

立法會
Legislative Council

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Tel : 2869 9254
Date : 16 March 2005
From : Clerk to Subcommittee
To : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Daniel LAM Wai-keung, BBS, JP

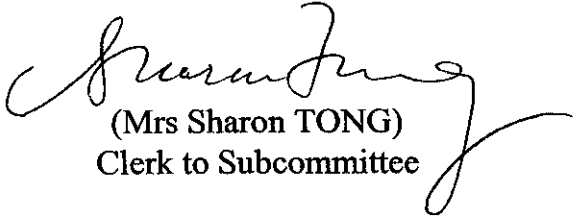
Panel on Security

**Subcommittee on Review of Existing Statutory
Provisions on Search and Seizure of Journalistic Material**

I attach for members' reference the following papers on the Interpretation and General Clauses (Amendment) Bill 1995 –

- (a) Legislative Council Brief dated 21 June 1995 issued by the Security Branch (Ref : SBCR 7/2801/77);
- (b) Minutes of meetings of the Bills Committee to study the Interpretation and General Clauses (Amendment) Bill 1995 held on 3, 6 and 12 July 1995 (LegCo Paper Nos. HB 1126/94-95, 1225/94-95 and 1262/94-95) (English version only);
- (c) Report of the Bills Committee to study the Interpretation and General Clauses (Amendment) Bill 1995 (LegCo Paper No. HB 1184/94-95); and

- (d) Extract from the official record of proceedings of the Council Sitting of 26 July 1995 – resumption of the Second Reading debate on the Interpretation and General Clauses (Amendment) Bill 1995 (LC Paper No. CB(2)1084/04-05(01)).


(Mrs Sharon TONG)
Clerk to Subcommittee

Encl.

c.c. Hon LEUNG Yiu-chung)
 Hon LAU Chin-shek, JP) Non-Subcommittee Members
 Hon Emily LAU Wai-hing, JP)
 SALA1

LEGISLATIVE COUNCIL BRIEF

Interpretation and General Clauses Ordinance (Chapter 1)

PROTECTION OF JOURNALISTIC MATERIAL : INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1995

INTRODUCTION

At the meeting of the Executive Council on 20 June 1995, the Council ADVISED and the Governor ORDERED that the Interpretation and General Clauses (Amendment) Bill 1995 at Annex A should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. Section 50(7) of the Police Force Ordinance (Cap 232) empowers a magistrate to issue a search warrant to any police officer if the magistrate is satisfied, upon the oath of any person, that there is reasonable cause to suspect that there is in any place any newspaper, book, document, or any other article which is likely to be of value to the investigation of any offence. An extract of section 50(7) is at Annex B.

3. There has been public concern, particularly from Legislative Council Members and the Hong Kong Journalist Association (HKJA), that section 50(7) of Cap. 232 gives the Police too much power and that the power could be abused in relation to journalistic material, thus threatening press freedom. In response, the Police amended their internal orders in 1992 to the effect that a decision to search any premises for journalistic material now has to be made by a police officer of Chief Inspector rank or above and after consultation with the Crown Prosecutor. Although we have obtained legal advice that this section is not inconsistent with the Bill of Rights Ordinance, the Governor undertook in his Policy Address, in October 1994, to take action to amend certain legal provisions which impose restrictions on press freedom by the end of the 1994-95 legislative session; section 50(7) of Cap 232 is one of these

provisions. Action is, therefore, required to give additional safeguards to protect journalistic material, and to demonstrate the Government's strong commitment to a free and vigorous press.

Scope of The Legislative Proposal

4. Apart from Cap 232, there are other provisions in a number of other ordinances which give police officers the powers of entry and search or seizure. In some cases (e.g. section 33 of the Societies Ordinance, Cap 151) the powers may be exercised without a warrant (warrantless search).

5. In addition, the Police Force is not the only law enforcement agency which has the powers of entry and search or seizure. Officers in the Immigration Department, the Independent Commission Against Corruption, and the Customs and Excise Department, and authorised officers in other Government departments, also have the powers of entry and search or seizure under various ordinances. Some of the provisions in these ordinances also empower officers to conduct warrantless searches. Therefore, amending section 50(7) of Cap 232 alone will not achieve the purpose of providing additional safeguards to protect journalistic material; a more comprehensive proposal, also covering both other law enforcement agencies and warrantless powers of search is required.

THE BILL

6. The Interpretation and General Clauses (Amendment) Bill 1995 at Annex A seeks to add a new Part to the Ordinance to -

- (a) define "journalistic material" (new section 82 in Clause 2), to cover any material acquired, created, possessed, or received for the purpose of journalism.
- (b) restrict the statutory powers of entry and search or seizure under other ordinances (new section 83 in Clause 2). There shall be no power to enter any premises for the purpose of searching for or seizing any material known or suspected to be journalistic material, unless the ordinance expressly provides to the contrary;

- (c) provide for a person, on whom the power of entry and search or seizure is conferred in any ordinance, to apply for a warrant under the new Part, authorising him to enter for the purpose of searching for or seizing journalistic material (new section 84(1) and (2) in Clause 2). An application for a warrant in respect of journalistic material has to be approved by a directorate disciplined services officer specified in Schedule 7;
- (d) require a judge to be satisfied that a number of conditions are met before a warrant can be issued, including that an arrestable offence has been committed, that the journalistic material to be searched is likely to be of substantial value to the investigation or relevant in the proceedings for the offence, that other methods of obtaining the material may compromise the investigation, and that it is in the public interest that a search warrant should be granted (new section 84(4) in Clause 2);
- (e) provide for the ancillary powers attached to such a warrant for the purposes of entering the premises, conducting the search, and taking possession of journalistic and other material found (new section 84(5) in Clause 2); and
- (f) apply the new provision to both existing and future ordinances (Clause 4).

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows -

Publication in the Gazette	23 June 1995
First Reading and commencement of Second Reading debate	28 June 1995
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

FINANCIAL AND STAFFING IMPLICATIONS

8. The proposals in the Bill have no staffing or financial implications.

PUBLICITY

9. A press release will be issued on 23 June 1995 to inform the public that the aim of the proposal is to give additional safeguards to protect journalistic material from being searched for and seized arbitrarily, and that introduction of the Bill will be a further step to demonstrate the Government's strong commitment to encourage a free and vigorous press.

10. Press briefings will be arranged and a spokesman will be available to handle media enquiries.

ENQUIRIES

11. Enquiries about this Legislative Council Brief can be made to -

Telephone No.

Mr Jack J C CHAN
Principal Assistant Secretary (Security)

2810 2632

Mr Clement LEUNG
Assistant Secretary (Security)

2810 2686

Security Branch
21 June 1995
(SBCR 7/2801/77)
[*23\Leg-brf]

**PROTECTION OF JOURNALISTIC MATERIAL :
INTERPRETATION AND GENERAL CLAUSES
(AMENDMENT) BILL 1995**

ANNEXES

Annex A - Interpretation and General Clauses (Amendment) Bill 1995

Annex B - Section 50(7) of the Police Force Ordinance (Chapter 232)

To

Amend the Interpretation and General Clauses Ordinance.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. Short title and commencement

(1) This Ordinance may be cited as the Interpretation and General Clauses (Amendment) Ordinance 1995.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Part XII amended

The Interpretation and General Clauses Ordinance (Cap. 1) is amended in Part XII by adding -

"SEARCH AND SEIZURE OF JOURNALISTIC MATERIAL

81. Interpretation

In this Part, unless the context otherwise requires -
"premises" (處 所) includes any place and in particular,
includes -

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any tent or movable structure.

82. Meaning of "journalistic material"

(1) Subject to subsection (2), in this Part "journalistic material" (新聞材料) means any material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Part if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

83. Power to enter and search or seize

A provision in any Ordinance which confers on, or authorizes the issue of a warrant conferring on, any person the power to enter any premises and search for or seize any material shall not, in the absence of an express provision to the contrary, be construed as conferring, or authorizing the issue of a warrant conferring, a power to enter premises where such entry is for the purpose of searching for or seizing material which is known or suspected to be journalistic material.

84. Search and seizure of journalistic material

(1) Subject to this section, where an Ordinance ("the empowering Ordinance") contains a provision to which section 83 applies, a person on whom there is or may be conferred under that provision the power to enter premises and search for or

seize material may apply to a judge of the District Court or the High Court for a warrant under this section authorizing him to enter premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material.

(2) An application for a warrant under this section shall not be made unless it has been approved by a person specified in Schedule 7 to be a directorate disciplined officer.

(3) A judge shall not issue a warrant under this section unless he is satisfied that the person to be authorized under the warrant is a person who, except for section 83, is or may be authorized under the empowering Ordinance to enter such premises and to search for or seize such material as may be specified in the application.

(4) A judge shall not issue a warrant under this section unless he is satisfied that -

- (a) there is reasonable cause to suspect that an arrestable offence has been committed;
- (b) there is reasonable cause to suspect that there is in the premises journalistic material which is likely to be -
 - (i) of substantial value to the investigation of the arrestable offence; or
 - (ii) relevant in proceedings for the arrestable offence;
- (c) other methods of obtaining the material may compromise the investigation; and

(d) it is in the public interest, having regard to -

(i) the benefit likely to accrue to the investigation; and

(ii) the circumstances under which a person in possession of the material holds it,

that a search warrant should be granted.

(5) Any person empowered by a warrant issued under this section may -

(a) enter, if necessary by force, any premises to search for and take possession of such journalistic material as may be found and such other material as he is or may be authorized under the empowering Ordinance to take possession of;

(b) detain any person for a reasonable period who may have such material in his possession or under his control and who if not so detained may prejudice the purpose of the search.

85. Amendment of Schedule 7

The Governor in Council may, by order published in the Gazette, amend the persons specified in Schedule 7 to be directorate disciplined officers."

3. Schedule added

The following is added -

"SCHEDULE 7

[ss. 84(2) & 85]

DIRECTORATE DISCIPLINED OFFICERS

The following are directorate disciplined officers for the purposes of section 84(2) of this Ordinance -

- (a) a police officer at or above the rank of Chief Superintendent;
- (b) an officer of the Operations Department, Independent Commission Against Corruption above the rank of Principal Investigator;
- (c) a member of the Immigration Service at or above the rank of Senior Principal Immigration Officer;
- (d) a member of the Customs and Excise Service at or above the rank of Chief Superintendent."

4. Application

This Ordinance applies to Ordinances enacted before the day on which this Ordinance comes into operation as it applies to Ordinances enacted on or after that day.

Consequential Amendments

Drug Trafficking (Recovery of Proceeds) Ordinance

5. Authority for search

Section 21 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) is amended by adding -

"(7) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap. 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material.".

Organized and Serious Crimes Ordinance

6. Authority for search

Section 5 of the Organized and Serious Crimes Ordinance (82 of 1994) is amended by adding -

"(8) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap. 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material.".

Explanatory Memorandum

This Bill amends the Interpretation and General Clauses Ordinance (Cap. 1) to make provision regarding powers of entry and search for or seizure of journalistic material.

2. Clause 2 in effect adds a new Part to the principal Ordinance. This provides -

- (a) that as a general rule a power of entry and search or seizure, whether under a warrant or otherwise, in any

Ordinance shall not be construed as authorizing entry onto premises where that entry is for the purpose of searching for or seizing journalistic material, unless that Ordinance expressly provides to the contrary (new section 83);

- (b) that a person on whom a power of entry and search or seizure is conferred under any Ordinance and who wishes to enter premises for the purpose of searching for or seizing journalistic material may apply for a warrant under the new Part (new section 84(1));
- (c) that such an application must first be approved by a specified directorate officer of the disciplined services (new section 84(2) and Schedule 7).
- (d) that a warrant may not be issued unless certain specified requirements are met (new section 84(4));
- (e) for the powers attaching to such a warrant (new section 84(5)).

3. It is proposed that the new provision should apply to both existing and future Ordinances (clause 4).

**Section 50(7) of the Police Force Ordinance
(Chapter 232)**

“(7) Whenever it appears to a magistrate upon the oath of any person that there is reasonable cause to suspect that there is in any building, vessel (not being a ship of war or a ship having the status of a ship of war) or place any newspaper, book or other document, or any portion or extract therefrom, or any other article or chattel which is likely to be of value (whether by itself or together with anything else) to the investigation of any offence that has been committed, or that is reasonably suspected to have been committed or to be about to be committed or to be intended to be committed, such magistrate may by warrant directed to any police officer empower him with such assistants as may be necessary by day or by night -

- (a) to enter and if necessary to break into or forcibly enter such building, vessel or place and to search for and take possession of any such newspaper, book or other document or portion of or extract therefrom or any such other article or chattel which may be found therein; and
- (b) to detain, during such period as is reasonably required to permit such a search to be carried out, any person who may appear to have such newspaper, book or other document or portion thereof or extract therefrom or other article or chattel in his possession or under his control and who, if not so detained, might prejudice the purpose of the search.”

Ref : HB/C/38/94

**Bills Committee to study the
Interpretation and General Clauses (Amendment) Bill 1995**

**Notes of Meeting held on Monday, 3 July 1995 at 11.00 am
in Conference Room B of the Legislative Council Building**

Present : Hon Andrew WONG, OBE, JP (Chairman)
Hon Emily LAU Wai-hing
Hon James TO Kun-sun

Absent with : Hon Mrs Selina CHOW, OBE, JP
apologies Hon Christine LOH Kung-wai

By invitation: The Administration

Mr Jack CHAN
Principal Assistant Secretary for Security

Mr Clement LEUNG
Assistant Secretary for Security

Mr Ian DEANE
Senior Assistant Solicitor General

Mr J L ABBOTT
Senior Assistant Law Draftsman

In attendance: Mr Jimmy MA
Senior Assistant Legal Adviser

Mrs Percy MA
Clerk to the Bills Committee

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I. Election of Chairman

Mr Andrew WONG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

The Bill

2. Mr J CHAN briefed Members on the Bill. The Administration had taken note of the public concern, particularly from LegCo Members and the journalists, that section 50(7) of the Police Force Ordinance (Cap. 232) gave the Police too much power in relation to search and seizure of journalistic material, hence threatening press freedom. Other than the Police, officers in other law enforcement agencies and Government departments also had the powers of entry and search or seizure under various ordinances. Some provisions in these ordinances empowered officers to conduct warrantless searches. Hence by amending Cap 232 alone would not achieve the purpose of providing additional safeguards to protect journalistic material.

3. After conducting a comprehensive review, the Administration introduced the proposed Bill which sought to:

- (a) define "journalistic material";
- (b) provide for an officer to apply for a warrant before he could be authorized to enter premises to search for or seize journalistic material. An application for a warrant had to be approved by a directorate disciplined services officer; and
- (c) require a judge to be satisfied that a number of conditions were met before a warrant could be issued, including that an arrestable offence had been committed, that the journalistic material to

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be searched was likely to be of substantial value to the investigation of or relevant in the proceedings for the offence, that other methods of obtaining the material might compromise the investigation, and that it was in the public interest that a search warrant should be granted.

Hearing for application of warrant

4. In order to satisfy that a warrant was issued in the public interest under the proposed section 84(4)(d), Mr James TO and Ms Emily LAU felt that inter partes hearing on an application for warrant should be provided in the Bill. In situations where inter partes hearing was considered not feasible, e.g. for urgent or sensitive cases, ex parte proceeding could be allowed. However, the journalistic material seized by an enforcement agency should be sealed, and in the event of objection raised within a reasonable period of time by the person who was target of the search, the court should hear arguments from both sides and decide whether the conditions for the issue of a warrant under the proposed section 84(4) were met. If not, the journalistic material seized would be returned to the person concerned.

5. In response, the Administration made the following points:

- (a) The Bill aimed to strike a balance between the protection of press freedom and the need to maintain law and order. The proposed inter partes hearing might have an impact on the efficient execution of duties of the enforcement agencies. In some cases, it would be undesirable to prolong the proceedings, e.g. where the material seized were blood samples or finger prints which would be of no use after a lapse of time, or where the suspect would be alerted by the seizure action.

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- (b) It was appreciated that the UK Police and Criminal Evidence Act 1984 contained a provision for inter partes hearing. The Administration was currently conducting a review on the applicability of the Act in Hong Kong and would consider Members' proposal in the light of practical experience after enactment of the Bill.
- (c) Generally speaking, once a warrant had been obtained, there was no restriction on the seizure of material pursuant to the exercise of the powers under the warrant. This also applied to the Organized and Serious Crimes Ordinance and the like. Under the Bill, there was restriction on the issue of warrant but not on the seizure of material pursuant to that warrant. It would appear that the proposal to require a further hearing in relation to the material that had been seized, apart from the operational difficulties that would arise in investigation, would introduce another dimension to the proceedings, hence, significant extension of the scope of the Bill.

6. On paragraph 5(c) above, Mr TO clarified that the purpose of inter partes hearing subsequent to the seizure would allow the court to hear the circumstances under which the person in possession of the material got hold of it and the grounds of the objection lodged.

7. SALA asked whether it was the view of the Administration that, as a matter of Legislative Council procedure, Members should not raise the subject because it was outside the scope of the present Bill. Mr ABBOT replied that the comment was not made in that context. It was just an indication that Members' proposal would add a new dimension to the proceedings. If the hearing subsequent to the seizure could look into the material seized, it would significantly prolong the hearing. It would therefore be a question of policy.

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8. In response to the Administration's enquiry on whether the proposal of sealing the material pending decision of the court was necessary because it was not a procedure followed in UK, Members confirmed that this was part of the package proposed. The intention was to ensure that the material would not be destroyed by the target of a search, but kept intact.

9. Mr ABBOT said that he was aware of situations where material seized under ordinary warrant were sealed pending decision of the court because the power was challenged by the person who was the target of the search. He would check to see whether such protection was already available by virtue of a general provision.

Admin

10. The Chairman summarized that, it was the Members' view that for urgent and sensitive cases, the two-stage procedure should apply, i.e. after ex parte hearing for application of warrant, the material seized should be sealed pending a further inter partes hearing, if necessary. The court would only examine the grounds for the seizure, but not the material itself.

11. Mr J CHAN said that as all cases would be dealt with expeditiously and efficiently, it would therefore be difficult to distinguish between urgent and non-urgent cases. The Administration had considered the question of inter partes hearing in detail, and having regard to its impact on law enforcement, was of the view that it should not be adopted at this stage. If this issue had to be re-considered, it was unlikely that the review could be completed within this LegCo session.

12. Members requested the Administration to consider their view in detail and provide a reply on its position at the next meeting.

Admin

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Injunction order

13. In response to Ms LAU, SALA said that it would not be possible for a person/an organization who was a target of a search to resort to applying for an injunction order because in practice, one would not be able to apply for an injunction order in anticipation of the search.

Section 84(4)(c)

14. Ms LAU suggested the Administration to consider improving the wording of the section to reflect the policy intention that all other methods of obtaining the journalistic material had been considered but found to be infeasible.

Admin

Section 84(4)(d)

15. Mr TO suggested that a sub-paragraph (iii) be included under the proposed section 84(4)(d) specifying that apart from matters stated in subsections 4(b)(i) and (ii) a court had to give regard to "all other relevant factors" as well. Mr ABBOT said that the conditions in the proposed section 84(4)(a)-(d) were specific hurdles the enforcement agency had to overcome in order to get the warrant. The suggestion that there should be positive obligation on an enforcement agency to disclose all relevant factors could not apply. However, the Administration could consider including a provision to the effect that in an inter partes hearing, the targeted person/organization could raise other matters under the ground of public interest.

Admin

16. In response to Ms LAU, the Administration said that in UK, ex parte hearings were always held in Chambers, whereas inter parte hearings could be held in either Chambers or open courts, depending on the decision of the judge. The intention of the Bill as drafted was that the hearings would not be held in public. At the request of Ms LAU, the Administration agreed to consider whether the hearings could be held in public.

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Concern of the Hong Kong Journalists Association (HKJA)

17. Referring to the document from the HKJA which had just been received and tabled (at **Appendix**), the Chairman invited Members and the Administration to comment on it.

18. Members noted that most of the points raised by the HKJA had already been dealt with in the earlier discussion. On paragraph 4 of the document, Mr TO did not agree that confidential journalistic material should be exempted from the provisions of the Bill.

19. Ms LAU shared the concern of the HKJA that if they were no longer in a position to protect the source of confidential information, it would undermine their credibility and adversely affect their work. In this regard, the Administration should give due consideration to the HKJA's concern.

(Post-meeting note: The document has subsequently been referred to the Administration for comments.)

Admin

Clause by clause examination

Clause 1

20. SALA confirmed that Cap 1 had already been authenticated.

Clause 2

21. Members noted that the existing Part XII was already repealed in 1993. For convenience, this Bill was included as Part XII.

Section 82(1) and (2)

22. Mr TO said that under the Personal Data (Privacy) Bill, the definition of "journalism" was in greater detail.

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23. The Administration agreed to provide the part of the UK Police and Criminal Evidence Act 1984 which provided the definition of "journalistic material" and relevant case law on the definition for Members' consideration.

Admin

24. SALA said that he was not aware of any judicial decision on the definition of "journalistic material" or "journalism". In the light of what was being proposed in the Personal Data (Privacy) Bill, Members agreed that the Administration should look into the definition again and consider the merit of adopting the UK definition for the purpose of Hong Kong.

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25. In response to Mr TO, Mr ABBOT said that the Bill was designed to be as broad as possible. Journalistic material should include products of journalists' endeavours such as video tapes, notes and photos. As regards whether the protection given under the Bill covered material acquired unlawfully, he was of the view that the Bill targeted material, not acts. Hence, whether the material resulted from an act which was unlawful would not have any bearing.

26. Mr TO said that the interpretation in paragraph 25 above should be spelt out in the Bill or included in the speech to be made by the Policy Secretary during resumption of Second Reading debate on the Bill. Ms LAU concurred. In response to Members, SALA advised that, from the drafting point of view, it was not necessary to state in the Bill that the journalistic material included those acquired unlawfully. His view was concurred by Mr ABBOT.

27. The Chairman requested the Administration to consider Members' request that the interpretation in paragraph 25 above should be mentioned in the Policy Secretary's speech when the Bill resumed its Second Reading debate.

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Section 83

28. The Administration said that this section was the crux of the Bill. Any existing ordinance which conferred on any

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person the power to enter and search did not apply in relation to journalistic material. Rather than amending the 106 provisions in all these ordinances, section 83 was proposed to provide that all these provisions should be construed as excluding a power to enter where the purpose of that entry was to search for or seize journalistic material. It was a device which covered all existing and future provisions conferring a power of entry, search for and seizure of journalistic material without having to mention each time that there was a special case for journalistic material. It was also for this reason that the Bill was dealt with under Cap. 1 which applied to all ordinances.

29. The Administration would provide a list of the 106 provisions for Members' reference.

Admin

30. In response to Ms LAU, Mr J CHAN said that apart from disciplined departments, some authorized officers in other departments also had powers of entry and search or seizure conferred on them by statute. When the Bill was enacted, an application for warrant had to be approved by a directorate disciplined officer. On the Member's concern about the implication of the Bill on the work of the enforcement agencies, Mr CHAN said that the Administration would issue internal guidelines to all departments concerned after enactment of the Bill.

Section 84(1)

31. The Administration said that the proposal requiring a person empowered to enter and search for or seize material to apply to a judge of the District Court or High Court for a warrant had made reference to similar provisions in the Organized and Serious Crimes Ordinance. At present, such applications were dealt with by Magistrates.

Section 84(2)

32. The Administration clarified that the approval by a directorate disciplined officer would be in writing. As an application for a warrant had to be made to the court, it was

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unlikely that the court would consider the application without sufficient documentary proof.

Section 84(4)(b)

33. The Administration said that there was no definition of "substantial value" under subsection 4(b)(i). The term was used to impose a fairly high hurdle for the applicant to overcome. The only higher hurdle one could impose was "indispensable". The term "indispensable" was not used because in an early stage of investigation, it would be difficult to prove for certain that something was indispensable.

34. In reply to Mr TO on the inclusion of "admissible evidence" under subsection 4(b)(ii), the Administration said that both limbs of subsection 4(b) dealt with the same stage, i.e. the investigation stage. The applicant for a warrant had to satisfy the judge that the material was likely to be relevant to the investigation or proceedings. Subsections 4(b)(i) and (ii) were different tests of different criteria covering different areas. One was by reference to the investigation, and the other to the prosecution for the offence in court. However, the test to be applied under subsection 4(b)(ii) required the court to look forward to the proceedings stage, i.e. after arrest and arraignment. Admissibility as evidence required that the material firstly, be relevant and secondly, that it could be proved. As long as the material was sufficiently relevant to be admissible, there was no requirement for the applicant to demonstrate that he would actually be able to tender the material in evidence in court. That was why reference was made to the relevance in proceedings but not to the actual acceptance of the material in evidence. According to the UK Police and Criminal Act 1984, the term "relevant evidence" although not defined in the Bill was defined to mean anything that would be admissible in evidence at a trial for the offence concerned.

35. Mr TO said that he would consider whether admissible evidence should be included under section 84(4)(b).

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Section 84(5)(b)

36. The Administration said that this was a common provision found in sections which conferred powers of search and seizure. It was designed to make the provision effective.

Clauses 5 and 6

37. The Administration said that these provisions were included because section 21 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and section 5 of the Organized and Serious Crimes Ordinance (Ord No 82 of 1994) had more stringent requirements than those proposed in the Bill. If these provisions were deleted as proposed by Mr TO, it would mean that a lower requirement was being imposed than the existing provisions under the Ordinances.

38. Members agreed that these provisions would be further considered at the next meeting. The Secretariat would make available copies of the relevant sections of the Ordinances and prepare a comparison on the requirements imposed under the Ordinances for Members' consideration.

Clerk
SALA

III. Date of next meeting

39. The next meeting would be held at 4.30 pm on 6 July 1995 in Conference Room B.

40. The meeting was adjourned at 1.05 pm.

95/07/03 11:03 To: +852 2845 2444

From: +852 3

Via HKT Never Busy

03-07-1995 10:39

P.01



HONG KONG JOURNALISTS ASSOCIATION

香港記者協會

To: Clerk to the Interpretation and General Clauses (Amendment)
Bill Committee

From: Ada Ma (Executive Secretary of the HKJA)

Urgent

HKJA DISAPPOINTED WITH GOVERNMENT MOVES ON PRESS FREEDOM

The Hong Kong Journalists Association notes the announcement today that the government is proposing changes to the system allowing disciplined services officers, including the police, to search for and seize journalistic material.

On the search for and seizure of journalistic material, the HKJA welcomes the recognition of the special nature of this material. This is particularly important, given the anger and suspicion caused by the seizure of raw videotape from TVB and ATV in October 1989, following a demonstration outside a National Day celebration.

However, the HKJA believes the government proposals do not go far enough. They fail to provide for a hearing in open court, and journalists, publications and broadcasting stations are not allowed to contest the application for a search warrant. From the perspective of a journalist, there will be no appreciable difference in the way the current system operates. A police officer will still arrive unannounced at a newsroom, armed with a warrant to seize whatever he thinks is needed for his investigation.

We call on the government to open up the relevant court proceedings to public scrutiny, and allow legal representation for affected parties. We further call on the government to bar the seizure of journalistic material given in CONFIDENCE, to ensure that confidential sources can be protected fully.

Executive Committee
June 23rd, 1995

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ASSOCIATE UNIONS / 海外聯繫組織
Australian Journalists Association
National Union of Journalists
(Great Britain & Ireland)
The Newspaper Guild (US & Canada)
New Zealand Journalists Union
Commonwealth Journalists Association

TOTAL P.01

LegCo Paper No. HB 1225/94-95

(Note: This record has been seen
by the Administration)

Ref : HB/C/38/94

**Bills Committee to study the
Interpretation and General Clauses (Amendment) Bill 1995**

**Notes of Meeting held on Monday, 6 July 1995 at 4.30 pm
in Conference Room B of the Legislative Council Building**

Present : Hon Andrew WONG, OBE, JP (Chairman)
Hon Emily LAU Wai-hing
Hon James TO Kun-sun
Hon Christine LOH Kung-wai

Absent with : Hon Mrs Selina CHOW, OBE, JP
apologies

By invitation: The Administration

Mr Jack CHAN
Principal Assistant Secretary for Security

Mr Clement LEUNG
Assistant Secretary for Security

Mr Ian DEANE
Senior Assistant Solicitor General

Mr J L ABBOTT
Senior Assistant Law Draftsman

In attendance: Mr Ray CHAN
Assistant Secretary General 2

Mr Jimmy MA
Senior Assistant Legal Adviser

Mrs Percy MA
Clerk to the Bills Committee

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I. Confirmation of the record of the meeting on 3 July 1995

The record was confirmed.

II. Meeting with the Administration

2. The Chairman drew the meeting's attention to a note from Ms Christine LOH on her various concerns on the Bill (tabled at the meeting). The points raised would be included in the ensuing discussion. The meeting then proceeded to discuss the various issues arising from the last meeting.

Hearing for application of warrant

3. Mr J CHAN said that the Administration had considered Members' proposal concerning the mode of hearing on an application for warrant, and after consultation with the enforcement departments, had come to a view that Members' proposal could be accepted with some modifications. He briefly introduced the Administration's revised proposal on a three-tier approach as contained in the paper tabled at the meeting. In brief, the application procedures under scenario one and scenario two were the same as those proposed by Members, i.e. an inter partes application for a production order in all general cases, and where inter partes application was not practicable, an ex parte application for a special warrant which required the sealing of any material seized pending the outcome of an application for the return of the material through an inter partes hearing. The procedure under scenario three was a revised proposal by the Administration to cater for urgent and sensitive cases which warranted the immediate use of the seized material.

4. Members in general felt that the revised proposal could address their concern. However, they pointed out that

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the test for both scenario two and scenario three cases appeared to be the same, i.e. non compliance with the production order and impracticability to make an inter partes application because it would seriously prejudice the investigation. It was therefore not clear what the specific criteria were for invoking the procedure under scenario three. There should probably be another test which an applicant for a warrant had to pass in order to satisfy a judge that the immediate use of the material seized was necessary. Otherwise, all or the majority of the cases could fall under scenario three.

5. In response, the Administration said that the paper was prepared for Members to have some basis for discussion. Subject to Members' agreement to the principle of the revised proposal, the Law Draftsman would work out details of the provisions and revert to Members. On the points Members raised, the Administration had the following comments:

- (a) For an ex parte application under scenario three, firstly, an application had to be approved by a directorate disciplined officer who had to be satisfied that the ex parte application procedure and the immediate use of the material seized were warranted; and secondly, a judge must also be satisfied that the criteria for resorting to scenario three procedure were met. Hence, an application under scenario three would have to overcome two hurdles.
- (b) The criteria for the issue of a warrant under scenario three would be worded in a way such that a judge had to be satisfied that it was necessary for the material seized to be used immediately in order not to prejudice the investigation. It was not certain if the criteria could be identified in more specific way than a general provision. However, it would be clear that this kind of warrant would only be granted

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when the other kind of warrant would prejudice the investigation.

6. In response to Ms Christine LOH, the Administration said that the conditions for issuing a warrant for search and seizure of journalistic material were specified in section 84(4). A judge had to be satisfied, among other things, that there was reasonable cause to suspect that the journalistic material was likely to be of substantial value to the investigation of the arrestable offence or relevant in proceedings for the arrestable offence. Hence, the question of "fishing" for evidence would not arise.

7. The Administration agreed to let Members have the draft Committee Stage amendments as soon as possible.

Admin

Section 82

Definition of "journalistic material", "journalism" and "premises"

8. Ms LOH said that the Personal Data (Privacy) Bill proposed that the working material of a journalist which had not become part of any news reporting would be excluded. However, the definition of journalistic material under this Bill covered any material acquired and created for the purpose of journalism, which she considered to be too wide. She also had similar observations on the definition of "journalism" and "premises".

9. The Administration said that the definition of "journalistic material" and "journalism" was taken from the UK Police and Criminal Evidence Act 1984 (PACE). The fact that no case law would be found on the definition could prove that there had not been a problem with it. The Bill proposed that, for the purpose of search and seizure of journalistic material, an enforcement agency could no longer resort to existing law but had to apply for a special warrant. If the definition proposed in the Personal Data (Privacy) Bill

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was adopted, it would reduce the scope for protection. Similarly, the scope for protection might be reduced by further defining "journalism".

10. In response to Members, SALA was of the view that if the definition proposed in the Personal Data (Privacy) Bill was adopted, it would certainly narrow the scope of protection. He recommended that the definition in the Bill be retained. Members agreed.

Means of obtaining material

11. The Administration reiterated that the means of obtaining the material would not have any bearing on the protection given under the Bill. The Administration agreed to consider Members' request that the Policy Secretary make a statement to this effect when the Bill resumed its Second Reading debate.

Admin

Section 83

12. Members noted that a list of the legislative provisions which authorized entry into premises for the purpose of search and seizure was tabled.

Section 84(4)(b)

13. Ms LOH considered that one of the conditions for issue of warrant stipulated in section 84(4)(b)(ii), i.e. the journalistic material was likely to be "relevant in proceedings for the arrestable offence" was a bit ambiguous and asked if consideration would be given to replacing it with "relevant evidence in proceedings for the arrestable offence".

14. SALA said that in UK, the expression was in more specific terms than that proposed under the Bill. The condition imposed was that the material had to be relevant

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evidence, and relevant evidence was further defined to mean anything that would be admissible in evidence at trial for the offence. He felt that this condition was an important one bearing in mind that it was an alternative condition to subsection 4(b)(i).

15. Mr ABBOT said that the policy intention was that the material had to be relevant as evidence in proceedings for the arrestable offence. What the drafting tried to avoid was to require an applicant to prove the admissibility of the evidence. To address Members' concern, the Administration agreed to move a Committee Stage amendment to include the word "evidence" under subsection 4(b)(ii).

Admin

Section 84(4)(c)

16. The Administration said that it had considered Members' view and would improve the wording of the section by following the provisions in PACE and the Canadian provision. The drafting would reflect that any other methods for obtaining the material had been tried without success or had not been tried because they were bound to fail.

Admin

Section 84(4)(d)

Public interest grounds

17. On Members' suggestion to include a provision in subsection (4)(d) to the effect that in inter partes hearing, a targeted person/organization could raise other matters on the ground of public interest, Mr ABBOTT was of the view that to add the requirement into the subsection as a further limb of that paragraph would impose quite a burden on an applicant. In fact, the burden would be open-ended, and difficult to discharge because the points under subsection 4(d) were quite specific. He would propose that the provision be re-drafted to leave it open for a judge not to

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grant an application where he considered that it was not in the public interest to do so. Although that was the position at the moment, the drafting could be improved to make it more clear.

18. In response to Mr TO, Mr ABBOT confirmed that the provision to be included would be to the specific effect that, apart from the grounds under section 84(4), a targeted person opposing to the issue of a search warrant could argue on general public interest grounds, having regard to any circumstances of the case.

Open proceeding for inter partes hearing

19. On whether inter partes hearings could be held in public, Mr J CHAN said that it was the Administration's view that it would be more desirable to leave the decision to the judge. Ms LAU suggested to state in the Bill that inter partes hearings should normally be held in public, but in case of special circumstances, it would be for the judge to decide. Mr ABBOT said that generally speaking, both parties involved might not want the hearing to be held in public, such as for operational reasons on the part of the applicant, and privacy reasons on the part of the news organization. If objective criteria such as special circumstance were introduced, it could then be a question of whether the judge was satisfied with the criteria, bearing in mind the proposed stipulation in the Bill that such hearings should normally be held in public. However, if no particular provision was included as drafted, the matter would basically be left to the discretion of the parties concerned.

20. At Ms LAU's request, the Administration agreed to reconsider the question of an open proceeding for inter partes hearing and would revert to Members at the next meeting.

Admin

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Clauses 5 and 6

21. SALA briefed Members on LegCo Paper No LS 155/94-95 tabled at the meeting, which was a comparison between the proposed section 84 of the Bill and the two provisions (i.e. section 21 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (DTRPO) and section 5 of the Organized and Serious Crimes Ordinance (Ord No 84 of 1994) (OSCO)) referred to in Clauses 5 and 6 of the Bill. It was proposed in the Bill that the two provisions would not be affected by what was being proposed in the Bill. The following points were highlighted:

- (a) The comparison must be looked at from the perspective that the three pieces of legislation dealt with different subject matters.
- (b) The authority for issuing a search warrant under the three provisions was the same. On judicial review of decisions to issue a warrant, the decision of the District Court was reviewable by the High Court. In the case of the High Court, the judicial review process was not available because the higher court was a superior court itself.
- (c) On the mode of hearing on an application of a search warrant, Members had earlier discussed a revised proposal by the Administration.
- (d) On the conditions under which a search warrant might be issued, there were more similarities than differences under the three provisions in question. However, the conditions under the DTRPO and the OSCO appeared to be more stringent than those proposed in the Bill, and from the perspective of protection for journalistic material, more protection would be available.

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- (e) On the “public interest” conditions, in the case of the proposed section 84(4)(d) of the Bill, the judge had to be satisfied that “it is in the public interest” whereas in the other two provisions the expression used was “there are reasonable grounds for believing that it is in the public interest”. While the two expressions did not appear to have different legal effect, it could be synchronised for the sake of consistency.
- (f) One of the conditions in the proposed section 84(4)(c) was that “other method of obtaining the material may compromise the investigation”. The conditions in the other two provisions were more specific. The Administration had earlier agreed to improve the wording of the subsection.
- (g) Under the proposed Bill, section 84(4)(b) provided that there had to be reasonable cause to suspect that the journalistic material was likely to be (i) of substantial value to the investigation of the arrestable offence or (ii) relevant in proceedings for the arrestable offence. However, under the other two provisions, the only condition imposed was related to “substantial value to the investigation”. It would appear that the inclusion of an alternative condition in paragraph (b)(ii) in the Bill implied a lowering of threshold. In a similar provision in the UK PACE, all the conditions specified had to be satisfied.

22. Mr TO was concerned about the disparity in the mode of hearing on the application for a warrant under the Bill vis-à-vis those under the DTRPO and the OSCO. He said that the three-tier approach Members considered earlier seemed to be a better one.

Action

23. In reply to Ms LOH, SALA advised that an enforcement department seeking a warrant under the DTRPO and the OSCO was not given a choice to resort to Cap 1 and would have to comply with the more stringent requirements under these two Ordinances even though the material involved was journalist material.

24. Mr ABBOT said that, in view of the need to re-draft the main provisions in the Bill, it would be necessary to consider whether the new threshold on the mode of hearing now proposed for the Bill was higher than that of the DTRPO and OSCO. He would take into account Members' view in finalizing the drafting.

Admin

Concerns of the Hong Kong Journalists Association

25. The Chairman said that Members had taken note of the concerns of the HKJA at the last meeting, but did not support its position in total.

26. The Administration would give a written reply on the points raised by the HKJA.

Admin

27. On paragraph 9 of Ms LOH's note which was tabled, Mr TO clarified that he did not agree with the HKJA's request that all confidential journalistic material should be exempted from the provisions of the Bill because journalistic material should not have absolute privilege.

28. Members noted the Administration's advice that the effect of the Bill was to restrict Government's ordinary powers in relation to search and seizure of journalistic material, hence to give more protection to journalistic material. Mr DEANE supplemented that the Bill already provided that the judge would have to take into account the "circumstances under which a person in possession of the material holds it" before granting the warrant.

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29. While Ms LAU appreciated the position, she urged the Policy Secretary to say a few words to address the concerns of the HKJA in his speech on resumption of Second Reading debate. This would go a long way towards reassuring the journalists about the Government's commitment in the protection of press freedom. The Administration took note of her suggestion.

Admin

III. Way forward

30. Members noted that, for the Bill to resume Second Reading debate at the last sitting on 26.7.95, the Bills Committee had to make a report to the House Committee on 14.7.95.

31. It was agreed that the next meeting would be held at 10.45 am on 12.7.95 to consider outstanding issues and the various Committee Stage amendments proposed by the Administration.

32. The meeting was adjourned at 6.00 pm.

(Post-meeting note: All papers tabled at this meeting were re-circulated to Members vide LegCo Paper No HB 1134/94-95.)

LegCo Paper No. HB 1262/94-95

(Note: This record has been seen
by the Administration)

Ref : HB/C/38/94

**Bills Committee to study the
Interpretation and General Clauses (Amendment) Bill 1995**

**Notes of Meeting held on Wednesday, 12 July 1995 at 10.45 am
in Conference Room B of the Legislative Council Building**

Present : Hon Andrew WONG, OBE, JP (Chairman)
Hon Emily LAU Wai-hing
Hon James TO Kun-sun
Hon Christine LOH Kung-wai

Absent with : Hon Mrs Selina CHOW, OBE, JP
apologies

By invitation: The Administration

Mr Jack CHAN
Principal Assistant Secretary for Security

Mr Clement LEUNG
Assistant Secretary for Security

Mr Ian DEANE
Senior Assistant Solicitor General

Mr J L ABBOTT
Senior Assistant Law Draftsman

In attendance: Mr Jimmy MA
Senior Assistant Legal Adviser

Mrs Percy MA
Clerk to the Bills Committee

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I. Administration's reply to submission from the Foreign Correspondents' Club, Hong Kong (FCC) (tabled and re-circulated to Members vide LegCo Paper No. HB 1192/94-95)

The Chairman referred Members to the Administration's reply commenting on the FCC's written submission. As the reply was only received by the Secretariat by fax at 9.39 am that morning, it was not possible to invite the FCC to send a representative to observe this meeting as proposed by the Administration. However, the Administration's comments would be relayed to the FCC.

Clerk

2. In response to the Chairman, Mr Jack CHAN said that most of the points raised in the submission had been covered in the previous discussions of the Bills Committee. Those which had been accepted by the Administration would be reflected in the Committee Stage amendments prepared for Members' consideration at this meeting. At the request of Ms Emily LAU, he elaborated on the concerns raised by the FCC which were considered unacceptable by the Administration:

- (a) The FCC's request that protection should be extended to cover journalists per se would deviate from the object of the Bill because the Bill aimed to restrict the statutory powers of entry into premises for the purpose of searching for or seizing any material known or suspected to be journalistic material, hence offering protection to journalistic material, not to journalists.
- (b) As regards absolute protection for journalistic material acquired in confidence, this was discussed by the Bills Committee. It was agreed

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that blanket exemption should not be extended to journalistic material.

II. Committee Stage amendments (CSAs) proposed by the Administration (tabled and re-circulated to Members vide LegCo Paper No. HB 1192/94-95)

3. Mr J L ABBOT said that the proposed section 84 in the Bill would be replaced by a number of sections. He gave a brief overview of the proposed CSAs as follows:

Proposed section 84

- (a) This section was the first tier of the three-tier approach. It set out who was qualified to apply for a production order; the kind of order that could be made; and the conditions that must be fulfilled before a production order was granted;
- (b) On conditions to be fulfilled before a production order would be granted, the word "evidence" had been inserted under subsection (3)(a)(iii)(B) as proposed by Members;
- (c) On methods of obtaining the material under subsection 3(c), the present formulation followed that of PACE and had taken into account Members' view expressed;
- (d) Section 84(4) stipulated that an application for such an order should be made inter partes; and
- (e) Section 84(5) specified that a person who failed to comply with the order would commit an offence. This provision was similar to section 4 of the Organized and Serious Crimes Ordinance in relation to application for production order.

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Proposed section 85

- (f) This section provided for the second and third tiers of the three-tier approach;
- (g) The same person who could apply for a production order could apply for a warrant under this section. The application had to be approved by a directorate disciplined officer;
- (h) On conditions to be fulfilled by an applicant for a warrant (section 85(3)), there were two separate sets of conditions, i.e.
 - (i) an order under a production order had not been complied with; or
 - (ii) the same conditions applied to the issue of a production order, except the one on "circumstances under which a person in possession of the material holds it", must be fulfilled, plus one of the conditions specified under subsection (4). The reason for the exception was that the applicant, i.e. the enforcement agency was unlikely to have the knowledge as to whether the condition was met. However, this requirement would come into play when there was an inter partes hearing at a later stage;
- (i) Section 85(5) dealt with the requirement for material seized to be sealed; and
- (j) Section 85(6) constituted the third tier of the three-tier approach. This section provided for immediate access to the material seized where the judge was satisfied that there might be serious prejudice to the investigation if immediate access was not granted.

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Proposed section 86

- (k) This section provided the right for the person from whom the material had been seized to apply to the court for an order for the return of the material within 3 days of the seizure, and an opportunity for him to establish public interest grounds as to why the material seized should not be used;
- (l) The judge would be allowed to examine the material seized. While it would not be practicable to ask the judge to re-appraise the grounds for issue of the warrant at this stage, he could consider any public interest issues that a person wished to raise. He would need to balance the grounds raised, e.g. confidentiality issues against the relevance of the material to the investigation; and
- (m) Section 86(5) provided for inter partes hearing on an application for return of the seized material.

Proposed sections 87 - 88

- (n) These sections dealt with supplementary and miscellaneous matters;
- (o) Section 87(1) was common in similar provisions dealing with powers in search and seizure of material held electronically;
- (p) Section 88(2) was a general provision allowing a person to raise any public interest issues on an application; and
- (q) Section 88(3) provided for open proceeding for inter partes hearing unless the judge ordered otherwise, as proposed by Members.

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4. Members raised a number of questions on the CSAs and the Administration responded accordingly. The deliberations were summarized in the following paragraphs.

Confidential journalistic material

5. On the question of protection for journalistic material obtained in confidence, the Administration reiterated that journalistic material should not be given absolute immunity. Under the proposed CSAs, the judge had to take into account "the circumstances under which a person in possession of the material holds it" in considering an application for a production order by an enforcement agency (section 84(3)(d)(ii)), or an application for the return of the material seized by a person from whom the material was seized (section 86(2)).

6. Ms Emily LAU asked whether "confidentiality issues" could be referred to in the Bill as one of the circumstances which the judge had to take into account in considering such applications. Mr James TO was of the view that the common law principle was quite clear on the need for the judge to balance public interest issues. It would not be necessary to single out "confidentiality issues" for inclusion in the Bill as proposed. He suggested the Policy Secretary to say a few words, at the resumed debate on the Bill, to address the concerns of the journalists by highlighting the three-tier approach now adopted for hearing applications for production order/warrant. The Administration agreed.

Admin

7. In response to Ms LAU, SALA said that the formulation now proposed under the Bill would cover situations previously raised by Members such as material obtained in confidence or legitimacy of obtaining or holding the material. He was of the view that the CSAs proposed would adequately address Members' concerns.

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Proposed section 86

8. Mr TO was concerned that, under the terms of section 86(2), the person from whom the material had been seized was placed with the onus of proving that the journalistic material seized could not be used for the purposes of the investigation in the public interest. He felt that the onus should be placed on the enforcement agency, similar to the procedure adopted for an application for a production order under section 84(3).

9. Mr ABBOT advised that, under the three-tier approach, there were two tests for "public interest issues". Under the first test, the applicant, i.e. the enforcement agency had to satisfy the conditions under section 84(3) before a production order would be granted by the judge. Under the second test, the applicant, i.e. the person from whom the material had been seized had to satisfy the judge why it would not be in the public interest for the material seized to be made use of for the purposes of the investigation. In the second scenario, the enforcement agency had already passed the hurdle in its application for a warrant for search and seizure of the material; it was then a question of whether the material seized should be used. It was therefore appropriate for the onus to be placed on the applicant of the order to satisfy the judge that it would not be in the public interest that the material seized should be unsealed, despite the fact that there were prima facie grounds for the issue of the seizure warrant in the first place.

10. Mr ABBOT was also concerned that if the person from whom the material had been seized, in applying for the return of the material, made a serious allegation without putting forward any evidence to substantiate it, then the judge would be in a quandary and would not be able to make a positive ruling as to whether the material should be unsealed. It was therefore only reasonable that the onus should be placed on the applicant, rather than the enforcement agency. Mr TO held the contrary view that the

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situation quoted could in fact allow the judge to dismiss the case very easily.

11. In response to Members, SALA said that the conditions specified for an application for a warrant to search and seize material had excluded one of the conditions specified for an application for a production order under section 84(3)(d)(ii), i.e. "the circumstances under which a person in possession of the material holds it". It was a deliberate intention to leave the test to the inter partes hearing for an application for the return of the material seized. He was of the view that the person who knew best the circumstances relevant to the application would be the person who was the subject of the search. Hence, it would not be unfair to place the burden of proof on the applicant.

12. Mr TO indicated that he would move an amendment to section 86(2) to shift the onus to the enforcement agency. Ms Christine LOH was of the view that Mr TO's request should be acceded to since the enforcement agency could resort to the third-tier for immediate access to the material if the case was proved to be urgent.

13. At Members' request, the Administration agreed to discuss among themselves whether Mr TO's request could be acceded to.

(The meeting was suspended at 12.05 pm and re-convened at 12.20 pm.)

14. The Administration, after re-consideration, agreed to accept Mr TO's proposal. Section 86(2) would be re-drafted by replacing "it appears to the judge that" in line 2 of the section with "the judge is not satisfied that" and by deleting the word "not" in line 5 of the section.

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15. SALA said that section 86(2) as re-drafted was silent as to who would bear the burden of proof. While the burden to produce evidence to support the application might still rest with the applicant, it would be a matter for the judge to satisfy himself whether it would be in the public interest that the material seized should be used.

16. Members found the amendment acceptable. The Administration noted Mr To's suggestion that the Policy Secretary should make a statement to clarify that the burden of proof should not be on the person from whom the material was seized when speaking at the Bill's resumed debate.

Admin

Proposed section 84(1)

17. On provisions for entry and search or seizure, SALA pointed out the following:

- (a) under sections 84(1) and 85(1), the expressions used were "to enter any premises and search for or seize any material"; and
- (b) under section 8 of PACE, the expression used was "to enter and search the premises".

He would like to ask the Administration to clarify whether the search and seizure would cover any person who happened to be on the premises at the time of the seizure. The power conferred on an enforcement agency to enter any premises and search for or seize material under section 85(1), as read with the ancillary power conferred on the same agency to detain any person who might have such material in his possession under section 85(7), would give rise to the impression that the search was not restricted to material on the premises. The PACE provision was very clear that it was the premises that would be searched. The Administration might wish to consider whether similar expression should be adopted.

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18. Mr ABBOT said that the wording of sections 84(1) and 85(1) followed that of section 83. If the provision was restricted to search of material on the premises, it would narrow the scope of protection under the Bill. However, if the provision could be construed as to search both premises and any person found on the premises, then the scope of protection would be wider.

19. Ms LAU said that if the intention was to restrict the power to search material on the premises, but not on any person found on the premises, it should be stated clearly in the Bill.

20. The Administration agreed to look into the matter.

Admin

Other drafting points

21. The meeting noted the following drafting points raised by Members and SALA, and agreed that these should be resolved between the Administration and SALA:

Admin
SALA

- (a) To consider synchronising the expressions "compromise the investigation" in section 84(3)(c)(ii) and "seriously prejudice the investigation" in section 85(4)(c) as both referred to one of the conditions to be fulfilled for the grant of a production order/warrant. The latter expression was commonly used, e.g. in PACE, OSCO and DTRPO. The former expression was considered a bit vague;
- (b) To consider whether the wording of section 87(3) should be replaced by "officers" within the meaning of Cap 32, i.e. to cover director, manager and secretary, etc;
- (c) To consider whether the expression "from whom" in section 86(1) should be changed to

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“in respect of whom” to cater for situation where the person from whom the material was seized was not actually the owner of the material;

- (d) To consider whether the seized material should also be made use of for the purposes of the “proceedings for the arrestable offence” under section 86(2), in order to be consistent with the conditions stipulated for an application for a production order under section 84(3)(iii); and
- (e) To consider whether the word “constable” in section 87(5)(b) should be replaced by a higher ranking officer.

Clauses 5 and 6

22. The Chairman asked the Administration to advise whether the threshold for hearing applications for production order/warrant under the three-tier approach now proposed for the Bill would be higher than those provided in the Drug Trafficking (Recovery of Proceeds) Ordinance and Organized and Serious Crimes Ordinance. Mr J CHAN replied that, although the thresholds under the two Ordinances were different, they should not be lower than that proposed for the Bill.

23. Mr TO was of the view that, if the thresholds were considered comparable and for the sake of consistency, the proposal to exempt the two Ordinances from the provisions of the Bill might need to be reconsidered. In response to Members, the Administration agreed to review the subject and report the outcome of the review to the LegCo Panel on Security in the next LegCo term.

Admin

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Conclusion

24. The Administration would let Members have the finalized CSAs as soon as possible. The deadline for giving notice of CSAs was 17.7.95. The Bills Committee would make a report to the House Committee on 14.7.95 recommending that the Bill should resume its Second Reading debate on 26/27.7.95.

Admin

Clerk

25. The meeting was adjourned at 12.50 pm.

Ref : HB/C/38/94

Report to the House Committee on 14 July 1995

**Bills Committee to study the
Interpretation and General Clauses (Amendment) Bill 1995**

PURPOSE

This paper reports on the work of the Bills Committee to study the Interpretation and General Clauses (Amendment) Bill 1995 and recommends the resumption of the Second Reading debate on the Bill at the Council sitting to be held on 26 July 1995.

BACKGROUND

2. There has been public concern that section 50(7) of the Police Force Ordinance (Cap 232) gives the Police too much power and that the power could be abused in relation to journalistic material, thus threatening press freedom. In October 1994, the Governor undertook in his Policy Address to take action to amend certain legal provisions which impose restrictions on press freedom by the end of the 1994-95 legislative session; section 50(7) of Cap 232 is one of these provisions.

3. In addition, apart from the Police Force, which has the powers of entry and search or seizure, officers in other disciplined services and Government departments also have the same or similar powers under various ordinances. Hence, a more comprehensive proposal covering both the other law enforcement agencies and the powers of search without warrant under other provisions in a number of other ordinances is required for the purpose of providing additional safeguards to protect journalistic material. The approach adopted is one of providing general protection of journalistic material and procedural safeguards against unreasonable search of premises and seizure of journalistic material in the Interpretation and General Clauses Ordinance (Cap 1).

THE BILL

4. The Bill seeks to:

- (a) define "journalistic material" to cover any material acquired, created, possessed, or received for the purpose of journalism;
- (b) restrict the statutory powers of entry into premises for the purpose of searching for or seizing any material known or suspected to be journalistic material;
- (c) provide for an officer to apply for a warrant in respect of journalistic material which has to be approved by a directorate disciplined officer;
- (d) require a judge to be satisfied that a number of conditions are met before a warrant can be issued;
- (e) provide for ancillary powers attached to such a warrant for the purposes of entering the premises, conducting the search, and taking possession of journalistic material and other material found; and
- (f) apply the new provisions to both existing and future ordinances.

THE BILLS COMMITTEE

5. The House Committee decided to form a Bills Committee to study the Bill on 30 June 1995. The membership list of the Bills Committee is at **Appendix I**.

6. Under the chairmanship of Hon Andrew WONG, the Bills Committee has held three meetings with the Administration. It has received submissions from the Hong Kong Journalists Association and the Foreign Correspondents' Club, Hong Kong.

DELIBERATIONS OF THE BILLS COMMITTEE

7. The major issues considered by the Bills Committee are summarized in the following paragraphs.

Mode of hearing on application for warrant

8. This is an area in which the Bills Committee Members have expressed considerable concern. Members propose that, in order that a warrant is issued in the public interest under the proposed section 84(4)(d), inter partes hearing on an application for warrant should be provided in the Bill. For normal cases, the inter partes proceeding should apply. For urgent and sensitive cases, a two-stage proceeding should apply, i.e. an ex parte application which requires the sealing of the material seized, pending the outcome of an application for the return of the material through an inter partes hearing.

9. After deliberation, the Administration has agreed to accept Members' proposal with some modifications. It proposes a three-tier approach for hearing an application for warrant: (1) an inter partes application procedure for a production order (not a warrant) in all general cases; (2) an ex parte application for a warrant (if the production order is not complied with or it is not practicable to apply for a production order) which requires the sealing of any material seized pending the outcome of an application for the return of the material through an inter partes hearing; and (3) an ex parte application for a warrant which authorizes the officer to seize and use the material seized in urgent cases.

10. Members agree to the revised proposal. The Administration will move the necessary Committee Stage amendments to the Bill.

Open proceeding for inter partes hearings

11. The Administration has agreed to Members' suggestion that inter partes hearings should be held in open court unless the judge directs otherwise. The Administration will move a Committee Stage amendment to this effect.

Scope of protection

12. A Member points out that the Personal Data (Privacy) Bill proposes that the working material of a journalist which has not become part of any news reporting should be excluded from the application of that bill. Upon comparison of the definition of "journalistic material" proposed under the Bill and that proposed in the other bill, the Member considers the former to be too wide because it covers any material acquired and created for the purpose of journalism. The Member has also queried the lack of definition for "journalism".

13. The Administration advises that the definition of "journalistic material" is taken from the UK Police and Criminal Evidence Act 1984 (PACE). Any past or future case law on the definition may be useful as a reference in the Hong Kong context. A conscious decision is made not to define the expression in specific terms (e.g. along the lines of the Personal Data (Privacy) Bill) because it may have the undesirable effect of reducing the scope of protection for journalistic material. Similarly, the scope of protection might be reduced by further defining "journalism".

14. Members agree that the definition on the various terms proposed in the Bill are acceptable.

15. On protection for journalists who are not actively employed, the Administration advises that the Bill aims to protect journalistic material, not journalists. It is immaterial whether the person who creates the material or in possession of it is still actively employed as a journalist. So long as the material meets the criteria set out in the proposed section 82, the safeguards provided in the Bill will apply.

16. On whether materials held in computers or in other electronic forms are subject to protection under the Bill, the Administration has agreed to address the issue in the Committee Stage amendments proposed.

Means of obtaining material

17. Members are concerned whether the material obtained through an unlawful act will be protected under the Bill. The Administration explains that the Bill targets material, not acts. Hence, the means of

obtaining the material will not have any bearing on the protection given under the Bill.

18. The Administration has noted Members' request that the Policy Secretary should make a statement to clarify this when speaking at the Bill's resumed debate.

Confidential journalistic material

19. On whether journalistic material obtained in confidence should be accorded exemption from search and seizure, Members agree with the Administration that journalistic material should not have absolute immunity. They also note that, under the proposed three-tier approach, the judge has to take into account the "circumstances under which a person in possession of the material holds it", in considering an application for a production order by an enforcement agency or an application for return of the material seized by the person from whom the material was seized.

20. The Administration has taken note of a Member's suggestion that the Policy Secretary should say a few words, at the resumed debate on the Bill, to address the concerns of journalists and to reassure them of the Government's commitment to protect press freedom.

Proposed section 84(4) in Clause 2

21. Members have a number of queries on the proposed section 84(4) which imposes various conditions with which a judge has to be satisfied before granting a warrant.

Section 84(4)(b)

22. Members consider that one of the conditions for the issue of warrant stipulated in the proposed section 84(4)(b)(ii), i.e. the journalistic material is likely to be "relevant in proceedings for the arrestable offence" is ambiguous, and suggest that it be replaced with "relevant evidence in proceedings for the arrestable offence".

23. Members note that in UK, the expression is in more specific terms than that proposed under the Bill. The condition imposed is that the material has to be relevant evidence, and relevant evidence is further

defined to mean anything that will be admissible in evidence at trial for the offence. The Administration explains that, as long as the material is sufficiently relevant to be admissible, there is no requirement for an applicant of a warrant to demonstrate that he will actually be able to tender the material in evidence in court. That is why reference is made to the relevance in proceedings but not to the actual acceptance of the material in evidence.

24. Despite the Administration's explanation, Members feel that the condition is an important one bearing in mind that it is an alternative condition to the proposed subsection 4(b)(i). The Administration has agreed to move a Committee Stage amendment to include the word "evidence" as proposed by Members.

Section 84(4)(c)

25. Members are uncertain as to whether "other methods of obtaining the material may compromise the investigation" under the proposed section 84(4)(c) refer to methods considered or methods tried out. They request the Administration to re-draft the section to reflect the policy intention clearly.

26. The Administration has agreed to move a Committee Stage amendment to clarify that the section refers to any methods for obtaining the material that have been tried without success or have not been tried because they are unlikely to succeed.

Section 84(4)(d)

27. Members suggest that, apart from matters stated in subsections 4(d)(i) and (ii), a court has to have regard to "all other relevant factors" as well in considering whether an application for warrant should be granted in the public interest.

28. The Administration holds the view that the conditions in the proposed section 84(4)(d) are specific hurdles the enforcement agency has to overcome in order to get the warrant. The suggestion that there should be positive obligation on an enforcement agency to disclose all relevant factors will impose an open-ended burden on it.

29. At Members' request and after reconsideration, the Administration has agreed to move a Committee Stage amendment to the effect that, apart from the grounds under the proposed section 84(4), a person opposing to the issue of a search warrant can argue on general public interest grounds, having regard to any circumstances of the case.

Clauses 5 and 6

30. Clauses 5 and 6 are consequential amendments to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (DTRPO) and the Organized and Serious Crimes Ordinance (OSCO) to stipulate that these two Ordinances will be exempted from the provisions being proposed in the Bill. The two Ordinances have more stringent requirements than those proposed in the Bill.

31. However, with the three-tier approach for hearing applications for warrant proposed by the Administration and accepted by the Bills Committee, Members are concerned whether the new thresholds for the hearings now proposed for the Bill would be higher than those provided in the DTRPO and OSCO. They feel that, for the sake of consistency, the proposal to exempt the two Ordinances from the provisions of the Bill might need to be reconsidered.

32. The Administration considers that, although the thresholds under the DTRPO and OSCO are different, they should not be lower than that proposed for the Bill. Nevertheless, it has agreed to review the subject and report to the LegCo Panel on Security in the next LegCo term.

COMMITTEE STAGE AMENDMENTS

33. At its third meeting held on 12 July 1995, the Bills Committee considered the Committee Stage amendments proposed by the Administration as set out at **Appendix II**.

34. Apart from a few minor drafting points which have yet to be resolved between our Legal Service Division and the Law Draftsman, Members now consider that the proposed amendments have adequately addressed their various concerns.

35. However, a Member is concerned that under the terms of the proposed section 86(2), the person from whom the material has been seized is placed with the onus of proving that the journalistic material seized cannot be used for the purposes of the investigation in the public interest. The Administration has agreed to redraft the section by replacing "it appears to the judge that" in line 2 of the section with "the judge is not satisfied that" and by deleting the word "not" in line 5 of the section. Members find the amendment acceptable.

RECOMMENDATION

36. The Bills Committee recommends that, subject to the Committee Stage amendments, the Bill should resume its Second Reading debate on 26 July 1995.

ADVICE SOUGHT

37. Members are invited to support the recommendation of the Bills Committee in paragraph 36.

Appendix I

**Membership list of the Bills Committee to study
the Interpretation and General Clauses (Amendment) Bill 1995**

Hon Andrew WONG, OBE, JP (Chairman)

Hon Mrs Selina CHOW, OBE, JP

Hon Emily LAU Wai-hing

Hon James TO Kun-sun

Hon Christine LOH Kung-wai

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL

COMMITTEE STAGE

Amendments to be moved byClauseAmendment Proposed

2

(a) By deleting proposed section 84 and substituting -

"84. Production order in respect of journalistic material

(1) A person on whom there is or may be conferred under a provision in any Ordinance, being a provision to which section 83 applies, the power to enter any premises and search for or seize any material, may apply to a judge of the High Court or District Court for an order under subsection (2) in relation to material which is known or suspected to be journalistic material.

(2) If on an application under subsection (1) a judge is satisfied that the conditions in subsection (3) are fulfilled he may make an order that the person who appears to be in possession of journalistic material specified in the application shall -

(a) produce it to the applicant to take away; or

(b) give the applicant access to it, not later than the end of the period of 7 days from the date of the order or the end of such longer period as the order may specify.

(3) The conditions to be fulfilled for the purposes of subsection (2) are that -

(a) there are reasonable grounds for believing -

- (i) that an arrestable offence has been committed;
- (ii) that there is material which consists of or includes material known or suspected to be journalistic material on premises specified in the application;
- (iii) that the material is likely to be-
 - (A) of substantial value to the investigation of the arrestable offence; or
 - (B) relevant evidence in proceedings for the arrestable offence;

(b) but for section 83 the applicant would be or could have been authorized under the provision mentioned in subsection (1) to enter onto the premises specified in the application and search for the material specified in the application;

(c) other methods of obtaining the material

- (i) have been tried and failed, or
- (ii) have not been tried because they were unlikely to succeed or would probably compromise the investigation; and

(d) there are reasonable grounds for believing that it is in the public interest that an order should be granted, having regard to -

- (i) the benefit likely to accrue to the investigation; and
- (ii) the circumstances under which a person in possession of the material holds it.

(4) An application for an order under subsection (2) shall be made inter partes.

(5) Any person who without reasonable cause fails to comply with an order made under subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

85. Warrant to seize journalistic material

(1) A person on whom there is or may be conferred under a provision in any Ordinance, being a provision to which section 83 applies, the power to enter any premises and search for or seize material, may apply to a judge of the High Court or District Court for the issue of a warrant under subsection (3) authorizing him to enter those premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material.

(2) An application for a warrant under this section shall not be made unless it has been approved by a person specified in Schedule 7 to be a directorate disciplined officer.

(3) If on an application under subsection (1) a judge is satisfied that -

- (a) the conditions specified in section 84(3)(a), (b), (c) and (d)(i) are fulfilled and that one of the further conditions set out in subsection (4) is also fulfilled; or
- (b) an order under section 84 relating to the material has not been compiled with,

he may issue a warrant authorizing the applicant to enter onto and search the premises.

(4) The further conditions mentioned in subsection (3) are -

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;
- (b) that while it might be practicable to communicate with a person entitled to grant entry to the premises, it is not practicable to communicate with any person entitled to grant access to the material;
- (c) that service of notice of an application for an order under section 84(2) may seriously prejudice the investigation.

(5) Subject to subsection (6), it shall be a term of any warrant issued under this section that a person who seizes journalistic material pursuant to the warrant shall seal the material upon seizure and shall hold the sealed material until otherwise authorized or required under section 86.

(6) Subsection (5) shall not apply where the judge is satisfied that there may be serious prejudice to the investigation if the applicant is not permitted to have immediate access to the material.

(7) Any person empowered by a warrant issued under this section may -

(a) enter, if necessary by force, any premises to search for and take possession of such journalistic material as may be found and such other material as but for section 83 he would be or could have been authorized to take possession of;

(b) detain any person for a reasonable period who may have such material in his possession or under his control and who if not so detained may prejudice the purpose of the search.

86 Procedure in relation to sealed material

(1) A person from whom journalistic material has been seized under a warrant to which section 85(5) applies may within 3 days of such seizure apply to a judge of the High Court or District Court for an order under subsection (2).

(2) If on an application under subsection (1) it appears to the judge that, having regard to the circumstances under which the person was holding the material at the time of its seizure, or to any other circumstance, it would not be in the public interest that the material be made use of for the purposes of the investigation, he shall order that the material be immediately returned to the person from whom it was seized.

(3) If on an application under subsection (1) the judge is of the view that the ground for making an order under subsection (2) has not been established, or where no application has been made under subsection (1) within the period specified in that subsection, the material may be unsealed.

(4) For the purpose of determining an application under section (1) a judge may require the person who seized the material to produce it to the judge for examination by him.

(5) An application for an order under subsection (1) shall be made inter partes.

87 Provisions supplementary to section 84

(1) In relation to material consisting of information contained in a computer -

(a) an order under section 84(2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

(b) an order under section 84(2)(b) shall have effect as an order to give an applicant access to the material in a form in which it is visible and legible.

(2) Notice of an application for an order under section 84(2) may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter.

(3) Such a notice may be served -

(a) on a body corporate, by serving it on the body's secretary or clerk or other similar officer; and

(b) on a partnership, by serving it on one of the partners.

(4) For the purposes of section 84, the proper address of a person -

(a) in the case of secretary or clerk or other similar officer of a body corporate, shall be that of the registered or principal office of that body,

(b) in the case of a partner of a firm shall be that of the principal office of the firm, and

(c) in any other case shall be the last known address of the person to be served.

(5) Where notice of an application for an order under section 84 has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except -

(a) with the leave of a judge; or

(b) with the written permission of a constable,

until -

(i) the application is dismissed or abandoned; or

(ii) he has complied with an order under section 84 made on the application.

(6) Any person who knowingly contravenes subsection (5) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

88 Miscellaneous

(1) The costs of any application under this Part and of anything done or to be done in pursuance of an order made under it shall be at the discretion of the judge.

(2) For the avoidance of doubt, it is declared that nothing in this Part shall be construed as requiring a judge to make an order under this section where he considers that, in all the circumstances of the case, it would not be in the public interest to make that order.

(3) Unless a judge otherwise directs, proceedings inter partes under this Part shall be held in open court.

(4) Rules of court may provide for proceedings relating to orders under this Part.

(b) In proposed section 85, by renumbering it as section 89.

3. In the proposed Schedule 7 -

(a) by deleting "ss84(2) & 85" and substituting "ss85(2) & 89";

(b) by deleting "section 84(2)" and substituting "section 85(2)".

Second Reading of Bill**INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1995****Resumption of debate on Second Reading which was moved on 28 June 1995***Question on Second Reading proposed.*

MR ANDREW WONG: Mr President, on 30 June 1995, a Bills Committee was formed to study the Interpretation and General Clauses (Amendment) Bill 1995. The Bills Committee had held a total of three meetings with the Administration. The Bills Committee has also considered views from the Hong Kong Journalists Association and the Foreign Correspondents' Club, Hong Kong.

The Bills Committee supports the objective of the Bill, that is, to provide additional protection to journalistic material and procedural safeguards against unreasonable search of premises and seizure of journalistic material for the purposes of investigation.

In studying the Bill, the Bills Committee has considered a number of issues. In response to Members' various concerns, the Administration has agreed to re-draft the main provisions of the Bill. I would like to highlight the deliberations of the Bills Committee on the major issues.

Mode of hearing on an application for warrant

The Bill requires an enforcement agency (including the police and Customs and Excise) to apply for a warrant for any entry and search for journalistic material. The Bill also requires a judge to be satisfied that a number of conditions are met before the warrant can be issued.

An area in which Members of the Bills Committee have expressed considerable concern is on the mode of hearing for application of warrant. In order to ensure that a search warrant is issued fairly and in the public interest, Members feel that inter partes hearing on an application for warrant in an open court should be provided in the Bill.

To address Members' concern, the Administration has agreed to introduce a three-tier approach for seeking to obtain journalistic material in the course of a criminal investigation:

- (i) an *inter partes* application procedure for a production order (not a warrant) in all general cases;
- (ii) an *ex parte* application for a warrant (if the production order is not complied with or it is not practicable to apply for a production order) which requires the sealing of any material seized pending the outcome of an application for the return of the material through an *inter partes* hearing; and
- (iii) an *ex parte* application for a warrant which authorizes the officers concerned to seize and use the material seized in urgent cases immediately.

The Administration has also agreed with Members' suggestion that *inter partes* hearings should be held in open court unless the judge directs otherwise. The Administration will move the necessary Committee stage amendments to introduce the new provisions.

Provisions on entry, search and seizure

The intention of section 83 of the Bill is to bring under it all the 106 provisions in various Ordinances which empower a law enforcement agency to enter premises to either search the premises or persons found on the premises for materials of whatever description. In the course of the deliberation of the Bills Committee, the Administration agrees that it will be necessary to amend section 83 and other related sections so that the procedural safeguards relating to applications for production order, "search and seal" warrant, and "search and use" warrant provided under the three-tier approach will also apply to journalistic material found on persons in the premises being searched. The amended provision will not give the law enforcement agencies the power to search persons found on the premises if they would not or could not have been authorized to do so by an empowering Ordinance. Similarly, it will also be necessary to qualify the words "any material" to ensure that the various descriptions of material which can be searched for and seized under all the 106 provisions are covered. The Administration will move the necessary Committee stage amendments to give effect to the proposals.

Scope of protection

The Bills Committee has considered the scope of the protection provided under the Bill, an area of considerable concern to the journalists.

The definition of “journalistic material” is taken from the United Kingdom Police and Criminal Evidence Act 1984 (PACE). It was a conscious decision on the part of the Administration not to define the expression in specific terms because it may have the undesirable effect of reducing the scope of protection for journalistic material. Similarly, “journalism” should be construed according to its ordinary and natural meaning; the scope of protection might be reduced by defining it.

The Administration also explains that the Bill aims to protect journalistic material, not journalists. So long as the material meets the criteria set out in the Bill, the safeguards provided in the Bill will apply.

On whether journalistic material obtained in confidence should be accorded exemption from search and seizure, the Bills Committee agrees with the Administration that journalistic material should not have absolute immunity. On whether the means of obtaining material will have any bearing on the protection given under the Bill, the Administration confirms that the Bill targets material, not acts. The Administration further advises that, under the proposed three-tier approach, the judge has to take into account the “circumstance under which a person in possession of the material holds it”, in considering an application for a production order by an enforcement agency or an application for return of the material seized by the person from whom the material was seized. This formulation should address Members’ concern.

The Administration has agreed to move an amendment to cover materials held in computers or in other electronic forms in the Bill.

I understand that the Policy Secretary will say a few words to address the various concerns of the journalists and to reassure them how this Bill could provide additional protection and safeguards in relation to search and seizure of journalistic material.

Exemption of the Drug Trafficking (Recovery of Proceeds) Ordinance and Organized and Serious Crimes Ordinance from the provisions of the Bill

Clauses 5 and 6 are consequential amendments to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance to stipulate that these two Ordinances will be exempted from the provisions being proposed in the Bill. The two Ordinances have more stringent requirements than those proposed in the Bill.

However, with the three-tier approach for hearing applications for production order/warrant now proposed for the Bill, the Bills Committee is concerned whether the new thresholds would be higher than those provided in the two Ordinances. The Bills Committee feels that, for the sake of consistency, the proposal to exempt the two Ordinances from the provisions of the Bill might need to be reconsidered.

While the Administration considers that the thresholds under the two Ordinances, albeit different, should not be lower than that proposed for the Bill, it has agreed to review the subject and report the outcome of the review to the Legislative Council Panel on Security in the next Legislative Council term.

Mr President, this Bill is of great significance in that it is the first time in our legislative history that journalistic material is given protection against unfair or unnecessary search and seizure by law enforcement agencies. Although presented as an amendment to the Interpretation and General Clauses Ordinance, the amendment will have impact on all existing and future legislation which empower law enforcement agencies and government departments to enter premises and to search or seize materials. I believe the proposals strike the balance between the need to protect press freedom and the need of our law enforcement agencies in their performance of duties.

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

MISS EMILY LAU (in Cantonese): Mr President, I speak in support of the Interpretation and General Clauses (Amendment) Bill and the amendments to be proposed by the Secretary for Security later.

Press freedom does not only mean the media's freedom to cover and report news stories, it also includes the trust the public reposes in the press, knowing that information supplied to the press will only be for news and no other purpose. Only thus will the public be willing to disclose to the media confidential information which it is in the public interest to disclose. Through this avenue, the media can give full play to their monitoring functions. Therefore, the press and many members of the public are concerned about the excessive power conferred on the police under section 50(7) of the Police Force Ordinance to search and seize journalistic material.

One reason for such concern aroused by the Police Force Ordinance is that in October 1989, four months after the Beijing massacre, police officers, in exercise of the powers conferred under the Police Force Ordinance, entered the offices of Hong Kong's two television stations, searched and seized a number of news videotapes. These videotapes contained footages of the clash between the police and democratic activists. The police stated then that they had to view those tapes to decide whether to press more serious charges against the demonstrators.

The incident had serious repercussions among the community. Some were worried lest information or material provided to the media should be searched and seized by the Government whenever it pleases and the identity of the providers be known. The material seized could even be used by the prosecution as evidence against the accused persons. This worried them very much.

Mr President, such excessive powers possessed by the police would directly affect the independence and credibility of the press. It was not until very recently that the Government became willing to address this question and tabled the present Bill the Second Reading of which resumes today. The Bill provides that the police or other law enforcers shall not search and seize journalistic material except by way of a more stringent procedure. Formerly, a police officer of whatever rank could apply to the court for a warrant to seize journalistic material. This failed to provide protection for the media and jeopardized the principle of keeping the source of information secret.

Mr President, when the principle of protection of press freedom clashes with the principle of effective enforcement of the law by the disciplined forces, it is very important for an appropriate balance to be struck between the two. I think that the law should provide that the Government may apply for a search warrant only when such an application is in the public interest. Besides, when the Government applies for a search warrant, the news agency concerned should be represented at the hearing. I believe this will be fairer. The judge will want to know why the law enforcer need to search the news agency concerned and why the agency does not want to surrender the required material. The judge will decide after hearing arguments from the two sides. I am glad that the Government is willing to accept Members' proposals and that the present amendments are seeking to establish a three-tier system of hearing, as observed earlier on by the Honourable Andrew WONG.

The first tier will be applicable under general circumstances when the presence of both parties will be required at the court hearing to enable the Government to apply for an order to surrender the required material in accordance with the procedure governing the Application for an Order to surrender Journalistic Material. The second tier will be applicable if the news agency concerned refuses to surrender the required material or if an application for an order to surrender is not possible. The Government may then apply *ex parte* for a warrant. However, the journalistic material so seized shall be kept under sealed cover pending a disposal order to be made by a judge when both parties are able to appear before him. The third tier will be applicable if the circumstances are such as to allow the Government to apply *ex parte* for a warrant and to use the seized material even though such use may seriously jeopardize the investigation.

I support the amendments proposed by the Government. This represents a compromise between the Government and Members. But I have to remind the Government never to abuse this power. It is because a judge will only permit the third-tier procedure to be applied in emergency situations albeit with the likelihood that the use of the seized material would jeopardize investigations. I hope the Government will brief this Council whenever it has resorted to the third-tier procedure to apply for a warrant so that this mechanism will not be abused. If in the future Members should discover any abuse of this third-tier mechanism by the Government and, if I were fortunate enough to be still sitting

on this Council then, I would consider tabling a Private Member's Bill to abolish this third-tier procedure in respect of the application for a warrant.

Mr President, I welcome the Government's acceptance of Members' proposals and its tabling of the present amendments. The amendments expressly provide that, unless the judge otherwise directs, hearing shall be held in open court. I believe this is a very basic principle of the rule of law. Unless there are compelling reasons, hearings should be conducted in open court. As I said at the beginning of this speech, Mr President, public concern about the Police Force Ordinance arose out of a 1989 incident when videotapes were seized from television stations. Since then, Members have been requesting the Government to amend the Police Force Ordinance. Not only has the Government sought to amend the Police Force Ordinance, it has further tabled a Bill whose Second Reading resumes today. The reason is that, apart from the Police Force Ordinance, similar powers are conferred on the police under 108 other Ordinances. Therefore, the Bill the Government is presenting today seeks to add a new part to the Interpretation and General Clauses Ordinance to cover other Ordinances under which the Government's power to seize material from the press will be restricted.

Mr President, Members will recall that, in his policy address last October, the Governor promised that 37 amendments in respect of 53 provisions in 27 Ordinances, particularly provisions jeopardizing press freedom, would be tabled to this Council before the current Legislative Session was out. These amendments of course would include the present Bill whose Second Reading resumes today. Other amendments will cover the Official Secrets Act, the Crimes Ordinance and the Telecommunications Ordinance. Mr President, today the current Legislative Session is about to end but the Governor's promise has not been fully realized. Last Tuesday the Secretary for Home Affairs reported to the Legislative Council Information Policy Panel that about 20% of the promise had yet to be fulfilled, and a most important 20% into the bargain. According to the Secretary, it was not until recently that information relating to the Official Secrets Act and the Crimes Ordinance was passed to the Sino-British Joint Liaison Group for discussion. The Government totally failed to give a commitment as to the timetable for the required amendments to be passed. With regard to interception, eavesdropping or other aspects of the Telecommunications Ordinance, the Government only said that the Law Reform Commission would probably table a report next year.

Mr President, I am very disappointed with and regret the Governor's failure to fulfill all of his promises. This also reflects the Government's failure to do its best to protect press freedom. I hope the Secretary for Security, in his response later, will give us a clear message. What the Government has promised must be fulfilled and there must be a clear timetable to go with it to ensure that all laws on Hong Kong's statute books inconsistent with press freedom will be repealed.

With these remarks, I support the Second Reading of the Bill.

MR JAMES TO (in Cantonese): Mr President, I deliberately choose to speak after the Honourable Miss Emily LAU has spoken because I knew her speech would be very detailed and I would not need to repeat the arguments after her. I just want to add a couple of points. Following the 1989 incident of seizure of videotapes, I proposed to amend the Police Force Ordinance to make it consistent with the Bill of Rights. At that time, the amendments I proposed were similar to the present amendments. But, unfortunately, the proposed amendments failed to gain the support of some Members. I recall that Miss LAU cast an abstention vote. I was very disappointed. Yet I understood the reason that prompted her to abstain. Anyway, though it took a long time coming, spring has eventually arrived. Yet I am still worried about some aspects of the law as amended.

First, I affirm in principle that the Administration has put in a lot of efforts in the present amendment exercise, particularly in the course of consultation with Members during Bills Committee proceedings where representatives of the Administration showed good faith and sincerity in listening to Members' views and examining them in detail. The Bill was ably, speedily and concisely drafted by the Law Draftsman. Yet I still have a number of points to make.

The definition of journalistic material covers information gotten hold of or obtained in the course of journalistic activities. I am worried that in the future the Administration, not necessarily the present Secretary for Security or the present Administration, may argue in court proceedings that journalistic material must mean material gotten hold of through lawful means. For example, disclosure of shady dealings or documents leaked by officials or disclosure to the press of government bungles or government employees' disaffection may, in most instances, be in breach of the Official Secrets Act or, if not in breach of the Act, at least in breach of internal procedures. If that should be the case, then what I am most worried about would be that the Administration might in the future argue before the court that the purpose of the Ordinance is to protect journalistic material from seizure unless an application is made to and granted by the court but that such protection does not extend to material obtained otherwise than through lawful means. If that be the case, the efficacy of the Ordinance in protecting press freedom would be substantially eroded.

I am not encouraging the press to obtain material or information otherwise than through lawful means. Nor am I encouraging other people to unlawfully get hold of, steal or snatch material and pass same to the press. But the question is this: We cannot deny that, in most instances, if shady dealings or big scandals were to be exposed, many people would be willing to take risks, even to the extent of breaking the law, in order to expose these. There are numerous examples of these throughout the world. In the process of striking a proper balance, I hope the Administration will state more clearly that this Ordinance will extend protection to journalistic material however obtained.

One last point I would like to make is this: Most of the provisions in this Amendment Bill are derived from the Police and Criminal Evidence Act 1984 of the United Kingdom. As a matter of fact, the Law Reform Commission already fully examined the applicability of this statute to Hong Kong. And the Legislative Council held a motion debate on it two years ago. I would like to remind the Administration that this happened two years ago and, therefore, apart from protecting press freedom, I hope the Administration will as soon as possible introduce into Hong Kong part of the provisions of the Police and Criminal Evidence Act as are applicable. In this regard, the Administration should as soon as possible table the relevant Bill to this Council in the next legislative year so that the law enforcement agencies, particularly the police force, will have better procedures for gathering evidence to ensure that a more appropriate balance will be struck between human rights, the rule of law and maintenance of law and order.

SECRETARY FOR SECURITY: Mr President, I would like to thank the Chairman of the Bills Committee, the Honourable Andrew WONG, and Members of the Bills Committee for their thorough and efficient study of the Interpretation and General Clauses (Amendment) Bill 1995. I am pleased that they fully support the principles of the Bill. And the amendments that I will move at the Committee stage also have the support of the Bills Committee.

The purpose of the Bill is to provide additional protection to press freedom by making existing powers of entry and search or seizure, when exercised in relation to journalistic material, subject to special requirements. The Bill demonstrates the Government's strong commitment to encourage a free and vigorous press. It strikes a good balance between the protection of press freedom and the need for effective law enforcement. And it meets the Governor's undertaking in his 1994 policy address to take action on provisions which infringe on press freedom.

We accepted almost all the suggestions of the Bills Committee to improve the Bill. We also take into account the comments and representations of the Hong Kong Journalists Association and the Foreign Correspondents' Club, Hong Kong. The provisions in the Bill, together with the Committee stage amendments that I will move later, provide for a three-tier approach to tackle the issue of access to journalistic material by law enforcement agencies.

Tier One: production order, inter partes hearing

Tier One deals with all general cases. An officer may apply to a District Court or High Court Judge for a production order, requiring the person who possesses the journalistic material to produce it or to give the officer access to it. An application for the order shall be made *inter partes*, that is, with both sides present. The officer has to satisfy the judge that a number of conditions are met before an order can be made. The conditions include, *inter alia*, that the material is likely to be of substantial value to the investigation of an

arrestable offence, and that is in the public interest to grant the order, having regard to the likely benefit to the investigation, and the circumstances under which the journalistic material is held, such as whether it is given in confidence. It is an offence for not complying with a production order, or for destroying or altering the material after a notice of an application has been served.

Tier Two: warrant application, seize and seal

Tier Two provides that an officer may make an ex parte application to a District Court or High Court Judge for a warrant authorizing him to enter premises and to search for or seize journalistic material. Such application shall not be made unless it has been approved personally by a directorate disciplined officer. This is to ensure that the decisions are made at a high level and that the grounds for resorting to this course of action are thoroughly considered and fully justified. The applicant will have to satisfy the judge:

- that a production order has been complied with; or
- that, in addition to meeting most of the Tier One conditions, it is not practicable to apply for a production order or that the service of a notice to the other party for an inter partes hearing may seriously prejudice the investigation.

Any journalistic material pursuant to the warrant has to be sealed. The person from whom the material was seized may make an inter partes application for the return of the material. Unless the judge is satisfied that it would be in the public interest that the material be made use of by the authorities, he shall order it to be immediately returned to the person from whom it was seized.

Tier Three: warrant application, seize and use

In exceptional circumstances, an officer may go for Tier Three, that is, to make an ex parte application for a warrant and for the immediate use of the journalistic material seized. Apart from satisfying all the additional requirements in Tier Two, the officer has to prove to the satisfaction of the judge that the investigation may be seriously prejudiced if immediate access to the material is not permitted.

During the discussions of the Bills Committee, the question arose as to whether "journalistic material" should be more precisely defined. After considering the various options, we have decided to adhere to the present definition in the Bill which follows the relevant provision in the United Kingdom Police and Criminal Evidence Act 1984. This will ensure that any case law on the United Kingdom definition can be availed of in Hong Kong. We believe, and the Bills Committee agrees, that the advantage of defining "journalist material" generally, as we do in the Bill, and not, for example, to make reference to the way in which the material was acquired, created or possessed, will provide the best protection to bona fide journalistic material. I

can assure the Honourable James TO that the Bill targets material, not acts of acquiring this material.

The Bill does not apply to the exercise of search and seizure powers under section 21 of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 5 of the Organized and Serious Crimes Ordinance. This is because those provisions already contain elaborate and stringent safeguards which provide adequate protection for journalistic material. We have, however, accepted the suggestion of the Bills Committee to review later, in the light of experience, whether the two provisions in the Ordinances should be brought within the scope of the Bill.

With this three-tier approach, we have gone a long way to ensure the protection of press freedom, but without undermining our ability to enforce the law and to protect public order and safety.

Finally, I should like to assure this Council and the media that our law enforcement agencies never look upon journalists or journalistic material as their normal means of acquiring evidence for the purposes of criminal investigations. The revised regime for access to journalistic material under this Bill and the amendments which I will propose later provide a series of different levels of hurdles which must be overcome before journalistic material can be searched or seized. The law enforcement agencies have rarely exercised their powers to search or seize journalistic material in the past and I have no doubt that they will rarely seek to do so in the future. They will also draw up detailed operational guidelines on how to exercise such powers to ensure that these powers will not be used unless the circumstances fully justify it.

Mr President, with these remarks, I commend the Bill to Honourable Members.

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

Bill read the Second time.

Committee Stage of Bill

Council went into Committee.

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1995

Clauses 1, 4, 5 and 6 were agreed to.

Clauses 2 and 3

SECRETARY FOR SECURITY: Mr Chairman, I move that clauses 2 and 3 be amended as set out in the paper circulated to Members.

The main reasons for these amendments have been explained in my earlier speech on resumption of the Second Reading debate. They set out a three-tier approach described in that speech and a number of consequential and other technical amendments also supported by the Bills Committee.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended —

- (a) in the proposed section 83, by deleting “search for or seize any material” and substituting -

“to search the premises or any person found on the premises or to seize any material (whether of a general or particular kind and whether or not the word “material” is used in that provision)”.

- (b) by deleting the proposed section 84 and substituting -

**“84. Application for production order
in respect of journalistic material**

(1) A person on whom there is or may be conferred under a provision in any Ordinance, being a provision to which section 83 applies, the power to enter any premises and to search the premises or any person found on the premises or to seize any material, may apply to a judge of the High Court or District Court for an order under subsection (2) in relation to material which is known or suspected to be journalistic material.

(2) If on an application under subsection (1) a judge is satisfied that the conditions in subsection (3) are fulfilled he may make an order that the person who appears to be in possession of journalistic material specified in the application shall -

- (a) produce it to the applicant to take away;
or

- (b) give the applicant access to it.

not later than the end of the period of 7 days from the date of the order or the end of such longer period as the order may specify.

(3) The conditions to be fulfilled for the purposes of subsection (2) are that -

- (a) there are reasonable grounds for believing -
 - (i) that an arrestable offence has been committed;
 - (ii) that there is material which consists of or includes material known or suspected to be journalistic material on premises specified in the application;
 - (iii) that the material is likely to be -
 - (A) of substantial value to the investigation of the arrestable offence; or
 - (B) relevant evidence in proceedings for the arrestable offence;
- (b) but for section 83 the applicant would be or could have been authorized under the provision mentioned in subsection (1) to enter onto the premises specified in the application and to search the premises or a person found on the premises or to seize the material specified in the application;

(c) other methods of obtaining the material
-

- (i) have been tried and failed; or
- (ii) have not been tried because they were unlikely to succeed or would be likely to seriously prejudice the investigation; and

(d) there are reasonable grounds for believing that it is in the public interest that an order should be granted, having regard to -

- (i) the benefit likely to accrue to the investigation; and
- (ii) the circumstances under which a person in possession of the material holds it.

(4) An application for an order under subsection (2) shall be made inter partes.

(5) Any person who without reasonable cause fails to comply with an order made under subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

**84A. Application for warrant to seize
journalistic material**

(1) A person on whom there is or may be conferred under a provision in any Ordinance, being a provision to which section 83 applies, the power to enter any premises and to search the premises or any person found on the premises or to seize any material, may apply to a judge of the High Court or District Court for the issue of a warrant under subsection (3) authorizing him to enter those premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material.

(2) An application for a warrant under this section shall not be made unless it has been approved by a person specified in Schedule 7 to be a directorate disciplined officer.

(3) If on an application under subsection (1) a judge -

(a) is satisfied -

(i) that the conditions specified in section 84(3)(a), (c) and (d)(i) are fulfilled; and

(ii) that one of the further conditions set out in subsection (5) is also fulfilled; or

(b) is satisfied that an order under section 84 relating to the material has not been complied with,

he may, subject to subsection (4), issue a warrant authorizing the applicant to enter onto the premises and to search the premises and any person found on the premises and to seize any material.

(4) A warrant issued under subsection (3) shall not authorize any entry, search or seizure other than such entry, search or seizure as, but for section 83, would be or could have been authorized under the provision mentioned in subsection (1).

(5) The further conditions mentioned in subsection (3)(a)(ii) are -

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;

(b) that while it might be practicable to communicate with a person entitled to grant entry to the premises, it is not practicable to communicate with any person entitled to grant access to the material;

- (c) that service of notice of an application for an order under section 84(2) may seriously prejudice the investigation.

(6) Subject to subsection (7), it shall be a term of any warrant issued under this section that a person who seizes journalistic material pursuant to the warrant shall seal the material upon seizure and shall hold the sealed material until otherwise authorized or required under section 84C.

(7) Subsection (6) shall not apply where the judge is satisfied that there may be serious prejudice to the investigation if the applicant is not permitted to have immediate access to the material.

(8) Any person empowered by a warrant issued under this section may -

- (a) use such force as may be necessary to enter the premises specified in the warrant;
- (b) on the premises, seize such material, including journalistic material, as may be found and as but for section 83 he would be or could have been authorized under the provision mentioned in subsection (1) to take possession of;
- (c) detain for a reasonable period any person found on the premises who may have such material in his possession or under his control and who if not so detained may prejudice the purpose of the search.

**84B. Further provision for warrants
under section 84A**

(1) A warrant issued under section 84A, other than a warrant to which subsection (7) of that section applies, shall -

- (a) specify the name of the applicant and the court issuing the warrant;

- (b) contain a statement setting out -
 - (i) the terms of the warrant applying by virtue of subsection (6) of that section;
 - (ii) the rights conferred under section 84C to apply within a specified period for the immediate return of journalistic material seized under the warrants and the consequences provided for in that section of not so applying.
- (2) A person executing or seeking to execute such a warrant shall -
 - (a) where the occupier of the premises being entered is present, supply the occupier with a copy of the warrant;
 - (b) where the occupier of the premises is not present but some other person who appears to be in charge of the premises is present, supply that person with a copy of the warrant;
 - (c) if there is no person present who appears to be in charge of the premises, leave a copy of the warrant in a prominent place on the premises.

(3) Where pursuant to such a warrant material is seized which is required to be sealed and held, the person executing the warrant shall make an endorsement on the warrant setting out details of such material and shall return the warrant to the court from which it was issued.

84C. Procedure in relation to sealed material

(1) A person from whom journalistic material has been seized pursuant to a warrant issued under section 84A, other than a warrant to which subsection (7) of that section applies, or a person claiming to be the owner of such material, may within 3 days of such seizure apply to the court

from which the warrant was issued for an order under subsection (2).

(2) On an application under subsection (1), unless the judge is satisfied that it would be in the public interest that the material be made use of for the purposes of the investigation, he shall order that the material be immediately returned to the person from whom it was seized; and in making a determination under this subsection the judge shall have regard to, among other things, the circumstances under which the material was being held at the time of its seizure.

(3) If on an application under subsection (1) the judge determines not to grant an order under subsection (2), or where no application has been made under subsection (1) within the period specified in that subsection, the material may be unsealed.

(4) For the purpose of determining an application under subsection (1) a judge may require the person who seized the material to produce it to the judge for examination by him.

(5) An application for an order under subsection (1) shall be made *inter partes*.

**84D. Provisions supplementary to
section 84**

(1) In relation to material consisting of information contained in a computer -

- (a) an order under section 84(2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under section 84(2)(b) shall have effect as an order to give an applicant access to the material in a form in which it is visible and legible.

(2) Notice of an application for an order under section 84(2) may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter.

(3) Such a notice may be served -

- (a) on a body corporate, by serving it on a person who is an officer of the body within the meaning of section 2(1) of the Companies Ordinance (Cap. 32); and
- (b) on a partnership, by serving it on one of the partners.

(4) For the purposes of section 84, the proper address of a person -

- (a) in the case of an officer of a body corporate, shall be that of the registered or principal office of that body;
- (b) in the case of a partner of a firm, shall be that of the principal office of the firm; and
- (c) in any other case, shall be the last known address of the person to be served.

(5) Where notice of an application for an order under section 84 has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except -

- (a) with the leave of a judge; or
- (b) with the written permission of the applicant, until -
 - (i) the application is dismissed or abandoned; or
 - (ii) he has complied with an order under section 84 made on the application.

(6) Any person who knowingly contravenes subsection (5) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

84E. Miscellaneous

(1) The costs of any application under this Part and of anything done or to be done in pursuance of an order made under it shall be at the discretion of the judge.

(2) For the avoidance of doubt, it is declared that nothing in this Part shall be construed as requiring a judge to make an order under this Part where he considers that, in all the circumstances of the case, it would not be in the public interest to make that order.

(3) Unless a judge otherwise directs, proceedings inter partes under this Part shall be held in open court.

(4) Rules of court may provide for the practice and procedure applying to proceedings under this Part.”

Clause 3

That clause 3 be amended, by deleting “84(2)” where it twice occurs and substituting “84A(2)”.

Question on the amendments proposed, put and agreed to.

Question on clauses 2 and 3, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1995

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

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

Bill read the Third time and passed.