

# OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 9 July 1986

The Council met at half-past Two o'clock

## PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)  
SIR EDWARD YOUDE, G.C.M.G., M.B.E.

THE HONOURABLE THE CHIEF SECRETARY  
SIR DAVID AKERS-JONES, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY  
MR. PIERS JACOBS, O.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL  
MR. MICHAEL DAVID THOMAS, C.M.G., Q.C.

THE HONOURABLE LYDIA DUNN, C.B.E., J.P.

THE HONOURABLE CHEN SHOU-LUM, C.B.E., J.P.

THE HONOURABLE PETER C. WONG, C.B.E., J.P.

DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.

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

THE HONOURABLE HU FA-KUANG, O.B.E., J.P.

THE HONOURABLE WONG PO-YAN, O.B.E., J.P.

THE HONOURABLE DONALD LIAO POON-HUAI, C.B.E., J.P.  
SECRETARY FOR DISTRICT ADMINISTRATION

THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.

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

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

THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN NAI-KEONG, C.B.E., J.P.  
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, J.P.

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.

THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.

THE HONOURABLE YEUNG PO-KWAN, C.P.M., J.P.

THE HONOURABLE JACKIE CHAN CHAI-KEUNG

THE HONOURABLE CHENG HON-KWAN

THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.

DR. THE HONOURABLE CHIU HIN-KWONG

THE HONOURABLE CHUNG PUI-LAM

THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

THE HONOURABLE HUI YIN-FAT

THE HONOURABLE RICHARD LAI SUNG-LUNG  
DR. THE HONOURABLE CONRAD LAM KUI-SHING  
THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.  
THE HONOURABLE LEE YU-TAI  
THE HONOURABLE LIU LIT-FOR, J.P.  
THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.  
THE HONOURABLE PANG CHUN-HOI, M.B.E.  
THE HONOURABLE POON CHI-FAI  
PROF. THE HONOURABLE POON CHUNG-KWONG  
THE HONOURABLE SZETO WAH  
THE HONOURABLE TAI CHIN-WAH  
THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING  
THE HONOURABLE TAM YIU-CHUNG  
Dr. THE HONOURABLE DANIEL TSE, O.B.E., J.P.  
THE HONOURABLE ANDREW WONG WANG-FAT  
THE HONOURABLE JOHN RAWLING TODD, C.V.O., O.B.E., J.P.  
SECRETARY FOR HOUSING  
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.  
THE HONOURABLE HARNAM SINGH GREWAL, E.D., J.P.  
SECRETARY FOR TRANSPORT  
THE HONOURABLE NIGEL CHRISTOPHER LESLIE SHIPMAN, J.P.  
SECRETARY FOR HEALTH AND WELFARE (*Acting*)  
THE HONOURABLE STEUART ALFRED WEBB-JOHNSON, J.P.  
SECRETARY FOR TRADE AND INDUSTRY (*Acting*)  
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER (*Acting*)

**ABSENT**

THE HONOURABLE JOHN JOSEPH SWAINE, O.B.E., Q.C., J.P.  
THE HONOURABLE CHEUNG YAN-LUNG, O.B.E., J.P.  
THE HONOURABLE CHAN YING-LUN, J.P.  
THE HONOURABLE KIM CHAM YAU-SUM, J.P.  
THE HONOURABLE THOMAS CLYDESDALE  
THE HONOURABLE DAVID LI KWOK-PO, J.P.  
THE HONOURABLE HELMUT SOHMEN

**IN ATTENDANCE**

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR. LAW KAM-SANG

**OATH**

Mr.N.C.L. SHIPMAN took the Oath of Allegiance.

**Papers**

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

*Subject* *L.N.No.*

Subsidiary Legislation:

Immigration Ordinance

Immigration (Amendment) Regulations 1986..... 153

Revised Edition of the Laws Ordinance 1965

Annual Revision 1985 ..... 154

Sessional Paper 1985-86:

No. 61—Report on the Administration of the Immigration Service Welfare Fund prepared by the Director of Immigration for the period from 1 April 1985 to 31 March 1986.

**Oral answers to questions****Improvement to sewerage and treatment systems**

1. MR. WONG PO-YAN asked: *Since many old districts in Hong Kong have, over the years, been developed into high density residential and commercial areas, will Government inform this Council whether or not there is any plan to speed up improvements to the existing sewerage and treatment systems in these areas, and if so, how?*

SECRETARY FOR LANDS AND WORKS: Sir, our trunk sewerage system and sewage treatment plants are designed and built to cater for the planned maximum population. However, in the course of time the population of many districts may change because of new developments and redevelopments, and this may require improvement or enlargement of the system.

The need for improvements is kept under regular review, so as to ensure that the sewerage system meets new requirements, and does not become a constraint on future development. Minor upgrading works are carried out speedily under a block vote for 'Works Contingent on Development'. For major improvement works, there is a 10-year 'Sewerage Treatment and Disposal Programme' which includes all projects for the provision of trunk sewerage and sewage disposal.

Improvements to existing outfalls in older districts, such as To Kwa Wan Kwun Tong and Wan Chai have been carried out under this programme, with old sea-wall outlets being replaced by underwater outfalls which carry sewage away from the shore line and into the main tidal flow.

In the past five years, some 30 km of new sewers have been laid, and a further 47 km are now under planning or construction. For example, a major new sewage outfall is planned to serve Lai Chi Kok, Tai Kok Tsui and Sham Shui Po, and construction should start shortly. There are 20 sewage treatment plants in operation, and 27 more are under various stages of planning and construction

MRS. NG (in Cantonese): *Sir, I know that the Kai Tak nullah is very polluted and it is also true of the Shing Mun River in Sha Tin. This is because of the pollutants coming from the restaurants and factories in the vicinity. I would like to know how the Government plans to improve the situation in these two districts?*

SECRETARY FOR LANDS AND WORKS: Sir, in the case of Kai Tak nullah, works have been completed to intercept the dry weather flow of the storm water system into which many discharges from industry and kitchens have been made and thereby fouling the nullah. The interception facilities have been completed and the dry weather flow from this storm water system will be pumped and conveyed to Kwun Tong where it will be further conveyed out to the tidal current in the sea via submarine outfalls. In the case of Sha Tin, discharge of industrial waste water into the storm water system is also a contributing factor to pollution in the Shing Mun River. There are proposals in hand to again intercept the dry weather flow of the storm water system at an appropriate point into the foul sewer system so that such industrial effluent would be conveyed to the Sha Tin Sewage Treatment Works for treatment and thereafter discharged into Tolo Harbour. Furthermore, action is being taken by the Buildings Ordinance Office to serve orders on the various industrial premises concerned to order them to reconnect their industrial waste pipes properly into the foul sewer system.

MR. JACKIE CHAN (in Cantonese): *Sir, I think we have a lot of blockage in the system, not because of misconnection but because of the faults of our citizens, so will the Government consider a publicity campaign to educate the public on how they should use the system and how to connect the pipes?*

SECRETARY FOR LANDS AND WORKS: Sir, I tend to agree with Mr. CHAN that blockage of the sewer system is a problem. Every year the Engineering Services Department carries out some 45 000 chokage clearances. It employs 24 sewer gangs for that purpose and at times of peak demand, contractors are also engaged to help out with the work. Therefore, Mr. CHAN's idea of publicity to educate the population not to indiscriminately throw things into the sewer to block the system would be a welcome idea, so we will certainly take this up.

MR. HU: *Sir, if the proposed improvements are carried out, what is the maximum population the improved sewage system can cater for?*

SECRETARY FOR LANDS AND WORKS: Sir, the sewage treatment and disposal capacity for individual districts are designed for the planned maximum population for the individual districts. I cannot say off-hand which individual treatment works has what maximum population capacity.

### **Expenditure for promoting industrial safety**

2. MR. TAM asked (in Cantonese): *The Government expenditure in promoting industrial safety for the years 1984-85, 1985-86 and 1986-87 are \$1,300,000, \$800,000 and \$700,000 respectively. Will the Government inform this Council:*

- (1) whether this downward trend indicates that Government is attaching less and less importance to industrial safety; and*
- (2) whether the Government will review its work on the promotion of industrial safety?*

SECRETARY FOR EDUCATION AND MANPOWER: With regard to the first part of Mr. TAM's question, the decrease in provision by no means implies that the Government is attaching less importance to industrial safety. The allocation of public funds for a particular promotional programme depends, of course, on the total resources available in a given year to meet the claims of all departments for publicity and campaign funding. The industrial safety campaign has been accorded high priority for the past 10 years and continues to be treated as a major campaign. Indeed, only one other publicity campaign has been allocated an amount equals to the \$750,000 allocated to industrial safety this year. In recent years, moreover, with accumulated experience in organising promotional activities, the cost-effectiveness of the campaign has been enhanced and the targetting of the promotional effort has been improved.

An important factor in addition has been the development of tripartite participation. The Labour Department has actively promoted in recent years a co-operative effort in which representatives of employers, employees, and the Government are brought together to work for the common objective of improving safety at work. These efforts are beginning to bear fruit and generous sponsorship has been obtained from individual industrialists and employers' associations. In 1985-86, about \$90,000 were donated by the private sector towards the costs of the industrial safety campaign. In the current financial year the Labour Department hopes to secure donations totalling some \$200,000.

While the Government's long-term commitment to industrial safety remains unchanged, it has been possible as a result of these developments to sustain the industrial safety drive at reduced cost to public funds but with increased impact.

As to the second part of the question, the department's work in the area of industrial safety is kept under review and the effectiveness of various promotional activities is closely monitored to ensure that the best value is obtained from the public and private funds available.

The active involvement of employer and employee representatives, through their participation in the Labour Advisory Board's Committee on Industrial Safety and Accident Prevention and its six industry-based sub-committees, is of particular value in ensuring critical examination of the industrial safety programme and a healthy infusion of new ideas.

MR. TAM (in Cantonese): *Sir, I am glad to know that the Government will not change its policy of promoting industrial safety, but will the Government consider allocating more funds, so that we can better publicise and educate the public on industrial safety?*

SECRETARY FOR EDUCATION AND MANPOWER: Yes, Sir, I can reassure Mr. TAM and Members of this Council that it is the Government's full commitment to ensure that industrial safety is given high priority in the past, in the present and in the future. Indeed, these campaigns are of a major kind and campaign priorities are given full consideration under the chairmanship of the Chief Secretary every year in the allocation of funds. I am sure that the Chief Secretary and the Financial Secretary will ensure that industrial safety is given full consideration every year in funds being allocated.

MR. NGAI: *Sir, in the light of the recent accident in a Ma On Shan construction site, resulting in the death of three workers, is the Government satisfied with the promotion of industrial safety at construction sites, as well as in manufacturing establishments and working places in general and whether there is any room for further improvement, although we have heard remarks from the Secretary?*

SECRETARY FOR EDUCATION AND MANPOWER: No, Sir, the Government is not satisfied with the improvements in safety at construction sites; indeed, legislation is now being considered to make the employment of safety officers and safety supervisors compulsory in the construction industry, and we intend to consult employers and employees fairly soon on this proposal. As regards the recent accident, a report is being awaited and we will decide as to whether in fact any improvements are necessary in that particular case. I can assure Mr. NGAI that in terms of construction site accidents, the number of fatal accidents over the last 10 years has in fact decreased. If I can give a general figure to Mr. NGAI's question, over the period from 1979 to 1985, the number of fatal accidents has decreased from 163 to 70. This surely is an indication that the safety campaign is bearing fruit and the Government's prosecution actions are also bearing fruit. Over the same period, I would say, the prosecutions have in fact decreased, but the amount of fines has doubled in the case of construction sites. All these are clear indications that the Government attaches great importance to industrial safety, particularly in construction sites and this area is being constantly monitored.

DR. HO: *Sir, may this Council be informed of the amount of expenses originally applied for by the Labour Department and what industrial safety publicity programmes have been curtailed in order to keep the expenditure within the approved provision?*

SECRETARY FOR EDUCATION AND MANPOWER: Yes, Sir, over the last few years, the department has, for example, applied for about \$2 to \$1.5 million for industrial safety. The allocation was varied from \$1.5 million to \$750,000 this year. This clearly is a matter for the Government's total budgetary strategy and I cannot, of course, comment on the appropriateness of the allocation but the Government does attach importance to industrial safety, as I said earlier. As regards the total efforts made, we will certainly maintain these efforts to educate the workers through the industrial training programmes in the department. This is now being done every year and every year there are about 380 courses done to cover 10 000 workers and supervisors. I am sure these efforts will continue.

MR. LEE YU-TAI: *Sir, may I ask how Government encourages donations and sponsorship from the private sector to promote industrial safety?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Committee on Industrial Safety and Accident Prevention comprises both employees' and employers' representatives and they have also under them six industry-based sub-committees comprising the same group of people. It is through these bodies that we enlist their support and secure donations every year and I am sure that employees and employers alike will help us to maintain these efforts in future years.

DR. CHIU: *Sir, will the Government inform this Council whether the expenditure quoted by my hon. colleague, Mr. TAM Yiu-chung, for industrial safety promotion also covers expenses for surveys and studies for the prevention of industrial accident? If not, are there any provisions for these purposes?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the particular fund I have mentioned is a non-recurrent block vote, provided particularly every year for industrial safety campaigns. There is in addition other recurrent expenditure under the Labour Department, which finances the surveys mentioned by Dr. CHIU, so I am sure these other expenses are all complementing the efforts made by the department in these industrial campaigns.

MR. CHAN KAM-CHUEN: *Sir, whilst appreciating the good work done by the Industrial Safety Committees, may I ask whether these funds will include financial assistance for setting up a Safety Council? If not, what progress has been made in this direction?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, this seems to be another issue I would like to have advance notice of the question.

MR. HU: *Sir, if the employers comply in every respect in the provision and training in relation with industrial safety and yet the employee fails to observe those details, what action will the Government take against the employer and employee?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Industrial Undertakings Ordinance and Regulations contain provisions to require factory inspectors to look at industrial undertakings and industrial sites to ensure that both employers and employees comply with the requirements, so the burden lies in both employees and employers to comply with the requirements. The department will continue to step up its inspections by factory inspectors to ensure that both the employers and employees are fully aware of these programmes and of safety requirements.

### **Activities of non-traditional religious sects**

3. MR. LEE YU-TAI asked: *In view of past suicides and recent incidents in Hong Kong of young people seriously injuring themselves or deserting their families because of connections with non-traditional religious sects or cults, is Government aware of the extent and nature of the activities of such sects or cults in Hong Kong?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, Government is aware of the activities for non-traditional religious sects or cults, the doctrine and practices of which are socially undesirable and run counter to generally accepted ethical standards. For instance, we have had reports of one cult whose adherents are being encouraged to use sex to recruit new members. Another one seeks to set up bases in various districts and preach eschatology to inculcate a pessimistic outlook on life among its followers.

While Government is committed to uphold religious freedom, whenever activities of such sects or cults which adversely affect young people and constitute a prima facie breach of the law, police will initiate prosecution. Persons related to any obscure religious movements are subject to close vetting and may be refused landing on arrival or subsequent extension of stay. District social welfare staff, who are well aware of the nature of the activities of these non-traditional religious cults, provide necessary counselling service to prevent young people from falling a prey to such cults.

There is as yet little evidence to suggest that such religious cults have spread to the extent to be a cause for alarm. However, to combat this type of problem effectively, it would require increased attention and care by the community as a whole. In particular, families, schools, traditional religious bodies, social work organisations and all those concerned with the well-being of youth have a part to play.

MRS. FAN: *Sir, has the Government considered issuing suggestions on guidelines to Schools and organisations working with youth, on how to identify young people Under the influence of such undesirable religious sects and the appropriate action to betaken?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, there is not so much a standard guideline but Government will certainly give consideration to mounting necessary publicity if the situation warrants, but I hope that the fact that this subject has been raised today would remind those concerned, i.e. parents, school authorities and youth workers to be aware of the possible harm that could be caused by such religious cults.

MR. LEE YU-TAI (in Cantonese): *Sir, I would like to ask the Government whether it is aware of the religious cults, what are methods they use to recruit new members and who are the targets that they would like to recruit?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, Government is aware of the method and activities of these religious cults. I have mentioned a couple of examples just now, but for obvious reasons it would not be advisable to disclose the names of those others currently under investigation.

MR. YEUNG: *Sir, have there been any successful prosecutions against these sects and cults in the past years?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, I can say, for instance, in 1983 eight persons who were suspected of involvement with such cults were refused landing and three in 1984, and two in 1985.

MR. CHEONG-LEEN: *Sir, what is the cult of eschatology and has it invaded the Legislative Council?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, certainly judging from the activities of the Legislative Council, I don't think it has invaded the Legislative Council yet.

### **Wong Chuk Hang nullah**

4. MR. LIU asked (in Cantonese): *In view of the proximity of the Wong Chuk Hang nullah to surrounding residential developments in the Southern District, will Government inform this Council what measures have been taken to reduce environmental nuisances caused by the nullah and whether there is any long-term plan to obliterate such nuisances by decking or filling the nullah?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the sources of pollution in the Wong Chuk Hang nullah are principally:

- (i) domestic waste from squatter areas, probably arising from misconnections of foul sewage into the storm water drains;
- (ii) industrial discharges connected into the storm water drains;
- (iii) tidal flows from Aberdeen Harbour carrying the pollutants from the harbour and also reducing the flushing rate of the nullah.

As a result, the nullah is heavily polluted, particularly at the main tidal stretch downstream of the Nam Long Shan Road bridge. Especially in dry weather, the dissolved oxygen level in the water is low and an obnoxious odour exudes from the polluted mud on the bed of the nullah. Members may be interested to know that a measure of improvement has been noted since water discharged from Ocean Park's Water World has been flowing through the nullah.

In order to reduce the nuisance, the nullah is cleaned and desilted on a regular annual basis. This work brings only temporary relief and there are no plans to undertake it more frequently.

Mr. LIU has raised the possibility of decking over or filling in the nullah. Decking over the nullah has been considered but is not thought to be worthwhile so long as industrial and domestic wastes continue to be discharged into it. There would be a risk of trapping vapours and gases beneath the decking. As decking over the whole of the nullah would cost approximately \$200 million, the project would be difficult to justify unless the additional land space thus created were required for road improvements or other facilities. It would also make cleaning and maintenance operations more difficult and expensive.

It would not be possible to fill in the nullah for as long as it is required to provide adequate drainage of storm water in the area.

Clearly, the long-term answer lies in reducing the amount of industrial and domestic waste entering the nullah. This would involve making a detailed study of the sources of pollution and taking action against the persons or companies causing the pollution. In some cases it may be necessary to divert grossly-polluted stormwater drains into the sewerage system. The pollution of nullahs by the improper disposal of waste is a territory-wide problem, and the Environmental Protection Department is already committed to studies in other areas, but will examine how the problems at Wong Chuk Hang nullah should be remedied once resources become available. I hope that these studies can be undertaken in the course of next year.

MR. LIU (in Cantonese): *Sir, does the Government intend to monitor the nullah closely and the effects of the pollutants on the environment? Would it also consider liaising with the factories to improve the situation?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the Government will monitor closely the extent of pollution caused by industrial effluent in the nullah and take enforcement action as soon as resources permit. I agree with Mr. LIU that there is much scope for improvements to be made on a voluntary basis through liaison with industrialists in the area and through disseminating information about better ways of disposing of industrial waste. I shall ask the District Officer, in consultation with the district board and the Government departments concerned to explore ways and means to achieve this, and certainly, Sir, the Southern District Board will be kept informed of progress at regular intervals.

### **Abuse of psychotropic substances**

5. MR. CHEONG-LEEN asked: *Regarding non-opiate psychotropic substances or so-called 'soft drugs', will the Government inform this Council how much is being spent on subvented programmes this year on prevention, public education, and in particular crisis-counselling?*

ATTORNEY GENERAL: Sir, the Government is spending \$1.58 million this financial year to cover all aspects of the anti-narcotics preventive education and publicity programme. It is not possible to provide a breakdown of the expenditure in respect of preventive education and publicity programmes relating to the abuse of non-opiate psychotropic substances. In Hong Kong, the most commonly abused drug is heroin and, for this reason, the main thrust of publicity is directed against the heroin problem. Measures directed specifically at the abuse of psychotropic substances were outlined by the Acting Attorney General, Mr. FINDLAY, in answer to a question in this Council on 21 May of this year.

With regard to crisis counselling, abusers of psychotropic drugs would probably not realise that a crisis situation had arisen until either they were in urgent need of medical treatment or their drug taking had led them into social and financial difficulties. In the former case, counselling will form part of the treatment available in the psychiatric hospital or out-patient service. In the latter case, if in social or financial difficulties the abusers can turn to one of a number of voluntary agencies who can refer them to SARDA for counselling.

Where a crisis situation had not arisen, any out-reach social worker coming into contact with an abuser of psychotropic drugs will be able to provide some degree of counselling.

MR. CHEONG-LEEN: *Sir, as it is quite likely that when a social worker is called upon to assist in crisis counselling or something near approaching crisis counselling he requires a certain level of experience or training. Could this matter be referred to ACAN for it to be further looked into?*

ATTORNEY GENERAL: Sir, the answer is yes. I shall in any event bring Mr. Hilton CHEONG-LEEN's suggestion to the attention of the Secretary for Health and Welfare.

### Review of Public Assistance Scheme

6. MR. HUI asked: *With reference to the review of the existing Public Assistance Scheme, could the Government inform this Council:*

- (a) *what is the progress of this review;*
- (b) *how will the public assistance index be revised in the review; and*
- (c) *whether the Government has any plans to adjust the scale of public assistance in view of the fact that the last revision of the scheme took place in February 1984?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the review of the Public Assistance Scheme is nearing completion and I hope that it will be possible to finalise proposals within the next month or so.

The review was not concerned with revising the public assistance index, which is a statistical measurement of the aggregate change in the prices of items of expenditure likely to be incurred by households receiving public assistance.

The real value of public assistance payments is monitored each month against movements of the index and the basic scale of rates is adjusted when price movements in the index have shown this to be necessary. Each time the rates are adjusted they are set slightly above the current level on the index to allow for future inflation. The reason why no increases have been necessary since February 1984 is that inflation has slowed down and the adjustment mechanism has not been triggered.

MR. HUI: *Sir, the salaries of civil servants have been adjusted upwards four times from 1984-1986 to cover inflation, and according to the Secretary for Health and Welfare, the reason why no increases have been necessary since February 1984 is that inflation has slowed down and adjustment mechanism has not been triggered. Can the Government inform this Council whether inflation has hit civil servants harder than public assistance recipients, or whether there is something wrong with the adjustment mechanism of the public assistance index?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I think that we are all benefitting from lower levels of inflation. The mechanism for determining civil servants' pay is well known to this Council. I think that the method of determining when adjustments are necessary to public assistance payments is suitable because it is based on price movements in those items of expenditure that most affect households on public assistance. I would also point out that the basic scale of

payment and rent allowance to four-person households under the Public Assistance Scheme has roughly doubled since 1980, which is above the growth in average industrial wages over the same period.

DR. HO: *Sir, may this Council know the reasons why the review is not concerned with revising the public assistance index, which was formulated some 10 years ago, and in view of the changing patterns of consumption as a result of our changing economy, could this Government consider reviewing the public assistance index in order to better reflect the level or the style of living of the recipients of public assistance?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the basket of items in the index is reviewed regularly. The last such review was only completed in 1985 and it was found that items of expenditure affecting public assistance households had not changed substantially. The review which Mr. HUI mentioned in his principal question is concerned with making various improvements to the scheme, principally to benefit certain groups who may not be receiving particular allowances that they require at the present time.

### **Written answers to questions**

#### **Centralised primary schools scheme**

7. MR. CHEUNG asked: *Can the Government inform this Council:*

- (a) the progress in implementing the 'Centralised Primary Schools' scheme; and*
- (b) whether Government has taken appropriate measures to cope with the needs of different localities in the implementation of this scheme?*

SECRETARY FOR EDUCATION AND MANPOWER:

(a) Based on the recommendation of the 1981 White Paper, 'Primary Education and Pre-primary Services', four centralised primary schools have been proposed. Of these, one in Ho Chung (Sai Kung) has been completed and has been in operation since October 1984. The remaining three are intended to replace small rural schools in Hang Hau (Sai Kung), Sha Tau Kok and Lantau respectively.

As regards the Hang Hau project, the site originally proposed at Chuk Kok was rejected after preliminary investigation because of the high cost of development. Consideration is now being given to a site at mang Kung Uk Village, which presently accommodates the existing Hang Hau District Public School. The intention is to build a new 12-classroom primary school on this site to replace the existing school and to accommodate the pupils from five other small primary schools in the vicinity. It is hoped that this second centralised primary school will be completed in time for the 1989-90 school year.

Owing to a redevelopment programme in Sha Tau Kok, the Fish Marketing Organisation's school will have to be closed. The opportunity will be taken to build a new school to reprovision this school and to replace four other small rural schools in the vicinity. The District Office (North) has consulted, and has obtained the support of, the North District Board regarding the establishment of this centralised school. It is anticipated that it will be completed in time for the 1988-89 school year.

As regards the proposed centralised primary school on Lantau Island, the intention is to amalgamate five small rural schools in south Lantau. The premises of one of the existing schools would be used for the new school as the demand for school places in that part of the island does not warrant the building of a new 12-classroom school. It was hoped that the proposed amalgamation would bring about more effective teaching by doing away with combined classes. However, in view of the lack of support from the headmasters, teachers and parents concerned, this project will not proceed for the time being.

(b) In the course of implementing the centralised primary schools scheme the Government has taken full account of the needs of the different localities to ensure that no hardship will be created for the pupils, the parents or the school authorities.

Firstly, the agreement of the constituent school authorities is sought at the initial stage of the proposal. As far as possible the incorporated body responsible for the new school is composed of representatives of the constituent schools to be replaced. Secondly, in order to assist with the travelling expenses which may be incurred by village children in attending a centralised primary school, the Government is prepared to consider transport subsidies where necessary. Thirdly, any members of the teaching staff of the constituent schools who cannot be re-employed in the new centralised school are given appropriate assistance in finding alternative posts elsewhere.

### **Suicide involving school children**

8. DR. LAM asked: *Will the Government inform this Council:*

- (a) *what is the total number of reported cases of students who attempted suicide in the past three years; and*  
 (b) *what are the underlying causes?*

SECRETARY FOR EDUCATION AND MANPOWER: The total number of cases, known to the Education Department, of suicide or attempted suicide involving school children over the past three years is as follows:

<i>1983-84</i>	<i>1984-85</i>	<i>1985-86</i>
10	34	56
(2 fatal)	(1 fatal)	(5 fatal)

In addition, the Technical Education and Industrial Training Department knows of two cases (fatal), both during the current academic year, involving students of technical institutes. No information is immediately available about cases involving post-secondary or tertiary students.

Figures from the Coroner's office meanwhile indicate that the total number of suicides in the 10-19 age group in the years 1983, 1984 and 1985 were 21, nine and 14 respectively. It should be noted, however, that the time periods are calendar rather than academic years and that the 10-19 age group is not composed wholly of students.

The reason for the increase in cases involving schoolchildren over the past two years is not known, although it is suspected that the influence of suicides among peers and reporting of cases locally and overseas may be contributory factors.

As regards the two students attending technical institutes, the underlying cause in one case appears to have been a combination of personal and work-related factors. The cause in the other case is not known. Principal (but not necessarily sole) causes in the cases involving schoolchildren, as revealed by the Education Department's investigations, are summarised below:

	<i>1983-84</i>	<i>1984-85</i>	<i>1985-86</i>
Poor family relationships	1	12	14 (3 fatal)
Abnormal emotional reactions (including situation-induced reactions)	4	10 (1 fatal)	23
School problems	2 (1 fatal)	5	9 (1 fatal)
Boy-girl relationships	1	2	4
Poor peer relationships	—	2	2
Suspected psychiatric problems	1	2	3
Health problems	—	1	1 (fatal)
Unknown	1 (fatal)	—	—

*Notes*

- (i) 'Poor family relationships' usually mean poor relations between child and parent, or parents, often caused by bad marital situations (e.g. separation, divorce, and so on)
- (ii) By 'situation-induced reactions' is meant cases when young people are encouraged to turn to suicide either through the influence of friends or by their awareness of suicide being heightened by reports of similar cases.

- (iii) 'School problems' include both learning problems and problems caused by the exaggerated expectations either of the pupils themselves or their parents.
- (iv) By 'poor peer relationships' is meant inability to get along easily and normally with others in their age group.

### **Development at Lei Yue Mun**

9. MR. POON CHI-FAI asked: *Since the seafood in Lei Yue Mun is well known both locally and overseas, being popular with tourists and local residents, and in view of the fact that a large scale clearance exercise is being conducted in the area to make way for development, will Government inform this Council:*

- (a) *whether consideration will be given to preserving the original characteristics of Lei Yue Mun when the district is developed; and*
- (b) *what measures will Government take to tackle problems such as inadequate car-parking spaces, defective drainage system, dilapidated roads and inadequate facilities which seriously affect the development of tourist and seafood industries there?*

SECRETARY FOR LANDS and Works: Sir, the implementation of stage IV of the Sam Ka Tsuen development involves some minor clearance on the periphery of Lei Yue Mun village; however, the village itself will not be affected. There are no plans for major development at Lei Yue Mun, and it is intended that the present village character of the area should be preserved.

Nevertheless, improvements to the environment and facilities of the area are needed. As regards the specific problems mentioned, the following measures are proposed:

(a) *Car Parking*

As a long-term solution, a site has been reserved at the edge of Lei Yue Mun village for a multi-storey car/lorry park. In the shorter term, three pieces of land have been let on short-term tenancies for temporary car parks, providing a total of 162 car parking spaces. In addition, sites at the junctions of Yau Wing Street and Ka Wing Street and along Shung Shun Street are also proposed for temporary car parks, providing a further 88 parking spaces.

(b) *Drainage*

Improvements to the stormwater drainage system are being carried out by the Housing Department under their squatter area improvement programme; the work is scheduled for completion in early 1987. There is at present no sewerage system for the area, but a study on the sewerage system for the whole of East Kowloon, including Lei Yue Mun, is at present being undertaken. The study is tentatively scheduled for completion in 1987. A site at Ko Fai Road is earmarked for a sewage treatment works for the area.

(c) *Roads*

A 4.5m wide emergency access lane leading to the existing jetty is proposed. Subject to the availability of funds, this is scheduled for completion in March 1988. Improvements to existing footpaths will also be made under the squatter area improvements programme.

(d) *Other facilities*

Work on other improvements, including a metered water supply and street lighting, is in hand and should be completed in 1987. The provision of facilities in the short term is hindered by the lack of vacant land in the village. However, longer-term improvements for the area are being considered.

## **Government Business**

### **Motion**

#### **CRIMINAL PROCEDURE ORDINANCE**

THE CHIEF SECRETARY moved the following motion: That the Legal Aid in Criminal Cases (Amendment) Rules 1986, made by the Chief Justice on 24 May 1986, be approved.

He said: Sir, I beg to move the resolution to approve the Legal Aid in Criminal Cases (Amendment) Rules 1986. These rules are made by the Chief Justice under the provisions of the Criminal Procedure Ordinance.

The main purpose of the amendments is to extend the availability of legal aid to proceedings overseas where evidence is to be taken for the purpose of criminal proceedings in Hong Kong. This has been done in rule 2(b).

Rule 3 makes consequential amendments to enable the Director of Legal Aid to engage overseas lawyers to represent the accused person in such proceedings overseas; and rule 5 consequentially adds the provision for payment of fees to such overseas lawyers.

Sir, I beg to move.

*Question put and agreed to.*

### **First Reading of Bills**

#### **BIRTHS AND DEATHS REGISTRATION (AMENDMENT) BILL 1986**

#### **FOREIGN MARRIAGE (AMENDMENT) BILL 1986**

#### **LEGITIMACY (AMENDMENT) BILL 1986**

**DOMESTIC VIOLENCE BILL 1986****LAND REGISTRATION (AMENDMENT) BILL 1986**

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

**Second Reading of Bills****BIRTHS AND DEATHS REGISTRATION (AMENDMENT) BILL 1986**

THE ATTORNEY GENERAL moved the Second Reading of: 'A Bill to amend the Births and Deaths Registration Ordinance'.

He said: Sir, I move that the Births and Deaths Registration (Amendment) Bill 1986 be read the Second time.

This Bill proposes a revision in the level of fees payable for various miscellaneous services provided by the Immigration Department under the Births and Deaths Registration Ordinance. The services include the late registration of births, the search of births and deaths records, the issue of certificates of registration and additions or alterations to the registered name of a child. The fees in question were last revised in 1984. It is proposed that they be increased by amounts varying between 10 and 25 per cent. The object of the proposed revision is to recover a greater proportion of the cost of the services. The revisions are proposed on the basis of a cost study. It is estimated that additional revenue of not more than half a million dollars per annum will be generated by this measure.

Sir, I move that the debate on this motion be adjourned.

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

**FOREIGN MARRIAGE (AMENDMENT) BILL 1986**

THE ATTORNEY GENERAL moved the Second Reading of: 'A Bill to amend the Foreign Marriage Ordinance'.

He said: Sir, I move that the Foreign Marriage (Amendment) Bill 1986 be read the Second time.

This Bill proposes a revision in the level of the fee payable for the issue of a Governor's licence of foreign marriage under the Foreign Marriage Ordinance.

The object is to recover a greater proportion of the cost of the service. This fee was last revised in 1984. On the basis of a cost study, it is proposed that the fee in question be increased from \$60 to \$70.

Sir, I move that the debate on this motion be adjourned.

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

### **LEGITIMACY (AMENDMENT) BILL 1986**

THE ATTORNEY GENERAL moved the Second Reading of: 'A Bill to amend the Legitimacy Ordinance'.

He said: Sir, I move that the Legitimacy (Amendment) Bill 1986 be read the Second time.

This Bill proposes a revision in the level of the fees payable for the re-registration of the birth of legitimated persons outside the stipulated period of time and the issue of certified copies of entries of the birth of such persons. The object of the present exercise is to recover a greater proportion of the cost of the services. The fees in question were last revised in 1984. It is now proposed that they be increased from \$30 and \$10 to \$35 and \$12 respectively. The revisions are proposed on the basis of a cost study.

Sir, I move that the debate on this motion be adjourned.

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

### **DOMESTIC VIOLENCE BILL 1986**

THE ATTORNEY GENERAL moved the Second Reading of: 'A Bill to provide protection of persons from domestic violence and for matters ancillary thereto'.

He said: Sir, I move that the Domestic Violence Bill 1986 be read the Second time.

The unhappy incidence of domestic violence has been well-known to those working in the medical and welfare field for some time. In the 12-month period up to 31 March of this year, there were 838 cases of domestic violence recorded by the Social Welfare Department. Since the department began keeping statistics on these matters in October 1984, there have been 1318 cases recorded. The vast majority of these were cases of violence being committed against women. In many cases the violence was repeated, in some cases over periods of two to three years.

These facts are still more striking if one takes into account the traditional reluctance in Chinese families to resort to outside agencies or legal procedures to settle domestic disputes. There is some evidence that attitudes among the younger generation may anyhow be changing, with the pressures of social mobility and employment opportunities among the nuclear family in an urban society. For example, the number of divorce petitions filed each year is steadily increasing, from 2018 in 1979 to 5047 in 1985. The pressures upon family stability may be manifesting themselves in domestic violence.

Efforts have been under way for some time in Hong Kong to bring aid to the victims of domestic violence. In June 1983 the Hong Kong Federation of Women Lawyers carried out a questionnaire survey which revealed a large measure of support for the adoption in Hong Kong of legislation along the lines now in force in England. In February 1984 Dr. Judith MACKAY released a study of wife battering in Hong Kong, conducted at the United Christian Hospital in 1983. One response to the problem was the recent initiative of the Hong Kong Council of Women in setting up a refuge to accommodate women and children in times of crisis. Early in 1984 I initiated steps to have the matter reviewed and the necessary amending legislation introduced.

At the present time, if a woman is assaulted by her husband and feels she can no longer put up with it, she has a limited range of options. She could of course leave home, but this assumes she and her children have somewhere to go and seek refuge. If she calls the police, she will find them generally reluctant to become involved in domestic proceedings. She could herself commence proceedings for assault. But while she waits for the case to come on, the violence in the home may continue. And the outcome of the case is uncertain. She may commence divorce proceedings and seek the court's assistance. But she may still love her husband and hope to save the marriage. What she really needs in the emergency is some sort of procedure that will enable her to go quickly to a court and obtain temporary relief that will give her appropriate short-term protection.

A useful model for improvement in the law has been found in the United Kingdom Domestic Violence and Matrimonial Proceedings Act 1976. The present Bill before this Council is based on that Act.

The Bill gives the victim of domestic violence the right to claim an injunction from a district court on a simple application, without the need for divorce proceedings. The high court will also have jurisdiction to grant the injunction in urgent cases or where there are special circumstances. If the judge after considering all the facts laid before him thinks a case has been made out for some temporary relief, he may make three types of order. He may issue an injunction to forbid the molestation of the applicant or a child. If he thinks it necessary, he may exclude the other party from the home or a part of the home. If the victim has been shut out, he may require the other party to permit the applicant to enter and remain in the matrimonial home.

It would be a mistake to think that this Bill is of no interest to men. They are the main culprits and so they will be directly affected by orders made under the Bill. In addition, the protection of the Bill applies to men as well as to women and it is right that it should do so. The statistics of the Social Welfare Department show that during the year ending 31 March 1986 there were 51 cases of men being the victims of domestic violence.

There are three features of the Bill which call for particular mention. First, the Bill applies to cohabitees as well as to married persons. This category would include people who have undergone a form of marriage ceremony not recognised under Hong Kong law. Special provision is made to require the judge to have regard to the permanence of the relationship. In other words, not any casual relationship will qualify for relief.

Second, the Bill will enable a judge to attach a power of arrest to his order if he is satisfied that the other party has already caused actual bodily harm to the applicant or a child. This will mean that if the violence continues the police can make an arrest. In that case, they must bring the man before a judge by the end of the next day.

Third, orders will have no legal effect on property rights or tenancies. The making of an exclusion order, from that point of view, will have no more effect upon the property rights of the couple or third parties, than when a husband walks out on his wife. However, the court will very likely take into account property aspects, including the nature of any tenancy and the likely effects of any order, when considering an application for relief.

I suggest to hon. Members that we would have little hesitation in legislating for violence of the kind we are now considering if it took place outside the family. It simply would not be tolerated. The question we have to ask ourselves is whether the fact that violence takes place behind closed doors is a reason to deny the victim the possibility of first aid through the courts. The known figures may be relatively small. But I take the view that this legislation would be justified even if there was only one case where the victim of violence wished to take advantage of its provisions.

Finally, I would like to thank those organisations which have drawn my attention to the extent of the problem of domestic violence in Hong Kong, and have supported the introduction of this Bill. In particular, I should mention the Hong Kong Family Welfare Society, the Hong Kong Women's Council, The Hong Kong Federation of Women Lawyers, the organisation called 'Against Child Abuse' and the Family Law Association.

Sir, I move that the debate on this Bill be adjourned.

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

**LAND REGISTRATION (AMENDMENT) BILL 1986**

THE SECRETARY FOR LANDS AND WORKS moved the Second Reading of: 'A Bill to amend the Land Registration Ordinance'.

He said: Sir, I rise to move the Second Reading of the Land Registration (Amendment) Bill 1986.

The main purpose of this Bill is to amend the Land Registration Ordinance to facilitate the storage of land registration records on computer.

This is achieved by inserting into the principal Ordinance an interpretation provision defining 'document' and 'record' widely enough to include computer software and microfilm. This will enable regulations to be made for the keeping of records on computer.

Computerisation of land registration records will enable the Land Office to provide a better service to the public by simplifying search procedures and reducing the search time taken. It will also provide a more cost efficient and less labour intensive record system.

The Finance Committee of this Council has already approved funds to computerise land registration records. It is anticipated that the computerisation programme will commence in November 1986 and will be completed by October 1988. When completed, it is expected to achieve an annual saving of about \$6 million in staff costs and \$1.3 million in accommodation cost.

Sir, I move that the debate be now adjourned.

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

**INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) (NO. 2) BILL 1986****Resumption of debate on Second Reading (25 June 1986)**

MISS TAM: Sir, this Bill has been introduced as a result of recommendations made by an *ad hoc* group with myself, Mr. Peter C. WONG, Mr. J.J. SWAINE, and Mr. Andrew WONG of the Legislative Council set up to study guidelines for the making of subsidiary legislation and to review the present procedure for the supervision of subsidiary legislation. It seeks to amend section 34 of the Interpretation and General Clauses Ordinance to allow the Legislative Council to extend by resolution the period in which it may intervene to amend subsidiary legislation tabled in the Council by up to 21 days and to intervene at any time within the first 28 days after a subsidiary legislation is tabled.

Section 34 of the Interpretation and General Clauses Ordinance provides that all subsidiary legislation should be laid on the table of the Legislative Council at the next sitting subsequent to its publication in the Gazette. Unless the principal Ordinance under which the subsidiary legislation was made requires specifically the expressed approval of the Legislative Council, a limited period of 28 days is then allowed for amendments to be made by the Council. The *ad hoc* group has examined carefully the above procedure and has arrived at the conclusion that whilst the present arrangement is acceptable in most cases, there are occasions when a greater degree of flexibility is needed. To illustrate, a difficult situation may arise when the potential impact of an item of subsidiary legislation could not be assessed fully within the stipulated time limit of 28 days. On the other hand, after the gazetting of the subsidiary legislation if a large number of public representations are received and detailed discussion with the Administration has to take place, a reasonable extension of time would be necessary.

To give the Legislative Council a greater degree of flexibility, the *ad hoc* group recommends that a provision be made to enable an extension, if necessary, of the period during which amendments may be made. Nevertheless, conscious of the need to confine the extension to a reasonable period, the group has agreed to a maximum of 21 days. This period, in addition to the 28 days already provided for, should be sufficient for proper consideration to be given to even complex or controversial items.

On the other hand, the *ad hoc* group has identified a problem at the other extreme. Section 34 of the Ordinance effectively prevents the Legislative Council from amending subsidiary legislation until the first sitting held not less than 27 days after it is tabled. Given the fact that subsidiary legislation which is subject to Legislative Council supervision under section 34 may come into immediate legal effect once it is published in the Gazette, this has led to the undesirable possibility for such legislation to have taken effect and achieved its object before the Legislative Council can exercise its powers to intervene. Let me give an example. The Census and Statistics Ordinance, Census and Statistics (1986 Population Census) (Marine) Order 1986 was gazetted on 24 January 1986 authorising the census to take place between 4 to 8 February 1986. However, under section 34(2) of Chapter 1, this Council could only move an amendment, if required, on 26 February i.e. 18 days after the census had been completed. To prevent similar incidents from happening, the group proposes that the Legislative Council be provided with the powers to amend subsidiary legislation at any time within the period stipulated under section 34. This should give adequate flexibility for the efficient supervision of subsidiary legislation by the Legislative Council.

Furthermore, the opportunity is also taken to remove anomalous wording in section 34 by substituting 'subsidiary legislation' for 'rules, regulations and by-laws' because both 'subsidiary legislation' and 'regulations' are defined in the Ordinance as having the same meaning.

With these remarks, Sir, I support the motion.

*Question put and agreed to.*

Bill read the Second time.

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

## **LAW AMENDMENT AND REFORM (CONSOLIDATION) (AMENDMENT) BILL 1986**

### **Resumption of debate on Second Reading (29 January 1986)**

MR. PETER C. WONG: Sir, the purpose of the Law Amendment and Reform (Consolidation) (Amendment) Bill 1986, here I refer to as LARCO, and the Fatal Accidents Bill 1986, here I refer to as FAO, is to implement the proposals of the Law Reform Commission contained in its 'Report on Damages for Personal Injury and Death' published in October 1984. The report contains some 31 recommendations, all aimed at updating and rationalising our legislation in this area of the law, which is sadly in need of reform. I share the Attorney General's view that the conclusions of the sub-committee of the Law Reform Commission are wise and well-judged. With the alarming increase in accidents, resulting in serious injuries or death, the Bills now before Council are timely and deserve our support. The price of progress and prosperity can sometimes be high.

With your permission, Sir, I shall deal with both Bills together as they form one subject. We agree with the recommendation that a single Ordinance should be created to deal with claims by dependants and the estate of an accident victim. At the moment, the relevant provisions are contained in two separate Ordinances (LARCO and FAO), and it will take more than imagination to look in LARCO for provisions dealing with claims for personal injuries not resulting in death. I am happy to report, Sir, that the Administration will actively consider amalgamating the various provisions into a single Ordinance at the earliest possible opportunity.

The group examining these very complex issues held several meetings. Searching questions were asked and as a result, a number of amendments, some of which involve changes which are fundamental, will be moved at the Committee stage.

Briefly, the new proposals deal with three major issues—

1. Broadening the list of dependants which may claim damages. The addition of co-habitees is somewhat controversial, but after careful consideration, the group felt that the inclusion was justified.

2. Giving the court the power to award provisional damages, which is not possible under the existing law. This is seen to be more equitable as a one-off award would not be able to take fully into account any further disability or illness which the injured person might suffer as a result of the accident.
3. Abolishing certain claims which are considered to be archaic and anomalous. One obvious example is the action of servitium which enables an employer to sue for the loss of his employee's services.

The Law Reform Commission also proposes other reforms such as doing away with 'windfall' damages and the creation of a claim for bereavement. These were carefully explained by the Attorney General when he introduced the two Bills on 29 January 1986.

Sir, the proposals contained in the two Bills are broadly in line with recent reforms in England, and are tailored to meet the unique circumstances in Hong Kong. One example is the inclusion of concubines taken before 7 October 1971 as dependants who may claim damages.

Members are, of course, aware that after that date, it would not be possible under the law to take concubines, at times unwittingly mispronounced by some ladies as 'porcupines'. 7 October 1971 is a significant date which marked the passing of the last vestiges of an era, in which Chinese customs and traditions and male chauvinism were deeply entrenched. Some mourned, others welcomed its passing, but many, especially the younger generation, recognised the change as inevitable, if Hong Kong were to become the highly successful city it is today.

Sir, the two Bills and the amendments are highly technical while the concepts involved are not exactly easy to grasp. It was precisely for this reason and the consequential important social effects of the proposed legislation that the Attorney General and a high-powered team from his chambers took part in many of our discussions.

Sir, if I may, I will now deal briefly with the agreed amendments.

The Attorney General will move the following two amendments—

- (a) Definition of 'dependant' (clause 2(1)) by adding concubines to the list.
- (b) Consequential amendments to the Small Claims Tribunal and Legal Aid Ordinances (Deleting references to claims now abolished).

Miss Maria TAM and Dr. Henrietta IP, who was a member of the sub-committee, will move the following five amendments—

- (a) Clause 3 FAO. A simplified provision.
- (b) Bereavement claim—increased list of claimants.
- (c) Loss of society claim—increased list of claimants.

(d) Clause 6(5) FAO (Funeral Expenses).

An amendment to revert back to the wording in the present Ordinance. The provision in the Bill was considered to be inappropriate.

(e) Clause 2 LARCO. The group queried how the 'pattern of savings' concept in clause 2 would be applied in practice, for example in relation to non-contributory pensions. After discussion with the Administration it was agreed that instead of imposing the 'pattern of savings' formula clause 2 should direct the court's mind to the accumulated wealth which would have been in the deceased's estate in the normal course of events. This approach avoids the need to define 'savings' and thus allows greater flexibility to the court to consider the individual circumstances of each case.

Because this new approach departs substantially from the draft Bill annexed to the Law Reform Commission report the Attorney General convened a meeting of a number of practitioners, academics and members of the Judiciary who specialise in this field to ensure that there were no hidden pitfalls. Members will be pleased to note that the approach was endorsed by the meeting.

Sir, there is one other point worth mentioning. We agree with the recommendation that consideration should be given to a review of the law of succession in the light of reforms now being proposed. Under the new proposals, if a co-habitee dies as a result of an accident, the surviving co-habitee may claim damages. However, under the existing law of intestacy, if the co-habitee dies of a heart attack, the surviving co-habitee would not be entitled to any distribution of the deceased's estate. Such inconsistency is undesirable. We understand that the subject is currently being examined by a sub-committee of the Law Reform Commission and the Administration will bring to the sub-committee's attention the group's observation.

Sir, in supporting the motion, I welcome the impetus of the Law Reform Commission, chaired by my learned and hon. Friend the Attorney General, and the many salutary measures it has so far proposed.

DR. IP: Sir, the Law Reform Commission sub-committee to study the Law Amendment and Reform (Consolidation) Ordinance (LARCO) and the Fatal Accidents Ordinance (FAO) commenced work in November 1982. I was one of its members and our report on damages for personal injury and death was presented to the commission in October 1984. I am also privileged to be one of the members of the Legislative Council *ad hoc* group to study this report and the two Bills before Council today. I agree with Mr. Peter C. WONG and endorse the recommendation in the report that in future the two Ordinances should be combined into one, and many of the points that I shall make in support of this Bill in fact applies also to the Fatal Accidents Bill.

*Assessment of damages:*

The LARCO deals with the award of damages for injuries and in some cases death and the FAO deals with the award of damages for fatal injuries. When a

person is injured through the tortious acts of another, his 'dependants' are entitled to compensation for loss of his support. In the case of a fatal accident, any pecuniary benefit which accrues to a dependant of a deceased in consequence of his death must be taken into account when damages are awarded to this dependant under FAO. In principle this award merges with the award for lost years under LARCO. However, if there are more than one dependant e.g. a wife and child, the wife may inherit the whole of the LARCO award, and the son will be entitled in his own right to damages under the FAO. This means that the defendant must pay the full LARCO award plus a further amount under the FAO.

To eliminate the incidents of 'double recovery', clause 2 of this Bill provides that the calculation of an award under LARCO shall be made without reference to any loss or gain to the deceased's estate consequent to his death (except for funeral expenses) and damage for loss of ability to render service after his death. The damages under LARCO is also subjected to any deduction the court finds justified in the particular circumstances.

On the other hand, where the victim suffers non-fatal injuries and their extent and effect could not have been fully assessed by the time judgement is given in his favour, the damages awarded may not fully reflect the degree of disability he will suffer some years later. As a result of this, he could be under-compensated for his injuries. Hence under clause 5 of the Bill the High Court should be given power to make awards of provisional damages (Order 18, rule 8(3), Order 21 and Order 37). The rules of the Supreme Court will be amended to allow for these changes and for assessment and award of further damages. (There is, of course, the usual payment into court if the defendant wishes to take measures against unlimited liability.)

As regards assessment on an award for lost years, Mr. Martin LEE, a member of the *ad hoc* group, made a proposal which has been accepted by the Administration: under clause 2 of LARCO compensation should be given for the actual loss the deceased person's estate suffers as a result of his premature death by directing the court to the accumulated wealth which would have been in the deceased's estate in the normal course of events. This approach avoids problems such as how to treat non-contributory pensions, as Mr. Peter C. WONG mentioned, for the purposes of the Bills' originally proposed 'pattern of savings' formulae.

As regards definitions of 'dependants', the *ad hoc* group held lengthy discussions on whether cohabitees should be included in the definition of 'dependants' who will benefit from the award of damages, as we do not want to encourage co-habitation. But it was brought to our attention that many newly arrived Chinese residents in Hong Kong have gone into cohabitation, not realising the need in Hong Kong to register a marriage, and are therefore excluded from compensation under both LARCO and FAO. The Law Reform Commission's report suggested that cohabitees who have lived together as man and wife for two years or more should be included as 'dependants' because there is sufficient

evidence to show that a permanent relationship exists between them. The proposed section 20C of LARCO and section 2 of FAO implement these changes.

As regards 'godchild', one of my favourite topics, the proposed section 2(1)(i) of the FAO and section 20C(5)(i) of LARCO introduces the amendment that 'a godchild or a godparent of the deceased according to the Chinese custom' (or the injured person) should be included as a 'dependant'. 'Kuo Kai' (過繼) is a deeply entrenched custom in Chinese families and often a man without a son would take his nephew as his own child to inherit his wealth. These proposals also cover the situation where a person takes a godchild (上契) according to the Chinese custom. In both incidents the 'godchild' must prove that he depends on the support of the victim. Here, I must stress a self-interest.

*Other aspects of reform:*

*Gratuitous services*

Under the proposed new section 20C(4) of LARCO the injured person, rather than the person who loses the benefit of gratuitous services, may claim compensation. The rationale is that gratuitous services are rendered at the option of the person who supplies them. He can withdraw them whenever he wishes and it would be wrong to deprive him of the compensation which is intended to substitute for his ability to render gratuitous services. Damages are intended to put a person back in the position they would have been had the accident not happened.

Sir, the *ad hoc* group has in considering these amendments, gone into great detail to ensure fair treatment to all those who are dependant on the support of a victim of fatal or non-fatal accidents. I hope that the proposals will meet with the approval of the Judiciary. I have pleasure to support this Bill.

ATTORNEY GENERAL: Sir, I am very pleased to be able to welcome the amendments that will be moved by Miss Maria TAM and Dr. Henrietta IP, and to say that they have the full support of the Administration.

As the speakers have already said, these amendments arise from the work of an *ad hoc* group of UMELCO, and I would like to take this opportunity to thank all the members of that group for the helpful and constructive work that they have done. The two Ordinances, as they will finally emerge from this Chamber, will undoubtedly be better pieces of legislation as a result of their efforts, and Members of this Council have proved yet again that they can play a valuable role in the process of law reform.

Sir, in fact, the Administration adopted and promoted proposals from the Law Reform Commission in a way that was not materially different from the forms suggested by the commission in its report. That the members of the *ad hoc* group were able to find ways of further refining some already sophisticated proposals is not a reflection upon the Commission, but rather a confirmation of

the fact that no law reform proposal is ever perfect, perhaps not even now and that with time and hindsight, and with new perspectives, it often happens that new, and better, ways of dealing with problems are brought to light.

Sir, this is particularly evident on this occasion in the amendments proposed or to be proposed by Miss Maria TAM to the Bill's provisions relating to the lost years' claim. In England this claim has been completely abolished. Parliament saw no solution to the problems which beset it. The Law Reform Commission here came up with what they saw as a solution, and this was the proposal in the Bill as it was introduced to this Council. The *ad hoc* group immediately perceived that solution was not perfect, and develop the approach that has been reflected in the amendment which Miss Maria TAM is to move. The intention of the reform always was to ensure that the estate of the deceased was compensated for what it loses as a result of premature death. I think the new amendment achieves this end in the simplest way possible.

Sir, the proposals being advanced in the amendments proposed by Miss Maria TAM to clause 3 of the Law Amendment and Reform (Consolidation) (Amendment) Bill and by Dr. Henrietta IP to clause 4(2) of the Fatal Accidents Bill, Extending, as they do, the list of claimants for the loss of society and bereavement claim, reflect Members' deep knowledge of complex relationships in Hong Kong society. Once again, the knowledge has improved on the reforms proposed in these Bills.

Sir, the remaining two amendments, to clauses 3 and 6(5) of the Fatal Accidents Bill proposed by Dr. Henrietta IP and Miss Maria TAM, are quite technical ones. In both cases the meaning of the original proposal remains intact, but I agree with hon. Members that the form they propose in their amendments, makes the meaning more accessible, especially to laymen, and to those lawyers not familiar with highly technical aspects of the law in this area.

Sir, I have noticed Mr. Peter C. WONG's comments about the desirability of amalgamating all the provisions in the law relating to damages for personal injury and death into one Ordinance. I have a great deal of sympathy for his suggestion, but it is not as easy to implement as might at first sight appear. Many of the provisions of LARCO relate to subjects other than personal injury, and, if those provisions which relate to personal injury are to be extracted and placed as well in a new Ordinance, consideration will have to be given as to where we put what is left. But we will keep the matter under review and see what we can do to meet the suggestion.

Sir, I have also noted the points made by the hon. Peter C. WONG about the inequality of treatment accorded or will be accorded the dependents of those killed in accidents by comparison with the dependents of those who die of natural causes. It is indeed anomalous that the cohabitee of someone killed in an accident should stand to benefit as a dependent under the Fatal Accidents Bill, but not a beneficiary of his estate on an intestacy. Fortunately those

discrepancies are currently the subject matter of another Law Reform Commission Study, and a report recommending reforms in that area is expected soon. I hope that further legislation can follow to meet the plan.

Sir, I also wish to move three amendments to the Bills. The amendments to the Fatal Accidents Bill and clause 3 of the LARCO to this Bill adds concubines taken before 7 October 1971 to the category of those who may claim dependency upon a deceased person. Although the status of concubinage has been abolished since that date, those concubines who were taken before then still receive recognition elsewhere in the law and it would be wrong to exclude them from this reform. The other amendment to the Bill (the addition of a new clause 6) is a purely consequential one intended to remove reference in the Small Claims Tribunal and Legal Aid Ordinances to certain claims which are now to be abolished.

*Question put and agreed to.*

Bill read the Second time.

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

## **FATAL ACCIDENTS BILL 1986**

### **Resumption of debate on Second Reading (29 January 1986)**

MR. PETER C. WONG: Sir, I have already dealt with this Bill in my speech on the Law Amendment and Reform (Consolidation) (Amendment) Bill 1986.

DR. IP: Sir, I have already explained in my speech in support of the Law Amendment and Reform (Consolidation) (Amendment) Bill 1986 the reason of the Legislative Council *ad hoc* group's proposals to amend the definition of dependants, and the new methods of assessing and awarding damages by the high court. My comments on the Law Amendment and Reform (Consolidation) (Amendment) Bill 1986 apply also to this Bill.

I wish merely to add that for the Fatal Accidents Bill the amendment contained in clause 5(3) of the Bill may require an amendment to the Supreme Court rules to ensure that all dependants may be joined as a plaintiff in the same action. I understand that order 15 rule 6 of the Rules of the Supreme Court will be reconsidered by the Rules Committee in this connection.

Sir, I support the Bill before Council.

*Question put and agreed to.*

Bill read the Second time.

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

**PRISONS (AMENDMENT) BILL 1986****Resumption of debate on Second Reading (25 June 1986)**

MR. CHEONG-LEEN: Sir, in supporting the statutory setting up of a Prisoners Welfare Fund, may I urge a review of the use of the fund itself.

I do not wish to comment on the first two broad categories of expenditure of the proposed fund, as they relate to items which have to do with comforts and conveniences, and other items not chargeable to the public revenue. This is a matter more within the purview of the prison administration and its system of discipline.

I note, however, that although the fund has in fact existed for many years, no money has ever been disbursed in respect of the third category of expenditure which is for the purpose of assisting prisoners after discharge.

Here I think a review would be beneficial firstly to the discharged prisoner who is in need of such help, depending on individual circumstances, and secondly to the community at large, which has a vested interest in these persons who have expiated their crime and are rejoining society.

This statutory fund could from now on be expanded in a constructive way to assist ex-prisoners to get back into the mainstream of society as a reformed individual and in this respect such effort should be a multi-agency approach in which the assistance of other Government departments can be called upon even more than before. Specifically, assistance where suitable could be given to triad members who have or are prepared to renounce their triad connections.

ATTORNEY GENERAL: Sir, I should like to thank Mr. CHEONG-LEEN for his support for the Prisons (Amendment) Bill 1986 and for the very valuable suggestions that he has made for disbursing benefits from the fund. The Commissioner of Correctional Services has assured me that he will review the procedures for administering the fund in order to identify deserving cases and to render assistance to them. Each case will, of course, be dealt with on its own merits.

*Question put and agreed to.*

Bill read the Second time.

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

**ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1986****Resumption of debate on Second Reading (25 June 1986)**

MR. CHENG: Sir, I welcome the Government's action in introducing legislation to put right a serious anomaly in the laws relating to the offence of speeding. The anomaly came into existence in 1984, when the new Road Traffic Ordinance and the Driving-offence Points Ordinance took effect. These two Ordinances, together with the Fixed Penalty (Criminal Proceedings) Ordinance 1976, gave the police the option of using two different procedures to prosecute speeding offenders. It was generally understood that minor offenders would be dealt with by a combination of the Fixed Penalty Ordinance and the Driving-offence Points Ordinance. A person exceeding the speed limit by less than 15 kph would expect to receive a fixed penalty of \$140 regardless of how many times he had committed speeding offences in the past. A person exceeding the speed limit by more than 15 kph but less than 30 kph would expect to receive a fixed penalty of \$200 and three driving-offence points: if he accumulated 15 points within two years he would be liable to disqualification for a maximum of three or six months. A person exceeding the speed limit by more than 30 kph would expect to be treated more severely: to receive three driving points and to be prosecuted under section 41 of the Road Traffic Ordinance, which provides for a fine of up to \$4,000 and possible disqualification under section 69 "for such period as the Court thinks fit". If he committed three such offences, and the third offence occurred within three years of the second, he would be given disqualification for 12 months under section 41(2) of the Road Traffic Ordinance and required to take a mandatory retest under section 70 at the end of the period of disqualification.

It became apparent, however, that the police were not following this categorisation. A representation from the Motor Transport Workers' Union to UMELCO in October last year drew Members' attention to the fact that it was police procedure to turn a fixed penalty ticket for every fourth and subsequent alleged speeding offence committed by a driver into a summons under section 41 of the Road Traffic Ordinance no matter by how much the driver was alleged to have exceeded the speed limit. This was often achieved by going to the extent of withdrawing and even refunding the fixed penalty and replacing it with a summons. It meant that after committing six speeding offences a driver would be automatically disqualified for 12 months and required to take a retest at the end of the period of disqualification, even if in every one of those offences he exceeded the speed limit by less than 15 kph. There is no question that the police were within their legal powers to follow such a procedure. None the less the confusion and inconsistency that resulted caused hardship and injustice to many drivers who might have expected more lenient treatment for a series of minor offences.

An *ad hoc* group was formed to examine the problem, and I had the honour of convening the group. We met the Administration on two occasions to discuss the proposed rectification of the anomaly and the more difficult question of arranging retrospective legislation to exonerate the affected drivers. After lengthy and complicated discussions we were generally satisfied that any attempt at retrospective legislation would amount to an interference in properly-passed judicial sentences and would probably result in allowing back on the roads without a retest a number of drivers who were not fit to drive. We therefore reluctantly accepted that retrospective legislation, even for those who had only committed minor offences, was not a sensible solution.

Sir, the removal of the mandatory disqualification and retest from the Road Traffic Ordinance and the accompanying amendments to the Driving-offence Points Ordinance will produce a fairer and more consistent system of penalties. I hope the new system will be widely and clearly publicised in order to encourage safe driving and to deter the would-be speeder.

There is, however, one part of the Road Traffic Ordinance which may still cause difficulties. It is accepted that section 41 must still exist for exceptional cases that cannot be dealt with by the Fixed Penalty Ordinance for technical reasons, and for very serious offences. I should be grateful if the Government would give a clear account to this Council of what kind of cases section 41 of the Road Traffic Ordinance will be used for and an assurance that it will only be used in cases where the Fixed Penalty Ordinance cannot be applied.

With these remarks, Sir, I support the Bill.

MR. LAI: Sir, I would like to voice certain reservations which I have held throughout the proceedings dealing with the proposed amendments to the road traffic Ordinances. It is accepted that the anomalies which came to exist between the traffic Ordinances were the results of oversights on the part of the Administration. In the ensuing confusion I feel that the public were not adequately informed of the severity of penalties likely to be incurred even for minor speeding offences. It would appear that, certainly up to last August, the police had too free a hand in deciding which penalty was appropriate for a given offence.

In the absence of clear guidelines an offender could be penalised either with penalty points or with disqualification depending upon which law the police chose to apply. The practice of turning a fourth and subsequent fixed penalty speeding offence into a summons under the Road Traffic Ordinance was not in keeping with the original aim of the Ordinance. The Road Traffic Ordinance was intended to be used for serious speeding offences and not, as became common practice, for repeated minor offences. Because of arbitrary use of the Ordinances, drivers who would have incurred penalty points under the Road Traffic (Driving-offence Points) Ordinance have in some instances suffered disqualification for up to 12 months with the added burden of an obligatory

re-test. Such harsh penalties have in some cases led to a loss of livelihood. Undoubtedly, some drivers have suffered unduly because of the discrepancy within the law.

The implementation of retrospective legislation as a means of rectifying any injustice has been ruled out. I recognise why in this instance such legislation has proved impractical to implement. Allowing drivers who had failed the re-test back on the roads would be difficult to justify. No doubt its application would raise more problems than it would solve. It would be difficult to separate, as it were, the sheep from the goats at this juncture.

The amendments which the Administration proposes will remove the anomalies which have caused the problems. The priority now being given to arranging speedy re-tests for disqualified drivers further helps to ease the situation. I welcome the changes but wish none the less to place on record my concern regarding the injustice suffered inevitably by some drivers.

With these remarks, Sir, I support the Bill.

MR. TAM (in Cantonese): Sir, I support with pleasure the Road Traffic (Amendment) (No. 2) Bill 1986, and the subsequent Road Traffic (Driving-offence Points)(Amendment) Bill 1986.

Since August 1984, the new Road Traffic Ordinance and Road Traffic (Driving-offence Points) Ordinance have been in force side by side. Under section 41(2) of the Road Traffic Ordinance, the period of disqualification is increased from six months to 12 months, whereas section 70(1) provides that drivers disqualified for six months or above are subject to a mandatory re-test. On the other hand, a driver awarded points under the driving-offence points system may also face disqualification.

Since then, the public has criticised that there is inconsistency in the operation of the two systems, and that it is wrong to have one offence dealt with by two Ordinances. The Bill put forward today basically resolves the misgivings of the public. I believe the Administration should be commended for being receptive to good advice this time.

The Bill proposes to repeal the provisions of mandatory disqualification and re-test, but the court is still empowered to disqualify a driver by discretion and order the subsequent re-test. Taken together with the escalating points system for speeding offences introduced by the Road Traffic (Driving-offence Points) (Amendment) Bill 1986, which is also tabled today, I think these proposals will help, firstly, relieve the drivers of some of their anxiety, and secondly, safeguard road safety.

However, even if the Bill is passed, the situation remains imperfect. Professional drivers may worry about the continued existence of dual systems, since the police can prosecute either under section 41 of the Road Traffic Ordinance or under the Road Traffic (Driving-offence Points) Ordinance. Besides, those

professional drivers disqualified under the existing legislation because of minor speeding offences may wish to request exemption from the re-test. I firmly believe that the Administration has the important responsibility for safe-guarding road safety, but at the same time the public also hope that their safety can be better protected. I therefore agree that Government should deal severely with those who blatantly commit serious speeding offences. As to those disqualified under the dual systems for repeated minor offences, I think Government should consider acceding to their requests.

Finally, I hope the Government would give the Bill extensive publicity once they have been passed, so as to educate the motorists. Government could also consider erecting conspicuous warning signs on some roads to advise motorists of the need to reduce speed, so that they could be psychologically prepared and play their part in a join effort to safeguard road safety.

SECRETARY FOR TRANSPORT: Sir, I am grateful for the support of Mr. CHENG Hon-kwan, Mr. Richard LAI and Mr. TAM Yiu-chung for the Bill.

Under the proposed new system, speeding offences will normally be dealt with by the fixed penalty procedure under the Fixed Penalty (Criminal Proceedings) Ordinance and the Road Traffic (Driving-offence Points) Ordinance, and it is envisaged that summons action under the Road Traffic Ordinance will be taken only in the following circumstances:

First, in a case where the offender is a holder of an international driving permit or a foreign driving licence recognised in Hong Kong and where action by fixed penalty would be technically not possible;

Secondly, in a case where a driver commits speeding and other traffic offences at the same time;

Thirdly, in a case where the seriousness of the offence warrants exposure of the offender to higher penalties provided for under the Road Traffic Ordinance; and

Fourthly, in a case where the driver cannot be stopped at the scene of a speeding offence and cannot be traced after three and a half months.

Summons action in the fourth category of offence will be taken against the registered vehicle owner. The three and a half-month period is set administratively to cope with the legal requirement to serve a demand notice or to apply for summons within six months of the date of an offence.

On the question of relief for drivers already disqualified under the Road Traffic Ordinance raised by Mr. TAM Yiu-chung, this matter has been given very serious consideration. There have also been extensive discussions, as Mr. CHENG Hon-kwan has noted, with an ad hoc group of UMELCO members. After much deliberation, it was accepted on all sides that retrospective legislation would be undesirable for a number of legal and practical reasons. Not the least of these, as has already been noted, is the risk of allowing unfit drivers back onto the roads.

Sir, arrangements are in hand to publicise the new provisions widely. These will include a pamphlet, available at all Transport Department licensing offices and district offices, which clearly sets out the offences for which driving-offence points will be awarded and the number of points in each case.

*Question put and agreed to.*

Bill read the Second time.

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

## **ROAD TRAFFIC (DRIVING-OFFENCE POINTS) (AMENDMENT) BILL 1986**

### **Resumption of debate on Second Reading (25 June 1986)**

MR. CHEONG-LEEN: Sir, speaking on this Bill, may I suggest that the Administration should consider in future the following refinements to the system of penalties for speeding offences:

Firstly, in the case of driving in excess of speed limit by more than 30 km and 45 km per hour, should the fixed penalties scale be escalated progressively?

Secondly, in the case of heavy vehicles such as lorries and buses, where speeding could be a much more serious matter than speeding by ordinary vehicles, should the level of fixed penalties be the same as for ordinary vehicles? Should they not be on a higher scale, which I am told is already happening in Singapore.

Other than the above two points, I support the Bill.

SECRETARY FOR TRANSPORT: Sir, I am grateful for Mr. Hilton CHEONG-LEEN's suggestion. His suggestion will be considered. However, the new escalating points scheme, with its attendant risk of earlier disqualification, should provide a sufficient deterrent.

*Question put and agreed to.*

Bill read the Second time.

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

**Committee stage of Bills**

Council went into Committee

**INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) (NO. 2) BILL 1986**

Clauses 1 and 2 were agreed to.

**LAW AMENDMENT AND REFORM (CONSOLIDATION) (AMENDMENT) BILL 1986**

Clauses 1, 4 and 5 were agreed to.

Clause 2

MISS TAM: Sir, I move that clause 2 be amended as set out in the paper circulated to Members.

*Proposed amendments***Clause 2**

That clause 2 be amended by deleting paragraphs (b) and (c) and substituting the following—

'(b) in subsection (2) by deleting paragraph (b) and substituting the following—

"(b) shall, where the death of that person has been caused by the act or omission which gives rise to the cause of action—

(i) be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included;

(ii) not include any damages in respect of loss of ability to render services after his death;

(iii) not include any damages for loss of property, whether income or otherwise, in respect of any period after his death, except in so far as the court is satisfied that, but for the act or omission that gave rise to the cause of action, the deceased would have achieved an accumulation of wealth by the time that he would otherwise have died, in which case damages may be awarded in respect of the loss of that wealth:

Provided that damages awarded under this sub-paragraph shall be subject to such deduction as the court considers it just to make in the circumstances of any particular case on account of the accelerated receipt of that wealth and in order to avoid over-compensation."!

The amendments were agreed to.

Clause 2, as amended, was agreed to.

Clause 3

MISS TAM: Sir, I move that clause 3 be amended as set out under my name in the paper circulated to Members.

*Proposed amendments*

### **Clause 3**

That clause 3 be amended as follows: in new section 20C(1) of the Ordinance—

- (a) by deleting 'the husband, wife, children or parents of the injured person' and substituting the following—
  - 'any person referred to in paragraph (a), (b), (c), (d), (e), (f) or (g)'; and
- (b) by deleting paragraphs (a), (b) and (c) and substituting the following—
  - (a) the husband or wife of the injured person, unless they had been living apart for a continuous period of at least 2 years immediately preceding the date when the cause of action accrued; or
  - (b) where there is no spouse entitled to recover damages under paragraph (a), any children of the injured person; or
  - (c) where there is no person by or for whom a claim can be made under paragraph (a) or (b), any concubine taken by the deceased before 7 October 1971; or
  - (d) where there is no person by or for whom a claim can be made under paragraph (a), (b) or (c), any person who—
    - (i) was living with the deceased in the same household immediately before the date of his death; and

- (ii) had been living with the deceased in the same household for at least 2 years before that date,  
as the husband or wife of the deceased; or
- (e) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c) or (d), the parents of the deceased or (if the deceased was illegitimate) his mother; or
- (f) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d) or (e), but the deceased was at the date of his death a minor, any person who during any marriage to which that person was a party treated the deceased as a son or daughter of the family in relation to that marriage; or
- (g) where there is no other person by or for whom a claim can be made under this subsection, any brother or sister of the deceased.'

The amendments were agreed to.

### Clause 3

ATTORNEY GENERAL: Sir, I move that clause 3 be further amended as set out under my name in the paper circulated to Members for the reasons I gave in my speech on the Second Reading.

#### *Proposed amendment*

### **Clause 3**

That clause 3 be amended as follows: in new section 20C(5), in the definition of 'dependant', by inserting after paragraph (a) the following—

'(aa) a concubine lawfully taken by the deceased before 7 October 1971;'

The amendment was agreed to.

Clause 3, as amended, was agreed to.

New clause 6 'Consequential'.

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

ATTORNEY GENERAL: Sir, in accordance with Standing Order 46(6) I move that new clause 6 as set out in the paper circulated to Members be read a Second time.

*Question put and agreed to.*

Clause read the Second time.

ATTORNEY GENERAL: Sir, I move that new clause 6 be added to the Bill.

*Proposed addition*

### **New clause**

By inserting after clause 5 the following—

'Consequential. 6. (a) The Schedule to the Small Claims Tribunal Ordinance is amended, in (Cap. 338.) the proviso to paragraph 1, by deleting subparagraph (a)(ii) and (iii).

(Cap. 91.) (b) The Second Schedule to the Legal Aid Ordinance is amended, in Part II, by deleting paragraph 1(b) and (c).'

The addition of the new clause was agreed to.

### **FATAL ACCIDENTS BILL 1986**

Clauses 1, 5, 7 and 8 were agreed to.

Clause 2

ATTORNEY GENERAL: Sir, I move that clause 2 be amended as set out in the paper circulated to Members for the reasons I gave in my speech on the Second Reading.

*Proposed amendment*

### **Clause 2**

That clause 2(1) be amended by inserting after paragraph (a) in the definition of 'dependant' the following—

'(aa) a concubine lawfully taken by the deceased before 7 October 1971;'

The amendment was agreed to.

Clause 2, as amended, was agreed to.

Clauses 3 and 4

DR. IP: Sir, I move that clauses 3 and 4 be amended as set out in the paper circulated to Members.

*Proposed amendments*

### Clause 3

That clause 3 be amended by deleting clause 3 and substituting the following—

'Right of action for wrongful act causing death.      **3** If death is caused to any person ("the deceased") by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the deceased to maintain an action and recover damages in respect thereof, then subject to section 4(2) an action for damages may be brought for the benefit of the dependants of the deceased against the person who would have been liable in damages to the deceased in respect of that wrongful act, neglect or default.'

### Clause 4

That clause 4(2) be amended by deleting paragraphs (c), (d) and (e) and substituting the following—

- (c) where there is no person by or for whom a claim can be made under paragraph (a) or (b), the wife or husband of the deceased (notwithstanding that they had been living apart); or
- (d) where there is no person by or for whom a claim can be made under paragraph (a), (b) or (c), any concubine taken by the deceased before 7 October 1971; or
- (e) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c) or (d), any person who—
  - (i) was living with the deceased in the same household immediately before the date of his death; and
  - (ii) had been living with the deceased in the same household for at least 2 years before that date, as the husband or wife of the deceased; or
- (f) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d) or (e), the parents of the deceased or (if the deceased was illegitimate) his mother; or

- (g) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d), (e) or (f), but the deceased was at the date of his death a minor, any person who during any marriage to which that person was a party treated the deceased as a son or daughter of the family in relation to that marriage; or
- (h) where there is no other person by or for whom a claim can be made under this subsection, any brother or sister of the deceased.'

The amendments were agreed to.

Clauses 3 and 4, as amended, were agreed to.

Clause 6

MISS TAM: Sir, I move that clause 6 be amended as set out in the paper circulated to Members.

*Proposed amendment*

#### **Clause 6**

That clause 6 be amended by deleting subclause (5) and substituting the following—

'(5) In assessing damages in any action brought under this Ordinance the funeral expenses of the deceased person, if such expenses have been incurred by the parties for whose benefit the action is brought, shall be taken into account.'

The amendment was agreed to.

Clause 6, as amended, was agreed to.

#### **PRISONS (AMENDMENT) BILL 1986**

Clauses 1 to 5 were agreed to.

#### **ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1986**

Clauses 1 to 5 were agreed to.

**ROAD TRAFFIC (DRIVING-OFFENCE POINTS) (AMENDMENT) BILL 1986**

Clauses 1 to 3 were agreed to.

**Third Reading of Bills**

THE ATTORNEY GENERAL reported that the

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) (NO. 2) BILL 1986

PRISONS (AMENDMENT) BILL 1986

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1986 and the

ROAD TRAFFIC (DRIVING-OFFENCE POINTS) (AMENDMENT) BILL 1986

had passed through Committee without amendment and the

LAW AMENDMENT AND REFORM (CONSOLIDATION) (AMENDMENT) BILL 1986  
and the

FATAL ACCIDENTS BILL 1986

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

*Question put on the Bills and agreed to.*

Bills read the Third time and passed.

**Unofficial Member's Motion****HONG KONG ROYAL INSTRUCTIONS 1917 TO 1985**

MISS MARIA TAM moved the following motion: That the Standing Orders of the Legislative Council of Hong Kong be amended in Standing Order No. 14 by adding after paragraph (3) the following—

'(4) At any sitting a Member may, with the consent of the President, address the Council on subsidiary legislation laid on the table of the Council at that sitting or at any of the three sittings immediately preceding that sitting, but no debate may arise thereon. A Member who wishes to address the Council under this paragraph at any sitting shall inform the President of his wish before the beginning of that sitting.'

She said: Sir, I beg to move the motion standing in my name in the Order Paper.

Standing Order No. 14 provides for Members of this Council to present papers and to address the Council thereon. The main purpose of the proposed amendment, which is the recommendation of the same ad hoc group which was working on the same subsidiary legislation, is to extend the scope of Standing Order No. 14 to enable Members, with the consent of the President, to address this Council on subsidiary legislation tabled at that particular sitting or at any of the three sittings immediately preceding that sitting. This is intended to rectify the present situation in which Members other than ex-officio or Official Members can only speak on such legislation if a resolution to amend is moved or if the legislation is made the subject of a motion for debate or an adjournment debate.

We have, however, come across subsidiary legislation which enactment enhances not only the activities of a sector of our community but also the position of Hong Kong as a financial centre of the world e.g. the rules and regulations under the Securities Ordinance and the rules and regulations under the Unified Stock Exchange Ordinance, or that it affects the interest of a vital section of our economic activities, such as the effect of the regulations of the control of water pollution to industry. Under these circumstances, we believe it is appropriate to draw attention to the implications of such subsidiary legislation; or to explain the necessary balance struck between protecting the sectoral interest and public interest. With the amendment proposed in this motion, we shall be able to do so without the aforementioned restrictions.

Sir, I beg to move.

*Question put and agreed to.*

4.15 pm

HIS EXCELLENCY THE PRESIDENT: At this point, Council might like a short break.

4.35 pm

HIS EXCELLENCY THE PRESIDENT: Council resumes.

### **Adjournment**

*Motion made. That this Council do now adjourn—*THE ATTORNEY GENERAL.

HIS EXCELLENCY THE PRESIDENT: Twenty-one Members have given notice of their intention to speak. Although I am sure they will be concise, I do not think we can finish in half an hour. So I propose to exercise my discretion under Standing Orders 9(7) and 9(8) to allow Members such time as is necessary to complete their speeches, and such time as is then necessary for an Official Member to reply to those speeches, before putting the question on the adjournment.

### **The Discussion Document on Options for Changes in the Law and in the Administration of the Law to counter the Triad Problem**

DR. HO: Sir, the triad canker has penetrated into our housing estates, our streets, our places of entertainment, our markets, our transport services, and even our schools. From the petty street gangs, who bully, intimidate, and blackmail law-abiding citizens, to the seemingly untouchable, unidentifiable master-minds behind the networks of organised crime, which promote drug-trafficking, prostitution, and criminal monopolies, triads are a real presence in our society. They recruit their members among the young and naive, who, attracted by glamour and excitement, are drawn into a life of crime, violence, and corruption. These criminal triad activities divert untold millions of dollars from legitimate businesses and from the public purse into the pockets of crooks and racketeers. There are indications that triad societies are reviving and have been able to re-establish discipline, control and loyalty among their followers. The larger and more powerful of them are becoming increasingly powerful through more efficient organisation and the use of modern technology.

The discussion document on the triad problem is therefore a timely and much-needed attempt to grapple with the problem. Whether we agree with all, or some, or none of the concrete solutions it puts forward, few of us would question the Government's sincerity and strength of purpose in suppressing triads and gangs and in listening conscientiously to the public comments that the document has generated.

I had the honour of convening the ad hoc group of Unofficial Members to study the document. We were a large group of about 20 regular Members, and we held six meetings to examine the proposals in the document and the responses of the community to those proposals. We were assisted during some of our meetings by the Administration. The fact that both the Security Branch and the Attorney General's Chambers sent their representatives to explain and listen to all district boards and district fight crime committees deserve the highest commendation. It is as a result of this huge exercise in consultation that we have a clear idea of the views of all segments of the society on the proposals. The intelligence and thoughtfulness behind the discussion of the document in the districts is, I think, ample justification of our burgeoning system of representative government and a credit to all those who participate in it.

In view of the fact that the triad issue is a sensitive one and in order to secure a balance of views from the otherwise silent majority vis-a-vis those of the well-organised, articulate groups, the ad hoc group requested the Government to undertake a survey of public opinion on the document. The survey was conducted by an independent agency and covered a sample of about 1 000 randomly selected citizens aged 18 to 64. They were interviewed face-to-face at home. In addition, the Administration made available to the ad hoc group a summary of views of the district boards and district fight crime committees and of the press on the triad document up to the last part of June 1986. The UMELCO Office received some 20 letters on the document from members of the public and a few written submissions from interested groups including those from the Meeting Point, the Hong Kong Bar Association and the Hong Kong Policy Viewers. It is interesting to note that there is a considerable convergence of views among the general public on the options as recommended in the document. There is unanimous support for the Government's determination to stamp out triads and for the spirit of the document. Positive reactions are made to harsher treatment of the triads, heavier fines, the use of one-way viewers, better protection of witnesses and tougher measures against those involved in illegal vice, gambling and drug trafficking activities. However, there is controversy about possible infringements of civil liberties, abuses of power by police, amendments to sections 20 and 22 of the Societies Ordinance, the prohibitions imposed on entry into certain premises for those convicted under section 20 of the Societies Ordinance, and the police supervision scheme. There is a general outcry against the option for liberalising gambling. I note that it is no longer the intention of Government to pursue this option. Those options aimed at tackling sophisticated organised crime as contained in the last chapter of the Document are least discussed. Most questions raised in relation to those options are meant for elucidation and clarification rather than expression of firm views. It is possible that people do not understand adequately the options in the last chapter of the document, and it is proper that the Administration should take a further in-depth study of these options and will consult the public again thereafter.

As convener, I wish to report that the ad hoc group reached broad agreement on such options as increasing the maximum fines; renunciation of triad membership; closure orders for vice-establishments; police protection of witnesses; omission of addresses in witness statements; one-way viewers; mandatory identification parades; the use of task forces and confiscation of proceeds from drug trafficking. The group had mixed views on the amendments to sections 20, 22 and 34 of the Societies Ordinance, the prohibition scheme, police supervision, amendments to certain provisions in the Crimes Ordinance and greater use of accomplice evidence. The group concurred with the Administration that the options with regard to the grand jury and the RICO statute should be studied in greater detail but objected strongly to legalising more forms of gambling.

Much has been said on the subject of civil liberties. Critics feared that personal freedoms will be unduly restricted as a result of the introduction of the proposed options. Apparently they are not aware of the fact that the average person is afraid of going out in quiet areas, our women-folk feel very insecure in their home alone at night, parents tend to prohibit their children to play in the parks and students are not at ease even in the school premises, in the light of the bullying, intimidating and disruptive behaviour of the triads and gangsters. To condone these criminal elements is tantamount to restraining the freedoms of law-abiding citizens. May I then ask the critics why the safety and freedom of the lawful majority has to be sacrificed for the liberties of the unlawful few or the long-term order and peace of the territory has to be traded in for the insolence and terrorism of the unruly? The survey which attempted to reveal the wishes and preferences of the silent majority indicated that 73 per cent of those respondents interviewed accepted the 'loss of civil liberty' as a worthwhile price for combatting triads and organised crime, while only 11 per cent of the respondents thought otherwise. The great majority have made a conscious, deliberate choice.

The discussion document is also criticised for its narrow approach, focussing largely on the investigation, prosecution and enforcement aspects of the police effort in suppressing triad and gang activities. As a member of the Fight Crime Committee, I wish to say that the Fight Crime Committee fully subscribes to the strategy that the triad and gang problem must be subjected to as broad an attack as possible in order to achieve maximum effect. Acting in this spirit, the Fight Crime Committee has set up a number of sub-committees, each assigned to tackle certain aspects of the triad and gang problem. For illustration, I enumerate some of the projects being undertaken: to review the Watchmen Ordinance, to examine the security industry, to review with the intention to amend the regulations governing the possession and use of replica firearms, to devise a set of standardised statistics for recording criminal activities for all branches of the criminal justice system, to monitor and alleviate delinquent and unruly behaviour among school children, to introduce legislation to close down vice-associated establishments, to propose measures to tighten up control of illegal gambling, and to assess the desirability of establishing a Young Offender Standing Committee with the aim to improve rehabilitation of young persons. This discussion document is one of the many projects put out by the Fight Crime Committee; there are many others on the pipeline, though the deliberations on them may not necessarily take the form of a consultation paper.

Sir, I do not intend to comment on all the options in the document. This is a structured debate, following the format of other recent adjournment debates. My hon. colleagues who participated in the ad hoc group will speak in greater detail on the various options. If they do not speak on some options, it does not mean that they have no views on them. As quite a number of my colleagues are speaking in this debate, all the speeches are subject to a five-minute limit.

As for myself, I shall comment on three areas of concern.

Firstly, arising from the increase of investigatory, prosecution and enforcement power in the police as a result of the adoption of the proposed options, a fear was expressed of the possible abuse of police power. It was suggested in some district boards that a number of safeguards should be devised. I believe that this is a sensible suggestion, and would like to make a few observations on this issue. At present, there is a tight system of supervision within the police force itself; and the standard of training of police officers and the educational attainment of the police constables are improving year by year. Secondly, the Crown's prosecuting arm is not a part of the police force. Thirdly, there is an independent Judiciary. Every case is heard by a magistrate; or in the district courts, cases are tried by a judge and a jury composed of ordinary members of the public. Fourthly, the Complaints Against the Police Office (CAPO) is supervised and monitored by an independent body known as the Police Complaints Committee composed of three Legislative Councillors, the Attorney General and eight Justices of the Peace. And fifthly, we have an open society with an increasingly representative system of government and a free press, which is rightly very critical of any abuse of power.

Furthermore, some of the options in the document already have built-in safeguards: a number of them, for example, may only be used with the permission of the Attorney General. The grand jury option, while it is designed to compel certain witnesses to give evidence on oath before it is decided whether a trial will take place, will mean in effect that a member of the Judiciary, that is a magistrate, rather than a policeman will take a statement in certain cases.

Nevertheless, additional safeguards should be considered. There has been a suggestion by some district boards that CAPO should be independent of the police. A number of letters received by UMELCO suggested that a separate body be set up to monitor police behaviour. In addition, Sir, I should like to suggest that some of the measures proposed in the options should have a limited life. My hon. Friend, the Chief Secretary, in his speech introducing the document earlier this session, said that they are not easy options and they carry with them some restrictions on existing freedoms. It is to be hoped that if the options are introduced, the triads should be at least reduced to such an extent that they are no longer the insidious menace to society that they are today. If so, then some of the options should not exist on the statute books as they have served their purposes. If, on the other hand, these options prove to be unsuccessful and ineffective, they should not wait around redundantly for repeal in several years' or decades' time or, worse still, to be used in inappropriate circumstances. Consideration should be given to giving some of the options a life of say five years and making them renewable and amendable by this Council. There are precedents for this, for example, in the legislation for Vietnamese refugees: we hope that both triads and refugees are problems that will not be with us forever. I do not propose that all options should have a limited life; for instance, the improvements to the wording of the Societies Ordinance and changes to the procedure of prosecution should be permanent. But the prohibition scheme,

the supervision scheme, and perhaps the renunciation scheme are obvious candidates for this treatment. The list of prohibited activities, which has caused considerable controversy, is clearly a schedule that will have to be regularly revised, if adopted.

Secondly, I wish to stress that the understanding and support of the Judiciary is essential in our fight against crime. The course of public consultation revealed that the courts are not seen to be meting out deterrent enough penalties to the convicted triads. Available statistics on unlawful societies offences in the past three years bear out this concern and show certain trends which have caused some legitimate unease in the mind of the public:

- (a) A clear drop in custodial sentences imposed (a decrease from 17.4 per cent in 1983 to 5.3 per cent in 1985).
- (b) A leniency towards the use of binding over and suspended sentences (an increase from 15.1 per cent in 1983 to 27.6 per cent in 1985 and from 3.8 per cent in 1983 to 9.2 per cent in 1985 respectively).
- (c) Relatively short custodial sentences imposed (between six and 12 months), as compared to the maximum imprisonment, which ranges from one to seven years.
- (d) Small fines imposed varying from \$250 to \$1,000 with an average of \$605, as compared to the maximum fines which range from \$1,000 to \$10,000.

While we recognise the independence of the Judiciary, the public urge that the Judiciary take into account the community's sentiments and cultural and social considerations when passing sentences on the triads. Just merely to raise the maximum fines under the Societies Ordinance is not an effective weapon to crush triad and gang activities. The greatest deterrence for an offender is his being caught and appropriately sanctioned.

Finally, Sir, to effectively clamp down organised crime requires a long-term, co-ordinated effort from all sectors of the community and all Government departments. The devotion, bravery and discipline of the police force must be augmented by all members of the public. At present, publicity campaigns promoting 'the united effort between the people and police in the fight against crime' are beginning to reap dividends, resulting in an increasing rate of reports of crime by citizens and of arrests and prosecutions of alleged offenders. To sustain these salutary efforts of public participation, a centralised anti-triad unit should be set up. It should be mainly operational in function. It must be visible and accessible to the public, so that men in the street can approach it with ease, should they have information and intelligence to confide in the police. Such a unit will in the long run foster a closer link between the public and the police and will enhance public confidence in the police determination to fight crime.

With these remarks, Sir, I support the motion.

MR. CHAN KAM-CHUEN: Sir, I support in principle the spirit of the 'Discussion Document on Options for Changes in the Law and in the Administration of the Law to Counter the Triad Problem' which heralds the Government's determination to come to grips with the plague of our community. I am not at all surprised that it also has the general support of the public in the recent survey.

For those who live in an ivory tower, the triad problem may seem to be far away but this is not the view of the public who fall prey of triad intimidation and extortion. Let those who say that the triad problem is not serious visualise themselves in the situation where their sons are tricked into drug addiction and their daughters lured and gang-raped into prostitution. Even the defenders of the wicked are not immune from blackmailing by these scums of society.

Large-scale criminal syndicates in other countries have used their ill-gotten wealth to invest in many legitimate enterprises and in some cases, to enter politics. They can afford to hire the best legal and financial services, corrupt law officers, extort contracts and control unions. It is therefore not surprising that they can purchase or create public opinion and even bend politicians with the votes under their control. Let us check this cancerous growth in Hong Kong before it comes to the terminal stage.

The term 'human rights' is often misused. We do not have the right to murder, rape or rob, otherwise our community will be thrown back into the Dark Ages. Human rights are freedoms to do what one should do for the good of oneself, family and community but not to deprive others of their rights. Once this demarcation line is violated, then criminal law and law enforcement should take over to restrict the freedom of the criminals to protect the victims' security and, in serious situations like the last riot, the peace and order of the community.

With this in mind, I submit that the word 'state' in a recent public statement should be substituted by the word 'triad' and I believe the public would find it more agreeable to read 'the rights of an individual must not be haphazardly subjugated to the rights of the *triad* without careful consideration and close examination of the situation in perspective'. Our independent Judiciary and our appeal system will provide the checks and balances on excesses, if any.

In the eyes of the public, whilst the triad victim is left to torment, physically and mentally, over losses, the suspect and later the criminal seems to have entered a large department store enjoying the following multiple discounts:

- (1) legal aid paid for by taxpayers;
- (2) if this fails, to free him, there is expert mitigation which is usually effective, witnessed by the infrequency of maximum sentences and fines;
- (3) then, there is a 33.3 per cent discount for the period of imprisonment for good conduct;

- (4) on release, there is protection of the ill-gotten gains stashed away; and
- (5) then there is rehabilitation service to help them back to society, which is often declined mentally as quite a high percentage of them reappear in court.

Does crime pay and does this fit the Chinese saying (姑息養姦) 'to foster evil propensities by being over lenient?' I hope the combined reply from our community is a resounding 'No!'.

Organised crime requires organised efforts of the whole community to combat, so that crime does not pay.

Sir, I shall not go into the details of this soul-searching discussion paper, as the Legislative Council *ad hoc* group convened by Dr. Ho have worked hard and have come up with comprehensive views on the various options.

MRS. CHOW: Sir, some, among them our legal experts, hold the view that since the document before us contains proposals which, if adopted, may seriously threaten basic human rights and civil liberties which most of Hong Kong people would choose to guard zealously it should not be supported.

Such a view, albeit eloquently argued, is not shared by the majority of public opinion expressed on the subject in open forums and in the media, as well as reflected by a survey specifically commissioned by Government, but independently conducted by a professional survey company with a clear objective to gauge the sentiment of the silent majority on the proposals before us. By and large, it is widely recognised that Hong Kong is facing a serious triad problem, and in spite of the general worry that wider power given to the police might be abused, the majority of the community deems it worthwhile to sacrifice certain civil liberties in order to combat triads and organised crime.

Public sentiment for a heavier hand of the law comes as no surprise. For while most of us are trying so hard to build a better community for ourselves and our young, the destructive tentacles of organised crime are dismantling the dreams as fast as we can build them, or even faster. Triad activities infiltrate into legal as well as illegal aspects of our everyday life. Being organised not only gives triad members strength and backing, but also provides the financial resources to procure the best professional service they require to help them stay on the right side of the law.

When we refer to triad members, we have to realise that we are talking about a pretty wide range in the criminal hierarchy. There is the newly recruited 14 year-old school boy, as well as the big brother of the drug syndicate who heads the organisation. While the former hardly comprehends what he is doing, and therefore if properly rehabilitated could possibly have a fresh start in life, the latter is beyond any kind of redemption. Imprisonment for the one is equally

inappropriate as rehabilitation for the other. The difficult task, but a necessary one, is to sort the men from the boys so as to determine the appropriate action to be taken against it.

For the first offenders and novice triad members, appropriate action is action that achieves rehabilitation and prevention of recidivism. For the die-hard triad veteran appropriate action is action that limits his movements and influence as effectively and for as long as possible so as to protect society. In this regard, one wonders whether present punishment is heavy enough to cope with the extremely serious or violent organised crimes being committed. I believe it is time to seriously consider the reinstatement of the death penalty for masterminds of gang wars as well as syndicated drug trafficking.

Before I close, may I refer to the proposed option whereby an offender becomes automatically indebted to the Crown when he is convicted under the Dangerous Drugs Ordinance. I support this. However I do not think it goes far enough. In fact a number of triad trades such as gambling dens and vice establishments are sources of income which should be subject to the same treatment as income from drug trafficking. Furthermore, any means to curb the growth of criminal wealth should be explored, for this would not only weaken their triad position considerably, but also undermine the materialistic appeal of such criminal association to the vanity of our young people.

MRS. FAN (in Cantonese): Sir, the discussion document has now become a matter of concern to the general public. It contains views collected from the various district fight crime committees, the triad problems confronted by different districts, as well as the feelings of certain citizens who have been victimised by triads. The various difficulties and limitations in dealing with the triad problem are clearly expounded in the document, followed by proposed options for solving these problems and ending up with an analysis of the advantages and disadvantages of the proposed options. I am deeply impressed by the frank, rational and objective attitude adopted by the document in tackling the triad problem.

Hong Kong is a small place but full of people. Therefore, its living environment is far from ideal. Triad societies try to make use of this defect to threaten and seduce ignorant young men to join them and work for them. The current judicial spirit in Hong Kong is 'to be lenient rather than to pervert justice', so that certain undesirable elements are able to remain at large. Even if they could be charged, the penalties imposed are insufficient to create a deterrent effect. As a result, the triad problem is getting more and more serious. Since members of the public are in the open while triad members lurch in the dark, it is very difficult for members of the public to guard against vengeance from triad members, especially when the former's place of work and residence are fixed. Therefore, despite their anger, members of the public dare not air their grievance. They could only hope that the Government, the legislators, the law

enforcers and the judicial officers would be able to control this problem and deal with triad societies effectively, so that they do not have to live under its shadow regularly.

This is not a theoretical problem, but a fact faced by many of our citizens. They are worried about their children being threatened and seduced by triad members to go astray. For the sake of Hong Kong's next generation, we must deal with triad societies seriously. Hence I agree to the imposition of heavier sentences and fines proposed by the discussion document. Many citizens fervently hope that Hong Kong's judicial officers will not be too lenient in passing sentences. Lenience towards triad members is cruelty towards law-abiding citizens.

Some citizens report to the police when they can no longer tolerate the nuisance and disturbance caused by triads. Then they have to spare a lot of time to give statements, identify suspects and act as a witness. As a result, it is difficult for the police to find witnesses. In dealing with triad societies and undesirable elements, I think the police and the public must reach some common understanding and realise each other's position. The police should appreciate the difficulties experienced by members of the public and do their best to assist them, rather than rely solely on powers given them by the law and work by the book. Therefore, first of all, witnesses must be given suitable protection and the relevant proposals in the discussion document must be implemented. Secondly, the police must make efforts to establish and reinforce the confidence of the public in them.

The police constitute the most important sector in the fight against triad societies. In order that they can take more effective and faster action against triads, they require more forceful support in legislation and more effective procedures. Many people raise objection to the expansion of police powers, mainly because they are afraid that such powers might be abused and law-abiding citizens would become victimised. But if the police maintain their existing powers, it is very doubtful whether they will be able to deal with the triad problem, which is getting more and more serious. Therefore, I think the police should be given sufficient power to deal with this problem. Nevertheless, in case of any abuse of power, police officers must be severely punished. It is hoped that judicial officers will also pass a heavy sentence on law enforcers who violate the law themselves.

Finally, I would like to express my views on the Racketeer Influenced Corrupt Organisations (RICO) Statute. This American statute enables the prosecution to present a full picture of organised crime to the court, so that the latter can have a clear picture of the relationship between the different crimes involved, as well as the extent of involvement. Existing criminal law rules in Hong Kong generally result in various charges brought against an accused person being tried separately, and the court will consider each charge in isolation. The defect in existing laws is that it would not be possible to fully

expose the seriousness of organised crime of triad societies and it would also be difficult to bring to justice the ring leader behind the scene. For instance, if someone made use of the gains obtained from triad activities to run some legal business, such a person could be brought to justice under the American RICO Statute. His gains could also be confiscated, so that the entire criminal organisation would be hard hit and consequently put out of existence. I feel there is a need to examine this Statute and to consider whether it is possible to inscribe its spirit in Hong Kong laws.

MRS. NG (in Cantonese): Sir, relevant Government departments have recently produced a series of discussion documents and the discussion document that forms the subject of the adjournment debate in this Council today, i.e. 'Options for Changes in the Law and in the Administration of the Law to Counter the Triad Problem', is indeed an objective consultative document. The 12 proposals contained therein have clearly specified the pros and cons and provided unprejudiced analysis of the proposed changes for reference and consideration by the general public. This is indeed a democratic style of practice.

I had previously been a member of Wong Tai Sin District Fight Crime Committee and used to pay visits to the mutual aid committees and owners incorporations within the district to consult them of their views on crime fighting. I have learned from these sources that members of the public are mostly reluctant to stand out to report crime. In consideration of the fact that the mode of identification currently in use by the police does not provide adequate protection for the safety of the witness, I am strongly for the idea of using the identification procedures presently adopted in America—identifying suspects through one-way viewers. The adoption of this proposal will definitely encourage the public to report crime and give evidence as this will ensure the safety of the witnesses and reduce the chance of their being revenged upon by the triad elements.

It is evident that vice establishments have caused nuisance to residents of domestic buildings. I am therefore in support of the amendments to the legislation to control pornographic activities and the nuisances arising from such activities and also to enact summary offences proceedings to deal with the nuisances caused by those 'one-woman brothels' so that tenants in domestic premises can more easily lodge complaints to the court.

As an educationalist, I deeply regret that the discussion paper has not fully reflected its concern over the triad problem at schools. Indeed, the Royal Hong Kong Police Force should not and cannot be the sole department committed to the task of curbing triad activities at schools. It is only through the co-operation of the Education Department, the Social Welfare Department, the ICAC and other departments concerned that the task will attain any success. I suggest the Education Department should review the form master system. As the form masters are working in the front line in the contact with students, the relevant

authority should cut down their teaching sessions to allow ample time for them to know their students better, keep in close liaison with the parents and take early precautions against triad activities. The Social Welfare Department should as soon as possible revise the existing ratio of one school social worker to 4 000 students because by this ratio, the school social workers are too fully occupied to provide sufficient counselling service to the students. The Police Community Relations Bureau of the police force should be additionally staffed to strengthen its ties with schools in a bid to nip any school triad activities in their buds. Over the years, the ICAC has put in a lot of efforts in the production of teaching materials and aids for moral and civic education and this has won high appraisals from the education profession. I urge the ICAC to keep up with its good work for the well-being of our students.

MR. YEUNG (in Cantonese): Sir, triad societies are a vicious disease of the community. Once we realise the history of triads, we will understand that triad societies will definitely not disintegrate completely. What is so frightening about triads is that apart from being a threat to law and order, they entail serious consequences by offering protection to prostitution and gambling activities. Vice, gambling and dangerous drugs are disastrous in that they are all-pervasive and damaging to social ethos. Since the great majority of triads are persons who idle about in all sorts of entertainment premises day and night in the hope of recruiting new members to extend their influences, youths and students who do not attend to their proper duties are often their target of recruitment. They will mistake triads for their newly-made intimate friends and ultimately fall into their traps after which they will be unable to extricate themselves. As the influence of triads are so far-reaching and as there is no basic cure for this vicious disease, our principal task is to face the reality and adopt effective measures to control and alleviate the state of illness so that it will not spread and deteriorate.

I suggest that Government should take the following four measures at the same time:

- (1) *Stringent policies (just as giving specific injections and applying specific drugs to support a surgical operation)*

To amend the law is principally to assist the police in further protecting the life and safety of the public rather than to give them additional and unnecessary powers. Before imposing supervision on habitual criminals and dangerous personalities, the police must obtain prior approval from the Attorney General and the supervision order must be issued by the courts. In this connection, the police should draw up departmental guidelines so that members of the force know clearly how they should properly make use of these powers and avoid abusing them and infringing on personal freedom. In fact, in a society where the Judiciary is independent, the general public have ample

opportunities to complain through a number of effective channels about the abuse of power by the police and this civic right should be made use of effectively in order to fully discharge the imperceptible function of supervision.

'Money is the root of all evils.' This saying reflects that the growth of triads is closely related to the sources of money. In order to cut off the sources of income of triads from vice, gambling and dangerous drugs, Government should thoroughly implement the closure order system, increase the penalties for illegal gambling and confiscate the profits and properties which have been acquired in drug trafficking. Such a way of cutting off the sources of income of triads will definitely check the growth of triad influences.

(2) *Rehabilitation (just as taking nourishing food or tonics to speed up recovery)*

The basic functions of penalties are to impose punishment, achieve a deterrent effect and promote rehabilitative education. The 'scheme of renunciation of triad membership' will definitely be useful to those triad members who are aware of their past follies and who wish to turn over a new leaf. In this regard, Government should step up rehabilitation work and provide more information on job opportunities so that those triad members who intend to turn over a new leaf may be given an opportunity to lead a normal life and be free from falling prey to the inducement, threats and control of triads once again.

(3) *Long-term attention (just as health care and regular medical examination)*

Government should continuously pay attention to the trend of social ethos to prevent the resurgence of triad activities. The Royal Hong Kong Police Force, Social Welfare Department, Education Department, Legal Department and the Judiciary should strengthen co-ordination and communication in order to make concerted efforts to counter the triad problem.

In view of the great variety of unlawful activities and organised crime involving triad societies, anti-triad units in various districts should be more practical and effective in making all-out efforts to eradicate triad activities in the district. However, in order to directly crack down on serious crime, criminal intelligence work will become more important. In this regard, Government should provide the police with adequate resources (e.g. the installation of computer equipment) to cope with the intensified work to eradicate triad activities and stamp out organised crime.

(4) *Preventive work (just as putting into practice the medical slogan 'Prevention is better than cure')*

Government should actively promote youth activities and establish a healthy society which provides proper recreational activities for young people. Furthermore, Government should fully wipe out the 'hero image' of triad societies and reinforce its work of conveying to youths the correct social value by dispelling the ideas of heroism and hedonism, and emphasising personal responsibilities so that the offenders know that they are responsible for what they do. This is indivisible from the discipline and education of the family, school and society.

Sir, I am confident that in the long run, patience and determination are specifically required in treating vicious diseases. If Government takes all the four measures mentioned above at the same time, the adverse influence of triad societies on the public will be reduced accordingly and the image of a really stable and prosperous society will distinctly emerge.

MR. JACKIE CHAN (in Cantonese): Sir, the discussion document on triad problem recently published by the Government gives a detailed exposure of the criminal activities of triads. Apart from decent trades, triads enter into all kinds of businesses so long as a profit can be made. They traffick in dangerous drugs, operate gambling dens, force the innocent into prostitution, engage in loan-sharking, robberies, murders and arsons which pose serious damage to the society. As the local political situation is now getting stable, it becomes an urgent task for the Government to adopt stringent measures against triad societies and weed out this social cancer in order to maintain Hong Kong's internal security.

With a view to cracking down on triad activities, a number of proposals were made in the document. Several of these proposals deserve our attention and support. These include the proposal for a scheme of renunciation of triad membership, the proposal to introduce a new form of identification parade and the proposal to amend the law to enable the formulation of closure orders on vice establishments. As everybody knows, one of the main sources of income of triad societies is the operation of vice establishments. These establishments have long been the cause of great nuisances to the public and serious threats to the law and order in multi-storey buildings. The document again showed concern over the importance of this problem and proposed a system of closure orders which has won the support of various district boards and district fight crime committees. I fully agree and support this proposal and hope that the Government would react promptly by amending the law so that the system could be put into early operation to relieve the public of their worries.

However, I cannot agree to the police supervision scheme proposed in the document. Perhaps some people may say that 'heavy penalties are required in times of trouble.' But is Hong Kong in such troubled times that requires us to sacrifice our good spirit of rule by law to combat crime? If the heavy penalties imposed to crack down triads are found to infringe on personal freedom and the dignity of human rights, the issue should be considered carefully. Apart from

running counter to the spirit of rule by law, this proposal in fact leaves much room for discussion. If the scheme is introduced, there will be two kinds of citizens, viz. ordinary citizens and a minority group of special citizens. The latter are penalised triad members who have been released but have to face social segregation. Whilst ordinary citizens can frequent various kinds of establishments, this group of special citizens are restricted from entering specified areas. The scheme appears to be quite acceptable as it is only aimed at penalised triad elements. But in practice, the situation may not be as simple as what we expect as ordinary citizens will almost inevitably be involved because of their similar appearance to special citizens under police supervision. As a result, they will often be disturbed unnecessarily and their personal freedom seriously infringed upon. We understand that last year over 600 triad members were prosecuted but only less than 250 of them were convicted. It is therefore impractical to enact a piece of legislation which will cause inconvenience to the majority of citizens simply because supervision is required for a small number of triad members released from detention. Furthermore, the scheme will have a serious impact on the psychology of the released prisoners who may feel discriminated and rejected by the community despite their having served the due punishment. This could induce a resistance to the law and hostility towards the community which lead ultimately to criminal offence again.

I also believe that many employers are reluctant to offer appointments to released prisoners under supervision. The existing policy is to assist released prisoners to turn over a new leaf and return to the society. This bizarre proposal however seems to stop them from doing so. Besides, I think that police resources should not be wasted on the supervision of penalised triads members. The foremost task for the police now is to re-organise and expand its anti-triad squad, to centralise manpower and resources to disintegrate triad societies, and to crack down on their illegal activities. The most important of all is to restrain triad masterminds by law, impose heavy penalties on them and confiscate the gains which they have acquired in illegal activities. Without a leader, I believe that the threat on our society posed by the remaining triad members will be reduced to a minimum.

In the long run, Government should step up school education. On one hand, an all-out effort should be made to curb triad infiltration into schools while on the other hand, correct ideas should be instilled into our youths to rectify their perception of triads as heroes and their erroneous concepts of materialism and hedonism, to establish a healthy social platform for them so that our stable and prosperous society may develop further under a balanced and orderly climate.

Lastly, I am glad to support the spirit of the document though I do not fully agree to the proposals therein. As a matter of fact, the efforts made in preparing the document is commendable.

MR. CHEONG-LEEN: Sir, the fact that this discussion document on triads is published for public comment confirms the view that Government regards the triad problem as a serious matter.

The community concern is widely shared, and apart from the worrying fear that parents have of their children coming under triad influence, whether in school or in the playground or elsewhere, there is also the growing concern at triad expansion in organised crime, such as blackmail, gambling, prostitution, drug trafficking, hawkers, and so on.

By and large, the document has been supported by the district boards which are concerned about the problem at the grass-roots level.

My own general view on the document is along the following lines.

Firstly, I support the increased co-ordination resulting from this document between the law enforcement agencies and other Government departments to tackle the triad problem. A concerted effort within the Government itself is bound to have a multiplier effect in the long run to contain the size of the triad problem.

Secondly, the public, having now been made more aware of the dimensions of the problem—especially concerning the potential danger of organised criminal activities—could perhaps be now persuaded to more closely co-operate with the authorities in facing up to the challenge and dangers of triads. In this respect, the Organised and Serious Crimes Bureau, which is responsible for dealing with triads within the police force, could adopt a more visible presence with the public. Also a triads hot line which would be taking calls 24 hours a day could be set up.

In order to command public support, the police must be seen by the public to be going all out to tackle the triad problem.

Furthermore, at District Fight Crime Committee meetings, and at other functions and meetings attended by Police Community Relations Officers, there could be more focus on triad-related matters which would give added input to the police communication network in combating the problem.

Thirdly, a number of the options proposed, if adopted, will curtail the wide range of individual freedom which represents the Hong Kong life style. Here we are faced with a choice in the balancing of the larger interest of the community against the personal freedom of those who would flout the law. On balance, my view is that in order to attack the growing menace of organised crime, which includes triad activities, it is necessary at this time to legislate for some of the options proposed. Certainly, the public would welcome new measures to encourage witnesses to come forward to testify, such as the use of one-way mirrors, the creation of 'task forces' of investigators and lawyers to concentrate on suspected individuals and enterprises, the adopting of some of the procedures of the American Grand Jury system in the attacking of organised crime in order to get at the 'big guns' in the triad world.

Members of the public are naturally concerned about the additional powers which will be given to the police. Here my view is that the Legislative Council should give to the police and other authorities the additional powers required to fight triads and other forms of organised crime and at the same time strengthen the monitoring committees responsible for ensuring that the police will not abuse these powers. As and when the growing threat of organised crime as represented by triads in particular becomes less serious, the Legislative Council will have to review the reduction of any powers having to do with personal freedom which are no longer required in the overall community interest.

Finally, may I say that I support all efforts which are designed to enable those who wish to do so to renounce their triad links. I would support the proposed police supervision scheme targetted at the 'potentially dangerous reoffender'. I got from the document that it suggested that any initial number of not more than 500 should be the figure in mind and I think that is a manageable figure. However, it would seem that penalties such as not entering Jockey Club premises or possessing a paging machine are not practical from a wider point of view. I would also urge that the rehabilitative supervision by the Correctional Services and Social Welfare Departments be brought into play whenever it is suitable.

Sir, I support the motion.

MR. CHUNG (in Cantonese): Sir, the Government's decision to give priority to consider the use of draconian measures to thwart illegal activities of triad societies should be given moral support by the general public. The various options put forth by the Government have triggered off many concurring echoes as well as differing views, all of which confirm that the public has grave concern over the law and order as well as the triad problems in Hong Kong. I would like to make the following comments on the discussion document:

- (1) The supervision order aims at the 'potentially dangerous reoffender' and not the unrehabilitable recidivists. While the proposed police supervision order and prohibition order may be effective in reducing the contact of the supervised with triads, they are only penal measures lacking in counselling and rehabilitative functions. I therefore suggest the setting up of an independent statutory committee instead of letting solely the police carry out the supervision order. The committee should consist of UMELCO Members, representatives from the Royal Hong Kong Police Force, Correctional Services Department, Social Welfare Department, Education Department, Hong Kong Discharged Prisoners' Aid Society, social workers and members of the public. It should aspire at both supervision and rehabilitation. The police should submit to the committee reports of the supervised at regular intervals. The committee should be empowered to provide proper rehabilitation service to those placed under the order according to the actual needs of the one being supervised. It should also be given the right to regulate the weight on supervision in relation to rehabilitation and vice versa for each case, as

well as to shorten the time of the supervision order if necessary. Its other function is to provide assistance to those harassed by triads or fellow gang members after the expiry of the supervision order.

- (2) One of the proposals under the supervision order is that it could involve a special form of caution when a person being supervised is charged with a subsequent offence or is questioned in relation to that offence at a police station. I personally feel that this proposal is unacceptable because it will make explanation or provision of evidence to the charge mandatory in the case of a person under the supervision order. His right to remain silent is thus infringed. Furthermore, if the special form of caution appears in the suspect's statement, the court will be aware of the fact that the suspect has previous criminal records. The suspect may be prejudiced against and this would be greatly disadvantageous to him.
- (3) Most of the proposals in the discussion document will no doubt give additional power to the police. The public worries that some police officers will abuse their power. Even though the Government has declared that if such abuses happen, there are a number of channels for the public to lodge their complaints and ask for fair dealing. However, I have to express my dissatisfaction on the way the Complaints Against Police Office (CAPO) handles investigations. CAPO refers what it regards as minor complaint cases to the police station where the police officer under complaint worked. In reality, it is very difficult to decide whether a case is minor or serious. The said arrangement will create unease and fear for the complainant as he is required to make statement at the police station where the officer he has complained about belongs. Such practice will also put the public in doubt as to whether fair dealing can be ensured and will undermine public confidence in CAPO. I therefore suggest that all complaint cases, whether minor or serious, should be handled by CAPO itself.
- (4) I believe that the increase in the use of accomplice evidence will be able to arouse suspicion and distrust among members of the criminal syndicates, hence weakening their strength. The practice to remit penalties of an accomplice therefore deserves our support. If an accomplice has turned into a witness for the Crown with the guarantee from the Attorney General that he will not be prosecuted, he should still be bound by law to act as witness for the prosecution and to provide true information, otherwise the Attorney General is entitled to withdraw the guarantee of no prosecution and to use the information in his statement as evidence to prosecute him.
- (5) As regards the Grand Jury approach, the proposed Grand Jury is meant to be an investigatory jury to help the police to collect evidence. Although there are merits in this proposal, it would mean infringement upon a witness' right to assist the police voluntarily and his right to remain silent, thus contradicting the traditional principles of Hong Kong's judicial system. I consider that this approach should not be adopted at the present stage.

- (6) The proposals in the document are mainly stop-gap measures and there are few radical solutions. In my opinion, to root out the problem completely, the police, schools and social workers should work closely with one another to eliminate and prevent triad members from penetrating into schools. More effective methods should be employed in antitriad campaigns. Good family education should be propagated via television programmes. All effort should be geared to reduce young people's tendency to commit crime so that the triad societies can be deterred from further expansion. In addition, schools and organisations should work in full co-operation to launch community functions to promote civic education in line with youth policy so that young students will not fall prey to triad members. Youths should be encouraged to join the Junior Police Call and to report illegal activities of the triad societies. If all these measures are carried out perserveringly, we will be able to get the expected result in time.

Sir, the above are my remarks.

MR. HUI: Sir, the discussion document on options to counter the triad problem must be hailed as a laudable attempt made by the Government to contain the cancerous growth of a perennial social problem. Over the years, triad activities have infiltrated into all sectors of the community, extending their ubiquitous influence over hawkers, prostitutes and school drop-outs who become prey to the extortion of triad gangs. Although no statistics are available on crimes committed by triads, we have every reason to believe that organised crimes in which triads are engaged today cannot be tackled by using traditional police methods. I fully support the proposals in the document, albeit some draconian measures, for it is better for us to err on the side of the offenders in the interest of Hong Kong's stability and prosperity.

The imposition of a police supervision order as part of the court sentence is considered a must, if the triad menace is to be eradicated. This order repealed in 1983 should be re-implemented with extreme discretion, aiming at hard-core cases—say, 200 potentially dangerous re-offenders to begin with. The police supervision order needs to be decided by the court upon the recommendation of the police and probation officers in consultation with professional social workers. This way, the suitability of the order, imposed after serious consideration on re-offenders with real need, can be guaranteed. Furthermore, the order should be carried out by experienced police officers with special training in rehabilitation who can provide close supervision to criminals and are attached to the proposed task force. It is also proposed that the police supervision scheme be reviewed after a trial period of two years.

I must, however, draw Members' attention to the objective of the scheme which places too much emphasis on the restrictive and preventive effects of the order and ignores the rehabilitative and educational functions of penalty. The police supervision order, as it now stands, fails to get to the roots of the

problem—it has not provided offenders with the necessary assistance to enable them to go straight upon completion of the order. Social workers generally favour a more balanced approach of employing such additional means as outreaching social work and rehabilitation services to help pull young offenders away from the association and intimidation of triad gangs. By offering them prevocational and employment opportunities, we can successfully help them to turn over a new leaf. Like the Community Service Order invested with the same spirit, a police supervision order could truly reform criminals, particularly those who have made a sincere and successful attempt to live down their conviction.

On the same ground of rehabilitation and with due respect for personal freedom, I object to the option that prohibits triad members from visiting certain public places. It is a cogent argument that control should be exercised over illegal activities rather than triad members who take part in them. Apart from operational difficulties, the envisaged negative effects of this option, including antagonising triad members and curtailing human rights, tend to outweigh the advantages.

Sir, any form of penalty carries with it the objective to make the criminal pay for the offence he has committed. Here, I wish to suggest:

- that the police supervision order be relaunched as a mandatory sentence for selected re-offenders in protection of public interest;
- that a monitoring group consisting of psychologists, lawyers, police and social workers be set up to oversee the implementation of the supervision order and to conduct periodical reviews;
- in view of the fact that the miscalculated disbandment of the Triad Societies Bureau had given rise to the ramification of triad activities, that this special unit be re-established and strengthened. This so-called task force ought to be a high-powered law enforcement agency equipped with specially trained personnel and first-hand information and should be directly responsible to the Commissioner of Police in order to avoid abuse of power; and
- that other forms of penalties be explored in dealing with different types of triad offences.

On the other hand, consideration must also be given to maintaining freedom in our society which cannot be sacrificed for a quick solution to the triad problem. It is therefore necessary to curb triad activities by employing longerterm rehabilitation methods, for which more social resources should be deployed to improve the existing provisions. Only by combining harsh penalties with timely assistance given to those who want to become straight can we hope to suppress the prolific growth of triad activities in Hong Kong.

Sir, with these remarks, I beg to support the motion.

MR. LAI: Sir, basically, I am much in support of the spirit behind the proposals made by the discussion document. For instance, the proposals related to the

protection of witnesses, the taking of evidence (i.e. the redrafting of section 34 of the Societies Ordinance), greater use of accomplice evidence, and increasing penalties for triad members, and confiscating the proceeds of drug trafficking are all highly recommendable. But there are also several proposals which carry some doubts with regard to their practicability. First of all, I would like to comment on certain points related to the proposals in the document, and then look at the issue as a whole outside the context of the discussion document.

Based on the following grounds, I think the proposal to have more legal gambling is highly impractical:

1. Such a proposal will affect society far more than triad societies because more citizens will indulge in gambling, thus resulting in more broken homes and social tragedies, as well as disrupting people's lives and affecting Hong Kong's economic growth. It will also lead to more loan-sharking and intimidation, which are usually performed by triads. Hence paradoxically, it will lead to more triad activities.
2. Since illegal gambling offers more attractive pay-outs, it will continue to maintain its attraction irrespective of the existence of legal forms of gambling.
3. Even if more forms of gambling become legalised, the influence of triads would still exist. As a result, it will help to enhance their power.
4. As a matter of principle, the encouragement of gambling is undoubtedly contradictory to the objective of building a healthy and stable society.

With regard to the police supervision scheme, I have the following doubts:

1. Such a supervision scheme will only result in social stratification and create a sense of antagonism among discharged criminals, so that it will be more difficult for them to recover as normal citizens and be reintegrated into society.
2. While enforcing supervision in public places, police officers might cause disturbance to the public or abuse their powers.
3. If discharged criminals were not allowed to enter gambling or vice establishments, they could still go to such places as discotheques, fast food shops, restaurants, or even private clubs. And even if discharged triads were not admitted in these places, other unarrested triad members could still be active.
4. Paging machines are now commonly used in many trades in Hong Kong. If discharged prisoners were not allowed to use them, their chances of making a living would no doubt be reduced. Moreover, wireless telephones can also perform the functions of paging machines. If it is rigidly provided that discharged criminals cannot enter certain places and cannot use certain equipment, it is very likely that they will make use of other legal loopholes.

5. Once enacted, this legislation will be doing an injustice to trades which become affected, because the presence of police will disturb their business.
6. When criminals are sentenced to prison, it means they have to be held responsible and have to pay a price for their deeds. Therefore, in order to impose heavier penalties or further deprive them of their freedom, it would be more appropriate to carry out such measures while they are still in prison rather than after they have been discharged.

As for amending section 20 of the Societies Ordinance to make it an offence for any person to imply, deliberately, that he is a member of a triad society, it will create many enforcement problems because of the flexibility of the provision, despite the fact that this proposal will make it more effective to prosecute triad members. Although prosecutions made under this provision have to have prior approval of the Attorney General, abuse of powers by the police could happen in the process of prosecution as well as in the course of arrest.

The proposed amendment in paragraph 5.14(c) of the document also contravenes the judicial spirit in Hong Kong. According to this proposal, if it is proved that someone implies that he is a triad member, it will be the responsibility of that person to prove that he is not. In other words, the burden of proof has switched from the prosecution to the defence.

With regard to the scheme of renunciation of triad membership, I support the intention of the scheme in principle. But I also have some suggestions. Under the proposal, the Registrar of Societies (that is, the Commissioner of Police and his deputies) will have the power to refuse to accept applications for renunciation if he thinks that an applicant is seeking renunciation in order to avoid prosecution: this is a useful saving clause, and I hope it will be used where necessary in order to avoid the scheme's being abused by hardened criminals. Secondly, it is important that the renunciation should be accomplished as a formal ceremony, before a magistrate, if possible. Thirdly, the details and identities of those participating in the scheme must be kept confidential: this will mean that any ceremony will have to be held *in camera*.

In principle, the proposal concerning the protection of evidence is feasible. But once enacted, the legislation must provide flexibility in application. If the statements given by a witness are contradictory, he should be given a chance to explain the reasons. The court also has to investigate carefully to see if the witness's explanations are satisfactory before deciding whether he has committed perjury.

In this way, the witness could be prevented from not confessing all the details and from failure to turn up to give evidence at later trials because they have been bribed or intimidated. On the other hand, it can also prevent a nervous witness from giving inaccurate statements unintentionally or being unable to express himself clearly.

I would also like to express the following views which go beyond the context of the document:

1. The document does not provide any substantial information on the situation concerning triad societies. For example, there are no figures to show the effect of previous legislation in cracking down on triad societies and there is no mention of the reasons accounting for the powerful growth of triad societies.
2. The document has placed too much emphasis on expanding the enforcement power of the police and on the charging of suspects, but lacking in positive suggestions such as the following:

Gambling activities (both legal and illegal) could be suppressed by discouraging the habit of gambling with such means as providing educational guidance to improve the people's spiritual life or by providing healthier forms of entertainment for the public, so as to create a healthy social atmosphere.

Assistance and guidance, e.g. employment counselling should be provided for discharged prisoners and the Social Welfare Department should work in conjunction with other Government department.
3. I agree that more severe sentences should be imposed in tackling crimes. But this does not mean putting the emphasis solely on amending the law. The problem of crime can be dealt with more thoroughly by focussing on the judicial system as a whole, e.g. by imposing longer terms of imprisonment to create a deterrent effect.
4. Existing penalties must be carried out. They are meaningless if they are never enforced. Otherwise, no matter how severe they may be, they will carry no deterrent effect.
5. The Government should have stricter control on the licensing of billiard saloons and automatic games centres so that they will not be run by triad members. Efforts should also be made to eliminate illegal establishments while providing an effective channel for the public to report triad activities.

In conclusion, to attack triad societies on all fronts, comprehensive measures must be laid down to tackle the roots of the problem. To impose heavy sentences is an effective method, because if strictly enforced, every citizen will be cautious and will not dare to play around with the law.

DR. LAM (in Cantonese): Sir, it is indeed a piece of good news to the people of Hong Kong that the Government, viewing with great concern over the harm done to our society by triad activities, has planned to take tougher actions to fight against triad gangs. In principle, I am in favour of imposing heavier penalties so as to deter unlawful triad activities. However, the triad problem is in fact related to the whole social system and the problem cannot be completely resolved merely by imposing harsher penalties.

I welcome the proposal on protection of witnesses as put forward by the discussion document. I suggest that the police should consider setting up a hot line to receive complaints and information about triad activities from the public and re-establishing a centralised Triad Societies Bureau to co-ordinate all efforts throughout the territory to combat triad gangs.

The option for police supervision proposed by the document is a form of double punishment in disguise. As discharged triad offenders have already received their due punishment while in prison, it is unfair for the police to impose further supervision on them. Under police supervision for a long period, discharged offenders may find it hard to find a job and this may affect their efforts in rehabilitation. They should be allowed to enter freely into billiard halls, entertainment places and carry paging machine just like ordinary citizens. I believe that everyone of us in this Chamber did have done something wrong in the past, if we adhere to the principle of 'do not impose on others what we do not want to be imposed on ourselves', we will not give our consent to the proposed supervision on discharged offenders so readily.

If the option contained in para. 5.14 is adopted, it is very likely that some people who have no affiliation whatsoever with triad societies but who like to utter triad jargons for the sake of fun may be sent to court. Perhaps this option can deal a blow to the 'small potatoes' of triad gangs and also those young men who are on the verge of committing crimes. Only these 'marginal' people will proclaim themselves to be triads without any scruples, and they will also go around engaging in extortion and bullying activities. On the other hand, the identities of the core members are usually well-covered and they have a proper occupation too. Therefore the above options are not effective weapons against them.

Although the police may consider that the options proposed by the document will not increase their power, but enlarge their scope of work instead, yet after the scope of work of the law-enforcers has been enlarged, the realm of power will naturally expand—this is a logical result. In view of the fact that in 1985, an average of 12 cases of complaints against police were lodged by the public every day, we must proceed very carefully and take appropriate measures to prevent police community relations from deteriorating.

Sir, with these remarks, I support the motion.

6.00 pm

CHIEF SECRETARY: Sir, with your consent, I move that Standing Order 8(2) be suspended so as to allow the Council's business this afternoon to be concluded.

*Question put and agreed to.*

MR. MARTIN LEE: Sir, the triad problem has been with us for many many years. Like everybody else in Hong Kong I wish to see this problem contained although it would be too optimistic to hope that it will be eradicated.

The discussion document is, I regret to say, unsatisfactory in many ways. As many of my colleagues have already spoken and others will speak on the specific proposals contained therein I will confine myself to what I consider to be fundamental general principles.

Our principal task is to find out what is wrong with the present system in relation to the triad problem. In this regard, it should be noted that there are generally four stages which involve different sectors of the community:

- (a) first, the public—in reporting triad-related crimes;
- (b) then the police—in investigating these reports with a view to arresting the culprits;
- (c) then the Legal Department—in prosecuting such crimes; and finally
- (d) the Judiciary—in trying these cases and sentencing the offenders after conviction.

There seems to be a general reluctance on the part of the public to report triad-related crimes to the police. This is due mainly to the following reasons:

- (i) fear of reprisal;
- (ii) no confidence that the police would give sufficient protection to the public if they report these crimes;
- (iii) the belief (rightly or wrongly) that some members of the police force work hand in glove with triad members so that if the public were to report such crimes to the police, they may be victimised by the police; and
- (iv) not enough has been done by the police to facilitate the reporting of these crimes.

Fear of reprisal can and will be removed, if the police could rectify the other three matters.

This is time for our police force to take a serious look at its own deficiencies and try to improve on them. The police should start by making it easier for the public to report triad-related crimes, for example, by having a hot line as suggested by the Hong Kong Bar Association; then they must dispel the belief that they are working hand in glove with triad members by doing more to seek out all the bad elements within the force and bring them to court; and further, they should assure the public that as soon as they report these crimes, they will, if they so request, receive immediate protection from the police which will continue even after the culprits have been dealt with by law.

Sir, with these improvements, I am sure that the public will be much more ready to report these crimes and give evidence at the trial of these triad members. And there will not be much problem in the prosecution and the trial of these offenders.

But if after those improvements have been made, it is found that the powers of the police are insufficient to enable them to secure convictions of guilty triad members and that without the proposed additional powers, it will be difficult, if not impossible, to secure their conviction, then we will certainly consider the proposals carefully. But even then it is still incumbent to provide additional safeguards against the possible abuse of these additional powers.

Sir, with respect, this is how the problem ought to be tackled. But this discussion paper adopted a wholly different and unsatisfactory approach, namely:

- (a) firstly, by stating that the triad problem is a very great one;
- (b) secondly, by pointing out that there are some deficiencies in the present system, namely:
  - (i) the reluctance on the part of the public to report these crimes and give evidence at the ensuing trial;
  - (ii) the fact that only petty criminals are arrested, prosecuted and convicted; and the
  - (iii) the leniency and light sentences are meted out by the courts; and
- (c) finally, by suggesting that more powers should be given to the police, and see if the problem will thus be solved.

With respect, this approach is entirely illogical, totally misleading in its conclusion and it misses the wood for the trees. The result is that our attention is diverted away from the real and immediate problems which pertain to the police force and focussed instead on the reform of our legal system. This is putting the cart before the horse. For until the police has succeeded in putting its own house in order, any additional power is likely to aggravate the problem even more. If the public do not trust the police with the present powers, the public will trust the police even less with additional powers.

Sir, in relation to the recent survey conducted, I wish to make the following points:

- (a) Firstly, the apparent support from the public on 'the spirit of the discussion document on options to combat the triad problem' should be viewed with the greatest care because it is so easy to influence public opinion by framing the right questions. Suppose the public were asked the following questions:
  - (1) Is rape very prevalent?
  - (2) Should we not try to reduce the number of rapes in Hong Kong?
  - (3) Should the police be given more powers so as to reduce this particular crime?I am sure the public will also respond enthusiastically in support. And so with murder, robbery and commercial crimes. If we were to continue to increase police powers as a result of these surveys, we will become a police state very soon indeed.

- (b) Secondly there is general concern among the people surveyed that there should be additional safeguards against abuse. There must not be additional powers without additional safeguards.

Sir, the triad problem must be tackled with resolve, as there is too much triad influence in our society especially on our young people. But the problem cannot be solved unless the police has the confidence of the people. So let improvements start with the police. And let us not interfere with our existing legal system unless it is absolutely necessary to do so.

Sir, I support the motion.

MR. LEE YU-TAI: Sir, the discussion document has focussed mainly on problems of prosecution and penalties concerning triad activities and has overlooked the 'preventive' aspect and the 'follow-up' actions that are necessary to help triad members start anew. The document therefore seems to have failed in grasping the problem in its full context and the options therein cannot be fully effective in rooting out the triad problem.

Triad societies have made young people their main targets of recruitment. Triad members penetrate into schools; by intimidation or bully, they make juveniles and those academically poor students their preys and force them to participate in triad activities. Many young people leave home and school because of inducement or threats and become bond slaves under the control of triad societies. Their parents and teachers are helpless in bringing them back. At present, the Protection of Women and Junveniles Ordinance is unable to impose adequate protection for juveniles as it only provides the Director of Social Welfare with the right to guardianship. Action should therefore be taken to review and amend the Ordinance as soon as possible so that parents may then apply to the court or the authority concerned for injunctions to relieve their children (who are still juveniles) from the intimidation and control of the triad societies whereby they may lead a normal life again under good protection. Success in stopping the triad societies from recruiting new members would mean success in the prevention of triad activities.

The document has examined the questions of penalties and supervision at great length, yet no substantive programme has been drawn up for the rehabilitation of ex-offenders who wish to start a new life. Furthermore, it even proposes to restrict the freedom of the ex-convicts. Such measure would make it extremely difficult for those under supervision order to return to their normal lives. On the contrary, they would be discriminated and looked down upon as 'objectionable' elements of society. They would have no alternative but join their gangs and take up their former activities, thus the 'once a triad, always a triad' effect is again strengthened. To prohibit those with criminal records from entering certain public places would inevitably produce a kind of 'branding' effect too. A person will have to suffer from the social stigma of being rejected

by society even though he is determined to turn over a new leaf. It is therefore unfair to impose such 'branding' effect and careful consideration should be given to the proposal.

The influx of refugees from Vietnam and immigrants from China in the '70s had produced a great strain on the manpower of the police force. The triad societies took advantage of the situation and expanded themselves. Comprehensive and all-out counter-action would need to be launched in order to successfully contain the triad problem.

Sir, I would suggest the introduction of more preventive measures and stricter legislation to stop triad societies from recruiting new members. Furthermore, I would suggest more 'follow-up' actions and better rehabilitation programmes to help those who have gone astray to start anew and lead a normal life again.

MR. LIU (in Cantonese): Sir, triad societies and their illegal activities have a long history in Hong Kong. They are deeply rooted, involving a very wide range of criminal offences. It is known to everyone that triad societies bring great calamity to the society. This discussion document on 'Options for Changes in the Law and in the Administration of the Law to Counter the Triad Problem' describes in great detail the organisation of triad societies and the offences committed by their members. It serves to confirm the threat posed by triad societies to the social order and peacefulness of Hong Kong. The Government's determination to combat triad activities and to prevent further spread of crimes deserves support from every member of the public. Therefore, I fully endorse in principle the spirit of this discussion document.

However, as some of the options in the document are controversial, I wish to comment briefly on the options which I support and state my reservation on the rest for Government's consideration.

Firstly, as regards the tackling of serious crimes, the central and district fight crime committees already formed a very effective structure which should be maintained and strengthened so as to achieve the objectives of crime prevention and public education and to provide feedbacks on various means to combat criminal activities and organised crimes. However, given the extent of the triad problem, there appears to be a need to set up an additional body to deal specifically with the problem. Despite their past achievements, central and district fight crime committees should not be relied solely upon. With the setting up of a specialised body, all relevant resources and professional talents could be pooled together to co-ordinate and effect anti-triad measures through the assistance of the police and various departments concerned. In my view, the triad problem is a special problem which calls for specific measures. Relying simply on the existing central and district fight crime committees cannot possibly yield the best result from the available resources and manpower in the purge against triad societies.

My second point relates to triad influence on youths in schools. I am extremely concerned about this problem. I understand that the police, the Education Department and the school authorities have maintained close liaison to counter the problem over the years. The Education Department has also set up a Standing Committee on the Unruly and Delinquent Behaviour in Schools to monitor the discipline of students. However, the problem that we now face is that students, especially those with poor academic results and lacking in family care, are often targeted for recruitment into triad societies under threats and inducement. In view of this, more efforts are required to step up preventive measures in schools. It seems that the discussion document only touches briefly on this point. I hope that the Government will formulate specific proposals to prevent students from going astray and being induced by triads to join triad societies.

I agree in principle, though not without reservations, to the various options to counter criminal activities of triad societies stated in the discussion document. For example, to prohibit convicted triad members from entering electronic games centres, billiard saloons and martial art schools may stop triads from making trouble in these places, but their activities are not confined in these places. Forbidding them to go to these premises does not guarantee that they will not gather at other unexpected places, or even carry out more secret activities which render police investigation even more difficult. This option should therefore be studied further. Moreover, I think that the above restriction seems to deprive the individual of his basic freedom. It is therefore necessary to strike a balance, on a comprehensive basis, among the various aspects in order to ascertain whether this option is practicable and effective.

Apart from this, I fully support the legal procedure concerning the scheme of renunciation of triad membership stated in the discussion document. The scheme allows those who were triad members to have a chance of rehabilitation. I therefore believe that although this option is controversial, it deserves to be put under trial for a short period in order to assess its effect.

I agree to the 'identification parades' proposed in the document. Under the proposed method, it is not necessary for the witness to face the suspect during the parade. I hope that the police will consider and accept this proposal as many citizens are afraid to come forward for fear of being identified and retaliated upon. I hereby call on the police to promptly adopt the new proposal on identification parade to encourage more witnesses to come forward and give assistance to the police as far as possible without fearing the consequences in order that criminals will be put under proper punishment by the law.

I would like to make a further point about the proposal to legalise more gambling activities. This is really a serious mistake which can never help tackle the triad problem. On the contrary, this will bring about a negative effect by encouraging more gambling activities. Members of the public will suffer more both in terms of morality and money. I understand that the Government

already has reservation on this proposal. Therefore, I would like to emphasise specifically that I hope Government will shelve this proposal.

MR. POON CHI-FAI (in Cantonese): Sir, the increasing triad crime problem in Hong Kong has reached a stage which threatens the territory's stability and prosperity and the pursuit of a contented life by its residents. Public anxiety over triad crime is sufficiently reflected by calls made by the public in the media for heavier penalty and restoration of the capital punishment.

The discussion document issued this April by Government proposes heavier penalty and an attack against triads. The determination shown by Government to combat triads is indeed worthy of our support. The proposals in the discussion document are also relatively and generally acceptable. However, some of the proposals would need to be reconsidered and improved upon. The Discussion Document also seems to have placed too much emphasis on suppression and penalty at the expense of youth education and rehabilitation of offenders. These are the questions that I would now like to address.

(1) *Revision of fines*

Paragraph 5.10 of the discussion document refers to the non-revision of many fines for some years. The present proposal for increasing the fines merely serves to offset the inflationary effect over the years and is therefore at variance with the hope of the public to see heavy punishment and tough laws being used to reduce crime in the present-day situation where crime is becoming an increasingly serious problem. I hope that Government would consider raising the fines to above the inflation adjustment levels.

- (2) Paragraph 5.26 of the discussion document states 'the supervision order could be imposed by the courts *after* sentencing or application from the prosecution'. This is unreasonable because it amounts to imposing further penalty after sentencing, which is against the spirit and principle of law. If the supervision order is to be regarded as part of the whole penalty, then it must be put before the court prior to sentencing to enable the court to consider both the order and other penalties as a whole. In fact, supervision as such is not a positive way to help an offender to make amends and turn over a new leaf. It is also against the principle of educating rather than punishing an offender. On the contrary, the provision of appropriate counselling, probationary and employment services can strengthen the confidence of an offender in starting a new life on return to society. Periodic appointments for him to visit a probationary officer or a social worker may be more useful than a supervision order.

(3) *Limits on the activities of triad offenders*

The proposal to restrict the activities of convicted triad members for a period of at least two years after release from detention is difficult to accept

and is contrary to the principle of law. It is particularly unfair to persons who merely possess triad membership but have not been convicted of other offences. As an example, whilst a non-triad convicted of rape and wounding may have free access to the racecourse, billiard saloons and games centre, there is no reason why a triad with no other convictions should be deprived of similar rights. In addition, in so far as these establishments are lawful, it is illogical to prohibit access to them. If they were unlawful, then both their operators and clients would have violated the law and clearly should have been banned. Furthermore, the discussion document refers to paging machines, which for some people, have become a means of making a living. The prohibition on convicted triads from enjoying such entertainment and using their means of making a living is difficult to justify.

(4) *Renunciation of triad membership*

Sir, I have no objection to the scheme of renunciation of triad membership. As a matter of fact, some triad members were forced, induced or misled due to youthful ignorance into membership. The scheme can provide an opportunity for these people to turn over a new leaf. However, some of them may fear that public renunciation would endanger their life or damage their family or personal reputation, or they may not wish their family to know or their relatives and friends to become prejudiced against them. Such people may not have the courage to take advantage of the scheme. While I do not approve of triads, I cannot help but feel that too much emphasis is placed by the discussion document on giving an impression that a triad member may be prosecuted at any time and that a magistrate may be asked to impose heavy penalty. There should not be one treatment for all triads. The most important consideration is whether they have committed or engaged in any serious crime or criminal activity. The mere possession of triad membership without any other offences should not be treated as a serious crime. In sentencing an offender, only the gravity of the offence should be considered, regardless of whether the offender is or is not a triad. An offender charged only with being a triad member and who has never previously committed any other offence should receive a light sentence so as to make it easier for him to turn over a new leaf. Otherwise, by driving him to the wall, the opposite result may happen.

(5) *Legal gambling*

I object absolutely to more legal gambling. Many crimes are in fact rooted in a disposition for gambling and subsequent loss of money. The legalisation of gambling would encourage the activity and directly or indirectly leads to more crimes. If legalisation is aimed at reducing the major income for illegal organisations, then are we to legalise vice and drug-trafficking as well? In this respect, I am pleased to learn that Government, in response to public views, have decided not to allow more legal gambling.

(6) *Preventing the police from abusing its powers*

The police are a large force and it is almost impossible to ensure that there is no black sheep among its members or no abuse of powers will occur. Judging from the increase in the number of complaints against the police and the results of a recent opinion survey by this Council in which 50 per cent of the respondents expressed a worry that police power would become too large and might be abused and 66 per cent of them considered that there were at present no adequate safeguards to prevent the police from abusing its powers, it seems that the public have not much confidence in the force. The authorities concerned should, apart from making every effort to enhance the quality and reputation of the police, set up an independent body with members drawn from the Legislative Council, district boards and the public to monitor any possible abuse of powers and to receive complaints.

Sir, before I conclude, I wish to emphasise particularly that heavy penalty and tough laws are a very useful way to deter crimes. The use of heavy punishments at troubled times is indeed inevitable. Lenient sentences handed down by some courts tend to undermine the deterrent of the punishments prescribed by law and encourage the growth of crime. I hope that the authorities concerned would, as far as possible, list out the maximum as well as the minimum penalties of all offences in our penal code and make sure that serious crimes would be severely punished. Also, imprisonment and payment of a fine are no longer the penalties with the best deterrent effects. Some illegal syndicates regard such fines as part of the operational costs of their illegal activities whereas many criminals think of imprisonment as mere vacation. Instead, caning as a punishment is what strikes fear in the criminals and leaves a lasting memory and as much, is the best deterrent. I hope that for criminals committing serious crimes, the authorities concerned would consider caning as a penalty in addition to imprisonment in order to achieve a deterrent effect. I think that heavy penalty and tough laws, supplemented by moral education for young people, prompt introduction of civic education, extensive anti-crime publicity, promotion of public awareness of the evils of triad societies and a rehabilitation programme for offenders, would help to curb crimes by tackling the problem both at its source and at its manifestation.

MR. TAI: Sir, the consultative paper on the triad problem has been extensively debated by district boards and various bodies. It demonstrates the concern of our society over the activities of triads now existing in Hong Kong, in particular, the concern of penetration by triads in our schools and the effects of their influences on our youths during their formative age. Indeed, if the triad problem is not seriously tackled, it will hinder the proper maintenance of law and order in the territory.

I shall only speak on two aspects arising out of the consultative paper: they are sentencing and the proposed changes to the law of evidence.

Over the years, the Judiciary has taken a lenient attitude towards triads and its related offences. Despite the fact that the maximum sentences for triads and its related offences are imprisonment up to 12 months or over, custodial sentences are rarely imposed. Most offenders are usually fined for committing such offences, occasionally coupled with suspended sentences.

Reformatory measures have also been taken by the appropriate authority to deal with those who have substantial connection with triads, but the dimension and proliferation of triads now existing in Hong Kong do suggest we have to take another look at the problems facing us and, perhaps, there is a need to take deterrent measures against these offences.

By and large, triads in Hong Kong are not as well organised as the mafia in the United States. None the less, they prey on the fear of the general public. They are usually involved in assault, blackmail, extortion, drugs, vice and gambling cases. The suggestion in the paper proposes a measure in fine as one means of deterrence. I personally have queries over its effectiveness as a deterrent measure. One has to look at the personal background of the triad members, they are usually school drop-outs with complicated family backgrounds and very often do not have steady jobs. For technical offences or for offences which do not pose a serious threat to the well-being of our society, a fine would be a proper deterrent measure. But with the problems of triads now being faced in Hong Kong, compulsory custodial sentences may be warranted.

The next aspect I would like to speak on is the proposed changes to the relevant provisions of the Crimes Ordinance relating to witness statements made during the course of police investigation. In order to secure prosecution cases, the paper proposes to amend sections 32, 33 and 39 of the Crimes Ordinance to deal with hostile witnesses who make contradictory statements at the time of trial. The clear disadvantage is that a witness who has made a statement of fact which he may be uncertain of may resist to tell the truth in fear of sanction in the proposed changes to the Crimes Ordinance; hence, his statement is locked to a particular version of event at the time of the trial, thus causing injustice. A further point to note is that the proposed changes to the relevant sections of the Crimes Ordinance will not only have an effect on the law of evidence relating to the triad cases, but it will affect witness statements in all criminal cases, upon which I hope the Administration will be able to clarify.

MRS. TAM (in Cantonese): Sir, every law-abiding citizen living in this society basically enjoys equal rights while his life, property and personal freedom are all under protection. However, the life and personal freedom of the general public are being seriously threatened by the increasing rampant triad activities. Triad activities are really becoming intolerable and must be dealt with by a proper remedy, so that order can be restored.

The basic spirit of the document being discussed by this Council today is to adopt more stringent laws and stricter enforcement measures to suppress triad activities. I agree with this spirit in general, but at the same time, I want to reiterate two important principles. First, changes in the law should not be made unless it has been proven that existing legislation is outdated and that they have lost their effectiveness. On the other hand, the changes proposed must reflect efficiency and improvement. Care should also be given to prevent any possible abuse which may result from the changes. Secondly, although severe penalties and stringent laws often constitute a basic method to solve social problems, they are not the only means. In order to suppress triad activities effectively, I think it is not enough to make appropriate amendments to the law alone; the Government and society should also work in full co-operation with each other, e.g. by further improving the rehabilitation of offenders scheme and by reinforcing the youth counselling service. It is only through whole-hearted joint efforts of various sectors of the community can triad activities be suppressed effectively.

The report before me carries many recommendations on how the existing legislation and enforcement measures should be changed. But due to time constraint, I would like to concentrate my views on the following three aspects:

#### I. *Police Supervision Ordinance*

This document recommends that the Police Supervision Ordinance, which was repealed in 1983, be now re-introduced in a milder form, targeting at 'potentially dangerous re-offenders'. I think careful consideration should be given to the reasons for repealing this Ordinance in 1983 to ensure that such reasons would not affect the new ordinance proposed. Moreover, according to Hansard, one of the four reasons given by the Secretary for Security at that time to support the repeal of the Police Supervision Ordinance was that the courts tended to support a supervision scheme which should be more helpful to the rehabilitation of offenders. The proposed supervision scheme, though milder, is still essentially a measure of social restraint and does not carry any rehabilitative function. Its targets therefore, should not be those 'potentially dangerous re-offenders' mentioned in the document, but recidivists who have committed serious crimes and with a long criminal record. I think what the 'potentially dangerous re-offenders' should receive is the kind of rehabilitative scheme provided by the Correctional Services or other concerned Government departments.

At the same time, I have some reservations on the proposal requiring those under supervision to be given a special form of caution on being charged. On the one hand, it is against the current judicial spirit in Hong Kong to pass the burden of proof onto the defendant. On the other, this proposal will indirectly make known the defendants' past criminal records to the judge and hence, might bias the trial.

## II. *Limits on the activities of triad offenders*

The document proposes to rob triad folklore of its 'glamour' by placing restriction on the behaviour of individuals who have been convicted of triad membership or claiming or professing triad affiliation, and by prohibiting such individuals from entering certain places of entertainment. I agree that triad folklore should be robbed of its 'glamour', but I have some reservations on adopting the above-mentioned approach for three reasons which are set out below.

First, restricting triad members from entering the above-mentioned places of entertainment does not necessarily mean that opportunities for committing crimes will be reduced. Triad members could easily switch their base to football grounds, theatres, or even restaurants, thus creating greater disturbance to the public.

Second, the above proposal has imperceptibly extended the arms of the law. Triad members without any criminal record might also be charged if they visit prohibited places of entertainment. This might create a sense of social discrimination among those who have been triad members and reinforce their belief that 'once a triad, always a triad' thus making it more difficult for them to re-live the life of a normal person.

Thirdly, some of the prohibited places of activity listed in the document have been inappropriately included, e.g. billiard saloons and electronic games centres. I cannot agree with this because billiards and electronic games are decent forms of entertainment welcome by many young people. Moreover, billiard saloons and electronic games centres are not indecent places of entertainment. Problems only arise from the lack of effective control measures. Once the Control of Billiard Saloons Bill and the Automatic Games Centres Bill, which are currently being drafted, are passed, it is believed that the management conditions of these places will be improved. Thus they should not be included as prohibited places of entertainment.

## III. *Scheme of renunciation of triad membership*

The document proposes to implement a new scheme through legislation so that triad members who wish to renounce their triad affiliation may do so by completing a form of declaration. I fall in with such an idea but the loopholes contained in this proposal must be plugged. According to the document's proposal, any person who wishes to renounce his triad affiliation through this scheme must first identify his triad status, complete a form of declaration and then return it to the Registrar of Societies or a magistrate, who will decide whether the application should be accepted. While it is stipulated that no prosecution would be made by the authorities on the basis of admissions contained on the form once such a declaration is accepted, the proposal gives no specific guarantee that the declarer will not be prosecuted when the declaration is not accepted. This loophole is unfair to the declarer and the worries it creates

will also deter those who really want to renounce their triad membership from coming forward; hence, will affect the result of this scheme. I therefore propose that an amendment be made to protect the declarer from being prosecuted even if his declaration is not accepted.

Finally, whether an ordinance can fulfill its expected legislative purpose depends on whether there are sufficient and compatible enforcement measures. In order to deal with triad activities effectively, the Government had once set up a Triad Societies Bureau within the police force. But for various reasons, the bureau was disbanded by the Government toward the end of the 1970's and district police units became responsible for anti-triad work. Although this decentralised approach provides a higher degree of flexibility, it prevents police expertise, information and financial resources from being centralised for maximum results of anti-triad efforts. Today I am glad that the Government is taking the triad problem seriously and has come up with some options for legislative changes to deal with triad activities. But at the same time, I hope that the Government will attach importance to enforcement power and measures by re-establishing an anti-triad unit within the police, so as to centralise resources against triads.

MR. TAM (in Cantonese): Sir, it is commendable that the authorities are taking the triad problem seriously and are considering measures to suppress triad activities. But I think part of the contents of the discussion document submitted by the Government is debatable.

In the first place, the discussion document has generally exposed the rampant situation of the triad problem today but it provides little relevant information to prove the seriousness of the problem, not to mention the lack of a more profound and comprehensive analysis of the various causes leading to this problem. Moreover, the suggestions stated in the document for tackling the triad problem tend to concentrate on the aspects of law enforcement and prosecution. While no consideration has been made from the angle of counselling, the document also markedly reveals that the Government does not have an integrated and comprehensive plan for preventing and suppressing triad activities, or for cutting off the various factors which contribute to the expansion of triad power.

I have certain doubts about the following proposals in the document:

- (1) The proposed placing of a supervision order on the 'potentially dangerous reoffenders'—on the face of it, a supervision order no doubt has its effectiveness and carries a certain deterrent effect. But if it is misused or used on youths who are only first offenders, it might also create an adverse effect which is fairly serious, and might give rise to more anti-social behaviour. I therefore suggest that the supervision order should, if it is to be enforced, be placed mainly on the core members of triad societies to create the desired deterrent effect.

- (2) With regard to the prohibition order, even if we put aside our misgivings and worries about its restrictions on personal freedom and the creation of double punishment, I still have doubts about the effectiveness of the order. What is not obvious is that restricting triad members from going to certain places does not mean that their chances of committing crimes would be reduced, because they can easily gather at some other places.
- (3) It is proposed that the Societies Ordinance be amended but would this affect innocent societies which have no triad affiliation? It is quite necessary for the Government to distinguish between lawful societies from triad societies in the legislation.

By and large, I think the following points should not be overlooked in considering the discussion document:

- (1) We want to deal with the triad problem. But what are our actual targets? 'When the tree falls, the monkeys run away'. In my opinion, if we want to crack down on triad societies, emphasis should be placed on disconnecting their financial sources and on getting rid of the core members of such organisations.
- (2) We want security for our society. But the proposals in the document, on the whole, might lead to the expansion of police power and the interference with civil rights. This problem must not be taken lightly. If the proposals in the document are to be implemented, there must be some effective and strict monitoring measures. But the discussion document did not go into depth on the social effects which would arise from the implementation of the proposals. Furthermore, it lacks proposals on how to prevent the emergence of the above-mentioned problem.
- (3) In order to solve the triad problem, it is necessary to mobilise the entire community. But the latent threats posed by triad societies have prevented the effective operation of 'full-fledged' legal measures. Prevention of the infiltration of triad influence into the police force will help to reduce its threatening force and so reinforce public confidence in solving the triad problem.

Finally, I would like to point out that security is one of the conditions for the stable development of the society. Since triad activities have a damaging effect on security, the society has no place for them. The discussion document tabled before this Council today could be regarded as the first step taken towards success. We must try to get to the root causes of the triad problem by adopting a more comprehensive and thorough scheme that brings together various systems of the community, so as to attain better results and minimise any social effects.

MR. ANDREW WONG (in Cantonese): Sir, first, allow me to take this opportunity to congratulate the Government, the Fight Crime Committee and its Working Group on Gangs for their discussion paper entitled 'The Discussion Document on Options for changes in the Law and in the Administration of the Law to

Counter the Triad Problem', which is as good as or even better than reports submitted by consultant firms. I would also like to take this opportunity to urge Government to make use of its own resources here in Hong Kong rather than utilising public funds to hire overseas consultant firms to conduct studies on social policy issues in future.

Sir, please also allow me to salute the members of various district boards as well as each and every organisation which has submitted written representations on the issue. The improvement and betterment of policies as well as the control and solution of social problems depend on a constant exchange of views amongst people from all sectors. I would also like to give my views on the issue in this adjournment debate.

The whole discussion document centres on the triad problem, as its title suggests. As is commonly known, triad societies are organisations or associations of criminals but they are not the whole community of culprits of organised crime or all other sorts of crime. Therefore, to pinpoint triad societies will bring about two problems. The first is about fairness. Is it fair to pinpoint triad societies but not all other criminal organisations? The second is about effectiveness. By pinpointing the organisation but not the offence, are we putting the cart before the horse? Will it force criminals to denounce their triad membership and continue to commit offences in another organised form? Critics do have a point to make when they say the discussion document is far from comprehensive. Apart from tackling the triad problem within its own terms of reference, the discussion document has also considered the overall problem. In addition to discussing the RICO (Racketeer Influenced Corrupted Organisations) Statute of the United States of America, the discussion document also suggests in paragraph 6.85 that further study of the RICO Statute should be conducted. By the way, the American Statute should be more appropriately translated as 'fraudulent corrupted organisations' statute and the so-called fraud covers blackmail, extortion and deception.

There is something wrong with the concept of identifying triad societies as criminal organisations. Not all triad members are criminals. Some may have never committed any crime. Others will never do so. While still others may have done so but have already turned over a new leaf. However, it is perfectly reasonable to classify triad societies as illegal organisations and regard triad members who, once affiliated, as having committed certain offences and thus as criminals. A society may allow organisations to be formed by its people to have privacy, but not absolute secrecy. A free society like Hong Kong should allow its people to have the freedom of association and allow the societies to have privacy. However, it should not allow its people to form societies secretly and carry out secret activities, because it is not privacy, but rather indulgence, the self-indulgence as well as Government's indulgence of some people. It will result in a chaotic situation all the people against all, rather than a free and spontaneous order. The Societies Ordinance was enacted for this purpose. In view of the fact that the Societies Ordinance specifically deals with triad

societies, and that triad members are not necessarily criminals, and they may not or will not commit any offence, I therefore support the scheme of renunciation of triad membership as proposed in paragraphs 5.44 to 5.46 of the discussion document.

Sir, it is generally thought that punishment should have three functions: retribution, reform and deterrence similar to hon. YEUNG Po-kwan's propose punishment, achieve deterrent effect, and promote rehabilitative education. I believe that it is wrong to think in this way. All punishment should only have one objective, i.e. to give due retribution which is not retaliatory. This does not exclude capital punishment because this may be the due retribution for certain offences. Reform is simply the effect produced, either deliberately or accidentally, when imposing the penalty. Deterrence is something even more accidental. Therefore, while I support the proposal to review the amount of fines and to increase the years of imprisonment in para. 5.14(a), the rationale behind should not be deterrence. I cannot agree with the saying: 'Dish out harsh sentences in times of Chaos'. Therefore, in principle, I am opposed to the proposal of supervision order in paras. 5.23 to 5.30 and those on restricting the activities of triad members in paras. 5.34 to 5.35. I would also like to earnestly request those who support in principle the above proposals to consider whether these measures are really practicable and effective.

Sir, any law and any legal measures should have the result in mind but we must be also very fair. Therefore the law makers must be very fair. Our Administrative Officers' ties all bear the word 'fair'. Therefore in dealing with any any social problem, in dealing with any law reform we must be careful. We must not just look at the result but also look at the fairness of the law. I support the motion.

MR. LAU (in Cantonese): Sir, regarding the options to counter the triad problem, the report in question has given an outline of the measures to be adopted. However, in consideration of the great changes in the social circumstances as compared to those in previous days, what we have to tackle to-day should not merely be confined to the triad problem but should also include other organised criminal syndicates. Considering the recommendations made in the report by the Administration to amend certain parts of the legislation, I recognise that the Administration has a determination to solve the triad problem, but it still remains doubtful whether it could thus attain its end.

In order to eliminate triad organisations as well as criminal syndicate activities, it is an undeniable fact that we must have a comprehensive strategy to act upon. However, we must be very prudent and not act with undue haste irrespective of whether we are amending the current legislation or enacting new laws to that effect or else it would easily exert a pernicious influence and the original purpose of the concept would be defeated.

The Administration should therefore consider the following aspects if it should desire to effectively control the activities of triad societies as well as organised criminal syndicates:

- (1) certain parts of the prevailing legislation to deal with triad societies are apparently outdated in view of the changes in social circumstances. Therefore, if the Administration should consider at the present stage an increase in the penalty and making appropriate amendments to certain legislation in the context of the current social circumstances, it would not only provide a deterrent effect but also assist in the effecting of prosecution procedures. Only by this can we bring about a stop-gap as well as an ultimate solution to the problem.
- (2) The most effective way to eliminate criminal societies is to carry out mop-up operations against them. Therefore consideration should be given to strengthening the police force by way of establishing a special unit to deal specifically with organised criminal syndicates. Some people might have worries about whether the police would abuse their powers. The authority concerned might consider setting up an independent body such as a 'monitoring commission, to be headed by a Judge responsible for dealing with complaints against those police officers alleged to have abused their authorities. Conceivably, it can remove the sense of doubt on the part of the public and effectively safeguard their rights.
- (3) The Government should probe deeply into the reasons and background leading to young people's joining triad societies and committing crimes; and accordingly work out its educational and publicity policies. At the same time, the Government should arrange more cultural and recreational activities for the young people and provide adequate facilities in this respect. By enabling the young people to take part in these activities, it will minimise their chances of getting in touch with the triad elements, thereby steering their way back to the right track and making them become good citizens.

Generally speaking, I support the essence of the discussion paper and most of the recommendations put forward therein. Nevertheless, I do have reservations on some parts which slightly deviate from the spirit of 'rule by law' in Hong Kong, or infringe upon personal freedom.

CHIEF SECRETARY: Sir, this debate marks the final phase of consultation on the discussion document—'Options for changes in the law and in the administration of the law to counter the triad problem'. During the three-month consultation, all district boards and district fight crime committees have discussed the document and earlier this week the written comments of the Bar Association were received.

Other interested groups, and the *ad hoc* group of this Council, have also taken time to study the document and to meet with the Administration to give their views. This consultation has been extremely useful and revealing and I should like to put on record the Government's appreciation of all those who have taken part.

Despite some reservations that have been expressed I believe that it is the general perception that there is continuing and widespread worry about the threat to law and order and to society itself presented by triad societies and other gangs. We have heard today the views of Members which very well sum up the range of these concerns.

I shall not attempt, today, to respond to the points which have been made. They need analysis and conclusions to be drawn. We shall need to seek the advice of the Executive Council as to which options to pursue and how to pursue them, following which a statement will be made, during the early part of the next session of this Council, setting out the way in which the Government intends to take them forward.

Thereafter, since most of the options involve changes to the law, there will be a further stage for public debate when legislation is introduced into this Council. I hope some things can be achieved relatively quickly, others will take longer. But in all these necessary processes and deliberations we must not lose sight of our principal objectives; we have to reassure our citizens so that they will feel able to come forward and give evidence without fear of retribution and we have to find the means to deal with the special characteristics of these organisations which make it difficult to implement normal procedures against them.

Sir, as I have said I am grateful for the comments and suggestions made this afternoon by Members of the Council and I look forward to the continued advice and co-operation of Members in the coming months.

*Question put and agreed to.*

### **Adjournment and next sitting**

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 16 July 1986.

*Adjourned accordingly at five minutes past Seven o'clock.*

(*Note:* The short titles of motion/bills listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.)