence from politics, the government and other organisations. Hence, he maintained that his Office and the Audit Commission should not be combined.

#### Other Complaint Channels

26. Mr HUI Cheung-ching asked and The Ombudsman indicated that his Office was not established to replace the existing channels of complaint but rather to provide an independent authority, with status and power conferred by the statute, to deal with complaints relating to maladministration and to recommend remedies.

27. In response to the Chairman, The Ombudsman assured the meeting that since the abolition of the referral system in 1994 whereby complaints from members of the public had to route through LegCo Members, his Office had been prudent in deciding whether or not to undertake investigation into complaints so received and that he had a team of officers designated for screening the complaints to ensure that the services of his Office would not be abused. In further reply to the Chairman, The Ombudsman expressed that pursuant to Article 73 of the Basic Law, LegCo Members were also

provided with the statutory function to receive and handle complaints from local residents. Hence, he held the view that it should be for the complainant to decide by which channel he/she wished his/her complaint to be pursued. In this connection, Mr NG Leung-sing enquired and The Ombudsman said that if Members had decided to refer a complaint to his Office, his Office would take it up as its case if there were sufficient grounds to proceed. Upon completion of the investigation, in view of the secrecy provision, it would only inform the complainant, instead of the Members concerned, of the results.

#### Re-appointment of The Ombudsman

28. In response to Ms Emily LAU, The Ombudsman thanked Members as well the public for proffering concern about his re-appointment. He indicated that it was a personal issue which should not be associated with the work of his Office. In further reply to Ms Emily LAU, he informed the meeting that his contract would expire on 31 January 1999. He was interested in his job and it would be for the Chief Executive to decide whether or not to re-appoint him. However, he assured Members that whether or not he was re-appointed, he would continue to serve the community the best he could.

29. The meeting ended at 12:45 pm.

Legislative Council Secretariat

7 December 1998