

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 12 October 1994

The Council met at half-past Two o'clock

PRESENT

THE PRESIDENT

THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., LL.D., Q.C., J.P.

THE CHIEF SECRETARY

THE HONOURABLE MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR NATHANIEL WILLIAM HAMISH MACLEOD, K.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

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

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

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D., J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E., J.P.

THE HONOURABLE MRS PEGGY LAM, O.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E., J.P.

THE HONOURABLE MRS ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE VINCENT CHENG HOI-CHUEN, O.B.E., J.P.

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, O.B.E., J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

DR THE HONOURABLE HUANG CHEN-YA

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING, J.P.

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

THE HONOURABLE ALFRED TSO SHIU-WAI

ABSENT

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

THE HONOURABLE JAMES DAVID MCGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

THE HONOURABLE SIMON IP SIK-ON, O.B.E., J.P.

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

IN ATTENDANCE

MR MICHAEL SUEN MING-YEUNG, C.B.E., J.P.
SECRETARY FOR HOME AFFAIRS

MR ALISTAIR PETER ASPREY, C.B.E., A.E., J.P.
SECRETARY FOR SECURITY

MR RONALD JAMES BLAKE, J.P.
SECRETARY FOR WORKS

MR JAMES SO YIU-CHO, O.B.E., J.P.
SECRETARY FOR RECREATION AND CULTURE

MR ANTHONY GORDON EASON, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR HAIDER HATIM TYEBJEE BARMA, I.S.O., J.P.
SECRETARY FOR TRANSPORT

MR DONALD TSANG YAM-KUEN, O.B.E., J.P.
SECRETARY FOR THE TREASURY

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

MR NICHOLAS NG WING-FUI, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MRS REGINA IP LAU SUK-YEE, J.P.
SECRETARY FOR TRADE AND INDUSTRY

THE DEPUTY SECRETARY GENERAL
MR LAW KAM-SANG

PAPERS

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

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Occupational Therapists (Registration and Disciplinary Procedure) (Amendment) Regulation 1994	517/94
Occupational Therapists (Registration and Disciplinary Procedure) (Amendment) (No. 2) Regulation 1994.....	518/94
Water Pollution Control (Victoria Harbour (Phase One) Water Control Zone) Order.....	519/94
Water Pollution Control (Victoria Harbour (Phase One) Water Control Zone) (Appointed Days) Order.....	520/94
Statement of Water Quality Objectives (Victoria Harbour (Phase One) Water Control Zone)	521/94
Dangerous Drugs (Amendment) Regulation 1994	522/94
Gambling (Amendment) (No. 3) Regulation 1994	523/94
Medical Laboratory Technologists (Registration and Disciplinary Procedure) (Amendment) Regulation 1994	524/94
Quarantine and Prevention of Disease (Scale of Charges)(Amendment) Regulation 1994	525/94
Official Languages (Alteration of Text) (Adoption Ordinance) Order 1994.....	526/94
Practising Certificate (Solicitors)(Amendment) (No. 2) Rules 1994	527/94
Solicitors (Professional Indemnity)(Amendment) (No. 2) Rules 1994	528/94
Specification of Public Office	529/94

Official Languages (Authentic Chinese Text) (Guardianship of Minors Ordinance) Order	(C)17/94
Official Languages (Authentic Chinese Text) (Foreign Marriage Ordinance) Order	(C)18/94
Official Languages (Authentic Chinese Text) (Adoption Ordinance) Order	(C)19/94

Sessional Papers 1994-95

- No. 1 — Land Development Corporation
Annual Report 1993-94
- No. 2 — Report by the Commissioner of Police on
Police Welfare Fund for the Period
1 April 1991 - 31 March 1992
- No. 3 — Report by the Commissioner of Police on
Police Welfare Fund for the Period
1 April 1992 - 31 March 1993
- No. 4 — The Government Minute in Response to the
Report No. 21A of the Public Accounts Committee
dated May 1994
- No. 5 — The Government Minute in Response to the
Report No. 22 of the Public Accounts Committee
dated June 1994
- No. 6 — Companies Registry Report for the Period
1 August 1993 to 31 March 1994
- No. 7 — Revisions of the 1994/95 Estimates Approved by the
Urban Council during the First Quarter of the
1994-95 Financial Year
- No. 8 — Regional Council Revised Estimates of
Expenditure 1994-95
- No. 9 — Regional Council Revised Estimates of Revenue and
Expenditure 1994-95
- No. 10 — Report of Changes to the Approved Estimates of
Expenditure Approved during
the First Quarter of 1994-95
Public Finance Ordinance: Section 8

- No. 11 — Report by Commissioner of Correctional Services on the Administration of the Correctional Services Department Welfare Fund for the Year Ended 31 March 1993
- No. 12 — Report by the Trustee of the Correctional Services Children's Education Trust for the Period 1 September 1992 to 31 August 1993
- No. 13 — The Land Registry Trading Fund Hong Kong Annual Report 1993-94
- No. 14 — Hong Kong Tourist Association Annual Report 93-94
- No. 15 — The Government Minute in Response to The Sixth Annual Report of The Commissioner for Administrative Complaints Hong Kong dated June 1994

Miscellaneous

Report of the Boundary and Election Commission on the Delineation of Geographical Constituencies in Respect of the Ordinary Election of the Legislative Council to be held in September 1995

ADDRESSES

The Government Minute in Response to the Report No. 21A of the Public Accounts Committee dated May 1994

The Government Minute in Response to the Report No. 22 of the Public Accounts Committee dated June 1994

CHIEF SECRETARY: Mr President, laid on the table today are the Government Minutes which respond respectively to Reports No. 21A and No. 22 of the Public Accounts Committee (PAC). The Minutes set out the actions the Government has taken, or is planning to take, on the conclusions and recommendations in the Reports.

The Honourable Peter WONG, Chairman of the Public Accounts Committee, spoke in this Council on 1 June 1994 and 6 July 1994 when tabling the two PAC Reports. I would like to take this opportunity to respond to some of the points he made.

PAC Report No. 21A deals with two outstanding issues, namely, provident fund and superannuation schemes operated by subvented organizations, and the sale of a commercial site in Garden Road.

As regards the first issue, we note that the Committee's concern is focussed primarily on the superannuation schemes of the University and Polytechnic Grants Committee (UPGC)-funded institutions. We welcome the Committee's support of our view that it should be the responsibility of the institutions concerned to ensure that their schemes are well managed. The UPGC accepts the need for active monitoring of the schemes. It requires the institutions to submit annual reports and actuarial advice on the financial performance of their superannuation schemes. This enables the UPGC to consider and, if necessary, advise the institutions on the remedial action to be taken to rectify any doubts over the longer term financial viability of any of the schemes.

The Committee drew attention specifically to the long-term financial position of the superannuation schemes of the University of Hong Kong and the Chinese University of Hong Kong. The two institutions have recently submitted reports to the UPGC on their plans to address the matter. The UPGC will consider these reports at its forthcoming meeting. We will inform the PAC of the steps taken by the institutions in due course.

On the second issue, we have looked very carefully into the way in which the sale of the commercial site in Garden Road was handled. Our conclusion is that there is no evidence to substantiate any act of misconduct which would warrant disciplinary proceedings. The evidence indicates that the officers concerned took account of a number of considerations which they felt justified their decisions and acted in good faith. Their judgement may now be questioned, but that does not constitute misconduct warranting disciplinary action. We would like to reassure Members that the Central Tender Board will continue to discuss and record fully any substantial differences in tender prices in considering whether to accept a tender.

I now turn to PAC Report No. 22 which examines the results of various value for money audits. First, on the question of fees and charges. I wish to assure Members that we are determined to achieve the policy objective that fees charged by the Government should, with certain specific exceptions, be set at a level to recover the full cost of providing the goods or services. We agree with the PAC's observation that the longer the time span between fee increases, the larger the increase would have to be and hence the more difficult it would be to secure public acceptance.

That is why we have refined our system last year for monitoring and implementing fee reviews and adjustments. Fees and charges for goods or services, where clients or users should pay the full costs incurred, are reviewed annually to take account of inflation. They are also subject to a full costing exercise every four years. For both types of exercises, the departments work to

a predetermined schedule. This ensures that increases in government fees and charges are phased during the course of the year to reduce the impact on the public at any one time. I am pleased to report that this system has been working well. There are, however, still instances where full cost recovery cannot yet be achieved. For example, in the case of licensing hotels, guesthouses and clubs, the full cost of operating the licensing schemes will only be recoverable upon full implementation of the schemes.

In his speech, Mr WONG commented on the inadequacies in the planning of a number of government and public projects. I agree that the departments concerned should make every effort to work out their precise requirements at the planning and design stage. The Government Minute sets out in detail the actions we have taken in response to the PAC's advice in this regard, both project-specific and in general terms. I wish to assure Members that the Administration is conscious of the need to ensure that government projects are adequately planned, that they are completed on time and within budget, and that they achieve their intended objectives.

On the utilization of space in the Housing Authority headquarters building, to which Mr WONG referred in particular, the Director of Housing has, in his response in the Government Minute, assured the PAC that he will continue to provide the Housing Authority with all relevant information to facilitate the Authority in its considerations of housing policy and other development proposals. The Housing Authority, like the Government, fully recognizes the importance of the PAC's observations and recommendations. In the light of the PAC's report, the Housing Authority has requested the Housing Department to conduct a comprehensive review of the allocation and utilization of office space at the Housing Authority headquarters building. The Director of Housing will provide to the PAC the results of the review.

Mr President, the Government is committed to working closely with the Audit Department and the PAC in the quest for the more efficient use of public funds. I am confident that the measures we have taken, or are planning to take, will go a long way towards this end.

Hong Kong Tourist Association Annual Report 1993-94

MR MARTIN BARROW: Mr President, I am pleased to table the Annual Report of the Hong Kong Tourist Association for the financial year 1993-94.

Overall, it was a satisfactory year, with the tourism industry enjoying steady expansion. We welcomed 7.2 million "international" visitors last year, compared to 6.9 million in 1992. The increase resulted in part from improved economies in our major long-haul markets — particularly Europe and North America — which encouraged additional travel and tourism spending. In addition, the bullish economic environment in Asia ensured continued travel growth within the region.

Consequently, Hong Kong maintained its position as Asia's most popular travel destination.

In April last year, we begin including the People's Republic of China (PRC) visitors in our statistics. The tally for the year was 1.7 million visitors, making the PRC our second largest market. As a result, arrivals totalled 8.9 million — representing, after adjustment, an increase of 11.6% for the year.

Tourism receipts for 1993 also rose and exceeded HK\$60 billion for the first time. They totalled HK\$48 billion in 1992, but a straight comparison is not possible, because the figure last year included spending by PRC nationals.

We are pleased to note that tourism reaffirmed its new role as the territory's second largest earner of foreign exchange, the expenditure being equivalent to 7.1% of GDP, up from 6.5% in 1992.

It was also a successful year for our hotel sector, which enjoyed an average occupancy rate of 87% — 5 percentage points higher than in 1992. Some tightness in room availability occurred but there was, nevertheless, adequate room supply for most of the year and it is important that this fact is not obscured by difficulties occurring during only a few days. Hong Kong hotels continue to offer good value for money.

In general, then, the main indicators for 1993 reflected a healthy industry.

Looking long-term to the future, to ensure that we take full advantage of the anticipated boom in travel worldwide, we have for some time been encouraging the development of new hotels, talking to both the Government and private sector. At the same time, of course, sufficient airport capacity will also be critical to meeting the anticipated increases in demand.

In view of these and other opportunities we anticipate, it has become increasingly evident to the Association that a long-term strategy is required. To this end, the Hong Kong Tourist Association (HKTA) commissioned the "Visitor and Tourism Study" together with the Hong Kong Government's Planning Department. The study will address key planning and development questions related to facilities and infrastructure.

During 1993, we also decided to revise our marketing strategies. We have for several years based our activities overseas on the theme of "Stay an extra day". Given changing market forces and infrastructural conditions, we are now concentrating on encouraging the even spread of business throughout the year. We are, therefore, focussing on market segments which are not season-sensitive, as well as those willing to pay for the quality which the territory offers.

In 1993, the Association also undertook a significant marketing initiative with the launch of the Pearl River Delta Tourism Marketing Organizations.

The HKTA played a prominent role in bringing the China National Tourism Administration, the Guangdong Provincial Tourism Bureau and the Macau Government Tourist Office together to formulate the strategy for promoting the Pearl River Delta as a single product.

As well as these new ventures, of course, we stepped up our traditional programme of marketing activities around the world.

For example, in relation to the important business and meeting sector, the Hong Kong Convention and Incentive Travel Bureau again promoted Hong Kong aggressively as an international centre for conventions, exhibitions and incentive travel. Over 270 000 visitors came here for such a purpose last year. This represented growth of 12.5% over the previous year, while the number of events also rose by 21.6%.

Consequently, we are very pleased with the future doubling of space at the Hong Kong Convention and Exhibition Centre, which is due to be completed in 1997. I am happy to report that we have already secured a number of major conventions and events for well after that year.

The Association was also committed to improving service standards in the industry, and raising the public profile of tourism and promoting its interests.

In conclusion, I should just like to make a few general observations on the current state of the industry.

First, we should note that overall visitor arrivals increased by 3.4% in the first eight months of this year. The moderate increase conceals both positive and negative trends. On the negative side, visitor numbers from Southeast Asia have declined, by 5.5%. One reason is that residents of this regional market are travelling further afield as they enjoy greater wealth. This trend should serve to alert us to the absolute necessity of providing a top-quality product and formulating a consistent and imaginative long-term development plan for the industry to encourage both first-time and repeat business. The Taiwan market also has had its problems, primarily to do with the ban on group tours to the mainland. On the other hand, it was encouraging to see such other major markets as Japan, the United States and Canada and West Europe showing significant increases.

Second, we can see that average hotel room occupancy for the same period stood at 83%, down two percentage points from last year, so there has been some slight easing of pressure.

In summary, Mr President, while Hong Kong's tourism industry is in a strong position, we are mindful of the necessity for imaginative marketing, product development and long-term visionary planning if growth is to be maintained. In addition, we feel that the contribution of this industry to Hong Kong's socio-economic well-being is still not understood or fully appreciated by

some people within the Government. We should not have to expend our energy constantly trying to get this message across, particularly when it comes to funding. Quite bluntly, we are currently seeing elsewhere the effects of other national tourist offices spending far more on marketing. People from Southeast Asia, for example, are simply being persuaded to visit other travel destinations and not come to Hong Kong.

This is a tough business. The HKTA will certainly do its very best to ensure that the industry continues to make a major contribution to the territory's prosperity but we must have the support of the whole Government and the community in general. This is crucial if Hong Kong is to take advantage of the growth of the industry worldwide. And we have a unique opportunity for growth with the continuing development of China's economy. We have a high quality infrastructure and have accumulated the expertise to take full advantage of opportunities arising. I have every confidence in our tourism industry's ability and determination.

Thank you.

The Government Minute in Response to The Sixth Annual Report of The Commissioner for Administrative Complaints Hong Kong dated June 1994

CHIEF SECRETARY: Mr President, when presenting the Sixth Annual Report to the Council on 6 July, the Chief Secretary said that a Government Minute would be prepared in three months' time, and that this would outline the action that the Government has taken or proposes to take in response to the recommendations made by the Commissioner for Administrative Complaints (COMAC) in relation to the cases listed in his report on which complaints were found to be substantiated or partially substantiated. This Government Minute is tabled today.

In 1993-94, COMAC found 37 complaint cases to be substantiated or partially substantiated. In the majority of these cases, the branches or departments involved have accepted and followed up all of COMAC's recommendations. There are three cases in which one of COMAC's recommended measures has had to be modified because of operational constraints. I am referring to cases Nos.OCAC 24/93 (a complaint against the Buildings Department), OCAC 65/93 (against the Labour Department) and OCAC 5/93 (against the Lands Department). The reasons for the modifications are set out in the Minute.

Should any Member wish to have further clarification on any of the explanations given in the Government Minute, the Administration would be pleased to provide this.

ORAL ANSWERS TO QUESTIONS**Use of Pesticides in Golf Courses**

1. DR SAMUEL WONG asked: *Mr President, will the Government inform this Council whether:*

- (a) *pesticides or herbicides are being used in excessive quantities in Hong Kong's golf courses to the extent that nearby land or watercourses have become polluted; and*
- (b) *the Government would consider encouraging the management of golf courses to use biological or manual control methods to combat the problems of weeds and pests?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) Pesticides and herbicides are used to control the growth of insects, fungi and weeds on golf courses. The use of these pesticides and herbicides is governed by the Pesticides Ordinance.

There is no evidence to suggest that excessive pesticides or herbicides have been used on golf courses. Nor is there evidence to show that land or watercourses in their vicinity have been polluted by pesticides.

- (b) The Administration has been encouraging the use of biological and manual control of weeds and pests (that is, hand-weeding and hand-picking) on golf courses. The Agriculture and Fisheries Department is currently discussing with the Hong Kong Golf Association the preparation of a code of practice on weed and pest control. The code would advocate the use of non-chemical controls wherever this is possible.

DR SAMUEL WONG: *Mr President, will the Secretary for Planning, Environment and Lands inform this Council on what basis he is thus able to tell us that the use of pesticides or herbicides is not excessive; and if possible, can we be told of the approximate quantities of these chemicals used on each of the three or four major courses in Hong Kong each year?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, to take the last part of that question first, I think that requires, probably, a considerable amount of detail which I will obtain and pass on to the Honourable Member. (Annex I)

As far as the information in the main answer to the question I gave is concerned, the fact is that in all the departments which might have an interest in this subject, there has been no offer of evidence as to pollution caused by herbicides and pesticides. What is happening at the moment on this is that the Environmental Protection Department is conducting a study on inland river and watercourses. Water samples are taken from sites across the territory, including, I must say, not simply areas near golf courses but also areas near farms which I believe are likely to be a more significant contributor to consumption, or a greater consumer, of herbicides and pesticides, than golf courses. The results of this current study will be available in early 1995 and will determine the need for establishing a regular programme for monitoring pesticide contamination in watercourses.

MR PETER WONG: *Mr President, I am pleased that the Secretary can inform us that there is going to be some looking at it because unless you look you will not find anything. Will there be independent monitoring of the use of pesticides and herbicides on our golf courses?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think the answer to that question is two-part. Firstly, as I have said, it is not that we are going to do something, we are doing something — we are conducting this study. And secondly, I think the question of whether monitoring would be justified, by comparison, for example, with the work that we have to do in relation to livestock waste control and the use of chemical wastes in industry on a much more widespread scale, will depend on the outcome of the current study.

MR MARVIN CHEUNG: *Mr President, will the Administration please confirm to this Council that the strict observance of the relevant controls over the use of chemical pesticides provided for under the Pesticides Ordinance would, in the opinion of the experts, ensure that land and water resources would not become polluted by the use of such chemical pesticides?*

PRESIDENT: Secretary, are you able to answer that?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I think, Mr President, I am not in a position to give a detailed answer to that question, I should have to confer with other parts of the Administration and provide an answer in writing. (Annex II)

DR PHILIP WONG: *I do not know whether the Secretary is a golfer but like many of my colleagues, I have been playing golf in many places around the world and I notice that the golf courses in Hong Kong do have a particular smell, I wonder if that is not an excessive amount of pesticides, then what causes those smells?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I have to declare an interest as a total non-golfer in these matters, but I hesitatingly suggest that it might be something to do with the "birdies" or the "bogies".

Traffic James at Kwai Chung Container Terminal

2. MR LEE WING-TAT asked (in Cantonese): *Mr President, in view of the frequent traffic jams at Kwai Chung Container Terminal, resulting in serious congestion in Tsing Yi, Kwai Chung, Tuen Mun and Western Kowloon, will the Government inform this Council whether there are any effective long-term and short-term measures to solve the problem?*

SECRETARY FOR TRANSPORT: Mr President, we keep a very close watch on traffic conditions in the vicinity of the container port. Traffic is invariably heavy but moves. Congestion, blockage and severe delays result when there are major accidents, rainstorms or industrial action, or when there is a surge of container traffic, for example, following the reopening of the port after the passage of a typhoon.

To better manage and improve the road system the Administration has instituted a number of effective traffic management measures. Let me cite a few examples:

- an urban clearway restriction has been imposed along the whole of Container Port Road;
- traffic surveillance cameras have been installed at strategic locations near the port to monitor traffic flow — this helps speed up the response to congestion;

- the new Texaco Road Interchange will be partially opened in November this year, followed by its full opening early next year;
- a traffic surveillance and information system will be installed in Tuen Mun Road, with the first stage due for completion next year;
- better vehicle recovery services have been introduced to deal with vehicles involved in accidents and breakdowns; and
- the police have stepped up their patrols of the area, and will deploy unmarked cars fitted with video cameras.

In addition we have also established an emergency traffic control centre at the container port. This is activated whenever traffic problems are anticipated. This has helped to keep the traffic moving, for example, during the very difficult weather conditions that prevailed during the summer months.

Separately, we are also exploring with the container terminal operators what more can be done to better manage container port traffic so as to reduce the number of unloaded lorry trips into and out of the port. This should promote greater efficiency and hopefully result in less traffic.

In addition, the 24-hour opening of the Lok Ma Chau border crossing scheduled to come into effect on 3 November should provide scope to spread the flow of container port traffic and reduce congestion during peak hours.

As for longer-term measures, the Tsing Yi Duplicate South Bridge, the opening of Route 3 (Country Park Section), the development of a port rail link and the barging of more containers from the Pearl River estuary should help to contain road congestion.

Mr President, traffic conditions in the vicinity of the container port and in the approach roads are a real concern to the Administration. We have taken and shall continue to take all practical measures to minimize traffic disruption and to better manage and improve the road system.

MR LEE WING-TAT (in Cantonese): *Mr President, the Tsing Yi Duplicate South Bridge will have a very important role in relieving the traffic congestion in Tsing Yi and Kwai Chung. Its construction, however, has been delayed for 18 months due to the deferment of the CT9 project. Has the Government ever considered that the construction plan of the Tsing Yi Duplicate South Bridge and the CT9 project be handled separately so that construction of the bridge can commence immediately?*

PRESIDENT: Secretary, are you able to answer?

SECRETARY FOR TRANSPORT: Mr President, the Honourable LEE Wing-tat is most persistent on this matter and indeed, he has put similar questions to my colleagues, the Secretary for Works and Secretary for Economic Services, and myself when we met to brief Members on the Policy Commitments. I certainly share Mr LEE Wing-tat's concern. The Tsing Yi Duplicate South Bridge is urgently required on transport grounds. We need to expand the capacity of the bridge to serve not only the container port but also Tsing Yi development and Tsing Yi residents.

The Government's position has always been that the quickest way to build the bridge has been to entrust it to the successful bidder or developer of CT9. Certainly, we can look at the options again, but even if we were to undertake this bridge as a Public Works project we would have to follow the broad scheme designed to serve CT9, otherwise fresh engineering, traffic and environmental studies will have to be conducted. And if we were to build this bridge under the Public Works Programme, we also need to resolve the land and funding implications. But as my colleague, the Secretary for Works, has intimated, the Administration is prepared to examine the feasibility of building this bridge first.

MRS MIRIAM LAU (in Cantonese): *Mr President, traffic congestion near Kwai Chung Container Terminal is mainly due to the fact that the container trucks have to queue up and wait on the nearby roads before they can enter the container terminal. Can the Secretary for Transport inform this Council whether the Government will actively look for a site near Kwai Chung Container Terminal for the container trucks to park when necessary while they are waiting so that traffic congestion in the area can be eased?*

SECRETARY FOR TRANSPORT: Mr President, the Honourable Member is right. Because of the substantial heavy traffic leading to the container port there is a lot of traffic. Our figures show that on average, some 25 000 vehicles enter and exit from the port every day. Lorry-parks in Kwai Chung and Kwai Tsing districts will not in themselves solve the traffic problems. One third of the vehicles leaving the district are destined towards the container terminals and the same proportion applies to other vehicles returning to lorry-parks. The majority of the container traffic related activities must be concentrated in the container port area and obviously we will continue to look for other sites to try and reduce traffic on the roads and for parking.

MR JAMES TIEN: *Mr President, will the Secretary please inform this Council, other than the new Texaco Road Interchange, the Tsing Yi Duplicate South Bridge and Route 3 (Country Park Section), if there are any other major trunk road by-pass interchanges planned for easing the traffic in and out of the Kwai Chung area, especially towards Kowloon?*

SECRETARY FOR TRANSPORT: Mr President, I have covered the main projects in my main reply but apart from the road projects, of course, we are planning the Northwest Railway Corridor which will provide a major freight line, and I believe that when implemented this will greatly help to alleviate the present position.

MR PETER WONG: *Mr President, the Secretary informed us that the 24-hour opening of Lok Ma Chau will help to spread the peak hour congestion, some of which will go into the night-time. Can the Secretary inform us whether full consideration has been given to the noise implications of this, especially in residential areas through which the containers may have to go?*

PRESIDENT: Are you able to answer that, Secretary?

SECRETARY FOR TRANSPORT: Yes, Mr President, Yes, indeed, because we have anticipated that there will be noise problems, some noise barriers have already been constructed along some of the roads fronting estates in northeastern part of the New Territories.

Stationing of Chinese Troops

3. MRS SELINA CHOW asked (in Cantonese): *Mr President, since the Chinese and British Governments will be making arrangements for the stationing of Chinese troops in Hong Kong after 1997, will the Government inform this Council:*

- (a) *whether members of the People's Liberation Army will be despatched to Hong Kong before 1997 to deal with handing-over matters; if so, what will the size of the first batch of the Chinese Garrison be; what will the nature of their work be; how long they will stay in Hong Kong; and*
- (b) *how the Hong Kong Government will co-ordinate such work with them?*

SECRETARY FOR SECURITY: Mr President, there will be a great deal of practical work to be done to prepare for the stationing of the Chinese garrison in Hong Kong as from 1 July 1997. The Chinese will need a small number of personnel here in Hong Kong if this work is to be carried out smoothly and efficiently. But it is too early to say how many or how long they will stay. We will be discussing with the Chinese the work which needs to be done — and how it should be managed and co-ordinated — in the Joint Liaison Group in the coming months. As the Governor said in his policy address, the British

garrison will offer its full co-operation to the Chinese military authorities to ensure a smooth handover of defence responsibilities.

MRS SELINA CHOW (in Cantonese): *Mr President, given the poor relationship between China and Britain, and the lack of progress as to the work of the Joint Liaison Group (JLG), is the Government being over-optimistic by expressing in the main reply the expectation that a decision would eventually be made by the JLG? If the JLG fails to arrive at a consensus after all, will this pose any difficulties to the handing-over in relation to the stationing of the People's Liberation Army in Hong Kong or cause any distress among the people of Hong Kong?*

SECRETARY FOR SECURITY: Mr President, I believe not. We did reach agreement with the Chinese on the question of the military estate in July this year, and I believe this proves that both sides are eager to co-operate on this issue. We have had discussions since then with the Chinese authorities and they have asked that we should have further more detailed discussions in November this year relating to the handover of military responsibilities on 1 July 1997, and I am confident that both sides will co-operate to make a success of this.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, can the Administration inform this Council whether the batch of personnel to be deployed to Hong Kong prior to 1997 to prepare for the handover are all members of the People's Liberation Army? If they break the laws in Hong Kong, will they be repatriated back to China and be dealt with according to Chinese laws, or will they be dealt with according to the laws of Hong Kong?*

President: Secretary, are you able to answer that?

SECRETARY FOR SECURITY: Mr President, as I said in my main answer, we do not know at this stage who will be coming, how many will be coming or for how long they will be coming, but I certainly would not expect that we will see any large number of Chinese military personnel in Hong Kong before 1997. I think we will see a small number of experts here from time to time to look at the reprovisioning projects, to look at the fitting-out and equipment of the military sites that they are going to inherit, and generally to prepare for the handover of military responsibilities.

As regards the second part of the question, while they are in Hong Kong they will of course be subject fully to Hong Kong law.

MR HOWARD YOUNG (in Cantonese): *Mr President, as mentioned in the Governor's policy address and quoted by the Secretary, full co-operation will be rendered to the Chinese military authorities to ensure a smooth handover of defence responsibilities. However, as far as I know, apart from defence matters, the British garrison in Hong Kong is also engaged in various social functions. For example, the British garrison has always participated in various social and community activities such as taking part in ceremonial functions and building bridges for country parks. Many social organizations will also seek the British garrison's co-operation when organizing outdoor orienteering activities. These are all done on a voluntary basis. My question is: Does "co-operation" cover this type of activities or is it confined only to defence matters?*

PRESIDENT: We are dealing with a question as to events leading up to the handover, Mr Howard YOUNG, Are you concerned with that side of it, or post-handover?

MR HOWARD YOUNG: *Well, my point is that we are talking about the handover but to my understanding, the British garrison in Hong Kong is not only concerned with defence matters, I do know they do a lot of worthwhile social and community projects. I was wondering whether this sort of service might continue in future, or whether it was taken into consideration or not?*

PRESIDENT: If you are asking about post-handover you are outside the scope of the main question and answer, Mr YOUNG.

MR HOWARD YOUNG: *Yes, it is not just to do with the stationing of troops but if there is an intention to have such activities continuing as part of the activities of the garrison or military personnel in the future, then I do not really see how this could be done unless there were discussions or familiarization of such activities before 1997.*

SECRETARY FOR SECURITY: Mr President, the Joint Declaration and the Basic Law do of course make it clear that the purpose of the Chinese garrison being here is for defence only and that internal security remains the responsibility of the Special Administration Region Government. But I certainly do not take that as meaning that social, charitable and ceremonial activities on the part of the People's Liberation Army (PLA) are excluded. Whether they actually want to involve themselves in them is something for the PLA to decide. All I think I can say is that I am sure that in the discussions that will be taking place in the next two to three years, the question of those sorts of activities will undoubtedly come up in discussions between ourselves and the Chinese and between the PLA and the British military in Hong Kong.

MRS SELINA CHOW (in Cantonese): *Mr President, when we listened to the Secretary's reply just now, it seems that both Britain and China are of the opinion that it is necessary to begin preparatory works as soon as possible. My question is: If a consensus is reached between Britain and China as regards preparatory work, will the people of Hong Kong be informed in order to avoid unnecessary panic or speculation?*

SECRETARY FOR SECURITY: Mr President, yes, I do not think there is anything that is going to be secret about this. Most of it is actually very detailed stuff. It relates to the fitting-out and the equipping of the sites that the Chinese will inherit. It relates to discussions on the progress of the reprovisioning works which we have undertaken to provide for the Chinese garrison. It relates to the logistical arrangements for the handover of sites. And it also relates, probably, to the ceremonial aspects of the final handover. But certainly, as progress is made on these matters, I would be quite happy to brief Members of this Council.

Public Access to Government Advisory Bodies

4. MS EMILY LAU asked (in Cantonese): *Mr President, in his reply to a question regarding greater openness of the 350 government advisory boards and committees at the Legislative Council sitting on 8 December 1993, the Secretary for Home Affairs indicated that it was not necessary for those advisory bodies or committees which have not yet conducted open meetings to make their meetings open or provide the public with relevant documents such as agenda, minutes and discussion papers. In order to enable the public to have a deeper understanding of and greater participation in the process of policy formulation, will the Government inform this Council whether it will consider allowing greater public access to the meetings of these advisory bodies and making information and documents more readily available to the public in a gradual manner?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, at present, a number of advisory boards and committees already routinely conduct their meetings in public and generally make available their papers for public inspection. In the case of another 41 boards and committees, the Chairman and/or members of the committees hold press briefings to explain matters discussed by the board or committee concerned on matters of public interest. Alternatively, press releases are issued from time to time by some boards and committees to keep the media and the public informed. There is therefore a degree of openness being practised by some boards and committees already. According to the latest information, over 180 advisory boards and committees have already adopted one of the above-mentioned two trends to increase transparency and openness. I would like to take this opportunity to inform

Members that before launching major policy initiatives we always try to consult the public and this is more and more often the case.

In considering whether other boards and committees can be more open, it has to be borne in mind that the business transacted by the 350 advisory boards and committees vary greatly in nature. Some handle confidential or commercially sensitive information on a regular basis while others might just render advice on general issues and deal with routine matters. It would therefore not be appropriate to apply any across-the-board measures to make these boards and committees more open. Indeed it would not be realistic to expect some of these boards can operate publicly.

Having said this, we also recognize the community's aspiration for easier access to information. I intend to ask Policy Secretaries and Heads of Departments to examine the nature and operation of the advisory boards and committees under their purview and to consider which boards or committees can be made more open. In this regard an obvious consideration is an assessment as to whether the release of information would hamper the smooth operation of the board or committee, or prejudice the frank exchange of views among members. Where the Policy Secretary or Head of Department considers that there is a case for a board or committee to be made more accessible to the public, he or she would consult the board or committee concerned and seek agreement to put in place appropriate measures.

In the meantime, we would continue to encourage these boards and committees, wherever possible to keep the public and the media informed of the progress of their work either by way of regular press releases or press briefings.

MISS EMILY LAU (in Cantonese): *Mr President, I am glad to hear the Government saying that at present, 180 advisory boards and committees have channels to provide information to the public. But I cannot understand why the Government has said that it was unrealistic to urge the other boards and committees to be more open. The Government should realize that the public wish to understand the Government's decisions through the information provided by these boards and committees so that they can make their own decisions accordingly. Would the Government inform this Council whether it will make a policy decision as soon as possible and ask the remaining boards or committees to provide information to the public or at least to hold a press briefing after each meeting? Also, please explain why it would hamper the smooth operation of the boards or committees should certain information such as times and dates of meetings and agenda be released?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I believe the Honourable Emily LAU has somehow misunderstood my answer. I was not saying that apart from the 180 boards or committees which have been made

open, all the other boards or committees would not let their operation be publicly accessible. Nor was I saying that it would be unrealistic to ask them to be more open. What I meant was that we have certain boards or committees that handle confidential or commercially sensitive information. It would not be realistic to have them operate publicly. As Members know, we are asking Policy Secretaries and Heads of Departments to examine the nature and operation of the advisory boards and committees under their purview. They will be made more open in a gradual manner if it is found necessary and to the extent that their operation will not be hampered. In addition, press releases will be issued if the operation among the boards and committees is not impeded.

As to the question on whether the operation of the boards or committees will be hampered, this is quite obvious because of the nature of some of these boards or committees. For example, if the subject of discussion is regarding the details of negotiations between Hong Kong and an external party and the attitude to be taken, I believe Members will agree that no information should be released until the matter has been finalized.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, since all of the members of these boards and committees are appointed, if we still refuse to make public the views that have been discussed in these advisory boards, people will challenge whether there is broad representation and whether it is reasonable. My personal experience is that even the information of the District Fight Crime Committees is not available. You just cannot help wondering why information relating to the meetings of a district fight crime committee is treated in such a confidential way. I would like to ask the Government whether it will consider the practice of the two municipal councils. They try to make public as much as possible the contents of their agenda and only those parts which have to be kept confidential are not made public. (This is because during meetings of the two municipal councils, some of the time will be dedicated to discussion on confidential issues and under such circumstances, that part of the agenda and matters to be discussed will be kept confidential).*

PRESIDENT: Yes, was that the question Rev FUNG? I am sorry I missed the actual question.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, I would like to ask whether the Government will consider having the advisory boards and committees to hold meetings in a manner just as the two municipal councils do. That is, the agenda is made public as far as is possible and only certain parts of the agenda are kept confidential when the circumstance makes it necessary to be treated confidentially.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I believe we all know very well that over half of the boards and committees are already handling their information in this way. As to the other boards and committees, I have undertaken in my answer that I will ask other Heads of Departments and Policy Secretaries to re-examine the boards or committees under their purview and see if it is possible for these boards and committees to operate in such a way.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, in the second last paragraph of his main reply, the Secretary for Home Affairs said that he "intends to ask Policy Secretaries and Heads of Departments to examine the nature and operation of the advisory boards and committees under their purview and to consider which board or committee can be made more open". I would like to ask how long this process will take; and whether the Secretary can promise to explain to this Council if any of these boards or committees cannot be made open?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, as the boards and committees in questions are not just a few in number (there are over a hundred of them), therefore we believe we may need a few months' time. But I cannot say for sure now as to the exact time required, for example, six or eight months. However, we will proceed as fast as possible.

As to whether or not we will account to this Council why these boards or committees are not able to make available to the public their information, we must take into consideration the nature of these boards or committees, and that their views are very often the starting point in the process of decision-making. Some of them are our main sources of consultation. We ask them for their views, and these views are often the basis on which we work out our policies.

After the formulation of the policies, we still have many opportunities to consult the public in the form of green paper or white bills. And if matters are to be sorted out in the form of bills, such bills will be tabled before the Legislative Council for consideration sooner or later. Therefore, Members and the public need not worry. We will finalize our decisions on the basis of the opinions collected. We have plenty of opportunities for further consultation.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, can the Secretary for Home Affairs cite a few names to illustrate which advisory boards of the Government conduct their meetings with public attendance; which boards or committees have their proceedings being kept at public libraries and are available for public inspection? If not, when will they be made available?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I do have such a list on hand but it is a bit lengthy. Since I do not wish to read them out one by one, may I give a written reply? (Annex III)

MR MAN SAI-CHEONG (in Cantonese): *Mr President, I only asked the Secretary to cite a few names, not all. Also, I would like to ask him another question. That is, are the proceedings kept in public libraries? If not, when will they be made available?*

PRESIDENT: I think we had better let the Secretary hand in a written list, Mr MAN. But do answer the second question please, Secretary?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, of course they are available at public libraries. For example, there are records of the Committee for the Promotion of Civic Education, Board of Education, district boards and so on.

MS ANNA WU: *In view of the statement that there is an increasing trend towards more formal public consultation on major public initiatives, will the Secretary indicate whether the Administration is willing to adopt the principle that all proceedings of advisory bodies and committees should be made open unless there are reasons to the contrary? And will the Secretary also indicate what improvements have been made between 8 December 1993 and now to improve the transparency of these advisory bodies and committees?*

SECRETARY FOR HOME AFFAIRS: Mr President, as I said in the main reply, we will continue, where those boards and committees have not opened up their meetings, to explore the possibility of doing that with the Secretaries or Heads of Departments concerned. As regards the second question, I cannot quote exact figures, but we have made improvements since then, because the last time I reported a figure of 41 boards and committees which have opened up. That number has now increased to 63, and so we have made progress during this time. If the Honourable Member wants it, I can supply her with the list of the 63 committees. (Annex IV)

PRESIDENT: Not answered, Ms WU?

MS ANNA WU: *Mr President, I wonder if the Secretary can answer specifically if the Administration is willing to adopt the principle of making all meetings open, unless reasons to the contrary are given?*

SECRETARY FOR HOME AFFAIRS: Mr President, as I implied in my main answer, that is in fact our criteria; unless there are other overriding reasons we will make it open. But of course having said that, I have also mentioned some of the restrictions placed on us, which would make it inappropriate for us to open up some of the committees.

MISS EMILY LAU (in Cantonese): *Mr President, I hope the Government can let us know the number of boards and committees that are on the list as soon as possible. But during this afternoon, can the Government inform this Council how many of these boards and committees do involve in matters of commercially sensitive nature, and which have been described by the Secretary for Home Affairs as boards and committees that can never be made open? Can the Secretary read out the list?*

SECRETARY FOR HOME AFFAIR (in Cantonese): Mr President, I do not have the list on hand. But I can supply a written reply. (Annex V)

Northwest New Territories Railway

5. MR ALFRED TSO asked (in Cantonese): *Mr President, a motion debate was held on 9 March 1994 to urge the Government to construct the Northwest New Territories Railway and its extension to Tuen Mun as soon as possible. In his reply, the Secretary for Transport undertook to make a decision in June this year but so far no decision or announcement has been made. In view of this, will the Government inform this Council:*

- (a) *why the Secretary for Transport has still not given any reply and when a decision can be made; and*
- (b) *whether, in relation to the announcement by Zhuhai in Guangdong Province on 25 August this year to construct the "Guang Zhu Railway", the Government has taken any initiative to study the project and communicate with the Chinese side to ensure that the design of the Northwest New Territories Railway is compatible with the transport network in Guangdong Province so as to achieve maximum cost effectiveness?*

SECRETARY FOR TRANSPORT: Mr President, in the motion debate held on 9 March this year, I did indeed inform Members that we hoped to finalize the Railway Development Strategy within three months. This forecast has proven to be over optimistic. More time has been required for additional studies, for example on how best to meet the travel needs of Eastern New Territories residents, especially those arising from the findings of the Task Force on Land Supply and Property Prices. Insofar as the Northwest New Territories Railway

is concerned, which is also known as the Western Corridor Railway, this remains a high priority under our proposed railway strategy. I remain confident that despite the delay in announcing the strategy it can be completed and operational by 2001.

The strategy is now almost finalized and the next step will be to discuss this with the Chinese side, since most of the expenditure on new railways will be post-1997. Thereafter we will announce the strategy publicly. I hope that we can have discussions with the Chinese side very soon.

As regards the second part of the question, we understand that the Guangzhou to Zhuhai railway will run along the west bank of the Pearl River Delta and that it will not have any direct connection to Hong Kong. In the circumstances, it should not directly impact on our proposed Northwest New Territories Railway. But this is precisely the sort of subject and detail we wish to discuss with Chinese officials in the context of improving co-operation on infrastructural developments. As the Governor announced in his policy address last week, we will be responding to valuable suggestions from Chinese officials in this regard.

MR ALFRED TSO (in Cantonese): *Mr President, in the motion debate held on 9 March this year, I explicitly stated that where the design and planning of the Northwest New Territories Railway were concerned, it was necessary to have communication with China and exchange with it the detailed information as soon as possible. The Secretary for Transport also responded that this railway was given the top priority. But the reply of the Secretary for Transport today reflects that no formal communication with China has been made and no preparation work has been done in the last seven months. Can the Secretary for Transport explain why the Administration has not done that? Are there any problems in making contacts with the Chinese side and when will there be formal communication between the two sides for the purpose of finalizing the planning work so that the development of New Territories West and that between Hong Kong and China will not be hindered as a result of the delay on the completion of the Northwest New Territories Railway?*

SECRETARY FOR TRANSPORT: Mr President, I think it would be wrong to say that we have had no discussions with the Chinese side up to now. We do have discussions with the railway authorities in China on professional and technical levels and this of course is to ensure compatibility. And also, for example, when the Railway Development Study (RDS) was in progress our study team did visit Shenzhen and Guangzhou to discuss with their counterparts there technical matters and to find out what their plans were. Indeed a copy of the RDS report has been passed to the Chinese side and we have undertaken to consult them on the strategy when detailed proposals have been finalized. Efforts will be made to ensure that this strategy is compatible with the Chinese side's railway plans. As I have said just now, in the Transport Branch we have

virtually completed updating and finalizing the strategy. We are ready to consult the Chinese side, and we will have to consult the Chinese side because the expenditure will be post-1997. As soon as we have a response from the Chinese side the Council will be fully briefed.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, may I ask how much the construction cost of the Northwest New Territories Railway is in rough terms? Will the Government consider entrusting the Kowloon-Canton Railway Corporation (KCRC) with the construction work and will the new railway be linked up with the Kowloon-Canton Railway line?*

SECRETARY FOR TRANSPORT: Mr President, the cost in the RDS was estimated at roughly \$28 billion at today's prices. Now obviously these figures will have to be adjusted to reflect MOD prices. Insofar as the question of whether the KCRC will be involved with the railway is concerned, once the strategy is announced the institutional arrangements for implementing the project will have to be decided, and obviously KCRC's interests and their intentions can be ascertained. Finally, in response to Mr TAM, yes, the line will link up to the existing KCRC line at the border, so that there will be a loop both east and west; that is the intention.

MR WONG WAI-YIN (in Cantonese): *Mr President, the Northwest New Territories Railway is very important to the 700 000 residents in New Territories West. At the initial stage of planning, it was originally proposed that the terminus of this railway line would be located at Tin Shui Wai. But many Members of this Council and residents called for the extension of the railway line to Tuen Mun Town Centre. The initial response from the Secretary for Transport indicated that the railway would be extended to Tuen Mun North (Siu Hong Court). But it is still the hope of the Democratic Party that the railway can be extended to Tuen Mun Town Centre. According to the Secretary for Transport, an underground alignment was required for the railway to run from Tuen Mun North to the Town Centre and the cost incurred would be exorbitantly high. But the Democratic Party has suggested to lay a cover on the surface of the Tuen Mun River beside Siu Hong Court in order to give a way directly leading to Tuen Mun Town Centre with a view to dovetailing with the development of San Fat Estate. As the Secretary for Transport has been contemplating this suggestion for so many months, may I ask about the progress of the matter? Has there been any calculation on the funds needed to implement the suggestion? Is it far less expensive than the construction of an underground alignment? As for the suggestion to extend the railway to Tuen Mun Town Centre, has the Secretary for Transport come to any decision yet?*

SECRETARY FOR TRANSPORT: Mr President, the Honourable Member is right. During the motion debate in March this year, many Members did argue for the extension of the Northern Railway to Tuen Mun Town Centre. Following initial feedback and discussions with district boards and others the Administration has indicated that we are prepared to extend the Tin Shui Wai loop down to Tuen Mun North. As a result of the debate, of course we have taken on board Members' views, but the difficulties of extending the line to Tuen Mun Town Centre are still very real. I do not think it will be possible in the initial stage to achieve this, but perhaps later on.

PRESIDENT: Not answered, Mr WONG?

MR WONG WAI-YIN (in Cantonese): *Mr President, I have a specific suggestion which has been brought to the attention of Mr BARMA before. That is to lay a cover on the surface of the section of Tuen Mun River adjacent to Siu Hong Court. In that case, it will no longer be necessary to dig a tunnel. Mr BARMA said this suggestion would be taken into consideration. As the matter has been considered for several months, I hope that he can disclose whether there is any decision after so much consideration and whether any calculation has been made on the funds required for this suggestion.*

SECRETARY FOR TRANSPORT: Mr President, we certainly did consider this proposal. It carries substantial additional financial costs, and there are other land and environmental implications. Within the Government, we do not believe that the case to extend this to Tuen Mun Town Centre is justified given the other constraints.

DR TANG SIU-TONG (in Cantonese): *Mr President, we used to say time and again that the Government should consult the Chinese side beforehand if the infrastructure concerns the Chinese side. Regrettably, we now learn that no contact has yet been made as regards the Northwest New Territories Railway. Can the Government advise this Council when the Government will communicate with the Chinese side? When will it be completed? When will the people of Hong Kong be told that the Northwest New Territories Railway is to be constructed?*

SECRETARY FOR TRANSPORT: Mr President, as I intimated just now, it is wrong to suggest that there has been no dialogue with the Chinese side yet. We did give them copies of the RDS and our experts have held discussions with them. Regarding the question of when we can consult the Chinese side, as I have said, we have now finalized the strategy and we are ready to consult them, but obviously we need to finalize the arrangements with them first. And as soon as this has been decided, announcements will be made.

MRS MIRIAM LAU (in Cantonese): *Mr President, judging either from the perspective of cross-border cargo transportation or resolving the traffic congestion problem in New Territories West, the Northwest New Territories Railway is vitally important and is urgently needed in Hong Kong. Since the project has been delayed for a long time, can the Secretary for Transport advise this Council precisely how long the construction of the Northwest New Territories Railway will take? And if the Government takes vigorous steps to implement this transportation infrastructure plan, will the Government be able to have an early completion of the Northwest New Territories Railway before the year 2001?*

SECRETARY FOR TRANSPORT: Mr President, I certainly agree with the Honourable Member that the Northwest Railway is urgently required. Although there has been a delay of several months regarding finalization of the strategy, I do not believe that this will delay the completion by the year 2001. This is a realistic target date. As to whether or not it can be accelerated ahead of that date, obviously we will be looking at the practicalities of this. I hope so, but as I said, 2001 is from our point of view a fairly realistic date.

PRESIDENT: Not answered, Mrs LAU?

MRS MIRIAM LAU (in Cantonese): *Mr President, my question just now is this: Can the Secretary for Transport advise this Council how long the construction of the railway will take? That is, how many years and how many months?*

SECRETARY FOR TRANSPORT: Well, we are near the end of 1994, so if you subtract that from 2001, I would say it is about seven years.

Quality Assessment of Public and Private Hospitals

6. DR HUANG CHEN-YA asked (in Cantonese): *Mr President, will the Government inform this Council:*

- (a) *what steps are taken by the Government to ensure proper quality assessment in public hospitals managed by the Hospital Authority and private hospitals;*
- (b) *if such steps have already been taken, what are the respective mortality and morbidity rates for major surgical operations such as cholecystectomy, prostatectomy, coronary bypass surgery, thyroidectomy and hysterectomy in each of the public and private hospitals; and*

- (c) *if such statistics are not available, when will the Government expect these to be available so that the public can be ensured of proper standards being maintained in both public and private hospitals?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, all hospitals in Hong Kong are regulated by various ordinances prescribing conditions on accommodation, staffing level and equipment, qualifications of professional staff as well as regulations on drugs, fire safety, storage of dangerous goods and other operational matters.

Since 1993, the quality of service provision and patient care in public hospitals has been strengthened through the establishment of quality assurance mechanisms in all clinical specialties. This has resulted in the adoption of structured approaches including "medical audits" to ensure conformance to established professional practice and standards.

Furthermore, to assist private hospitals in safeguarding the quality of patient care, the Director of Health has issued a set of guidelines endorsed by the former Medical Development Advisory Committee to all their operators covering aspects including organizational structure, personnel and equipment, patients' rights, staff development and education. Supplementary notes on specific issues are also promulgated as and when necessary.

In keeping with the International Classification Coding System, information is collated by the Department of Health and published in its annual report in the form of morbidity and mortality data for various disease conditions rather than according to major surgical operations. These figures are subsequently used as a monitoring tool on the epidemiological pattern of diseases in the community. However, since these statistics are affected by factors such as the pre-operation health condition, demographic structure and case mix, they should not be interpreted as an indicator of the performance of any particular hospital.

DR HUANG CHEN-YA (in Cantonese): *Mr President, let us assume that a certain kind of surgical operation is being performed in two hospitals, and in one of these two hospitals, the mortality rate is one in 1 000 patients while there are 10 complications; whereas in the other hospital, the mortality rate is three in 1 000 patients while there are 50 complications. If the public know these figures, they will surely consider which hospital they should go for treatment. And the Hospital Authority will also consider whether these services should be improved. Therefore, the collection of the so-called morbidity rates just mentioned by the Administration simply cannot serve the purpose of a medical quality assessment. Can the Administration inform the Council whether it is able to collect the related information with a view to ensuring that the public can really obtain the due services?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the best approach to safeguard the quality and standard of service is through the establishment of quality assurance mechanism. This will have the effect of ensuring that the whole patient care process will conform to professionally accepted quality standards. There are well over 20 000 different disease categories, the majority of which are not amenable to surgical intervention but to other forms of therapy. Collecting mortality and morbidity rates for major operations as a means to ensuring standards of medical care is therefore of limited value. This is further complicated by the fact that it is difficult to draw comparisons on mortality and morbidity rates for major operations or disease conditions as they tend to vary significantly on account of the case mix, the co-existing disease and the pre-existing health status of the patient.

DR LEONG CHE-HUNG: *In the third paragraph of the Secretary's reply she alluded us to a set of guidelines endorsed by the former Medical Development Advisory Committee in 1991. The Secretary might recall from records that that Committee also endorsed that a review of the guidelines be made in two to three years' time. Could the Secretary inform this Council how religiously are these guidelines adhered to, both in private and public hospitals? Could these guidelines be made available to the public? And has the Administration taken active steps to review these guidelines from time to time?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, these guidelines were issued by the Director of Health, and endorsed by the former Medical Development Advisory Committee. No doubt these are reviewed from time to time, and as I said in my main reply, we have a system of issuing supplementary notes on specific issues, and also to promulgate these as and when necessary; all these notes are published.

DR CONRAD LAM (in Cantonese): *Mr President, I would like to follow up the question raised by Dr LEONG Che-hung. May I ask the Secretary for Health and Welfare whether the guidelines to private hospitals are outdated or not? In the course of work of the Department of Health, what has been done to see that the private hospitals have substantially conformed with the requirements of the guidelines? If the private hospitals do not adhere to the guidelines, what can the Administration do?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, under section 3 of the Hospital Nursing Homes and Maternity Homes Registration Ordinance, the Director of Health may refuse the application for registration of a private hospital on grounds that the applicant or any person employed by him is not a fit person to carry on or to be employed at a hospital of such a description as the hospital named in the application. The Director of Health can refuse, for reasons concerned with situation, construction, accommodation, staffing or

equipment, the premises are not fit to be used for, or in connection with a hospital of such description as stated in the application; or that the hospital is used for purposes which are in any way improper or undesirable in the case of such a hospital; or that the hospital is not under the charge of a person who is either a duly qualified medical practitioner or registered nurse and who is resident in the hospital; or that there is not a proper proportion of registered nurses among the persons having the superintendence of or employed in the nursing of the patients in the hospital.

DR CONRAD LAM (in Cantonese): *Mr President, the Secretary for Health and Welfare has not answered the second part of my question, namely in the course of work of the Department of Health, what has been done to monitor or supervise the private hospitals and to see whether they have conformed to the requirements of the guidelines?*

SECRETARY FOR HEALTH AND WELFARE: The Director of Health has dedicated teams to inspect private hospitals and in the course of her work there are mechanisms for sending various questionnaires to hospitals. I believe these questionnaires number something over 50, and these include various aspects of the operation of the hospital. In the course of their work these inspection teams and specialist teams can call in experts from various clinical specialities outside the Department of Health to assist where such specialists are not available in the Department.

DR LEONG CHE-HUNG: *The Secretary has told us that there is an ordinance which can suspend the hospital's or clinic's licence. Since the guidelines have been drawn up, I wonder whether the Administration can inform this Council whether there are any hospitals, be they private or public, which have not met the guidelines and their licences would be considered for suspension?*

SECRETARY FOR HEALTH AND WELFARE: I shall need to do some research for that question and reply in writing to the Honourable Member. (Annex VI)

DR HUANG CHEN-YA (in Cantonese): *Mr President, the Secretary for Health and Welfare mentioned that the structured approaches such as "medical audit" have been adopted to ensure conformance to established professional practice and standards. Can the Administration inform the Council what kind of data or analytical methods are used in medical audit in order to ensure that the services do conform to the required standards?*

SECRETARY FOR HEALTH AND WELFARE: This involves a lot of technical detail which I will assure the Honourable Member I will supply in writing. (Annex VII)

WRITTEN ANSWERS TO QUESTIONS

False Curricula Vitae

7. MR ERIC LI asked (in Chinese): *Is the Government aware that some staff of the Hong Kong Polytechnic have provided false information in their curricula vitae? If so, will the Government inform this Council whether it will take investigation and prosecution actions on such cases; if not, what the reasons are?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Administration understands that the Hong Kong Polytechnic has investigated the recent allegations made against some of their staff for fabricating information in their *curricula vitae* and has established that these allegations are groundless. The Polytechnic has written to the magazine concerned pointing out the inaccuracies of its report.

The internal management and appointment procedures of the University and Polytechnic Grants Committee (UPGC)-funded institutions are matters within their institutional autonomy. All of the UPGC-funded institutions have established procedures for examining the validity of information quoted by their staff in their *curricula vitae* and for taking appropriate disciplinary action, including the termination of appointment if such information is found to be false or fabricated. It would be inappropriate for the Government to intervene in such matters unless requested to do so by the institution concerned or where a formal complaint is made to the police or the Independent Commission Against Corruption.

Control over Private Medical Practices

8. MR ERIC LI asked: *Will the Government inform the Council:*

- (a) *are there any ordinances or regulations specifically prohibiting an investor from incorporating a limited company to own a medical practice which is under the direct supervision of a registered medical practitioner or a group of registered medical practitioners;*

- (b) *will the answer to (a) above be different if the investor himself is a registered medical practitioner supervising the relevant medical practice;*
- (c) *what control does the Director of Health exercise over the operations of private medical practices which are not clinics or polyclinics as defined in the Medical Clinics Ordinance; and*
- (d) *will the answer to (c) above be different if the medical practice is incorporated under the Companies Ordinance in the situations as described in (a) and (b) above?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) The provisions governing the incorporation of companies are contained in Part I of the Companies Ordinance (Cap. 32). Section 4 of this Ordinance provides that any two or more persons, associated for any lawful purpose, may form an incorporated company with limited liability. There are no specific provisions which prohibit an investor from incorporating a limited company to own a medical practice which is under the direct supervision of a registered medical practitioner or a group of registered medical practitioners. If the objects of a company do not appear to be illegal, the Registrar of Companies cannot refuse the incorporation.
- (b) There are no specific statutory provisions which prohibit an individual doctor or a group of doctors from incorporating a company to carry on the business of medical practice, or to invest in such a business.
- (c) Under the Medical Clinics Ordinance (Cap. 343), private consulting rooms used exclusively by registered medical practitioners in the course of their practice on their own account and not bearing any title or descriptions which include the word clinic or polyclinic in the English language are specifically exempted from the registration requirements of that Ordinance. Nevertheless, all registered medical practitioners are responsible for the standard of their professional practice and are subject to the control of the Medical Registration Ordinance (Cap. 161) and the Professional Code of Conduct issued by the Medical Council.
- (d) The answer to (c) above is the same whether or not the medical practice is incorporated under the Companies Ordinance in the situations as described in (a) and (b) above.

Place Shortage in International Schools

9. MR MARTIN BARROW asked: *Will the Government inform this Council what steps it is taking to overcome the serious shortage of places in international schools, which is hindering the development of Hong Kong as an international business centre?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Government recognizes the importance of providing enough international school places to maintain and develop Hong Kong as an international business centre.

International school places are provided through:

- (a) the 14 schools under the English Schools Foundation (ESF) (Annex A); and
- (b) another 20 international schools.

The ESF schools come under the public school sector, providing a total of 9 915 places at both primary and secondary levels. The other schools are private schools providing a total of some 14 200 places. Government assistance to these latter private schools take the form of land grant at nominal premium and/or subsidy for secondary students if they meet certain criteria including the provision of an English-stream education and being non-profit making in their operations. A list of these schools so assisted are at Annex B.

As at September 1994, there are a total of some 1 100 vacancies in the ESF and Annex B schools.

To meet the increase in demand for international school places —

- (a) the Government has given approval for ESF to operate nine additional primary classes as from September 1994. So far the Foundation has found it sufficient to operate six classes only;
- (b) new international school projects due to be completed in the next three years will provide an additional 873 places (473 at primary and 400 at secondary levels); and
- (c) both ESF and several other international schools are planning to provide an additional 1 300 places (1 200 at primary and 100 at secondary levels) in the next two years and are seeking the Government's assistance in providing temporary accommodation to enable them to do so. We are actively considering their requests and will assist as far as possible.

Given the current vacancies in international schools and the additional supply coming on stream, there should be little problem in meeting the demand in the short term. Nevertheless, to ensure an adequate supply of international school places in the longer term and with a view to identifying what additional measures would be required to meet this objective, the Government has commenced a comprehensive review in July 1994. The review is expected to be completed in early 1995.

Annex A

Schools under English Schools Foundation

Primary

1. Beacon Hill School
2. Clearwater Bay School
3. Kowloon Junior School
4. Sha Tin Junior School
5. Bradbury Junior School
6. Glenealy School
7. Kennedy School
8. Peak School
9. Quarry Bay School

Secondary

1. Sha Tin College
2. King George V School
3. Island School
4. South Island School
5. West Island School

Annex B

List of Major Non-profit-making International Schools

1. Canadian International School
2. Chinese International School
3. Discovery Bay International School
4. French International School
5. German-Swiss International School
6. Hong Kong International School
7. Hong Lok Yuen International School
8. Kellett School
9. Singapore International School
10. Korean International School

Software on Violence or Sex

10. MR TIMOTHY HA asked (in Chinese): *The juvenile market for computer games has recently been flooded with software featuring mainly violence or sex. Some of the software even carries contents and scenes that are hardly different from those of a banned movie. Will the Government inform this Council whether:*

- (a) *it is concerned about the development of this trend; and*
- (b) *any measures will be taken to control the sale of such computer software to youngsters; if so, what the measures are; if not, why not?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, computer games are articles subject to the control of the Control of Obscene and Indecent Articles Ordinance (COIAO). It is therefore an offence to sell or hire an indecent computer game to a person below the age of 18. Obscene ones are banned completely.

The Administration is both aware and concerned that computer games stored in CD-ROMs or floppy disks readily found in shopping arcades selling computer products may be of an indecent or obscene nature. Enforcement action has been taken. During the period from July 1993 to June 1994, the police and the Customs and Excise Department have taken out 15 prosecutions, under the COIAO, in respect of objectionable CD-ROMs and floppy disks. In eight of these cases, some of the articles seized were computer games.

More recently the Administration has stepped up enforcement action. In the first seven months of this year, a total of 356 prosecutions have been taken out, representing an increase of 234% over the same period in 1993.

In addition, we have made supplementary publicity efforts to promote public awareness through announcements in public interest broadcast on television and radio. Posters and circular letters have also been issued to schools and youth centres to appeal for parents' and teachers' co-operation in educating young people to be more selective and careful in their choice of reading materials and games. Parental and teachers' guidance is particularly effective in the case of computer games because children who wish to play such games have to use computers at home or in school.

Applied Research and Development Fund

11. MR NGAI SHIU-KIT asked (in Chinese): *The response of manufacturers to the Applied Research and Development Fund has not been enthusiastic since it was launched in March last year. Loans amounting to some \$20 million have been approved up to August this year, constituting only a mere 10% of the available amount. In view of this, will the Government inform this Council:*

- (a) *of the reasons for the poor response of local manufacturers towards the Fund;*
- (b) *whether the application criteria will be relaxed so as to attract more manufacturers to participate in the scheme;*
- (c) *whether, apart from the existing options of equity participation and loan application, consideration will be given to expanding the modes of subsidization so that grant-in-aid will be made available to successful applicants; and*
- (d) *whether it will consider lowering the rate of return for the Fund, which is now set at 5% per annum?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, the Applied Research and Development Funding Scheme is administered by the Government-owned Applied Research and Development Fund Company Limited, which is required to seek a return of 5% on funds advanced from the Capital Investment Fund. Since the scheme was launched in February 1993, there have been some 300 enquiries, leading to 28 applications, of which nine have been approved and six are being processed. This approval rate compares favourably with private sector venture capital companies.

Nevertheless, as the original expectation was that the scheme would help to fund an average of 20 projects each year, the company is considering changes to the scheme to make it more attractive to potential applicants, including streamlining the application process, expanding both the proportion and the scope of expenditure which may be covered by funding, and by making more of the funding available through equity participation rather than repayable, interest-bearing loans. The company has recommended against making outright grants to applicants, but has suggested that the obligation to achieve a 5% rate of return be lifted, noting that this would enable it to offer soft loans and to assume a higher level of risk.

The Government is giving careful consideration to proposals to increase the proportion of expenditure which may be funded and to remove the requirement to achieve a 5% rate of return, both of which would require the consent of the Finance Committee of this Council.

Applied Research Centre

12. MR NGAI SHUI-KIT asked (in Chinese): *As the Government is considering setting up an Applied Research Centre to enhance and promote applied research in China and Hong Kong, will the Government inform this Council:*

- (a) *when a final decision on the establishment of the Applied Research Centre will be made;*
- (b) *whether the industrial sector will be consulted extensively before the scheme is finalised, and*
- (c) *what factors will be taken into account as the basis for consideration when deciding on whether to let an existing industry-support organization take the lead in the promotion of the scheme or set up a new corporation specially for this purpose?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, the Government has asked the Industry and Technology Development Council to advise on the establishment of an applied research centre, and expects to receive its recommendations in the near future. Funding proposals will be made to the Finance Committee of this Council as soon as possible thereafter.

The Council brings together representatives from many industrial sectors and organizations, and is thus well placed to reflect the views of the manufacturing sector.

In considering whether a new or existing organization could best discharge the proposed functions of the applied research centre, factors such as the ability and willingness of existing organizations to do so, and the scope for operational and financial synergies would be taken into account.

Corruption-related Complaints and Prosecutions

13. MRS SELINA CHOW asked (in Chinese): *Will the Government inform this Council of the number of complaint cases involving corruption activities in the various government departments as well as the number of successful prosecutions in the past year and how these figures compare with those in the previous three years?*

CHIEF SECRETARY: Mr President, the government sector accounted for 42% of the 3 284 complaints of alleged corruption reported to the Independent Commission Against Corruption (ICAC) in 1993. During that year, the ICAC

received 1 365 government sector complaints. In 1990, the figure was 1 125, in 1991, 978 and in 1992, 1 032. So far this year, 1 008 complaints have been received.

Not all allegations were capable of investigation. 834 fell into the investigated category in 1993. Corresponding figures for 1990 to 1992 were 513, 577 and 661. This year, 656 complaints were so far capable of investigation.

In 1993, on the advice of the Attorney General's Chambers, prosecutions were conducted against 44 government servants and a further 18 were officially cautioned on advice that prosecution would not be in the public interest. The figures for prosecution in the three previous years were 29, 33 and 26 and for cautions 19, 18 and 25. In 1994 so far, 31 government servants have been prosecuted and 12 cautioned.

Arising from the prosecutions in 1993, 24 government servants were convicted. In the previous three years, the figures were 15, 18 and 15 and so far in 1994, 19 officers have been convicted.

It should be noted that statistics for each year do not precisely inter-relate. Investigations of reports made in one year may and frequently do run into the next year(s) and prosecutions arising from them will be accordingly carried forward from one year to another. In a time of heavy caseload and increasingly complex crime, investigations take longer to complete and this also makes correlation by years imprecise.

Light Rail Transit Accidents

14. WONG WAI-YIN asked (in Chinese): *Mr President, with regard to the occurrence of another serious traffic accident of the Light Transit Railway (LRT) at the junction of Tsing Lun Road, Tuen Mun in August this year, will the Government inform this Council of the following:*

- (a) *the total number of LRT traffic accidents in the past three years with a detailed breakdown of the date, time, location, number of casualties and the period during which service has been interrupted;*
- (b) *the number of LRT trains that have been damaged beyond repair since the operation of the LRT, and the loss incurred to the LRT Corporation for repairing trains and other facilities damaged in accidents; and*
- (c) *what measures are in place to prevent the recurrence of accidents; whether the Government will give consideration to:*

- (i) *building more flyovers or tunnels at busy junctions so as to avoid accidents arising from the shared use of the road surface by LRT trains and other vehicles;*
- (ii) *reviewing the present arrangement of giving the right of way to LRT trains at certain junctions through the automated control of traffic light signals; and*
- (iii) *enhancing territory-wide educational publicity?*

SECRETARY FOR TRANSPORT: Mr President, there were 28 traffic accidents involving Light Rail Vehicles (LRVs) in 1992, 21 in 1993 and 10 up to the end of September this year, resulting in a total of 150 casualties. Details are annexed.

No LRV has been written off. About \$1.8 million has been spent on repairs and maintenance arising from these accidents. Part of the expenses incurred have been recovered from insurance or damages claimed from the other parties involved in these accidents.

The construction of flyovers or tunnels at junctions to segregate LRVs with other road traffic is not a practical proposition given the vast land implications, financial expenditure and operational constraints involved.

LRVs are given a degree of priority at signal junctions. However, the Transport Department monitors road traffic volumes so as to determine whether such priority needs to be adjusted. There is no evidence that the current arrangements have contributed to accidents.

An inter-departmental committee has recently convened to consider ways of enhancing safety and has recommended that:

- (a) the Transport Department should ensure that all traffic signs and signals are in order and the phasing of traffic signals is appropriate;
- (b) the police should step up law enforcement to deter motorists from ignoring traffic signals and regulations;
- (c) "red light" cameras should be installed at some of the road junctions to deter motorists from jumping lights; and
- (d) publicity on TV targeted at motorists to exercise extra caution at LRT junctions should be launched.

In addition, the KCRC will also organize more road safety activities in conjunction with the police in Tuen Mun and Yuen Long.

Annex**ACCIDENTS INVOLVING LIGHT RAIL VEHICLES
1992**

DATE	DAY	TIME	FIRST STREET	SECOND STREET/ IDENT FEATURE	NO. OF CASUALS	ACC SEVERITY	SERVICE DISRUPTION PERIOD (mins)				STOPS AFFECTED
							0	1-10	11-20	Over 20	
02/02/92	Sun	19:50	Castle Peak Rd YL	Tai Tong Rd	1	SR	X				-
09/02/92	Sun	18:45	Castle Peak Rd YL	Tai Tong Rd	1	SL			X		Tong Fong – Yuen Long
09/02/92	Sun	22:38	Tsing Lun Rd	Tsing Chung Platform	1	SR			X		San Wai - Kei Lun
15/02/92	Sat	11:30	Lung Mun Rd	LRV Depot	1	SL		X			LRV Depot
21/02/92	Fri	14:21	Castle Peak Rd PS	LP AFA 7594-6G	17	SR				X	Tong Fong – Yuen Long
22/02/92	Sat	22:00	Castle Peak Rd YL	LP FA 7678	1	SR	X				-
24/02/92	Mon	19:47	Tsing Tin Rd	Ming Kum Rd	1	SR			X		Ferry Pier – Technical Institute
26/02/92	Wed	05:31	Castle Peak Rd HSK	LP 370 PL 18	1	FA			X		Lam Tei - Yuen Long
07/03/92	Sat	17:18	Castle Peak Rd YL	Kik Yeung Rd	1	SL		X			-
26/03/92	Thu	17:15	Wu Chui Rd	Melody Garden	2	SL				X	Ferry Pier – Technical Institute
06/04/92	Mon	07:17	Castle Peak Rd YL	Kuk Ting St	1	SR		X			-
17/04/92	Fri	08:33	Castle Peak Rd LT	Tsing Chuen Wai	1	FA			X		Lam Tei - Yuen Long
17/04/92	Fri	11:00	Wu Chui Rd	LP 001CS69	1	SL		X			-
28/04/92	Tue	07:33	Castle Peak Rd LT	Near Tsing Chuen Wai	1	SR			X		Lam Tei - Yuen Long
02/05/92	Sat	22:35	Castle Peak Rd YL	Tai Tong Rd	1	SR		X			Tai Tong Rd
06/05/92	Wed	08:22	Castle Peak Rd HSK	Tin Ha Rd	1	FA				X	Lam Tei - Yuen Long
16/05/92	Sat	09:40	Pui To Rd	LP FA 2896-9G	1	SL			X		Kin On
22/05/92	Fri	22:30	Wu Shan Rd	Hoi Wong Rd	1	SR				X	Siu Hei – Goodview
02/06/92	Tue	22:35	Castle Peak Rd HSK	Hung Shui Kiu Main St	1	SL				X	Lam Tei - Hung Shui Kiu
29/07/92	Wed	08:20	Ming Kum Rd	Shek Pai Tau Rd	1	SR			X		Ming Kum – Shek Pai
11/08/92	Tue	07:16	Kin Shing Lane	LPFA9631	1	SL	X				-
14/08/92	Fri	10:55	Wu Chui Rd	Nr Tuen Mun Ferry Pier	1	SL		X			-
20/09/92	Sun	18:30	Ming Kum Rd	LPFAFA2797	2	SL		X			-
13/10/92	Tue	21:00	Castle Peak Rd HSK	Chung Uk Tsuen Platform	1	SR				X	Lam Tei - Hung Shui Kiu
27/10/92	Tue	17:30	TM Heung Sze Wui Rd	Platform of On Ting Est	1	SL			X		On Ting
29/10/92	Thu	08:00	Pui To Rd	LP290PL42	1	SR				X	San Fat
28/11/92	Sat	17:33	Yau Oi Rd	LPYO/6M/061	1	SL		X			-
08/12/92	Tue	13:10	Castle Peak Rd SH	Ho Fuk Tong LRT Platform	1	SR			X		Pui To - Fung Tei

Total No. of accidents 28

Note : SL - slight
SR - serious
FA - fatal

ACCIDENTS INVOLVING LIGHT RAIL VEHICLES
1993

DATE	DAY	TIME	FIRST STREET	SECOND STREET/ IDENT FEATURE	NO. OF CASUAL	ACC SEVERITY	SERVICE DISRUPTION PERIOD (mins)				STOPS AFFECTED
							0	1-10	11-20	Over 20	
27/01/93	Wed	11:17	Tsing Wun Rd	LP AH3043-7	2	SL			X		Tsing Shan Tsuen
21/02/93	Sun	05:30	Tsun Wen Rd	Tsing Lun Rd	3	SR				X	San Wai - Kei Lun
21/02/93	Sun	12:58	Castle Peak Rd PS	Yung Yuen Rd	2	SL		X			-
12/03/93	Fri	10:58	TM Heung Sze Wui Rd	LRV Track	1	SR	X				-
05/04/93	Mon	16:25	Wu Chui Rd	Melody Garden	1	SR		X			-
09/04/93	Fri	18:15	Wu Chui Rd	Melody Garden	1	SL	X				-
21/04/93	Wed	19:28	Ming Kum Rd	Nr LRV Platform	1	SR		X			Ming Kum
06/05/93	Thu	16:10	Castle Peak Rd LT	Traffic LP: Mn31 360/05S	2	SL			X		Lam Tei - Hung Shui Kiu
16/05/93	Sun	11:20	Castle Peak Rd YL	Fung Cheung Rd	1	SR			X		Tong Fong - Yuen Long
16/05/93	Sun	15:29	Castle Peak Rd YL	Kuk Ting St	3	SL		X			-
27/05/93	Thu	07:35	Castle Peak Rd LT	Nr Nai Wai LRT Platform	1	SL		X			Nai Wai
10/06/93	Thu	11:05	Castle Peak Rd LT	LP Blg TM Gov't Pri Sch	1	SL		X			-
18/07/93	Sun	00:45	Castle Peak Rd HSK	LP Near LRT Platform	1	SR				X	Lam Tei - Hung Shui Kiu
19/07/93	Mon	21:10	Wu King Rd	Wu Shan Rd	2	FA		X			Siu Hei - Goodview Garden
10/09/93	Fri	12:25	Castle Peak Rd LT	LP Nr Tsing Chuen Wai	19	SR				X	Lam Tei - Hung Shui Kiu
16/09/93	Thu	06:15	Castle Peak Rd LT	LP LRV P No. 360PL26	1	FA				X	Lam Tei - Hung Shui Kiu
18/09/93	Sat	08:11	Long Yat Rd	Castle Peak Rd YL	2	SL		X			-
12/10/93	Tue	11:10	Tin King Rd	LP Nr Tin King Est	1	SR		X			Tin King - San Wai
29/10/93	Fri	12:45	Castle Peak Rd YL	Tai Tong Rd	1	SR			X		Tong Fong - Yuen Long
09/11/93	Tue	22:30	Tin Yiu Rd	Tin Fuk Rd	1	FA				X	Hang Mei Tsuen - Tin Shui
06/12/93	Mon	10:33	Castle Peak Rd HSK	Tin Ha Rd	1	SR	X				-

Total No. of accidents 21

ACCIDENTS INVOLVING LIGHT RAIL VEHICLES**1994****(Jan 1 to Sep 30)**

DATE	DAY	TIME	FIRST STREET	SECOND STREET/ IDENT FEATURE	NO. OF CASUAL	ACC SEVERITY	SERVICE DISRUPTION PERIOD (mins)				STOPS AFFECTED
							0	1-10	11-20	Over 20	
09/02/94	Wed	19:50	Castle Peak Rd PS	LP LRV Track	1	SR			X		Tong Fong - Yuen Long
12/03/94	Sat	08:05	Castle Peak Rd LT	CH22.5 M.S CPK Rd	1	SL			X		Lam Tei - Hung Shui Kiu
15/04/94	Fri	17:40	Castle Peak Rd SH	LP Hoh Fuk Tong	1	SL		X			Hoh Fuk Tong
25/04/94	Mon	14:47	Lung Mun Rd	LP LRT Depot Platform	2	SL		X			Melody Garden - LRT Depot
02/05/94	Mon	06:23	TM Heung Sze Wui Rd	LP Sam Shing Est	1	SR		X			-
28/06/94	Tue	07:32	Pui To Rd	LP LRV Track	1	FA				X	San Fat
03/07/94	Sun	08:30	Castle Peak Rd SH	LP Siu Hong Court	1	SL	X				-
15/07/94	Fri	19:15	Castle Peak Rd YL	LP Fung Nin LRT Platform	1	SR			X		Tong Fong - Yuen Long
29/07/94	Fri	10:00	Wu Shan Rd	Wu King Rd	5	FA			X		Siu Hei - Goodview Garden
10/09/94	Sat	12:45	Tsing Lun Rd	LP Sam Hing Tsuen	42	FA			X		Lam Tei - Hung Shui Kiu

Total No. of accidents 10

Shenzhen River Training Project

15. DR PHILIP WONG asked (in Chinese): *It is reported that since the resumption of negotiation on the training of the Shenzhen River in June 1992, the Hong Kong and Shenzhen authorities have finished the cost-effectiveness analysis and the Environmental Impact Assessment on the river training project. Both parties have also agreed to strengthen co-ordination and work positively towards an early commencement of the project. In view of the tremendous influence the Shenzhen River training project will have on the economic development, environmental protection and daily life of the residents in the northern part of the New Territories, will the Government inform this Council of:*

- (a) *its policy on the Shenzhen River training project; and*
- (b) *the date when the first phase of the project will be implemented in co-operation with the Shenzhen authorities?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The Government fully recognizes the importance of the Shenzhen River training project. Our policy on the project is clear and simple: the first phase of the project should commence as quickly as possible to reduce the risk of flooding in both Shenzhen and the northern New Territories of Hong Kong; and we will do all we can to achieve this objective.
- (b) There has been good progress on the preparatory work for the project. The Joint Working Group on Shenzhen River Regulation, which comprises representatives from both sides, held its fourth meeting last month. The meeting endorsed the EIA Report for Stage 1 Works and reached agreement that both sides should seek to begin construction as soon in early 1995 as possible. We expect the first phase to begin immediately after land resumption is completed and the Finance Committee has approved the necessary funding. The first phase is scheduled for completion in mid-1997.

Deputy Judge's Pay

16. MISS EMILY LAU asked: *In view of the concern expressed by some lawyers in private practice about the low rate of pay for deputy judges in the High Court and District Court and temporary magistrates, will the Administration inform this Council of the following:*

- (a) *the current rates of pay for deputy judges and temporary magistrates;*
- (b) *the last time the rates were revised;*
- (c) *whether there are plans for another revision; and*
- (d) *whether the existing rates are considered adequate to attract legal talent to serve on the bench?*

CHIEF SECRETARY: Mr President,

- (a) The current daily honoraria for Deputy High Court Judges, Deputy District Court Judges and Temporary Magistrates are \$4,600, \$3,750 and \$2,500 respectively.
- (b) The rates were last revised in June 1989.
- (c) The Judiciary Administration accepts that there is a case for adjusting these rates, and hopes to be able to put forward proposals to the Finance Committee within the next year.
- (d) Although the honoraria are not designed to compensate Deputy Judges and Temporary Magistrates for their loss of earnings, the existing rates have not kept pace with inflation. Some practitioners, particularly the more junior ones, have cited this as a reason for their refusal to serve as Deputy Judges and Temporary Magistrates.

Derivatives Trading

17. DR HUANG CHUN-YA asked: *In view of the reported heavy losses suffered by several overseas corporations due to trading in derivatives, will the Government inform this Council:*

- (a) *what is the current exposure to derivative-related risk among banks and insurance companies in Hong Kong;*
- (b) *whether the Securities and Futures Commission will require listed companies to report their exposure to derivative-related risks in their half-yearly reports so that investors may know more about the risks involved in their investment; and*
- (c) *whether further precautions will be taken to minimize the risk to the financial sector?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) The current exposure to derivative-related risk among authorized institutions under the Banking Ordinance and authorized insurers under the Insurance Companies Ordinance is minimal. For the banking sector, the risk weighted amount of foreign exchange-and interest rate-related derivatives as at 30 June 1994 were only 0.66% and 0.49% respectively of the total balance sheet of the banking system based on the Basle capital adequacy framework. For insurance companies in Hong Kong, it is uncommon for them to invest in derivatives and their derivative holding is primarily for hedging investment risks or efficient portfolio management.
- (b) The Securities and Futures Commission (SFC) recognizes the risks associated with derivative-based activities undertaken by listed companies. It, together with the Stock Exchange of Hong Kong Limited (SEHK) and the Hong Kong Monetary Authority (HKMA), have agreed to lay down appropriate disclosure requirements for listed banks to report to the market in their annual reports the exposure to derivatives. Similar requirements have not yet been imposed on listed companies generally. However, the SFC and the SEHK have taken note of the recommendations of the Group of Thirty (United States investment bankers) in their report on derivatives published in August 1993 and the guideline issued by the International Organization of Securities Commissions (IOSCO) in July 1994 on risk management of over-the-counter derivative trading. On the basis of these recommendations and the guideline, the SFC/SEHK aim to devise a suitable package of regulations for the local market, including the aspects of disclosure and management controls.
- (c) For investors, the SFC has taken steps to ensure that they understand the nature of derivative trading and the risk likely to be involved. The Code of Conduct for Registered persons, which became effective in February 1994, includes the requirement that registered persons under the purview of the SFC should ensure that their clients understand the nature and risks of derivative products and have sufficient net worth to assume the risks involved. This is to make sure that not only are investors well informed about the nature of derivative products, but also that registered persons understand properly the client's financial needs and credit-worthiness before providing services in relation to such products.

The SFC also requires registered persons to set aside sufficient capital to cover their risk exposure related to derivatives. Where appropriate, the calculation may include the use of acceptable risk management models and stress tests using extreme potential market conditions. The SFC may also call on experts to review and

confirm the adequacy of a registered person's internal control mechanism and his calculation of financial provisions.

For authorized institutions supervised by HKMA, the existing supervisory framework has already taken into account the typical risks associated with derivative transactions. The risk from the various types of derivatives is included in the calculation of interest rate risk in a new return which will be introduced in February next year.

In July 1994, the IOSCO and Basle Committee issued a guideline which highlights the management control mechanisms effectively to control and reduce risk associated with derivative trading, that is credit risk, market risk, liquidity risk, settlement risk, operation risk and legal risk. The SFC and the HKMA have issued a paper for public consultation and the response from the market so far have been supportive of the measures. It is proposed that the SFC will adopt the guideline as a statement of best practice to be complied with by registered persons. HKMA will also turn the Basle Committee guideline, which focuses on high level controls, into a formal guideline later this year, to be supplemented by a more detailed guideline next year on the operational aspects of risk management of derivative products.

Prevention of Bribery Ordinance

18. MS ANNA WU asked: *According to recent public reports, the Legal Department now avoids relying on the presumption provisions of section 25 of the Prevention of Bribery Ordinance (Cap. 201) in its prosecutions under the Ordinance because it believes section 25 may have Bill of Rights implications. Will the Government inform this Council of the following:*

- (a) *the Legal Department's policy concerning section 25 of the Prevention of Bribery Ordinance; and*
- (b) *whether there are any other statutory provisions that the Legal Department, the police or other law enforcement agencies have placed in disuse in their criminal prosecutions because of those provisions' possible inconsistency with the Bill of Rights?*

ATTORNEY GENERAL: Mr President, the answers to Ms WU's questions are as follows.

- (a) Section 25 of the Prevention of Bribery Ordinance relates to prosecutions for bribery under section 4 or 5 of that Ordinance. It provides that, where it is proved that the accused gave or accepted

an advantage, the advantage shall be presumed to have been given and accepted for the purposes alleged in the particulars of the offence, unless the contrary is proved. In the light of case law under the Bill of Rights Ordinance concerning presumptions, prosecutors have been instructed to invite the courts not to rely upon section 25. Instead, prosecutors will need to prove that an alleged advantage was given and accepted for the purposes alleged. Should the section be challenged as being inconsistent with the Bill of Rights Ordinance, prosecutors are instructed to inform the court that it is the Crown's view that the section has been repealed by the Bill of Rights Ordinance.

Section 25 of the Prevention of Bribery Ordinance is being considered by the independent ICAC Review Committee in the light of legal advice concerning the Bill of Rights Ordinance.

- (b) It is not the policy of the Administration to decline to rely on any provision of the criminal law because it may possibly be inconsistent with the Bill of Rights Ordinance. However, if my department considers that such a provision is inconsistent with the Bill of Rights Ordinance, prosecutors will be instructed not to rely upon the provision and legislative steps will be taken to delete the provision from the Ordinance concerned. Some provisions have already been deleted for this reason. Steps are being taken to delete the following additional provisions:
- (i) section 8(d) of the Summary Offences Ordinance (Cap. 228), which makes it an offence for people to assemble in the night-time without reasonable excuse, or for a person to fail to report such an assembly;
 - (ii) section 30 of the Summary Offences Ordinance which makes it an offence for a person to be in possession of anything reasonably suspected of having been stolen and to fail to give a satisfactory account of how he came by that thing;
 - (iii) section 4(4) of the Massage Establishments Ordinance (Cap. 266), which provides for an enhanced penalty in certain circumstances, unless the defendant proves certain facts;
 - (iv) section 29(6)(a)(i) and (ii) of the Theft Ordinance (Cap. 210), under which two presumptions operate against a person accused of certain offences involving the dishonest use of cheques; and
 - (v) section 40(a) of the Dutiable Commodities Ordinance (Cap. 109) which creates a presumption that any goods to which the Ordinance applies are dutiable goods.

Provisions to delete items (i), (ii), (iii) and (iv) on this list are contained in the Administration of Justice (Miscellaneous Provisions) Bill 1994, which is now before this Council. It is proposed to introduce into this Council, during the current Session, a provision to delete or amend the other item.

Shared Public Housing Units for the Elderly

19. MR WONG WAI-YIN asked (in Chinese): *As elderly people sharing the same public housing unit are frequently in conflict with each other and may even end up in bloodshed, will the Government inform this Council of the following:*

- (a) *the total number of such cases in the past three years;*
- (b) *given that long-standing grudges are believed to exist between both parties before the bloodshed, how the authority concerned would handle such situation and how many such cases have been received in the past three years; and*
- (c) *how similar cases can be prevented from occurring, whether consideration will be given to building more single person hostels to gradually replace the existing mode of providing public housing units to elderly people on a sharing basis?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) In the past three years, there were seven cases of conflict between elderly people in shared flats in public housing estates which resulted in injury or death. Four deaths were caused.
- (b) There are 10 790 tenants sharing accommodation in public housing estates. In the past three years, 490 complaints about conflict were received. In such cases Housing Department staff normally interview those concerned to try to resolve the dispute. While many disputes are resolved or defused in this way, others are referred to the Social Welfare Department for counselling and assistance, including medical and psychiatric help and the provision of home care.

Where disputes appear more serious, transfers are arranged by the Housing Department as soon as practicable. In the past three years, a total of 161 transfers have been arranged in such circumstances.

- (c) As well as making units with shared facilities available to elderly tenants for whom such accommodation is suitable, the Housing Department also provides purpose-built self-contained flats for one or two-person households as part of the public housing development programme. A total of 38 000 small flats, new and refurbished, will be available for allocation to one or two-person and mostly elderly households from 1994-95 to 1998-99.

The Housing Department has also adopted other measures to prevent and resolve conflicts among elderly tenants. Under the Housing for Senior Citizens Scheme, hostel accommodation with a warden service to help residents get on together better is provided. There are now 15 Housing for Senior Citizens projects, with another 38 providing 4 900 places coming on stream in the next five years,

In addition, the Housing Department started an Estate Liaison Officers Scheme in 1991 to look after the elderly in public housing estates. This Scheme has been extended to 10 estates.

BILLS

First Reading of Bills

MATRIMONIAL CAUSES (AMENDMENT) BILL 1994

TIMBER STORES BILL

BUILDINGS (AMENDMENT) (NO. 2) BILL 1994

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

Second Reading of Bills

MATRIMONIAL CAUSES (AMENDMENT) BILL 1994

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: "A Bill to amend the Matrimonial Causes Ordinance."

He said: Mr President, I move that the Matrimonial Causes (Amendment) Bill 1994 be read a Second time.

The law of divorce in Hong Kong has remained essentially unchanged since the early 1970s. Since then, there have been significant changes in community attitudes towards divorce. It is against this background, and with

due regard to the outcome of wide-ranging consultation and a survey of public opinion, that the Law Reform Commission has recommended a thorough overhaul of this area of the law. The Matrimonial Causes (Amendment) Bill 1994 seeks to implement the Law Reform Commission's recommendations.

Under the present law, divorce proceedings must be conducted on the adversarial basis of petitioner and respondent. The sole ground for divorce is irretrievable breakdown of marriage. To establish this state of affairs, applications for divorce have to be based on one or more of five facts. These include separation for two years where both parties consent to the divorce and separation for five years where one party does not consent. The present law also provides that petitions for divorce cannot normally be made until three years after marriage.

The reforms embodied in the Bill are intended to bring the law of divorce into line with current day community expectations and reduce the hardship, acrimony and distress in divorce proceedings. These aims are to be achieved by reductions in the minimum periods of separation and marriage before divorce proceedings may be commenced, as well as through provision of a new non-adversarial procedure of divorce by mutual consent. Proceedings on this basis may rely on the facts of either one year's separation or one year's prior notice of intention to divorce during which there would be no separation requirement.

The opportunity has also been taken in the Bill to remedy provisions in the principal Ordinance for differential treatment between the sexes with respect to the court's jurisdiction and divorce proceedings citing the fact of adultery, which may not be compatible with the Bill of Rights.

Turning to the main parts of the Bill: clauses 3 to 6 provide for husbands and wives to be subject to the same criteria with respect to the court's jurisdiction in matrimonial proceedings under the Ordinance. Habitual residence in Hong Kong for three years is included as a new basis for jurisdiction.

Clause 7 provides for reductions in the minimum periods of separation in divorce proceedings from two years to one year, where both parties consent, and from five years to two years, where one party does not consent. With the latter reduction, the current fact of desertion for two years will become redundant. Accordingly, this clause provides for its repeal. The clause also provides for the new procedure of joint application for divorce by mutual consent.

With respect to the current three-year prohibition, except in special circumstances, on divorce early in marriage, clause 8 provides for a reduction to one year.

Clause 9 provides for proceedings for divorce in cases of prior judicial separation to take account of the new procedure of joint applications for divorce. It also provides for husbands and wives to be treated equally in divorce petitions citing adultery.

Clause 16 provides for the abolition of actions for damages for adultery.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

TIMBER STORES BILL

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to regulate timber stores."

He said: Mr President, I move that the Timber Stores Bill be read a Second time. This Bill seeks to establish an independent ordinance for the licensing of timber stores.

The licensing of timber stores is at present affected under the Miscellaneous Licences Ordinance, which covers a variety of unrelated establishments, ranging from auctioneers to timber stores, public dance halls and physiotherapy clinics. In 1982, the various licensing functions under the Ordinance were reviewed; it was decided that the Ordinance should in due course be repealed, after each licensing function was provided for elsewhere or abolished.

A licensing system for timber stores is necessary to ensure fire safety. Without a licensing system, the Director of Fire Services would not be able to ensure compliance with the fire safety standards and requirements in timber stores. The most practical way of providing a licensing system is to enact an independent ordinance relating to timber stores, of which there are now about 120 operating in the territory.

The provisions in the Bill generally follow those at present in the Miscellaneous Licences Ordinance. But there is one new provision in clause 10, whereby any person aggrieved by a decision of the Director of Fire Services in a matter relating to a timber store licence may appeal to the recently established Administrative Appeals Board.

The Bill also updates the fees charged for timber store licences, which have not been revised since 1984. The fees will be increased to achieve cost recovery for the processing of applications for the grant, renewal, transfer, amendment and duplication of a licence.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

BUILDINGS (AMENDMENT) (NO. 2) BILL 1994

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the Second Reading of: "A Bill to amend the Buildings Ordinance."

He said: Mr President, I move the Second Reading of the Buildings (Amendment) (No.2) Bill 1994.

The Bill deals with three separate matters, namely, the control of hand-dug caisson operations, compatibility with the Bill of Rights and the control of ground investigation in designated sewage tunnel areas.

Clause 3 of the Bill requires the Building Authority to refuse to approve building plans where the building works concerned involve the construction of hand-dug caissons except under certain circumstances, essentially where this is the only practical method because of site constraints. This is to reduce the risks to the health and safety of those working in such circumstances to an absolute minimum.

Section 40(6) of the Buildings Ordinance provides that where an offence has been committed by a body corporate, partnership or an unincorporated association, any person who was the director, manager, partner, secretary or other similar officer shall also be deemed guilty unless he proves that the offence was committed without his consent or connivance and that he exercised all diligence to prevent the commission of the offence. This provision may be held by the courts to be consistent with the Bill of Rights where the offence is a strict liability one and inconsistent where the offence is not. Clause 5 amends section 40(6) of the Ordinance so that it is consistent with the Bill of Rights.

The Government has proposed the construction of sewage tunnels under the Strategic Sewage Disposal Scheme. A developer or contractor may be unaware of the existence of a sewage tunnel, and employ a drilling rig to take soil samples for analysis or carry out other works nearby. Under existing law, he needs no approval for such ground investigation works. As a result the construction of a tunnel may be affected and a tunnel may be damaged if works of this kind are not controlled. Clause 6 adds sewage tunnel protection areas to the Fifth Schedule to the Ordinance so that ground investigation works to be conducted in such areas require the approval of the Building Authority.

Thank you, Mr President.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

ORGANIZED AND SERIOUS CRIMES BILL

Resumption of debate on Second Reading which was moved on 15 July 1992

Question on Second Reading proposed.

DR PHILIP WONG: Mr President, the Bill was introduced to address the wide public concern about the extent of organized and serious crimes in Hong Kong. The Bill seeks to improve the Administration's ability to investigate and prosecute these crimes by four distinct methods which are explained at the moment.

The Bill was introduced in July 1992. Concern has been expressed now and then as to the time that it has taken the ad hoc group set up to study the Bill to conclude its deliberations. Time apparently does not allow me as convener of the ad hoc group to report on every detail that has been considered. The resulting 29 pages of Committee stage amendments, to be moved by the Secretary for Security will tell for themselves the efforts made by all parties concerned in accommodating the different views and in addressing the most controversial aspects about the Bill.

Indeed, Mr President, the Bill is controversial in a number of aspects. Some provisions are draconian. The objective of the ad hoc group has been to ensure that, between the need to combat organized and serious crime and the need to ensure that any powers go given will be no more than absolutely needed, the right balance is struck.

Definition

The balancing exercise began with the definition.

"Organized crime" is the theme of the Bill. It is hence necessary to ensure that we have the right definition from the outset. The definition in the Bill is however too wide and vague as it refers to "organized crime" as "any Schedule 1 offence committed by two or more persons". In effect, the definition could cover such trivial cases as two school girls stealing a chocolate bar from a supermarket. Apparently, these cases should not be the target of the Bill. It is true that there are a number of checks and balances within the relevant provisions to safeguard against abuses. It is however the ad hoc group's strong belief that the the definition should itself be carefully circumscribed to ensure that the focus is not missed. Amendments will be moved by the Secretary for Security to restrict the definition. On this the Honourable Martin LEE submitted a separate amendment. I will explain the majority's views on this point at the Committee stage.

I now come to the specific measures.

Powers of Investigation

Clauses 3, 4 and 5 provide for additional investigation powers. Clauses 4 and 5, providing for production orders and search warrants, are an expansion of existing provisions in other ordinances. Clause 3 is novel. It may require a person, or persons of a particular description, to provide information or produce material relevant to the investigation of an organized crime. The main feature of a clause 3 order is that no person subjected to an order may claim right to remain silent; right against self-incrimination; right of privacy; or obligation of secrecy.

It is difficult to strike a balance between the public interest in the investigation and prevention of crime and the public interest in upholding civil rights. After very careful and painstaking balancing, in the context of the Hong Kong Bill of Rights Ordinance and with reference to the laws in other common law jurisdictions, the ad hoc group generally accepted that certain rights of an individual may have to be abrogated to a certain extent for a justified and necessary public purpose. On this principle, a series of amendments are however considered necessary. I will leave it to the Secretary for Security to explain details of these amendments. The Honourable Martin LEE has submitted some separate amendments in respect of clause 3. I will explain the majority views on this aspect at the Committee stage. I now turn to two related and important issues.

In order to ensure proper treatment of a person served with a clause 3 order, there will be a new sub-clause to provide for a code of practice to be drawn up and approved by the Legislative Council. The code should prescribe procedures with regard to how interviews should be conducted; how material should be produced and how complaints should be handled. It is expected that the code will be submitted to this Council for approval soon after enactment of the Bill and before implementation of the clause 3 power.

It is also the unanimous view of the ad hoc group that a formalized and effective witness protection system is imperative. On this the Administration has made positive proposals to set up a dedicated unit within the police to take up witness protection matters to provide special arrangements to persons served with a clause 3 order and to set up an appeal board, with lay participation and before implementation of clause 3 to consider refusal of requests for protection. Review will also be conducted regularly on the capacity of the dedicated unit in meeting demands. The Legislative Council Security Panel has been entrusted to follow up on these issues.

Another provision in connection with clause 7 makes it an offence for anyone to prejudice an investigation taking place under clause 3, 4 or 5. The concern is the need to safeguard the investigations and the persons who assist in the investigations as well as freedom of expression. The ad hoc group

considered that the provision as proposed in the Bill is too wide. It has been eventually agreed to restrict the provision. The Honourable Martion LEE considers that one amendment does not go far enough. I will elaborate on the majority view in this regard when it comes to the Committee stage.

Confiscation

The confiscation provision in clauses 8 to 24 of the Bill are modelled on the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

The Bill proposes to enlarge the regime so that it is invocable upon conviction of a specified offence and when the person has benefited from crime. A confiscation order may cover the person's entire proceeds of crime. The focus of the ad hoc group was on whether this enlarged regime is appropriate.

The ad hoc group accepted that confiscation is an effective means to crack down on the economic power of organized crime groups and to uphold the principle that crime should not pay. The enlarged regime is however worrying because it may effectively cover a minor theft and proceeds of that theft.

The Administration has been receptive in accepting the ad hoc group's suggestion of restricting the provisions so that there will be separately a general power and a special power to confiscate. I will entrust the Secretary for Security to give details at the Committee stage.

Money Laundering Offence

Clause 25 proposes a general money laundering offence which is an extension from the current provision in Cap. 405 relating to drug money.

The ad hoc group recognized the merit of a wider provision against money laundering. Yet, the present proposal to enlarge the provision to such an extent as to cover all proceeds of crime will net even trivial cases. It may create unnecessary burden on innocent third parties who routinely handle money on behalf of their clients, for instance, bankers, lawyers, estate agents, and so on. The Administration has assured us that these legitimate trades are not their target. It has been agreed to limit the provision to proceeds of indictable offences; and proceeds of foreign offences which would amount to an indictable offence in Hong Kong. This latter application will help combat the internationalization of crime and prohibit criminals from making Hong Kong a haven of money laundering.

Sentencing in respect of Specified Offences

Clause 27 provides that, where a person is convicted of a specified offence, the prosecution may submit certain information to the court to enable it to impose a more severe sentence within the maximum penalty prescribed for that particular offence. The proposal is intended to address the public concern

that sentences in certain cases are not heavy enough to maintain a deterrent effect.

The ad hoc group generally accepted the object of the proposal and agreed that an appropriate sentence is an essential part of the administration of justice. There are however a number of contentious issues that require amendments. For instance, references will be deleted as to whether a person's previous conviction amount to an organized crime. procedures will be prescribed as to when and how the specified information should be submitted. There will also be specific provision to challenge the information.

Money Lending Offence

I should also like to mention a consequential amendment relating to section 24 of the Money Lenders Ordinance (Cap. 163).

The money lending offence is mostly associated with loansharking which is a prime activity of organized crime group. The current penalty of two years' imprisonment and a fine of \$100,000 is drastically inadequate to reflect the seriousness of the offence. The Administration has agreed to raise the maximum of the penalty to 10-year imprisonment and a fine of \$5,000,000, in addition to making the offence indictable and so bringing it properly within the scope of the confiscation and sentencing provisions of the Bill.

Conclusion

Mr President, the Bill is important and complex. It has significant legal and social implications. The ad hoc group has made strenuous efforts to accommodate the different concerns that have been expressed. On this, I must thank various public and professional bodies that have submitted their views on the Bill, in particular the Hong Kong Bar Association and the Law Society of Hong Kong, for their professional input. I must also thank the government officials and my honourable colleagues for their time and effort, and in particular the Honourable Simon IP for his valuable assistance as deputy convener of the ad hoc group and his leadership as convener of the technical subgroup.

Mr President, crime is a concern of everybody in the community. The exceptional provisions in this Bill invite as much concern as a monitoring measure, the ad hoc group has requested the Administration to give an annual report to the Legislative Council, and also a comprehensive review after three years, on the operation and effectiveness of the various provisions in the Bill. I await the undertaking of the Secretary for Security on this request.

Mr President, with these remarks, I support the Second Reading of the Bill.

MRS SELINA CHOW (in Cantonese): Mr President, colleagues from the Liberal Party and I affirm and support the Organized and Serious Crimes Bill and the amendments to be moved by the Secretary for Security. In terms of meeting the needs of society, combating crimes and safeguarding the spirit of the rule of law, this Bill will undoubtedly have positive, beneficial and stabilizing effects on society.

One of the major objectives of the Organized and Serious Crimes Bill is to stamp out triad activities.

In 1993, there were 3 487 criminal cases involving triad societies. Although in comparison with the number of cases in 1992 there was a drop of 13.2%, we would be over-optimistic if we became complacent by looking at the figures alone because these figures only represent the cases reported by the public and crimes detected by the police. The actual figures may rise sharply if cases unreported by the public and crimes undetected by the police are taken into account, let alone the fact that it is the usual practice of triad societies to intimidate the public and deter them from reporting crimes. A more reliable indicator would be an assessment of the actual number of persons victimized or intimidated by way of a statistical survey similar to that conducted in the past by the Government on the various criminal activities. Now there is a need to conduct a similar statistical survey on the activities of large organized criminal syndicates to ascertain the extent of the problem.

Of course, actual statistical data of criminal cases would be useful. Last year alone, the number of blackmail and intimidation cases involving triad societies reached 651. Moreover, criminal activities such as car theft, drug trafficking and illegal gambling are mostly controlled by triad societies or organized criminal syndicates. Today, triad societies have even grown into enterprise-like multinational syndicates. Therefore, it is high time to enact new laws to deal with organized and serious crimes.

Now is the time to declare war on triad societies and organized criminal syndicates. The passage of this Bill will equip the law enforcement body with effective weapons to deal with organized crimes. This complicated Bill has taken the ad hoc group about two years to scrutinize. During this period, the Administration expressed dissatisfaction with the ad hoc group and even criticized it openly. Of course, at a time when organized criminal syndicates were expanding incessantly, we could not blame the Administration for being impatient. However, this is a very complicated Bill. With the foremost consideration of safeguarding the public interest in mind, Members had to reach a compromise over human rights which may affect every citizen. How then could Members afford to act carelessly? Moreover, the Administration has put all the blame on Members without enquiring the reasons. This is not only unfair but also shows that the Administration does not acknowledge and treasure the past co-operation between this Council and the executive arm of government.

In fact, in the course of scrutiny of the Bill, important issues covered by the original Bill were improved. I firmly believe that after in-depth debates and compromises, we and the Administration have struck a proper and reasonable balance. Issues such as the definition of organized crimes, the substitution of the high court for the district court as the judicial organ to issue an order for production of materials, the time for the prosecution to put up a request of classifying the case as an organized crime for rigorous treatment during the course of trial, arrangements for the protection of witnesses, and even the guideline for the police to handle witnesses have all been debated in detail. I believe that after the several amendments by the Administration, the Bill has struck a proper balance. I also believe that the amendment proposed by the Honourable Martin LEE would seriously weaken the ability to combat triad societies and criminal syndicates. During the Committee stage, the Honourable Miriam LAU from our Liberal Party will speak on and explain these amendments.

As far as crime-fighting is concerned, it can be said that the Bill will be conducive to prevention of crime on the one hand and facilitate investigation of crime on the other. I would like to elaborate on these two aspects.

As regards prevention of crime, the Bill not only provides for offences in respect of the proceeds from crime committed by the convicted, but also offences in respect of assisting others to retain the proceeds from crime. The Bill also provides for imposition of heavier penalties on those involved in organized or serious crimes. All these will greatly reduce the temptation for and the returns derivable from committing crime and increase the deterrent and preventive effects on crime.

As regards investigation, the Bill increases the investigative power of the police in respect of organized and serious crimes. With the power conferred by the courts, the police can require a person who knows the relevant information under investigation to answer questions, or require a person in possession or control of the relevant materials under investigation to produce the materials. This will undoubtedly be a morale booster to police officers and will help them conduct in-depth investigation into complex crimes, obtain information on criminals, and understand the network, connections and economic power in respect of organized crimes and thereby destroy the criminal network.

The expansion of the police force and its powers has, in the meantime, caused much public concern. A choice need to be made and a balance need to be struck between the right to remain silent, that is to say, the right to privacy of the individual and the public interest. Undoubtedly, the Bill allows the expansion of police powers in the public interest and the definition of public interest is of great importance to this Bill. The Bill provides for a restrictive arrangement involving the three powers, that is to say, the three arms of government, to ensure that there will not be abuse of power. First, the ambit of the exercise of power is defined by legislation. The law enforcement body will be subject to certain checks and balances as regards investigation. The

conferment of power by the Attorney General and the approval by the Judiciary can also function as appropriate checks and balances.

While checks and balances on power are certainly important, it is also equally important to vest the police with sufficient power to conduct effective investigations and combat organized criminal syndicates.

However, effective crime-fighting cannot be achieved through legislation alone. It will also depend on the manpower of the police and more importantly the determination of the Administration. Therefore, in addition to conferment of power by this Council, the Administration should also allocate more resources and manpower to the police force so that it will have the ability to combat criminal activities effectively.

MR MARTIN LEE: Mr President, organized crime has been a long standing problem in Hong Kong. As Honourable Members are aware, triad organizations subject their victims to a wide range of terrible offences. They extort, they steal, they kidnap, and they kill — to list but a few — and they profit handsomely from these acts. The triads have become menaces not just in Hong Kong — or even in Asia. Their organizational network, headquartered here, has spread across the globe to reach major cities in Europe and North America. And as their networks grow, they become even more difficult to stamp out.

We are all quite familiar with the problem. Everyone in Hong Kong wants to see an end to the triads and the damage they do to our society and our economy. The Democratic Party and its predecessors have always taken a strong stand against organized crime, and we will continue our efforts to stamp out such crime in our city.

The real question is: how? How do we put an end to organized crime?

The Government has been trying to combat organized crime for years. An entire bureau of the police force is dedicated to anti-triad operations, but despite their very hard and very courageous work, they have made little headway against these organizations.

The problem, the Administration concluded, must be with the law. Officials believe that our criminal legal system does not give the police enough punch to fight organizations that may be larger and more developed than many international business operations. They are certainly more tightly knit — the triads are secret societies bound together by their own cryptic oaths and codes of behaviour — codes that require absolute silence to the outside world on their cohorts' affairs, much more closely knit than our august body, the Executive Council. They are hierarchical groups, with network upon network of small-time hoodlums carrying out orders from their superiors. Tough nuts to crack indeed.

And so it was under these circumstances two and a half years ago that we were handed the Organized and Serious Crimes Bill (OSCB) and its companion, the Criminal Procedure (Amendment) Bill 1992. These are intended to be the special tools that will break the unbreakable, namely, triad syndicates.

The OSCB strengthens the Administration's crime-fighting tools by allowing them to pull in people who, in the reasonable opinion of the police, know of or possess something valuable to an investigation. The police can then question them and demand that they produce various materials. This is an investigative power that goes beyond any statute or principle of common law we now have in Hong Kong. It is not a power to approve too quickly in a community which enjoys the rule of law and is protected by a Bill of Rights and the International Covenant on Civil and Political Rights (ICCPR).

Among other provisions, the OSCB also slaps persons convicted of certain listed offences with stiffer penalties and snatches away from them the proceeds of their crimes.

This is all well and good. It is our duty as legislators to ensure that the police have the powers they need to fight crime and preserve public safety, and after our vote this afternoon, they will have at their disposal a new strong law to fight some very tough criminal organizations.

But I need not remind Honourable Members that we have another very serious responsibility as legislators — to protect the freedoms of Hong Kong people. This is perhaps our most important role as public servants in this Council. We alone stand between the Government and the people, and so we alone can protect the basic liberties of the people from improper government encroachment.

Part of our constitution, the Letters Patent, commands that we take this duty seriously. The second sentence of Article VII(3) reads, "No law of Hong Kong shall be made that restricts the rights and freedoms enjoyed in Hong Kong in a manner which is inconsistent with (the ICCPR) as applied to Hong Kong."

It is when faced with a Bill like the OSCB that these words speak the loudest. We must be ever so careful when granting the Government new powers to investigate and punish crime, not to sacrifice the basic civil liberties that we all cherish so dearly. I am talking about the right to the protection of privacy, the right to liberty and security of person, and the right to a fair and public hearing — rights which must be respected and which make our city one of the freest in Asia.

Honourable Members will surely see that if in the name of fighting triads we pass legislation that unduly interferes with our basic civil rights, we will be doing our community a disservice.

So the whole process really comes down to a balancing act. On the one hand, we want to strengthen police powers so the Administration can be effective against organized crime, but on the other hand, we have to safeguard our basic freedoms from improper government interference.

The ad hoc group has worked long and hard with the Government to reach the perfect balance. However, I cannot agree that the OSCB, as revised by the Government's Committee stage amendments, represents the best possible outcome, because I believe that the balance has been weighted too heavily in favour of strong police powers in clauses 2, 3, and 7. I have drafted amendments to them so that a more proper and even balance may be struck — and in line with the Bill of Rights Ordinance and ICCPR.

I also believe that the abolition of the corroboration of accomplice evidence rule in the Criminal Procedure (Amendment) Bill, the next Bill to be looked at, tips the scale too far in favour of the Government, and I therefore will oppose that Bill. I will give my reasons for this position when the Bill comes up for debate.

My three proposed amendments to the OSCB and my opposition to the Criminal Procedure (Amendment) Bill have been outlined in a paper distributed to Honourable Members on Monday.

Mr President, I would like now to respond to a few of the arguments which the Administration has put forward in opposition to my proposals.

Be Realistic

When the Government prepared the OSCB, it came as a great relief to many in Hong Kong and overseas. We were all looking for a quick and easy solution to what is obviously a complex and difficult problem.

But as legislators, we cannot let our hopes cloud reality. It would be woefully irresponsible for us to pass a law as important and powerful as the OSCB without a hard and realistic look at its likely effects. This means looking beyond the intentions of the government sponsors and to the actual words of the Bill.

If we are honest with ourselves and the people of Hong Kong, we have to admit that the upside of the Bill does not appear to be very great. I am not saying that there is no upside; I am merely pointing out that as much as we would like it to be, the OSCB will not be a miracle cure for the triad disease.

The Administration may well have some success with its new powers, but realistically, organized crime is not going to come to an end just because prosecutors can threaten these hardened criminals with longer prison sentences or because they can drag people in for questioning and threaten them with a maximum sentence of one year of imprisonment and a maximum fine of

\$100,000 if they do not co-operate. Again, I am not saying we should oppose the OSCB, but we should have a realistic picture of how it will affect Hong Kong.

Now look at the downside. The OSCB gives away broad powers, leaving us with little control over how the police use them. Members need only consider recent Legislative Council probing of the Independent Commission Against Corruption to understand this problem. These powers, if abused, could seriously threaten our basic civil liberties and, to be realistic, the risk of abuse is not small.

We need to minimize the downside by narrowing the area of possible abuse as much as possible. In fact, the ICCPR and the Bill of Rights require us to engage in just this exercise as part of our duty to protect the rights of Hong Kong people. The law states that whenever the Government comes to us with a bill that may infringe our most fundamental liberties, we can permit it — but only if the Government has a specific goal that is clearly important and only if the bill makes just the minimum necessary interference with our rights as is appropriate in a democratic society.

So, as Honourable Members deliberate on the issues, I wish to remind them of their duty under the law to ensure that every power we, the legislature, give the Administration is addressed exclusively to the Bill's intended purpose — to fight triads as the Honourable Mrs Selina CHOW said — and that it will only restrict our basic rights to the smallest possible extent.

Mr President, let us look for a moment at the experience in another country with a strong anti-organized crime law. The United States Congress passed the Racketeer-Influenced and Corrupt Organizations Act (or RICO as it is known there) in 1970. It was drafted to deal with organized criminal syndicates just like our Bill, although, admittedly by slightly different means. In fact, a member of the Attorney General's Chambers was sent to the United States to examine the American experience with their special law. Now, RICO has in its provisions an extra safeguard on top of what we have in the OSCB; because the prosecution there must first prove the existence of criminal syndicate before it can use the special power of RICO. And still, RICO has been applied beyond its intended targets — against defendants and for purposes that even RICO's own author did not expect.

That man, Mr G Robert BLAKEY, wrote in a recent issue of the United States magazine the *National Review*, "Should RICO be applied beyond a John GOTTI (boss of New York's largest mafia family) or a Charles KEATING (kingpin of the United States savings and loan scandal which has cost the United States several billions of dollars) to a Mahatma GANDHI or a Martin Luther KING? I thought not when I drafted the Act" But Mr BLAKEY then goes on in his article to describe how shocked he was to see his Act being used to stifle the free speech rights of anti-abortion demonstrators.

Like RICO was for the United States, the OSCB is an entirely new step for Hong Kong. We should therefore proceed with extreme caution so that we do not face the same problems that the Americans are dealing with under RICO. If a more balanced OSCB does not meet with success, the Administration can always come back to us, explain the situation, and ask for more power.

Safeguards and Our Role as Legislators

In opposition to my concerns, the Security Branch has argued in a paper that Members should not worry about handing broadly defined powers over to the police. Two points have been made. First, the Administration promises that investigators will only use the OSCB when they are reasonably sure that organized crimes are involved. And second, the Attorney General must apply to the High Court for permission to be given to employ special OSCB powers.

As far as the first comment is concerned, Members will recall that under the rule of law, our Ordinances apply equally to everyone. If a law is of general application and it is clear in its terminology, the words of the Security Branch cannot change that law and narrow its application to only certain people or acts. The comments of policy secretaries have no legislative effect. Only the Bills that we pass in this Council into law have.

And a requirement that the High Court gives the Attorney General permission before he invokes certain powers under the OSCB is not much of a safeguard against police powers if a law clearly confers broad powers to the police. It is the role of judges in our system of government to interpret the law — it is ours, fellow Members, to legislate. It is our job, then, and not that of the High Court Judge, to set the standards on which judges base their decisions. If we give judges a poorly drafted and ambiguous law that grants the Administration broad powers, the judges' job is made all the more difficult. If, on the other hand, we pass a law that hands clearly defined powers to the police, judges' jobs become easier, and prosecutors can better determine when to press charges in court; and the public is also better informed about the laws that govern them.

As a final safeguard, the Administration may contend that any clause violating the Letters Patent/ICCPR will be removed in litigation under the OSCB. The reality, however, is that any such litigation will reach the top of our judicial system over a very long time, during which our basic rights will continue to suffer. And how foolish all of us will then look not to have amended the law here in Committee when we should have.

As there is no time limit at the Committee stage, I shall give my reasons only at that point, and with these remarks, Mr President, I support this Bill. But I shall be proposing three amendments in due course.

MRS ELSIE TU: Mr President, as a member of this ad hoc group, I should like to say a few words on the Bill and on Mr Martin LEE's objection to some parts of it.

I have for many years dealt with the less privileged who get on the wrong side of the law, so I fully understand the reasons why these amendments have been proposed by Mr LEE. Fundamentally, the amendments proposed by Mr LEE are aimed at the less principled members of the police who might abuse their wider powers given by this Bill. I fully agree that this is a matter about which we should all be deeply concerned. We do not want to see police powers used against innocent people.

On the other side of the balance we have the much greater possibility that not only some but in fact all criminals will abuse the law whenever they find a weak link. The Bill may be called draconian, but it also aims at removing the weak links used by criminals, and also, unfortunately by smart lawyers whose job it is to find those weak links on behalf of their clients, and I am not referring to any lawyers present in this room. One such weak link was recently found, resulting in the acquittal of an elderly man, originally sentenced to nine years' imprisonment for raping a small girl. The acquittal was not based on the man's innocence, but on a technical error by the judge. This kind of weak link can often be found in the judge's corroboration warning, which this Bill also aims to remove or the second Bill aims to remove.

We have to weigh up today which is better: to protect the innocent victims of crime, or to create loopholes through which violent criminals may escape.

My answer to this is that first and foremost we must protect the innocent victims of criminals, who nowadays do not hesitate to kidnap and murder even small innocent children. I agree, of course, that we need to protect the smaller, though also vulnerable group of persons who are wrongly accused or convicted when police abuse their powers.

If I were asked to choose between protecting the many innocent victims of criminal violence, or the few who fall victim to police abuse, I would have to choose and give priority to the innocent victims of crime, because those victims include small children and women, and even the elderly and the handicapped.

Having said that, I must emphasize that I have always tried, and will continue my efforts, to get justice for possible victims of police abuse. If we pass this Bill today, I wish to state my position that I shall never give up my efforts until we have an independent Complaints Against Police Office, or alternatively until the police are placed under the jurisdiction of the Commissioner for Administrative Complaints along with all other departments and bodies where power may be abused or maladministration may occur. We are increasing police powers. We must also make the police more accountable to avoid abuse.

With these remarks, Mr President, I would support both Bills as amended by the Committee, but I regret that I must oppose the amendments which Mr LEE will move at the Committee stage on the grounds that they weaken the power to combat organized crime. Thank you.

MR MOSES CHENG (in Cantonese): Mr President, after scrutiny by this Council of the Organized and Serious Crimes Bill and the Criminal Procedure (Amendment) Bill 1992 which lasted more than two years, the debate on the Second Reading of these two Bills resumes today, at last. Today, we will be disseminating to the people of Hong Kong an important message: that the Legislative Council declares war on the unscrupulous criminals; that we are making a significant and correct step in combating serious crimes which are becoming increasingly rampant; that we will make every effort in securing a peaceful and harmonious society for the people of Hong Kong.

I believe every colleague will agree that to legislate in order to protect the safety of the public is our foremost objective which was, is and will be immutable. When scrutinizing the Bill, we have to bear in mind that the Bill should, on the one hand, ensure the police be vested with appropriate and reasonable authority so as to effectively combat organized and serious crimes and to safeguard public security, while, on the other hand, it should also ensure that personal freedom of the general public will not be unnecessarily infringed upon due to excessive police powers. It is our responsibility to ensure that the Bill meets both objectives. We aim at striking a right balance between the two objectives and that balance should be appropriate and consistent with the reality of Hong Kong. We uphold the principle that the Bill aims to combat effectively those criminals who manage to get off scot-free under the existing laws and also aims to protect the law-abiding citizens. We will hold fast to this principle and will not yield one inch of ground.

I would like to tell Members that these two years have not been wasted because we have been successful in urging the Government to come up with 70 amendments to the Bill. For example, the definition of "organized crime" in the existing Bill is much clearer and narrower in scope than the Government's originally proposed definition, and a lot of ambiguities have been clarified. A suitable check and balance mechanism is also put in place while expanding the police's authority in gathering evidence; and along the same line, measures to protect witnesses have also been strengthened.

The Governor claimed in his latest policy address that for the third year running, the rate of violent crime had fallen. I am afraid the Governor was only giving us part of the facts. The crime statistics as provided by the police show that the overall number of criminal cases is over 41 000 in the first half of the year, representing a rise of 2.7% over the same period last year, and drug-related crimes record a surge of 45%. We have but to admit that the crimes have become more organized and more complex than those in the past. It is thus essential for the police to be vested with more appropriate authority to

fight crimes. As regards maintenance of law and order, we shall absolutely not let up, nor shall we adopt a tolerant attitude.

I understand that the Honourable Martin LEE will be moving amendments to clauses 2, 3 and 7 of the Bill during the committee stage. In fact, the issues raised by Mr Martin LEE were, time and again, studied in depth at the meetings of the ad hoc group on this Bill. Before the resumption of the Second Reading debate on this Bill, I carefully went through the amendments once again, but I still hold the view that the Government's amendments have basically incorporated Members' suggestions and have taken into account the reality of Hong Kong by striking a right balance between fighting crimes and protecting human rights. Therefore, I do not think that Mr LEE's amendments should merit our support. The most appropriate thing for the Legislative Council to do now is to pass the Bill as soon as possible, so that the criminals can get the clear message that they will have nowhere to go but to await punishment according to the law. In addition, we should continue to monitor closely the implementation of this Bill after it is enacted as an Ordinance.

I hope that the police, armed with this new weapon, that is, the Organized and Serious Crimes Ordinance, will always remind themselves that they should spearhead their efforts against the criminals committing organized and serious crimes. The police have the full backing of the Legislative Council and the public as far as crime-fighting is concerned.

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

MRS MIRIAM LAU: Mr President, scrutiny of the Organized and Serious Crimes Bill has been a demanding exercise. Throughout this exercise, members of the ad hoc group have frequently been torn between two seemingly conflicting demands. On the one hand, we acknowledge the need to invest our law enforcement agencies with sufficient powers to enable them to effectively combat organized and serious crimes. On the other hand, there is constant concern that such powers which are necessarily extensive, may be abused to the detriment of human rights. Such concerns have just now been expressed by the Honourable Martin LEE. The result was a most rigorous tug of war between the two demands with many provisions of the Bill being refined, many checks and balances being built in and many powers being circumscribed. I believe that the Bill together with the Committee stage amendments which will later on be moved by the Secretary for Security now strikes the right balance between effective law enforcement and protection of human rights.

There may still be some who are still not entirely satisfied with the final product that is now presented to this Council. The Honourable Martin LEE is clearly one of them. He will later on at the Committee stage move amendments to further delimit the powers of the investigating authority and restrict the confines of the Bill. I cannot support his move. As much as I respect Mr LEE's

efforts to further protect civil liberties, we must be wary not to punch loopholes into this important piece of crime fighting legislation, for to let one and even one criminal off under the cause of human rights, however honourable that may be, we might be jeopardizing the civil rights of many other law-abiding citizens.

Specifically the Honourable Martin LEE seeks to exclude one-off offences from the definition of organized crime albeit they are of an organized and serious nature. He will also seek to exclude the application of a clause 3 order to "persons of a particular description" and to make disclosures about investigations liable to be prosecuted only if such disclosures are both intended to prejudice and are likely to prejudice the investigations.

The definition of "organized crime" has been the subject of lively debate within the ad hoc group for over many months. The proposed definition which the Secretary for Security will move at the Committee stage targets at triad activities and criminal activities of an organized and serious nature. These are the activities which the Bill aim at combatting. Not all one-off offences are included; only those which are serious and involve substantial planning and organization. I do not think that serious and organized one-off offences are less serious than those which are repeatedly committed. Furthermore there are already safeguards in the Bill to ensure that only appropriate offences will be netted in for the application of a clause 3 order since not only must the application be made by the Attorney General but a High Court Judge must be satisfied before authorization to use the powers will be given. If however such one-off offences were excluded from the definition of organized crime, this might create a loophole for clever criminals to escape the grip of the law. I do not believe that the community would wish to see this happen.

In regard to application of a clause 3 order to "persons of a particular description", the Administration has conceded that such an application will only be made where the crime could not otherwise be effectively investigated. Whilst this type of application is not to be encouraged and the investigating authority should use its best endeavours to target specific people, it can be envisaged that operationally there may be cases where it would not be possible to specifically identify the persons in question without compromising the investigation. Rather than to exclude such applications and thus thwart the investigation, I am prepared to allow such applications to be made provided there are safeguards against abuse. I am satisfied that such safeguards are included in the Bill.

On the question of what type of disclosure should attract criminal sanction, I believe that the integrity of investigations into triad organizations and criminal syndicates must be protected. This is necessary both for the reputation of those who are being investigated and for the safety of those who are assisting in the investigation. In my view, the right to know does not prevail over such important considerations. The test of "intent to prejudice" is already a high one and I do not see why a person who deliberately makes a disclosure intending such disclosure to prejudice the investigations should go unpunished. The fact that by chance such disclosure did not result in real harm to the investigations is

not in my view entirely relevant since the criminal intent already existed at inception.

Mr President, if we expect a law enforcement agency to do a good job in tackling organized and serious crimes, we must prepare to equip them with the necessary tools. The Bill with all the safeguards against abuse which the Administration has agreed to put into it remains an effective crime-fighting tool. We must, however, ensure that this effectiveness is not unduly hampered.

Mr President, I support the Bill.

SECRETARY FOR SECURITY: Mr President, I should like to thank Dr Philip WONG, Mr Simon IP, and other Members of the ad hoc group for their thorough and careful study of the Organized and Serious Crimes Bill. The Committee stage amendments which I am going to move later are the agreed outcome of detailed discussions in the ad hoc group.

This Bill, which was introduced into this Council in July 1992, seeks to improve our ability to investigate and prosecute organized and serious crimes. During the discussion of the Bill with the ad hoc group, we took into consideration the concerns of Members about the need to strike a balance between enhanced powers of investigation and civil rights and to ensure that the rights and liberties guaranteed in the Bill of Rights were respected. We have agreed to some 70 Committee stage amendments. I am, however, disappointed that Mr Martin LEE intends to move three further Committee stage amendments to restrict further the powers in the Bill. Their effect would be to emasculate the Bill; the police would not have the powers they need to tackle organized and serious crime effectively, a course of action which has the full support of the community and which has been consistently urged by this Council. The Administration intends to oppose Mr LEE's amendments.

I should like first to make some general points. The Bill aims to combat organized and serious crime in four ways — enhanced investigative powers, confiscation of the proceeds of crime, criminalization of money laundering, and special procedures for sentencing those convicted of organized and serious crimes.

Turning first to the special powers of investigation, one of the major difficulties which the police and other authorities encounter in tackling organized and serious crimes is the reluctance of people to come forward. To address this, we propose in the Bill that, for the investigation of organized crime, it should be possible to require persons having relevant information to answer questions or to produce the information. We recognize that these powers are intrusive and that the rights of the people in the community must be adequately safeguarded. We have, therefore, built in a number of safeguards in the Bill to prevent possible abuse. The safeguards include: first, that the powers can only be invoked in respect of organized crime, involving the restricted list

of offences in Schedule 1 to the Bill; second, applications to use such powers must be made by the Attorney General; and third, such powers must be authorized by a High Court Judge, who must be satisfied that a number of stringent conditions have been met.

The definition of organized crime was raised and discussed extensively by the ad hoc group. Members expressed concern that the definition might include offences other than a serious organized crime. An example quoted was that two school children planning and stealing a chocolate bar in a supermarket might be covered by the definition. The Administration is of the view that the definition must be wide enough to cover all types of organized crime and that the safeguards in the Bill, in particular that it would be for a High Court Judge to decide in each case whether the special investigative powers should be invoked, are adequate to prevent abuse. Nonetheless, to address this point, we agree to revise the definition to make it more specific.

The revised definition consists of three components. The first deals with triad societies; the second with ongoing criminal groups; and the third with very serious one-off offences involving substantial planning and organization. I am pleased that the first two components have the support of the ad hoc group. However, I am disappointed that the third component is opposed by Mr Martin LEE. The Administration considers it is essential to retain this because existing powers are inadequate to investigate and prosecute those responsible for planning and carrying out such crimes. To exclude crimes of this sort from the ambit of the Bill would create a loophole which criminal syndicates would learn to exploit by reassociating themselves, thereby making very difficult the detection and investigation of each separate crime. This would significantly limit the effectiveness of the Bill in achieving its stated objective, and undermine the widespread public support for more effective powers against organized and serious crimes. I therefore urge Members to support the three components of our proposed definition and to reject Mr Martin LEE's proposed amendment.

The ad hoc group also considered whether the special investigative powers in clause 3 of the Bill should be applied to persons of a particular description. I understand that Mr Martin LEE is concerned that our proposals are too wide and, accordingly, he proposes to move a Committee stage amendment to exclude the application of the powers to persons of a particular description. The Administration does not accept this amendment. The Bill will be fatally weakened if the coverage of clause 3 is restricted in this way, because in many cases it will not be possible, at an early stage of investigation, to identify precisely the persons who have information relevant to the investigation. Under some circumstances, for example, where urgent action is necessary because lives are endangered, the special investigative powers must be applied to persons of a particular description in order for the investigating authority to gather essential information. We have already built into the Bill a number of statutory safeguards to prevent the abuse of this particular power. Moreover, we have agreed to make an amendment to qualify this provision so that the special investigative powers can be applied to persons of a particular description only

where the organized crime could not otherwise effectively be investigated. Once again, I urge Members to support our proposal and to reject Mr Martin LEE's amendment.

Another question considered by the ad hoc group is how to safeguard the interests, and ensure the safety, of the persons who are required to answer questions and furnish information. The ad hoc group concluded that proper treatment of these persons by the investigating authority is of paramount importance and, accordingly, that a code of practice guiding the interview procedure should be drafted and approved by the Council, and should be in place before the special investigative powers are to be used. We accept this. A code of practice discussed and agreed by ad hoc group Members will be submitted to this Council for approval by positive resolution.

As regards the safety of witnesses, the police are in the process of establishing a Central Witness Protection Unit to implement improved witness protection measures. Persons who are required to answer questions or to furnish information under the Bill, will be given special arrangements, under which their requests for protection must be referred to the Headquarters Unit of the Police Central Witness Protection Unit and considered by the Director of Criminal Investigation. The ad hoc group has also requested that a Witness Protection Appeal Board, with lay persons as members, should be set up before the special investigative powers are in operation, so as to enhance public confidence and ensure that witnesses are adequately protected. We agree with this proposal, and will establish a Witness Protection Appeal Board.

Effective investigation and witness protection are both underpinned by clause 7(1)(a), which makes it an offence to make a disclosure which is likely to prejudice such an investigation. In brief, the clause provides that a person commits an offence if he makes any disclosure about an investigation under clause 3, 4 or 5 of the Bill, without lawful authority or reasonable excuse, where such disclosure is likely to prejudice the investigation. There has been concern expressed that this offence might restrict freedom of expression and could be used against the press. The offence is not designed to target any particular persons or professions. It is designed to ensure that investigations are not jeopardized, and the reputation and safety of persons involved in the investigations are not put at risk by the premature disclosure of the details of an investigation. Nonetheless, in order to meet Members' concerns, we have agreed to revise this sub-clause to specify that a person commits an offence only if in making the disclosure he intends to prejudice the investigation. Thus, a person who makes a disclosure, not knowing that it may prejudice an investigation, will not commit an offence.

I understand that Mr Martin LEE is not satisfied with this revised proposal and will propose that an offence should only be committed under this sub-clause only if the person intended to prejudice an investigation and the disclosure was likely to prejudice the investigation. The Administration does not agree with this proposal. If a person makes a disclosure, intending it to

prejudice an investigation, he should not escape liability. I urge Members to support our proposal and to reject Mr Martin LEE's amendment.

As regards the second major proposal in the Bill, confiscation provisions, these empower the court to confiscate all the proceeds of crime of a person who is convicted of a scheduled offence. This proposal is modelled on provisions in the Drug Trafficking (Recovery of Proceeds) Ordinance. I am pleased that the ad hoc group agrees that confiscation is an effective means of attacking the financial strength of organized crime syndicates. However, some ad hoc group Members were concerned that coverage of the provision might be too wide, since the confiscation order could be triggered by a conviction of a minor scheduled offence and would then apply to all the proceeds of crimes committed by the defendant. The Administration feels strongly that crime must not be allowed to pay and that failure to provide for the confiscation of the proceeds of all serious crimes would be a failure to do all that we could to prevent crime. I believe that there is wide public support for the confiscation legislation to cover all serious crimes. Nonetheless, to address Members' concerns, we have agreed to amend the provisions so that the defendant must have received proceeds of at least \$100,000 in respect of the specified offence of which he is convicted and the specified offence must be organized crime, before his proceeds from all organized crimes would be liable to confiscation. I am pleased that this revised proposal has the support of the ad hoc group.

Turning now to the money laundering provisions, the third major proposal in the Bill, these create a general money laundering offence to cover the proceeds of all crime, modelled also upon the provisions in the Drug Trafficking (Recovery of Proceeds) Ordinance. Again, I am pleased that the ad hoc group supports the objective of this provision, which will help destroy the financial strength of criminal syndicates. Some ad hoc group Members, however, have pointed out that the money laundering offence was unusually wide. We have therefore agreed to limit the money laundering offence to the proceeds of indictable offences.

The fourth major proposal in the Bill, the special sentencing procedures, will enable the prosecution to provide certain information to the court after a person is convicted of a specified offence under the Bill. The judge would then be required to take that information into account when sentencing and could, within the statutory maximum penalty, impose a heavier sentence than would otherwise be the case. The Administration firmly believes that this provision is necessary. The intention behind it is to permit the prosecution to inform the court of relevant information about the circumstances of a person convicted of a specified organized crime offence and of the circumstances of the offence, so that the court is aware of the full gravity of the offence. This will enable the court to impose an appropriate sentence.

We, of course, recognize that the special sentencing provisions must operate fairly. We have redrafted the provisions and built in additional safeguards in order to meet concerns expressed by Members of the ad hoc

group. The main amendments are that the information to be furnished must, as a general rule, be admissible in evidence in criminal proceedings; information to establish that the offence was an organized crime must either be adduced at the trial or accepted by the court before the person's conviction following a plea of guilty; the defendant must be given an opportunity to be heard regarding any information so submitted; and no information may be given in respect of previous convictions.

This redrafted provision has the support of the ad hoc group.

Mr President, I would like at this stage to explain the amendments which I will move at the Committee stage. The first amendment relates to clause 1 of the Bill. The Administration will need time to prepare for enforcement of this legislation and some provisions may need more lead time than others. We propose, therefore, that different provisions in the Bill may be brought into operation on different dates.

Clause 2 defines the major terms used in the Bill. As I have mentioned earlier, Members have expressed concern that coverage of the definition of organized crime is too wide. We have agreed to revise it to focus specifically on triad-related offences, on-going criminal groups and one-off, but very serious, organized crimes.

I shall propose other changes to clause 2. The definition of "premises" will be moved to clause 2 to make the Bill more tidy. It is also necessary to move the definition of "society" and "triad society" to clause 2, as a consequence of the new definition of "organized crime". We also propose that the definition of "reward" should include "pecuniary advantage" to accord with the corresponding definition in the United Kingdom Criminal Justice Act 1988.

As a consequence of the limitation of the confiscation provisions to the proceeds of a specified offence or an organized crime, and of the money laundering provisions to the proceeds of an indictable offence, the definition of "criminal activity" and "proceeds of crime" in clause 2 and "benefited from crime" in clause 8 are no longer appropriate, and are replaced by new definitions.

In respect of clause 3, Members were concerned that the powers were too wide and lacked sufficient safeguards. As I have explained earlier, there are already a number of safeguards in the Bill, but we have agreed that this clause should be further refined and additional safeguards built in.

Clause 3(3)(c) will be amended so that any matter on which a person subject to a clause 3 order is required to answer question or to furnish information must "reasonably" appear to the investigating authority to be relevant to the investigation. Clause 3(3)(d) will be amended to put beyond doubt that the court may not order detention of a person without his consent. Clause 3(4)(c) will be amended so that a clause 3 order can be obtained in

respect of persons of a particular description only where the organized crime could not otherwise be effectively investigated. Clause 3(4) will be amended to require a High Court Judge to have regard also to any obligation of confidentiality or any family relationship in deciding whether to grant a clause 3 order. Clause 3(7) will be amended so that a person will be provided with a copy of the clause 3 order and, in addition, the form of notice issued by the Attorney General requiring the attendance of a person will be specified in the Ordinance. Clause 3(12) will be amended to clarify the exceptions under which information provided by the person pursuant to a clause 3 order may be used against him in a subsequent trial. In particular, it will be made clear that the exception based upon the person's giving inconsistent evidence applies only for the purpose of impeaching his credibility as a witness. Clause 3(17) will be replaced by the new clause 3(18) to ensure that the rules of court will provide for application to vary or discharge a clause 3 order. In addition to these amendments, two new sub-clauses are proposed. The new clause 3(17) will set out the right of a person to apply to vary or discharge a clause 3 order and clause 3(19) will provide that a Code of Practice relating to the exercise of powers and the discharge of duties under clause 3 shall be prepared and shall be subject to approval by the Legislative Council.

As regards production orders provided for under clause 4 and search warrant provided for under clause 5, some Members considered that the application of these two clauses was too wide. In the amendments to be moved, we propose limiting application of clauses 4 and 5 to investigations into an organized crime, the proceeds of an organized crime or the proceeds of a specified offence. Some Members have also suggested that production orders should be made only by the High Court. The amendments will specify this.

I shall propose amending clause 6, which creates a limited right to disclose information obtained from the Inland Revenue Department, under the special powers of investigation. The amendments will, among other things, allow disclosure for the purposes of application for confiscation, restraint and charging orders.

Clause 7(1)(a) will be amended by replacing the dual criteria of likelihood of prejudice and knowledge with a single criterion of intention to prejudice. It will also restrict the application of this sub-clause to the pre-arrest stage.

Questions have been raised in respect of the scope of the confiscation provisions. Some Members were concerned that the entire assets of a person who have been convicted of a minor offence might be liable to confiscation. We intend to address this in the amendments proposed to clauses 8 to 14. The amendments will create a financial threshold of at least \$100,000, and provide that only proceeds of a person's specified offence or, where the specified offence is an organized crime, of his organized crime will be liable to confiscation.

There have been suggestions that the scope of the money laundering offence should also be restricted. The amendments to clause 25 address this concern by limiting the money laundering offence to the proceeds of indictable offences.

The details of clause 27, the special sentencing procedure, have been considered carefully by the ad hoc group. The amendments amount to a redraft of the whole clause. The principle remains unchanged, namely, that the prosecution should be able, as of right, to put before the court at the sentencing stage certain additional relevant information to which the judge may have regard before sentencing. The amendments do however provide additional safeguards to ensure fairness to the convicted person.

The amendment to clause 31 will require that further amendments by the Governor in Council to the Schedule and to the financial threshold for triggering a confiscation order shall be subject to approval by this Council.

As a consequential amendment, we propose making the offence of money lending under section 24 of the Money Lenders Ordinance an indictable offence with a maximum penalty of imprisonment of 10 years and a fine of \$5 million, and to increase the maximum fine on summary conviction from \$100,000 to \$500,000. Loansharking is a growing problem in Hong Kong and is currently dominated by organized crime syndicates. A sufficient penalty is needed both to deter people from committing this crime and to destroy the financial power it gives to organized crime syndicates. The increased penalties will demonstrate our determination to tackle this offence. Also, by making the offence indictable, the provisions in the Bill relating to the confiscation of the proceeds to crimes and money laundering can apply to this offence.

The last amendment relates to Schedule 1. The Import and Export Ordinance has recently been amended. Items 5 to 9 of Schedule 1 have to be amended and renamed to reflect this change. Some Members also expressed concern over the inclusion in Schedule 1 of the offences of "riot" and "unlawful assembly", and we have agreed to exclude these two offences.

Finally, Mr President, the ad hoc group has asked that a yearly report on the review of the implementation and effectiveness of the Bill should be provided to this Council. In addition, a comprehensive report should also be provided to this Council three years after implementation of the Bill. I agree to these requests, and will provide the Council with these reports.

Thank you, Mr President.

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

Bill read the Second time.

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

CRIMINAL PROCEDURE (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 15 July 1992

Question on Second Reading proposed.

DR PHILIP WONG: Mr President, this Bill is simple in form and yet complex in substance. It has a single proposal to abolish the corroboration rule in respect of alleged accomplices. But since it is an issue of legal technicality it has been difficult for non-practitioners to appreciate the implications.

The rule of corroboration warning requires a judge to warn the jury or himself, if sitting without a jury, of the danger of convicting without corroboration, and to identify items of evidence, if any, which may be corroborative. The Administration strongly maintains that the rule is technical, complex and inflexible. It is thus a fruitful source of appeals. It is hoped that with the enactment of the Organized and Serious Crimes Bill, more ringleaders could be brought to trial. In such event the prosecution would be likely to require their accomplices to give evidence, and the abolition of the corroboration warning would properly assist in these prosecutions.

Without the corroboration rule, judges would be able to exercise their discretion to deal with the credibility of accomplice witnesses in the same manner as they deal with credibility generally.

It is stressed that the proposal is not solely a Hong Kong initiative. In the United Kingdom it was a recommendation of the United Kingdom Law Commission, supported by the English Criminal Bar Association, the Law Society and the judiciary. A bill for this purpose is, we understand, currently before Parliament. The rule was abolished in Canada in 1982; New Zealand in 1986; and Western Australia in 1988.

The ad hoc group had divided views on the issue. Some Members agreed to the concern of the Administration. Some felt that the issue is more a matter of law reform. Upon a magnum of the Organized and Serious Crimes Bill more accomplices would be expected to give evidence, either under compulsion or for some private purposes. It is hence more necessary to retain the corroboration warning on accomplice evidence.

At the suggestion of the ad hoc group, the Administration has sought the views of the Hong Kong Bar Association and the Law Society of Hong Kong. Both bodies agreed that the corroboration rule has a number of defects. They suggested to replace it with a simple form of warning along the lines of the recommendations of the Law Reform Commission of Australia. The Administration disagreed with this counter-proposal and maintained its original view that the corroboration rule should be abolished without any other form of mandatory warning. I will leave it to the Secretary for Security to elaborate on the Administration's position in his speech.

After considering the pros and cons of the proposal and the alternatives available, the ad hoc group remains divided. Some Members considered the Administration's arguments reasonable. Some Members considered that, given the implications of the proposal, it would be desirable to gather the experience of relevant jurisdictions before Hong Kong makes changes or adopts any other form of warning as a replacement. I expect some Members will elaborate on their own considerations in a moment.

Mr President, I would like to particularly thank the Hong Kong Bar Association and the Law Society of Hong Kong for the time and input they gave in the deliberation of this Bill.

Mr President, after balancing the various arguments, I consider the Administration's proposal reasonable. I support the Second Reading of the Bill.

MR MARTIN LEE: Mr President, in this Bill, the Government proposes to abolish the rule regarding corroboration of accomplice evidence in criminal trials. This common law rule basically requires that judges warn juries or themselves, if they sit alone, of the danger of convicting an accused person on the uncorroborated evidence of witnesses who are accomplices. I must stress that this corroboration rule does not prevent a jury or judge from convicting an accused when there is no such supporting evidence from an independent source. It only warns them of the danger of convicting without such evidence, or rather, it only requires them to give such a warning.

The theory behind this rule is that accomplices are untrustworthy and unreliable witnesses. They themselves are facing possible criminal prosecution and may choose to protect themselves by giving false testimony.

The Government's criticism of the rule in effect is that it involves technical details that overwhelm some of our judges and that because some judges have not mastered the rule, they give inadequate warning or wrong warnings to the jury or to themselves if they sit without a jury. That leaves an otherwise good conviction open to appeal — not something any prosecution-minded prosecutor would like to see.

In support of its case, the Administration simply argues that the Bill is a "vital part of (its) package" against organized crime because it expects no doubt many accomplice witnesses will be testifying in cases brought under the OSCB or cases resulting from their investigations under the OSCB. The Administration's only other argument is that the United Kingdom Law Commission has recommended removing the rule, and that the parliaments of Canada, New Zealand, and Western Australia have already abolished it.

I urge Members to oppose any change to the corroboration warning rule at this time, as the Administration's arguments are too weak to even begin to make a case for abolishing the rule.

First, the whole matter is better left to the Hong Kong Law Reform Commission, which should carefully study the importance of this rule in the Hong Kong criminal justice system and survey the effects of its recent abolition in the jurisdictions cited by the Administration. We should learn from how their new law is being implemented.

Second, if the OSCB is used to bring organized crime ringleaders to court, there will certainly be tremendous reliance on accomplice evidence, because organized crimes by their very nature involve many people playing many different roles. I believe that nowhere else in the world will there be so much reliance on the words of accomplices to put defendants behind bars and often on their words alone.

Moreover, accomplices who testify in organized crime cases may cut deals, and indeed they often do, with prosecutors. In return for their testimony, they and their families may receive new identities and passports to another country. And nowhere else in the world will we find witnesses so willing to leave their own country than in Hong Kong!

This factor, coupled with the new stiffer prison sentences under the OSCB, will give accomplices more incentive than ever to fabricate testimony which is of use to the prosecution and hence they will get their passports. We cannot abolish a rule of evidence that may be safeguarding the basic right of criminal defendants to a fair trial simply to make prosecutors' jobs easier.

And if the Government's genuine aim is not to help prosecutors win more convictions, but rather to remove ungainly rules from our law of evidence, then why does the Criminal Procedure (Amendment) Bill eliminate only one part of the corroboration warning rule? In addition to accomplice witnesses, the common law rule also applies to witnesses who are complainants in sexual offence case. The United Kingdom Law Commission Report, which the Government has repeatedly cited in support of this Bill, called for the complete abolition of both parts of the rule. Honourable Members, if the corroboration rule is truly bad law, then the Government should have proposed removing the entire problem.

Further, the Administration itself has hinted that removal of the corroboration rule for accomplice testimony may not even rid them of their problems for good. On 21 July 1994, the Security Branch informed the ad hoc group in a paper which some of the Honourable Members might have forgotten already, "..... if the requirement of a corroboration warning is abolished and not replaced by another required warning, judges would nevertheless need to consider whether a warning is needed in any particular case." In other words, even without such a rule judges would still find it necessary to give some sort of warning to the juries or themselves if they sit without a jury. It will then be possible and indeed likely to question the adequacy of these "non-required" warnings on appeal, and a whole new body of law will arise again, further complicating our law of evidence. And if so, will legislators be asked later to abolish that new rule also? And we go from abolition to new rule, from new rule to new abolition, and infinitude.

But the crucial weakness in the Administration's case is that it does not even say that unless this common law rule is abolished, they will not get a conviction or that the conviction will necessarily be quashed on appeal. That is, they are not complaining that a lot of juries are acquitting the accused whenever there is no supporting evidence or that no judge can ever get the warning right. They are only complaining that some judges have given misdirection to juries from time to time.

So why should we rush to abolish this common law rule, which protects the basic rights of criminal defendants, only in relation to accomplice evidence? Surely, we should keep the present rule and see how the new law under the new scheme of the OSCB works in practice. If the necessity for the abolition is then made out, let us abolish it at that time, but not now when we do not even have a compelling case coming from the Administration.

We should, Mr President, wait and see; and not strike and see.

With these remarks, Mr President, I urge Honourable Members to join me in opposing this Bill.

MRS MIRIAM LAU: A great deal of time and money and efforts necessarily go into every investigation of triad organizations and criminal syndicates. The last thing that law enforcement agencies would wish to see is for the culprit to be brought to justice after much effort but then for his conviction to be quashed on appeal, only because something went wrong with the corroboration warning given by the trial judge. I believe that the community does not wish to see this either. I am informed by the Legal Department that actually there have been many cases in Hong Kong where convictions were overturned for this very reason. Some of these cases are very serious ones involving triads and criminal syndicates.

Mr President, many jurisdictions with corroboration rules similar to ours are convinced that the rules are full of defects. These rules have been criticized as being inflexible, complex and productive of anomalies. The United Kingdom Law Commission found that the complexity of the rules not only caused unnecessary difficulties at trials but could be also positively detrimental to justice. The United Kingdom Criminal Bar Association considered the rules to be highly technical and complex, potentially confusing for a judge, calculated to confuse a jury and a fruitful source of appeals. Canada, Western Australia and New Zealand have already abolished such rules and the United Kingdom is in the process of doing so. Even the Bar Association and the Law Society of Hong Kong do not seriously argue that the rule should not be abolished, although they prefer to replace the corroboration warning with a simpler form of warning along the recommendation of the Law Reform Commission in Australia. Replacement was actually an option considered by the United Kingdom Law Commission but was eventually rejected.

For those who feel uneasy about the abolition of the rule without replacement, I wish to point out that even without specific corroboration rules, the trial judge is still under a general obligation to put the defence fully and fairly to the jury and to guide the jury on items of the prosecution evidence which are actually or potentially unreliable. I agree that this may give rise to a new body of law, but Hong Kong will not be alone in this regime. In fact, Hong Kong will be able to resort to useful precedents from the many other jurisdictions which have already abolished the rule.

The Honourable Martin LEE argues that the matter should be brought to the Law Reform Commission for a general review. I do not believe that this is necessary. Review of the corroboration rules in other jurisdictions are already very thorough and I cannot see why the criticisms and concerns expressed over such rules elsewhere are not equally applicable to Hong Kong. There can be no doubt that the corroboration rule has developed into some sort of a stumbling block to justice. Having gone this far to bring about a potent tool for fighting triads and criminal syndicates, that is, the Organized and Serious Crimes Bill, we will be making a mistake if we left this stumbling block behind. I believe that it is timely for us to abolish the corroboration rule now.

Mr President, I support the Bill.

SECRETARY FOR SECURITY: Mr President, I should like to thank Dr Philip WONG, Mr Simon IP, and other Members of the ad hoc group for their thorough consideration of this Bill also.

The Bill proposes to abolish the technical and complex corroboration rule in respect of an accomplice's evidence. It is an essential part of the package of proposals to tackle organized and serious crimes, because prosecutions of these crimes often involve accomplice evidence. We therefore consider it important that the two Bills being enacted together.

Under the present corroboration rule, a judge is required to warn the jury, or himself if sitting without a jury, of the danger of convicting without corroboration, and to identify pieces of evidence which may be corroborative. Our proposal to abolish this rule will enable judges to exercise their discretion to deal with the credibility of accomplice witnesses in the same manner as they deal with credibility generally. Abolition of the present rule will not obviate the need for careful assessment of credibility in the case of a complex evidence. It will simply remove the unnecessary complexity and potential minefields of the present rule.

The requirement of a corroboration warning in respect of accomplice evidence has long been considered to be complex, technical and inflexible, and has been abolished in a number of common law jurisdictions. In the United Kingdom, the Criminal Justice and Public Order Bill contains a provision similar to that in this Bill to abolish the corroboration rule.

I am disappointed that some ad hoc group Members object to this proposal going forward as part of this package. The fact that the requirement of a corroboration warning extends to other types of evidence, not only the evidence of accomplices, is no reason to refuse to make this necessary reform.

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

Question on Second Reading of the Bill put.

Voice vote taken.

MR MARTIN LEE: I call for a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

PRESIDENT: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Dr LEONG Che-hung, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Miss Emily LAU, Mr Eric LI, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong,

Miss Christine LOH, Ms Anna WU, Mr James TIEN and Mr Alfred TSO voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr MAN Sai-cheong, Dr YEUNG Sum and Mr WONG Wai-yin voted against the motion.

THE PRESIDENT announced that there were 31 votes in favour of the motion and 13 votes against it. He therefore declared that the motion was carried.

Bill read the Second time.

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

CONSUMER GOODS SAFETY BILL

Resumption of debate on Second Reading which was moved on 8 December 1993

Question on Second Reading proposed.

DR LEONG CHE-HUNG: Mr President, the Consumer Goods Safety Bill was introduced into this Council on 3 December 1993. The purpose of the Bill is to require manufacturers, importers and suppliers to meet safety requirements for certain consumer goods. At present, no immediate remedy is available for consumer goods which are found to be unsafe but are not governed by any specific legislation. Death or injury arising from the use of unsafe goods have aroused much public anxiety and there is public demand for a scheme of statutory control on the safety of consumer goods in general. It may be used to deal with specific unsafe consumer goods as they emerge.

A Working Group on Consumer Products Safety, which comprised government officials, and representatives from the Consumer Council, relevant commercial and industrial organizations, was formed in mid-1991 and produced a report in December 1992. This Working Group concluded that legislation on consumer goods safety should be introduced and that the scope of legislative control should only cover consumer goods intended for private consumption on sale or intended for sale in Hong Kong. It should exclude those which were governed by specific legislation and should not apply to goods under transshipment or to goods manufactured for export.

A Bills Committee of this Council was therefore set up and I was elected Chairman of this Committee. The Bills Committee discussed in detail with the

Administration the Bill's legislative intent, the principles involved and procedures in enforcement.

The following particular areas have been discussed and noted by this Bills Committee:

- (a) Firstly, the Bill is modelled partly on the Toys and Children's Products Safety Ordinance and partly on the United Kingdom Consumer Protection Act 1987. It aims to provide guidelines to the court and the suppliers of consumer goods on compliance with the general safety requirement.
- (b) This Bill empowers the Secretary for Trade and Industry to prescribe statutory safety standards for specific consumer goods and in extreme cases, to prohibit the supply of certain consumer goods.
- (c) The Bill also establishes a safety control notice system under which the Commissioner of Customs and Excise may issue different notices to suppliers of consumer goods to remedy abuses relating to the supply or production of unsafe consumer goods. The Commissioner is empowered to issue "a notice to warn" requiring the supplier of consumer goods to publish a warning that specified goods may be unsafe unless certain steps are taken; a "prohibition notice" to prohibit the supply of unsafe consumer goods for a specified period of time; and in extreme cases a "recall notice" to recall those consumer goods already sold which will cause a significant risk to consumers.
- (d) A defence clause is provided in the Bill for persons who have taken all reasonable steps and exercised due diligence to avoid committing an offence under the Bill. An appeal board panel will be established to hear appeals against notices issued or certain decisions made by the Commissioner.
- (e) A consultation exercise to canvass views on the draft provisions of the Bill from interested bodies such as the Consumer Council, the Hong Kong General Chamber of Commerce, the Federation of Hong Kong Industries and the Retail Management Association Limited has been conducted by the Administration. They have all indicated their support to the proposed legislation.
- (f) The Commissioner of Customs and Excise will be assisted by the Government Laboratory in carrying out consumer goods testings. Officers from the Customs and Excise Department have been sent overseas for training on consumer products safety legislation enforcement. They will act on complaints and conduct spot checks.

- (g) Since the types of consumer goods are very wide ranging and Hong Kong is a very small market, the Bill will not prescribe the safety standards for each and every class of consumer goods available for local consumption. A grace period will also be given before the legislation is brought into effect.

So the Bills Committee accepts and supports the provisions in the Bill. The Bills Committee also agrees to the moving of a number of minor and technical amendments which will be moved later by the Secretary for Trade and Industry.

Mr President, with these remarks, I commend the Consumer Goods Safety Bill to Honourable Members and may I also take this opportunity to thank Members of the Bills Committee for their hard work and the Administration for its co-operation.

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I am most grateful to Dr LEONG Che-hung and other Members of the Bills Committee for their helpful examination of the Consumer Goods Safety Bill.

Product safety is undoubtedly one of the major concerns of consumers. The Bill seeks to impose a statutory duty on suppliers of consumer goods to ensure that the goods they supply for local consumption are safe. A dedicated team of 52 officers will be established in the Customs and Excise Department to enforce the legislation.

To facilitate compliance with the general safety requirement stipulated in the Bill, suppliers of consumer goods may approach the Product Standards Information Bureau of the Industry Department for information relating to safety standards applicable to the consumer goods they supply. They may also have their products tested by laboratories accredited under the Hong Kong Laboratory Accreditation Scheme, or by overseas laboratories with equal standing. To allow time for the suppliers to modify their goods, there will be a one-year grace period before the commencement of the legislation.

We hope that the enactment of this Bill will send a clear and strong message to the suppliers of consumer goods that it is their responsibility to ensure that their goods are safe. We shall launch a publicity programme in the grace period to educate the suppliers as well as the consumers. The Customs and Excise Department will operate a telephone hotline service to handle public enquiries on the Bill. The Department will also work closely with the Consumer Council and overseas enforcement agencies in enforcing the legislation.

Mr President, I commend this Bill to this Council.

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

Bill read the Second time.

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

SALE OF GOODS (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 27 April 1994

Question on Second Reading proposed.

MR MAN SAI-CHEONG: Mr President, the Bills Committee, chaired by the Honourable Fred LI, has finalized its scrutiny of the Sale of Goods (Amendment) Bill 1994, the Supply of Services (Implied Terms) Bill and the Unconscionable Contracts Bill.

The three Bills seek to implement certain recommendations of the Law Reform Commission for better protection of consumers. They will cover contracts for the sale of goods or supply of services where one party deals as a consumer in relation to another party. The proposed provisions virtually cover all consumers except parties to commercial contracts who are permitted to be exempted through express agreement. The Administration intends to recommend to the Governor in Council exempting advocates in court and company directors under the proposed section 3(3) upon enactment of the Supply of Services (Implied Terms) Bill.

The first Bill, the Sale of Goods (Amendment) Bill 1994, sets out the criteria for assessing the merchantability of goods, the buyer's right to reject goods accepted by him and the implied undertakings as to quality or fitness of goods supplied under a contract of sale.

Members of the Bills Committee sought clarification on the application to situation in which defective goods were sold at a bargain price. The Administration explained that the proposed section 2(5) provides that the quality of goods has to be commensurate with any description given to it and the price paid, whether or not a buyer will have a remedy depends on the facts of the particular case. However, whether the seller has brought the defects to the attention of the buyer will be a relevant consideration.

Members discussed with the Administration on the appropriateness to provide for transfer of a manufacturer's warranty to the consumer on liquidation of the retailer. The Administration explained that since there is no contractual relationship between the consumer and the manufacturer, the extension of liability to non-contracting parties is well beyond the scope of the present Ordinance and the proposed provisions in the Bill, and it should form a separate subject of review.

The second Bill, the Supply of Services (Implied Terms) Bill, codifies some of the obligations of a supplier of services under the common law.

Concern was raised that the provision on "dealing as consumer" should be widened to embrace the relative bargaining power of the two parties. The Administration held the view that the ambit of the proposed provision is appropriate and strikes a balance between protecting consumer and minimizing interference with commercial transactions. The relative strengths of the bargaining positions of the consumer and the other party will be considered by the court in determining unconscionability under the Unconscionable Contracts Bill.

On the standard for "reasonableness" in respect of care, skill, time and charge under the proposed provisions, the Administration advised that what constitutes reasonableness is a question of fact. The court will determine it on a case by case basis, depending on the situation of each case and with regard to the commonly understood criteria.

The Administration was asked to clarify whether clause 8(2), which provides that the statutory terms implied under the Bill may be excluded by express agreement where the contract is not a consumer contract, will affect section 165 of the Companies Ordinance (Cap. 32), which prohibits any exclusion of liability by a company auditor in respect of negligence or breach of duty by him in relation to the company. It pointed out that clause 9(2) of the Bill provides that the Bill does not affect any duties or liabilities arising under any other Ordinance. Hence, the prohibition on contracting out of an auditor's duties or liabilities as imposed by section 165 of the Companies Ordinance will prevail.

I now turn to the third Bill, the Unconscionable Contracts Bill, which seeks to empower the court to give relief in certain contracts which are found to be unconscionable. On whether the Bill, upon enactment, will apply to continuous contracts, the Administration was of the view that while the meaning of continuous contract varies from case to case, there is no straight forward answer to it. As this and the other two Bills will have no retrospective effect, any contracts made before the Bill comes into effect will not be affected.

The Bills Committee accepts the Administration's proposal to allow a grace period of 12 months before commencement of the third Bill.

Members stressed on the need to consolidate the various consumer-related Ordinances into one comprehensive piece of legislation to enable better understanding of consumers. The Administration has undertaken to review the situation.

Mr President, with these remarks and a number of minor amendments to be moved by the Administration at the Committee stage, I support these three Bills.

DR LEONG CHE-HUNG: Mr President, with your indulgence, I would like to speak on the three Bills together.

In front of this Council today, Mr President, are a set of three Bills for the resumption of Second Reading. These Bills aim at further protection of consumers' rights. Yet within the ambit of these Bills are areas which do raise concern amongst the medical and dental professions.

Mr President, during the course of treatment of patients, medications which are "consumer products" may and will be dispensed to patients. Similarly, in these days when implants such as heart valves and artificial joints are commonly used, the physicians, that is, the doctors, can only go so far as to ascertain that the products are from reputable sources and come untampered, but will have no means within their ability to test the quality of the goods before being used on the patients. Who then should be liable, should it be found that the medication is at fault or the implants made of faulty materials?

Mr President, medicine is a rapidly progressing science. A disease entity or a cause of a disease which is so obvious today could well be a mystery of yesteryears. Examples are abound. Twenty years ago, who would have thought that Hepatitis B virus could be detected in donor's blood and should then be discarded? Who would have predicted that HIV virus, the virus that causes AIDS, could harbour in blood but could be completely killed and therefore safe for transfusion if sterilized in specific heat treatment directions? In short, as the "state of the art" improved, complications from well-intentioned treatment may surface through no fault of the health care providers. The current Sale of Goods (Amendment) Bill before us mentioned that goods of merchantable quality should be as "fit for the purpose" and as "safe" as it is reasonable to expect. No time frame is considered. Who then is responsible? Is it really fair to victimize the goods providers?

The current Bills lean heavily on the delivery and completion of contracts. Yet, medical treatment cannot be assessed on a contractual basis. Success or failure of a patient's treatment in the professionals' view is based on peer review. A professional's performance is judged on such circumstances provided that he has done his very best within his ability.

Mr President, my constituents especially in the public sector are concerned with the civil litigations that may arise if services are not delivered "within a reasonable period of time". For whilst it is second nature for doctors and dentists to provide treatment at the earliest possibility, delays are sometimes unavoidable from constraints of manpower, availability of hospital beds, availability of operating hours and availability of ancillary support, all in all outside the control of the "service providers". It is unfair for them to be victimized in many cases as a result, for example, of the Government's funding constraints.

Mr President, I manage to throw out a few examples which have legitimately raised concern amongst my constituents, but they are not exhaustive. I look forward to the Administration's response to them and their thoughts on these and similar issues.

MR HOWARD YOUNG (in Cantonese): Mr President, this Council today will enact a series of Bills regarding consumers' rights and for the protection of their interests. In the near future, the Administration will also come before the Finance Committee for funds to set up a Consumer Representative Action Fund.

As a consumer, a Member of the Bills Committee scrutinizing these Bills and an employee of the ordinary service industry, I support this series of legislation and their spirit. I think these legislation will give consumers greater protection and set down very clear rules of the game whereby different business sectors will have a set of criteria to follow. This is beneficial not only to the consumers, but also to all service providers and goods suppliers because their business will flourish if they can gain the confidence of consumers assured by these legislation.

Before discussing these legislation, I would like to remind the Administration of the need for extreme care in our consideration of the consumers' interest. We must not forget that while we have to protect consumers' interest on the one hand, we have to strike a balance on the other, that is, to avoid doing any damage to the business or investment environment. If not handled properly, many consumers will be encouraged to lodge complaints or even initiate legal actions against the corporations or individuals who supply commodities or services simply because of trivialities. This may adversely affect the business environment.

Dr the Honourable LEONG Che-hung has just cited many examples. He suggested, from his professional viewpoint, some scenarios that could possibly arise. I can also give some examples from my trade — tourist industry. All of them happened in Europe. In the first case, according to a report, a person joined a package tour group. As a general practice, the travel agency will arrange two group members to share one room. As he joined the tour alone, he was, unfortunately, arranged by that travel agency to share a room with an alcoholic. After the 10-day tour, he became an alcoholic himself. In the end, he sued the travel agency for turning him into an alcoholic during the trip.

The second case is about a couple who joined a tour to a scenic place where they were going to have a happy vacation. Upon arrival at the hotel, they met another tour group comprising many wheelchair bound disabled people. Having returned to their home country, this couple served a summons on the travel agency for denying them the enjoyment of a happy vacation as they were saddened at seeing so many wheelchair bound disabled people at the hotel, when in the first place they had joined the tour for a happy vacation. So they sued the travel agency for failing to provide a satisfactory service.

The third example is even more ridiculous. But it does make one realize that the plaintiff can really win such a lawsuit. A newly-wedded couple flew to San Francisco from Europe. The airline, unfortunately, lost their luggage in which their contraceptive pills were contained. As their luggage had been lost, they had their contraceptive pills lost too. Nine months after the trip, the woman gave birth to a baby. She then sued the airline on the grounds that she had wanted to go sight-seeing rather than get pregnant. Since the airline lost her luggage, she had no contraceptive pills to take at night during the trip. Based on these grounds, she sued the airline for maintenance of the child from birth till the age of 18.

Mr President, these are not sheer fabrication. On the contrary, they are authentic cases reported by a travel magazine published in the Asia Pacific Region. The cases, which all happened in Europe, are quoted from the August issue of the magazine. The plaintiff in the third case I just mentioned, to our surprise, won the lawsuit. If similar cases happened here, I think a large number of service providers would have no alternative but to close down their business. Or they would have to take out heavy insurance in order to protect themselves. I heard that many doctors in the United States, fearing that they might be sued by their patients, are heavily insured. As a result, medical bills in the United States also are very expensive.

Of course, the above examples are far removed from the legislation we are going to enact today. I think Hong Kong's legislation is reasonable. There is a saying doing the rounds in Europe, particularly in Germany, that one had better not to open a travel agency if one is going to operate it in strict observance of all the relevant regulatory laws enacted by Germany in recent years. In the end, not only the service providers will suffer loss, the consumers will suffer too.

Mr President, I support today's Bill. In the future, I will also support any enhancement in consumer protection, as well as the series of legislation and guidelines which will set down clearly defined service standards required. Nevertheless, I would offer a word of caution that we have to strike a balance between the interests of the consumers and the interests of the companies or individuals who provide the services and commodities, in order not to adversely affect the investment environment of Hong Kong.

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I would like to express my sincere thanks to Mr Fred LI, Mr MAN Sai-cheong and other Members of the Bills Committee for their efficient and careful scrutiny of the Sale of Goods (Amendment) Bill 1994, the Supply of Services (Implied Terms) Bill, and the Unconscionable Contracts Bill during the summer recess. I am also grateful to the 80 organizations which had given us their views on the proposed legislation during the consultation exercise. Their comments have resulted in a number of improvements to the Bills which seek to enhance clarity

and consumer protection without unnecessarily compromising the freedom of contract.

The Bills seek to implement the recommendations of the Law Reform Commission in its Report on Sale of Goods and Supply of Services to enhance consumer protection.

The Sale of Goods (Amendment) Bill 1994 aims to improve the definition of the merchantable quality that goods must possess under a sale of goods contract and to stipulate that a buyer shall have a reasonable opportunity to examine the goods.

The Supply of Services (Implied Terms) Bill aims to codify some common law principles governing the supply of services. It provides that in a contract for the supply of service, the supplier is required to deliver his service with reasonable care and skill, and within reasonable time. It also provides that the buyer is expected to pay a reasonable charge if this is not determined by the contract. As pointed out by Mr MAN Sai-cheong, the Bill will not prejudice any duties arising from other laws which are stricter than those imposed by the Bill itself.

Mr Howard YOUNG has just shared with us a number of bizarre stories. I am not in a position to comment on what would happen in Hong Kong if these cases were pursued in Hong Kong. If indeed such cases arise in Hong Kong, I am sure the court will have careful regard to the terms of the Bill before us and take into account the relevant factors in assessing the level of care and skill which can reasonably be expected of the supplier in delivering the service.

I also note the concern of the health care providers raised by Dr LEONG Che-hung regarding the supply of medical products which are subsequently found to be defective. As we have indicated in our earlier response to the Hong Kong Medical Association, the passing of medical supplies is regarded as ancillary or incidental to the provision of medical services, which is governed by the Supply of Services (Implied Terms) Bill. Under this Bill, medical practitioners, like other service providers, have a statutory duty to perform the service with reasonable care and skill. The exercise of reasonable care and skill by a medical practitioner in choosing medical supplies for his patient will be one of the factors the court may consider in deciding whether he has fulfilled the statutory requirements. In determining what is reasonable the court will take into account all relevant facts in a particular case. The statutory duty to deliver the service within a reasonable time will apply if the contract does not fix the time for the service to be carried out. In these circumstances the court will likewise take into account all relevant facts before coming to a ruling on whether a service has been provided within a reasonable time. As I said earlier, these requirements are only codification of existing common law principles and will not create additional burden to responsible service suppliers.

The last, but certainly not the least, Bill in the package is the Unconscionable Contracts Bill. It will empower the court to strike down or rewrite unconscionable terms in consumer contracts. It will provide judicial guidelines for the court in determining unconscionability. Before the law comes into effect, there will be a one-year grace period for businesses to review their contracts.

During the deliberations of the Bills Committee, Members pointed out the need to publicize the proposed legislation to enhance business awareness and to educate the consumers on their rights. We share this view. We are planning joint publicity efforts with the Consumer Council.

Mr MAN Sai-cheong has called for an omnibus legislation to consolidate all existing consumer protection laws. This may make our consumer protection laws more user-friendly, but it can only be done at the expense of other law drafting exercises. Given our packed legislative programme and limited drafting resources, we feel unable to support the proposal at this stage. We do not see the urgency of the proposal as consumer interests are not compromised due to the absence of an omnibus legislation. We shall, however, keep under review the operation of our consumer-related legislation to see whether such consolidation is truly necessary.

In this connection, I wish to inform Members that we shall shortly apply to the Finance Committee of this Council for the establishment of a \$10 million Consumer Legal Action Fund. The Fund will help aggrieved consumers seek legal remedies to which they are entitled under existing legislation and under the Bills before Council this afternoon. I am confident that with your support for the proposed Fund, this package of consumer protection legislation will go a long way towards helping consumers to pursue their grievances and enforcing higher standards of quality and service from providers of goods and services.

Mr President, I commend these Bills to this Council.

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

Bill read the Second time.

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

SUPPLY OF SERVICES (IMPLIED TERMS) BILL

Resumption of debate on Second Reading which was moved on 27 April 1994

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

Bill read the Second time.

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

UNCONSCIONABLE CONTRACTS BILL

Resumption of debate on Second Reading which was moved on 27 April 1994

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

Bill read the Second time.

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

HONG KONG AIRPORT (CONTROL OF OBSTRUCTIONS) (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 12 January 1994

Question on Second Reading proposed.

MR HOWARD YOUNG: Mr President, the Hong Kong Airport (Control of Obstructions) (Amendment) Bill 1993 seeks to extend the application of the principal Ordinance to the proposed airport at Chek Lap Kok, the transfer of certain powers vested in the Governor in Council to the Secretary for Planning, Environment and Lands and to revise the penalty level which was fixed in 1957.

The Ordinance provides, among other things, for the restriction and, when necessary, the reduction of the heights of buildings in the interest of the safety of aircraft. At present, the Ordinance only applies to the Hong Kong Airport, which means the one at Kai Tak. Following the decision to build a new airport at Chek Lap Kok, a new set of Airport Height Restrictions needs to be developed. This is to ensure that the operation of the new airport will not be affected by building development. It is therefore necessary to extend the provisions of the Ordinance to cover both the existing and proposed airports.

In order to relieve the workload of the Governor in Council over technical and operational matters, it is proposed to transfer certain powers to the Secretary for Planning, Environment and Lands, including the power (a) to specify by order Airport Height Restrictions and to grant such exemptions for individual developments; (b) to authorize the provision or erection on buildings

of any marks, lights and beacons for aviation safety purposes; and (c) to extend the period for making compensation claims.

The Bill was introduced into this Council on 12 January. A Bills Committee was formed to study the Bill. It held two meetings in the second of which the Administration participated.

The Bills Committee, after deliberations on the Bill, expressed concerns on three areas, namely, the effect on property owners, the exemption procedure, and the compensation provision.

Firstly, the Bills Committee was concerned that the Bill may affect the rights of property owners. The Administration explained that in order to safeguard the future operation of the airport at Chek Lap Kok, a new set of Airport Height Restrictions will have to be drawn up. This will entail a careful study of the geographical setting and flight procedures to be adopted. As details of the flight procedures have yet to be finalized, it is unlikely that the Airport Heights Restrictions can be fully developed before the end of the year. The Administration indicated that whilst the Airport Height Restrictions will have an implication on the height of buildings on Lantau Island and some areas north of Lantau, the overall impact on the community will very likely be limited in view of the location of the new airport which is largely surrounded by sea.

The Administration further explained that in order to ensure aviation safety, there is no provision for statutory appeal against the Airport Height Restrictions. However, there is provision for the Secretary for Planning, Environment and Lands, on the advice of the Director of Civil Aviation, to grant exemption from the Airport Height Restrictions where this can be done without affecting safety. Moreover, anyone suffering loss or damage as a result of the operation of the Airport Height Restrictions can claim compensation by applying to the Director of Lands and to the Lands Tribunal in the case of disputes.

Members accepted the explanation of the Administration. In view of their wide ranging implications on the development in Lantau and the western part of the New Territories, Members considered that the new set of Airport Height Restrictions shall be finalized as soon as possible and recommended that the matter should be closely monitored by the Legislative Council Panel on Lands and Works.

The second area of discussion was on the power of the Secretary for Planning, Environment and Lands to impose conditions in relation to exemption, in the absence of any statutory qualifications. The Administration replied that any such conditions will have to be relevant and necessary in the interest of aviation safety and agreed to propose a Committee stage amendment to restrict the terms and conditions the Secretary for Planning, Environment and Lands may impose on the granting of an exemption order.

The third area which the Bills Committee raised for discussion with the Administration is that since there will not be any form of public consultation on the new Airport Height Restrictions, the public may not be fully aware of their operation and may miss the one-year deadline for submission of claims for compensation. The Administration replied that appropriate publicity, apart from normal gazetting, will be made when the Airport Height Restrictions orders are made. Members noted that the Administration would consider such cases sympathetically and would exercise discretion to extend the period for making claims, where appropriate. The Administration may wish to further clarify the position later on in its response.

In response to the Bills Committee's comments, the Administration has agreed to make two proposed amendments to the Bill. They are:

- (a) in clause 2(a) of the Bill, the word "includes" to be amended to read "means". This serves to clarify the definition of the "Hong Kong Airport".
- (b) in the new section 3A introduced by clause 3(f) of the Bill, by adding the phrase "required for or related to the safety of aircraft" before "as he may impose". This seeks to restrict the terms and conditions the Secretary for Planning, Environment and Lands may impose on the granting of an exemption order from the Airport Height Restrictions.

These two amendments will be moved by the Secretary for Planning, Environment and Lands at the Committee stage later on, together with a third technical amendment.

Mr President, with these remarks and subject to the amendments to be moved, I commend the Hong Kong Airport (Control of Obstructions) (Amendment) Bill 1993 to Honourable Members.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Thank you, Mr President, I am grateful to the Honourable Howard YOUNG, the convener of the Bills Committee on the Hong Kong Airport (Control of Obstructions) (Amendment) Bill 1993, for supporting the Bill, and to other Members of the Bills Committee for their careful and detailed deliberations on this item of legislation over the past four months.

The Amendment Bill seeks to extend the application of the Hong Kong Airport (Control of Obstructions) Ordinance to the new airport at Chek Lap Kok, to transfer certain powers vested in the Governor in Council to the Secretary for Planning, Environment and Lands, and to revise the level of penalties prescribed under the Ordinance.

In the course of the Bills Committee's deliberations, Members raised concern as to when the new Airport Height Restrictions would be formulated to safeguard the operation of the new airport at Chek Lap Kok. The Director of Civil Aviation already has this task in hand and the intention is that the revised restrictions should be in place before the new airport comes into operation. The Administration will brief the Lands and Works Panel of this Council when the new restrictions have been finalized.

The Bills Committee also raised concern that members of the public might miss the one-year deadline for submission of claims for compensation in cases where there is a diminution in value of an interest in land as a result of the Airport Height Restrictions. The Administration will look at each case and, where appropriate, will exercise the discretion provided for in section 23(1) of the Ordinance to extend the period for the making of claims.

I shall move three amendments during the Committee stage.

Thank you, Mr President.

Question on the Second Reading of the Bill 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) BILL 1994

Resumption of debate on Second Reading which was moved on 11 May 1994

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

Bill read the Second time.

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

RESIDENTIAL CARE HOMES (ELDERLY PERSONS) BILL

Resumption of debate on Second Reading which was moved on 3 November 1993

Question on Second Reading proposed.

MR HUI YIN-FAT (in Cantonese): Mr President, the Residential Care Homes (Elderly Persons) Bill provides for the control of residential care homes established for the care of elderly persons. This is to be done through a licensing system to be administered by the Director of Social Welfare. Any premises at which more than five persons who have attained the age of 60 years are habitually received for the purpose of care will come under the Bill. All subvented, non-profit-making and private residential care homes will be covered. Licensing requirements and appeal procedures will be laid down in two regulations, namely the Residential Care Homes (Elderly Persons) Regulation and Residential Care Homes (Elderly Persons) (Appeal Board) Regulation, which will be introduced after the passage of the Bill. The former regulation will specify requirements regarding, among others, the registration of health workers, the duties of operators, the duties of home managers, space and number of staff, location and design, and safety precautions. Licences will only be granted to residential care homes complying fully with the requirements. Certificates of exemption will be granted to existing residential care homes which are unable to comply fully with the requirements. The period of exemption will vary according to the degree of compliance. New residential care homes which cannot meet the licensing requirements will be prohibited from entering the market.

The Bill was introduced into this Council on 3 November last year. A Bills Committee of which I was elected the Chairman was formed to study the Bill. It has met eight times, including six meetings with the Administration and one meeting with concerned organizations. The Bills Committee received a total of 20 submissions. Draft regulations to be made under the Bill were also scrutinized by the Bills Committee.

The Bills Committee expressed concern that the proposed licence fees for a period of three years, as listed in Schedule 3 to the Residential Care Homes (Elderly Persons) Regulation, are too high, as compared with the child care centres on which no licence fee is imposed. The proposed licence fees range from \$53,610 for a self-care hostel with less than 30 places to \$160,860 for a care and attending home with more than 240 places. The Administration explained that running a private residential care home is a profit-oriented business and, in line with established policy, the proposed licence fees have been set at a level sufficient to cover all costs incurred by the Government. However, Members had reservation on the proposal for the following reasons:

- (a) since no licence fee is currently imposed for the registration of child care centres, there will be a case of double standard if residential care homes are charged for licences;
- (b) existing residential care home services being provided by the Government and subvented bodies are far from adequate; private residential care homes are performing an important social function in making up for the shortfall;

- (c) the current policy of full cost recovery shall not be applied across the board and where welfare services are concerned, this factor shall be carefully weighed against other fiscal considerations;
- (d) licence fees will push up the operating costs of residential care homes and operators will most likely shift the burden onto the elderly residents; and
- (e) a number of residential care homes may be driven out of business as a result of the rise in operating costs and the Government may not be able to solve the displacement problem immediately given its limited capacity.

After discussion and following a review, the Administration is prepared to recover only 25% of the costs on the ground that the licensing scheme which is intended to give better protection to the elderly involves an element of welfare, whereas the remaining 75% relating to the cost of enforcement will be borne by the Government. Members are not satisfied with the new proposal as their concerns have not been properly addressed. Moreover, as the total revenue to be collected by the Government will only amount to \$4.2 million a year, there is no strong financial ground to insist on the fee charging proposal. Members agree to move a Committee stage amendment to remove the fee-charging provision from the Bill.

I hope the information would be useful to Members in considering whether or not to support the proposed provision relating to the charging of licence fees in the Bill, and the Committee stage amendment to be moved by me to remove the provision later on. Apart from this amendment, I understand that the Administration will, in response to a Member's suggestion, also propose an amendment to include registered nurses for appointment as inspectors later on.

The Bills Committee and some organizations were also concerned about the shortage of health workers. The Administration indicated that there are at present some 200 health workers qualified for registration and the estimated increase required after the passage of the Bill will be in the region of 900 health workers.

To make up for the shortfall of about 900 health workers, the Administration proposed that in the next two years, 400 local health workers will be trained. Another 300 or 400 will be imported under the Importation of Labour Scheme. The latter measure will be an interim one to facilitate the smooth implementation of the licensing scheme. In the long run, more training courses will be organized to reduce the need for imported labour. The remaining shortfall of 100 or 200 health workers will come from the labour force in the local community. Members agreed with the proposed course of action.

In order to improve the recruitment of health workers and attract more people to join the trade, Members suggested and the Administration agreed that an appropriate pay scale shall be devised for subvented residential care homes which will serve as a benchmark for staff in private residential care homes.

The Bills Committee also considered the location restriction which disallows a residential care home from being situated immediately above any premises the use of which could cause safety hazards to its residents. Members considered it unfair to penalize the existing residential care homes for a subsequent change of use of the premises below. The Administration undertook to draw new operators' attention to the location restriction and discourage them from choosing first floor premises to set up residential care homes. As regards a few existing residential care homes which are already situated immediately above "disallowed" trades, the Administration would consider each case sympathetically and would examine the problem of displacement of residents when contemplating action against the operators in accordance with the licensing conditions.

Finally, Mr President, I would like to thank Members of the Bills Committee who have worked so diligently on the Bill and the Administration in providing the necessary supporting data to help Members in the scrutiny of the legislation.

With these remarks, Mr President, and subject to the endorsement of the amendments to be moved, I support the Bill.

DR LAM KUI-CHUN (in Cantonese): Mr President, those poverty-stricken elderly people who have not been accommodated in government-run or subsidized homes for the aged are forced to move into profit-making private residential care homes. It is necessary for the Administration to work out some basic requirements to ensure that the services offered by these homes are up to a certain standard. Therefore, the Liberal Party supports the spirit of this Bill.

In the course of working out the standard requirements of these homes, both the Administration and the Social Service Advisory Committee took into account the fact that in terms of conditions and services it would be impossible to raise the standard of these homes to the same level as government-run or subsidized homes within a short time. The Liberal Party agrees that the requirements laid down by the Bill represent a compromise or an expedient way of taking the scheme forward having regard to actual circumstances. The biggest problem now is how to assist the operators of these homes in recruiting sufficient manpower to provide service required under the legislation, given the present circumstances of a nursing staff shortage.

The Liberal Party thinks that the training programme for health workers concerned ought to be implemented as soon as possible, and close monitoring must be carried out. As to the substantial increase in licence fee proposed in the

Bill, the Liberal Party is against it. Among the homes currently in operation, it is estimated that 35 of them would have to close down in the face of practical difficulties. As to the homes that will continue to operate, it will not just be a question of recruiting more staff to raise the service standard, but also a question of reduction of intake to provide more living space per inmate. I can say for sure that this will mean an increase in operating costs for these homes. At present, most of the private residential care homes are being run at a narrow margin of profit, and the social function of these homes is to make up for the inadequacy of residential places in government-run homes.

The Liberal Party thinks that the Administration has the obligation to help these homes raise their service standard for the benefit of poverty-stricken elderly people. The Governor pointed out in his policy address last week that the Administration would provide financial assistance to private residential care homes so as to improve the facilities of these homes, and as a result the safety and health care requirements could be met. But before any financial assistance is given by the Administration, it instead proposes to increase the licence fee. This is really self-contradictory. A substantial increase in licence fee would mean putting an extra straw on the already heavily-loaded camel's back, and operators would naturally shift this newly added operating cost onto the elderly people, which would increase the burden of the poverty-stricken elderly people. The Liberal Party cannot agree with this fee increase.

The Liberal Party has noted that the Administration has never recovered the whole of the monitoring cost from the licence fees in respect of other private-run social services such as child care centres. The Administration should not create a bad precedent in the course of raising the standard of service of residential care homes. Should we proceed on the basis of this principle, in the event of accidents happening in factories or private schools and thus necessitating strengthened supervision, then the licence fee would have to be increased. Another example would be: if the crime rate on "Karaoke" premises should be on the rise necessitating stepped-up police patrol, would it be necessary then to increase the licence fee to pay for the salary of the extra police manpower?

It is the Liberal Party's finding that altogether \$4 million in licence fees may be collected from all the private residential care homes all over Hong Kong. Given such meagre income, the Administration could well afford to be generous and to prescribe a fee which would enable private residential care homes to have a better profit margin. The Administration, on the other hand, would get a sizeable income from profits tax. This would really be to "bait a hook with a small fish to catch a bigger one".

Homes capable of making a profit would of course be willing to pay tax. As to those which have but a narrower profit margin, an expenditure item would be done away with. Therefore, levying a nominal licence fee would be in the best interests of the community, the elderly people of the homes, homes operators and even the Administration.

Mr President, the Liberal Party will support the amendments proposed by the social work sector and will also support the resumed Second Reading of this Bill.

DR LEONG CHE-HUNG (in Cantonese): Mr President, I am very pleased that, after so many years of waiting, we are now into the Second Reading, to be followed by final passage, of the Bill on the supervision of the standards of residential care homes for the elderly. This will enable the elderly inmates, especially those of private residential care homes, to have protection that will satisfy the basic requirements both in terms of safety and care. Elderly people contributed their very best to Hong Kong during the whole of their working life. So it would be a shame to call our community a civilized and caring one if we should fail to provide them even with such minimum protection.

The Governor said in his policy address earlier that financial assistance would be given to private residential care homes so as to improve their facilities. We would certainly welcome this. However, mere financial assistance will not be enough to ensure that elderly people living in private residential care homes receive full and comprehensive care.

As a front-line medical worker, I am most concerned about the safety and health of the elderly inmates.

This Bill before us prescribes supervision in respect of the safety of these homes and lays down the number of health care staff required in order to ensure that the elderly people are taken proper care of. Nevertheless, this is still not enough.

The authority must ensure that there are sufficient staff to make visits to these homes and oversee the latter's compliance with licensing requirements.

Besides, in ensuring that the physical and mental health of the elderly inmates is taken proper care of, apart from speeding up the training of health care workers for residential care homes, the Administration should also take a general and frontal approach in providing effective and speedy medical support for various types of residential homes for the elderly people.

At present, many homes for the elderly, especially private homes, are quite dependent, or may I say over-dependent, on the Government's out-patient, emergency and acute beds services. Low costs, of course, is one factor. But the fact is that the elderly people are sent to the hospital for just any problem, minor or serious. This shows that residential care home operators are, because of the lack of medical support, worried lest nobody be available to help when the health conditions of the elderly worsen. Besides, they do not have the know-how to deal with the situation.

For the same reason, many care and attention homes for the elderly or convalescent homes are very selective in admitting residents. Only those who are in better health conditions or easier to be taken care of are admitted. There are those elderly people who have been hospitalized for some time, and even though in due course the doctors are saying that they can be discharged or can return to the homes for the elderly, some of these homes or convalescent homes would find an excuse not to take them in.

Many hospital beds are thus occupied by elderly people who should have been more suitably accommodated in the residential care homes or convalescent homes. On the other hand, owing to the lack of resources and manpower, hospitals are incapable of helping discharged patients in having community and rehabilitation services properly arranged for them. As a result, elderly people are not taken good care of after they have been discharged. Their health would deteriorate again, which would necessitate repeated checking in and out of hospital for treatment. A vicious circle is thus formed.

The geriatric team and psychogeriatric team recently set up by the Hospital Authority can be seen as the first step to break the vicious circle. Apart from providing "house-call" physical examination and general treatment to residents of residential care homes, these teams can also give assistance and advice to staff of the homes on proper nursing care.

At present, about 30% to 40% of public out-patient and hospital services are taken up by elderly people. 12% of the elderly people are checking in and out of hospital for relapse or complications; one third of them have mental disorders or senile dementia. The outreach medical teams are of great help in alleviating the work pressure of hospitals in the above aspects. Also, they can provide actual support as well as confidence for the residential homes to take care of those elderly people whose health conditions are not so good.

However, these outreach teams have to be sufficiently staffed and be given the necessary resources in order to give full play to their functions. Let us take Tuen Mun and Yuen Long as examples. One third of private homes for the elderly in Hong Kong are situated in these two districts. However, only one outreach team is available to serve these two districts, and no preference is given to these two districts over others. At present, however hard the medical and nursing staff may have been working, there is no way they can cover all the voluntary homes in the region, not to mention the large number of private homes for the elderly.

Moreover, the outreach team for psychogeriatrics is in want of day-time hospital support, which results in elderly people occupying acute beds instead of having only a short stay or observation which is all that is required. The effectiveness of the outreach team is therefore greatly reduced.

I urge the Administration to extend as soon as possible the outreach team service to the whole territory and at the same time provide the outreach team with sufficient staff and supporting facilities. Only in having sufficient support can the supervision system in respect of residential care homes truly benefit the elderly people of Hong Kong.

With these remarks, I support the motion.

MR WONG WAI-YIN (in Cantonese): Mr President, the early 1980s saw the proliferation of private homes for the elderly due to a serious shortage of government care and attention homes for the elderly. The diverse standards and qualities of these private homes for the elderly at the early stage of operation had impaired the confidence of the public and attracted public censure. A survey was conducted by the Association for the Rights of the Elderly on these private homes for the elderly in 1982. It was found that the safety facilities of the private homes for the elderly were grossly inadequate and such homes were also seriously understaffed. Many of them, therefore, had to employ Filipino domestic helpers on the sly. Consequently, communication problems between the Filipino domestic helpers and the old people arose. Due to the shortage of manpower, some homes found it difficult to take care of the bedridden patients and, therefore, they simply tied these old people up on their beds. I believe that Members still recall the case in which old people were tied up with iron chains in an old people's home located in Yuen Long.

Non-standardized charges, poor standard of the food served, scant space for movement and the lack of recreational activities are the problems generally faced by private homes for the elderly at the initial stage. Some homes do not provide even newspaper or television, let alone medical facilities. Many of such homes do not even have any handrail fixed onto the wall. Many complaints have been lodged with us to the effect that belongings of the old people were missing at the elderly homes or that after their belongings had been handed to the elderly homes, they were unable to be retrieved because of the poor memory of the elderly.

The above problems have rendered the development of private homes for the elderly a matter of concern to the public. Many organizations and members of the public had urged the Government to expedite the enactment of legislation to monitor these private homes for the elderly so that such homes would be put on the right track for the benefit of the aged. But the Government did not take any action. It was only when something had happened or the number of complaints was on the rise that the Government made the preliminary response. For instance, in 1986 when something serious concerning elderly homes happened, the Government then proceeded to print a code of practice which carried no legal effect. The operators, however, took no notice of this code of practice at all. Following another serious incident, the Government introduced an unattractive voluntary registration system which evoked a rather poor response from private homes for the elderly. Under the pressure from

members of the public and the opinion prevailing in society, the Government finally agreed to enact legislation. But it has taken as long as three years for this Bill to be tabled in this Council since the Government announced that legislation would be introduced. This shows that the Government has been dragging its feet where the question of private homes for the elderly is concerned.

I am glad that this Bill can be read a Second time today in this Council and I hope that the Bill will be passed following the amendments to be made to it. The Bill seeks to put private homes for the elderly onto the right track, reinforce the safety facilities and improve the quality of service of the elderly homes. All these have the support of the Democratic Party. But what attracts the most criticism is that the Government wants to recover the cost of licensing. The licence fees for the three kinds of elderly homes, namely care and attention homes, aged homes and self-care hostels, range from \$50,000 to over \$160,000. Despite the earnest endeavour made by Members of the Bills Committee to call for exemption, the Government is still proposing to charge a quarter of the prescribed licence fees, which range from \$13,000 to over \$40,000. In fact, Members of the Bills Committee find the fees very unsatisfactory and we call for full exemption. The Democratic Party is in support of the several reasons advanced by the Chairman of the Bills Committee, the Honourable HUI Yin-fat. The Democratic Party is of the view that it is unreasonable to charge a licence fee. In short, these homes provide services which are similar to those of the child care centres; so they should be treated the way child care centres are treated and be granted exemption from the payment of licence fee. The Administration should not apply double standards. Most importantly, if the Government insists on charging a licence fee, operators will only pass the fee onto the consumers. The old people who reside in the elderly homes and their family members will eventually suffer. For that reason, the Democratic Party supports the Honourable HUI Yin-fat's amendment to be moved on behalf of the Bills Committee in respect of granting old people's homes exemption from payment of the licence fee.

As regards Health Workers manpower, it is estimated by the Government that 900 additional Health Workers will be required following the passage of the Bill. The operators concerned have indicated difficulties in recruitment and called for labour importation. To begin with, the Democratic Party hereby stresses our objection against the importation of labour. In fact, we are of the view that the crux of the problem of manpower shortage lies in low pay and long working hours, which make people find the job unappealing. We believe that formulating a pay scale which prescribes the minimum pay is apt to attract more applications. In addition, the Government should provide more training courses with a view to getting more people trained for the job.

The Democratic Party considers the current working hours of Health Workers, which is generally 12 hours per shift, too long. Many married women are unable to take up a job which requires them to work for such a long time because they have to take care of their families. We therefore suggested

that operators consider re-arranging the duration to eight hours per shift or even four hours per shift as a part-time job. This should attract women who have been trained formerly and who are required to stay at home for a certain period of time doing housework or taking care of their children, to take up the job so as to alleviate the shortage of manpower. In order to encourage the management of the homes to improve the standard of their services, the Democratic Party suggests that the Government should provide those homes of better quality with more bought places. Although the Governor has undertaken in his last policy address to provide 700 additional places in the next three years (200 places to be provided this year, 200 places next year and 300 in the year after next), we consider these 700 places far from sufficient. The Democratic Party suggests that the Government should increase the number of bought places in private homes for the elderly, and thereby improve the quality.

During the course of the three-year grace period following the passage of the Bill, unscrupulous operators might close down the homes after they have "reaped enough profit" and, as a result, residential care services provided to the old residents will come to a halt. In order to prevent this from happening, the Democratic Party suggests that the Government should expedite the building of more subvented care and attention homes and convalescent homes to cope with the greater demand so that residential care services provided to old residents will not be interrupted due to the closure of the private homes for the elderly.

We see in the preceding year that many projects for welfare facilities were held up for various reasons and, therefore, the services concerned failed to come on stream as scheduled. We are worried that the lack of subvented homes will ultimately victimize the elderly. We hope that the Government will come up with a solution in this regard and will not resort to the remarks made by the Director of Social Welfare that it was because of the failure to identify the appropriate site or other reasons that the completion of these care and attention homes or their commencement of operation would have to be postponed.

Finally, the Democratic Party calls on the Social Welfare Department to step up inspection of these homes after the passage of the Bill in order to ensure that the standards of the homes are in compliance with the provisions of the law. We hereby solemnly stress that it is not our wish to see the Government refraining from deploying more staff for home inspection because of the amendment to be moved today in this Council calling for licence fee exemption. If so, it will be unable to enforce the legislation properly.

Mr President, with these remarks, the Democratic Party supports the Second Reading of the Bill and the amendments to be moved by the Honourable HUI Yin-fat.

SECRETARY FOR HEALTH AND WELFARE: Mr President, I would like to express my thanks to Mr HUI Yin-fat and his colleagues on the Bills Committee for their careful consideration of and support for the Bill.

Some Members of the Bills Committee have expressed their concern at the possibility that some elderly persons may be displaced as a result of the implementation of the control scheme. I wish to assure Members that the Administration will put in place alternative arrangements for all residents affected by the closure of substandard homes. No elderly person will be made homeless by the new control measures.

On the recommendation of the Working Group for the Elderly, the Administration will introduce three initiatives to facilitate the implementation of the control scheme. First, a one-off financial assistance scheme will be introduced after the Bill is passed to help self-financing and private homes to comply with the safety precaution, design and structural requirements of the regulations. Fifty million dollars has been earmarked under the Lotteries Fund for this scheme. Secondly, the Social Welfare Department, in conjunction with the College of Nursing, Hong Kong, or one of the tertiary institutes, will organize courses to train suitable persons to register as health workers. Thirdly, the fees to be paid by non-profit making residential homes for licences and certificates of exemption under the control scheme will be reimbursed.

Mr President, I beg to move.

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

Bill read the Second time.

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

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 8 June 1994

Question on Second Reading proposed.

REV FUNG CHI-WOOD (in Cantonese): Mr President, one of the main points of this Bill is to require restaurants to indicate whether they have set up non-smoking areas. Such a measure can encourage and educate citizens to reduce smoking. However, when this Ordinance is implemented, restaurants probably will only indicate whether non-smoking areas have been set up but may not be able to have actually set up such areas. Therefore, I very much hope that the Administration will soon review the need to require restaurants to set up non-smoking areas through legislation so as to further protect citizens' health inside restaurants. I believe that this measure will definitely be welcomed by the general public.

Another main point of this Bill is the prohibition of sale of tobacco products to persons under the age of 18 years. This measure can absolutely encourage young people to reduce smoking, but there may be certain difficulties in the enforcement. Nevertheless, this measure has to be complemented by large-scale educational and publicity campaigns launched by the Administration so that tobacco product buyers and young people below 18 years old can understand this measure through which young people can be encouraged to reduce or even refrain from smoking.

At the end of 1991, when a Bills Committee of this Council deliberated the Smoking (Public Health) (Amendment) Bill 1992, government officials had some reservations about this measure and they expressed in strong terms that there would be difficulties in the enforcement, among other things. Now, the Administration is willing to take this measure and I welcome such a move.

Incidentally, I would like to mention that during the enactment of the legislation in 1992, it was stipulated that smoking was to be prohibited in public areas such as public transport and cinemas. However, many citizens recently complain about numerous instances of non-compliance with this legislation on public transport such as ferries and even in cinemas. Hence, after the enactment of this legislation, there is an actual need for the enforcement to be stepped up. I hope that the Administration can pay attention to this phenomenon.

In sum, I welcome the Administration's anti-smoking efforts and I hope that such efforts can continue.

Mr President, the Democratic Party supports this Bill.

Question on the Second Reading of the Bill 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.

ORGANIZED AND SERIOUS CRIMES BILL

Clauses 13, 18, 19, 30, 32 and 33 were agreed to.

Clauses 1, 4 to 6, 8 to 12, 14 to 17, 20 to 29 and 31

SECRETARY FOR SECURITY: Mr Chairman, for the reasons I have previously indicated, I move that the clauses specified be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 1

That clause 1 be amended —

- (a) by renumbering it as clause 1(1).
- (b) by adding —

"(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette, and different days may be so appointed for different provisions."

Clause 4

That clause 4 be amended, by deleting subclause (1) and substituting —

"(1) The Attorney General or an authorized officer may, for the purpose of an investigation into -

- (a) an organized crime; or
- (b) the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime; or
- (c) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,

make an ex parte application to the High Court for an order under subsection (2) in relation to particular material or material of a particular description, whether in Hong Kong or, in the case of an application by the Attorney General, elsewhere."

That clause 4(2) be amended —

- (a) by adding "subsection (4A) and" after "Subject to".

- (b) by deleting "subsection (4)" and substituting "subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d)".
- (c) by adding "or control" after "possession".

That clause 4(4)(a) be amended —

- (a) by deleting "a specified offence" and substituting "an organized crime".
- (b) by deleting "the specified offence" and substituting "the organized crime".

That clause 4(4)(b) be amended —

- (a) by deleting "proceeds of crime" and substituting "proceeds of organized crime or a specified offence".
- (b) in subparagraph (i), by deleting "a specified offence" where it twice appears and substituting "an organized crime or that specified offence".
- (c) in subparagraph (ii), by deleting "benefited from crime" and substituting "benefited from organized crime or that specified offence".

That clause 4(4)(c) be amended, by deleting "and" at the end.

That clause 4 be amended, by adding —

"(4A) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) shall only be made where an application in relation to particular material is not reasonably practicable."

That clause 4 be amended, by adding —

"(5A) An application for the discharge or variation of an order made under subsection (2) or (5) may be made by any person who is subject to the order."

That clause 4 be amended, by deleting subclause (6) and substituting —

- "(6) Rules of court -
 - (a) shall provide for applications by any person who is subject to an order made under this section for the discharge or variation of such order;

- (b) may provide for proceedings relating to orders under this section."

That clause 4(7)(a) be amended, by deleting "and in which it is visible and legible".

That clause 4 be amended, by adding —

"(7A) Where an order made under subsection (2)(a) relates to information recorded otherwise than in legible form, an authorized officer may by notice in writing require the person to produce the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the order to produce the material in the form in which it was recorded."

That clause 4(10) be amended, by deleting "of \$100,000" and substituting "at level 6".

That clause 4 be amended, by deleting subclause (12).

That clause 4(2), (3) and (5) be amended, by deleting "認為" and substituting "覺得".

That clause 4(10) be amended, by deleting "解釋" and substituting "辯解".

Clause 5

That clause 5 be amended, by deleting subclause (1) and substituting —

"(1) An authorized officer may, for the purpose of an investigation into -

- (a) an organized crime;
- (b) the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime;
- (c) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,

apply to the High Court or the District Court for a warrant under this section in relation to specified premises."

That clause 5(2)(c) be amended, by deleting "subsection (3)" and substituting "subsection (3)(a), (c) and (d) or subsection (3)(b), (c) and (d)".

That clause 5(2)(d) be amended, by deleting "subsection (4)" and substituting "subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d)".

That clause 5(3)(a) be amended —

- (a) by deleting "a specified offence" and substituting "an organized crime".
- (b) by deleting "the specified offence" and substituting "the organized crime".

That clause 5(3)(b) be amended —

- (a) by deleting "proceeds of crime" and substituting "proceeds of organized crime or a specified offence".
- (b) in subparagraph (i), by deleting "a specified offence" where it twice appears and substituting "an organized crime or that specified offence".
- (c) in subparagraph (ii), by deleting "benefited from crime" and substituting "benefited from organized crime or that specified offence".

That clause 5(3)(c) be amended, by deleting "and" at the end.

That clause 5(4)(a) be amended —

- (a) by deleting "a specified offence" and substituting "an organized crime".
- (b) by deleting "the specified offence" and substituting "the organized crime".

That clause 5(4)(b) be amended —

- (a) by deleting "proceeds of crime" and substituting "proceeds of organized crime or a specified offence".
- (b) in subparagraph (i), by deleting "a specified offence" where it twice appears and substituting "an organized crime or that specified offence".
- (c) in subparagraph (ii), by deleting "benefited from crime" and substituting "benefited from organized crime or that specified offence".

That clause 5(4)(c) be amended, by deleting "and" at the end.

That clause 5(6)(b) be amended, by deleting "of \$50,000" and substituting "at level 5"

That clause 5 be amended, by deleting subclause (8).

That clause 5(2), (4)(d)(ii), (5) and (6) be amended, by deleting "令狀" wherever it appears and substituting "手令".

Clause 6

That clause 6(1) be amended, by deleting everything after "authorized officer" and substituting —

"to the Attorney General for the purposes of -

- (a) any prosecution of a specified offence;
- (b) any application for a confiscation order; or
- (c) any application for an order under section 15(1) or 16(1),

but may not otherwise be disclosed."

That clause 6(2)(b) be amended, by deleting "認為" and substituting "覺得".

Clause 8

That clause 8 be amended, by deleting subclauses (2) to (4) and substituting —

"(1A) If the prosecution so requests, the court shall first determine whether the specified offence of which the person stands convicted is an organized crime.

(2) The court shall then or, where no request has been made under subsection (1A), the court shall first -

- (a) impose such period of imprisonment or detention (if any);
- (b) make such other order in relation to sentence, not being an order provided for or referred to in subsection (6),

as is appropriate in respect of the offence concerned.

(3) The court shall then determine whether the person has benefited from the specified offence or from that offence taken together with any specified offence of which he is convicted in the same proceedings, or which the court proposes to take or has taken into consideration in determining his sentence, and, if he has, whether his proceeds of that specified offence or offences are in total at least \$100,000.

(4) If the court has determined -

- (a) under subsection (1A), that the specified offence of which the person stands convicted is an organized crime; and
- (b) under subsection (3), that his proceeds of the specified offence or offences referred to in that subsection are in total at least the amount specified in that subsection,

the court shall then determine whether the person has benefited from organized crime."

That clause 8(5) be amended, by deleting "he has so benefited" and substituting "his proceeds of the specified offence or offences are in total at least the amount specified in subsection (3)".

That clause 8 be amended, by adding —

"(8) For the purposes of subsection (1A) -

- (a) the court shall only have regard to evidence such as would be admissible in criminal proceedings;
- (b) the court shall only make a determination that a specified offence is an organized crime if it is so satisfied beyond reasonable doubt."

That clause 8(1)(a) be amended, by deleting "訴訟" and substituting "法律程序".

Clause 9

That clause 9(1) be amended, by deleting the passage beginning "has benefited" and ending "proceeds of crime" and substituting —

"and found to have committed an organized crime has benefited from organized crime and, if he has, of assessing the value of his proceeds of organized crime".

That clause 9(2)(a) and (b) be amended, by deleting "a criminal activity carried on by him or another" and substituting "the commission of an organized crime".

That clause 9(3) be amended, by deleting "proceeds of crime" where it twice appears and substituting "proceeds of organized crime".

That clause 9(2)(a) be amended, by deleting "認為" where it twice appears and substituting "覺得".

Clause 10

That clause 10(1)(a)(i) and (ii) be amended, by deleting "crime" and substituting "a specified offence or an organized crime".

That clause 10(3) be amended, by deleting paragraph (b) and substituting —

- "(b) any allegation that he has benefited from a specified offence or organized crime or that any payment or other reward was received by him in connection with the commission of a specified offence or an organized crime."

That clause 10(6) be amended, by deleting "a criminal activity carried on by him or another" and substituting "the commission of a specified offence or an organized crime".

That clause 10(6) be amended —

- (a) by deleting "訴訟" and substituting "法律程序".
- (b) by deleting "接受" and substituting "接納".

Clause 11

That clause 11(1) be amended, by deleting "crime" and substituting —

"any specified offence to which section 8(3) applies or, where the court has determined under section 8(1A) that a specified offence is an organized crime, all organized crime which he has committed".

That clause 11(3) be amended, by deleting "of crime" and substituting "for the purpose of subsection (1)".

That clause 11(3) be amended, by deleting "認為" and substituting "覺得".

Clause 12

That clause 12(9)(b) be amended, by deleting "criminal activity carried on" and substituting "specified offence or an organized crime committed".

That clause 12(4)(a)(i) be amended, by deleting "實質" and substituting "實益".

That clause 12(8)(a) be amended, by deleting "破產管理令" and substituting "接管令".

That clause 12(10)(a) be amended, by deleting "索取" and substituting "所得".

Clause 14

That clause 14(1)(c) be amended, by deleting "crime" and substituting "that specified offence".

That clause 14 be amended, by deleting subclause (2) and substituting —

"(2) Those powers are also exercisable where the High Court is satisfied -

- (a) that, whether by the laying of an information or otherwise, a person is to be charged with a specified offence; and
- (b) that there is reasonable cause to believe that he has benefited from that specified offence."

That clause 14(1), (3) and (4) be amended, by deleting "訴訟" wherever it appears and substituting "法律程序".

Clause 15

That clause 15(5)(b) be amended, by deleting "訴訟" and substituting "法律程序".

That clause 15(11) be amended, by deleting "《田土註冊條例》" and substituting "《土地註冊條例》".

That clause 15(11)(b) be amended —

- (a) by deleting "田土註冊署署長" and substituting "土地註冊處處長".
- (b) by deleting "在田土註冊署" and substituting "在土地註冊處".

Clause 16

That clause 16(4) and (8) be amended, by deleting "實質" wherever it appears and substituting "實益".

That clause 16(6) be amended, by deleting "訴訟" and substituting "法律程序".

Clause 17

That clause 17(1)(c) be amended, by deleting "訴訟" and substituting "法律程序".

Clause 20

That clause 20(2)(b) be amended, by deleting "認為" and substituting "覺得".

Clause 21

That clause 21(6)(a) and (b) be amended, by deleting "訴訟" and substituting "法律程序".

Clause 22

That clause 22(1) and (5) be amended, by deleting "自行" wherever it appears and substituting "自動".

Clause 23

That clause 23(1) be amended, by deleting "訴訟" where it twice appears and substituting "法律程序".

Clause 24

That clause 24(2) be amended, by deleting "訴訟" and substituting "的法律程序".

Clause 25

That clause 25 be amended, in the section heading by deleting "crime" and substituting "indictable offence".

That clause 25(1)(a) and (b) be amended, by deleting "crime" and substituting "an indictable offence".

That clause 25(1) be amended, by deleting "carries on or has carried on a criminal activity or has benefited from crime" and substituting "has committed or has benefited from an indictable offence".

That clause 25(2) be amended, by deleting "crime" where it twice appears and substituting "an indictable offence".

That clause 25(3) be amended, by deleting "a criminal activity" and substituting "an indictable offence".

That clause 25(4)(a) be amended, by deleting "crime" and substituting "an indictable offence".

That clause 25 be amended, by adding —

"(6) In this section, references to an indictable offence include a reference to conduct which would constitute an indictable offence if it had occurred in Hong Kong."

That clause 25(4) be amended, by deleting "訴訟" and substituting "法律程序".

That clause 25(4)(c)(ii) be amended, by deleting "解釋" and substituting "辯解".

Clause 26

That clause 26(7) be amended, by deleting "of \$50,000" and substituting "at level 5".

That clause 26(1), (2), (4)(a), (5)(a) and (b) and (8) be amended, by deleting "訴訟" and substituting "法律程序".

Clause 27

That clause 27 be amended, by deleting the clause and substituting —

"27. Sentencing in respect of specified offences

(1) This section applies where, in proceedings in the District Court or the High Court, a person has been convicted of a specified offence.

(2) The prosecution may furnish information to the court regarding any or all of the following -

- (a) the nature and extent of any harm caused, directly or indirectly, to any person by the act in respect of which the person has been so convicted;
- (b) the nature and extent of any benefit, whether financial or otherwise, that accrued or was intended to accrue, directly or indirectly, to that or any other person from that act;
- (c) the prevalence of that specified offence;
- (d) the nature and extent of any harm, whether direct or indirect, caused to the community by recent occurrences of that specified offence;
- (e) the nature and extent of the total benefit, whether financial or otherwise, accruing directly or indirectly to any person from recent occurrences of that specified offence.

(3) Only information that would be admissible in evidence in criminal proceedings (including proceedings in respect of sentencing) may be furnished to the court under subsection (2).

(4) If the prosecution so requests, the court shall determine whether the evidence adduced at the trial or, if the conviction followed a plea of guilty, the matters accepted by the court prior to conviction show that the specified offence was an organized crime.

(5) The prosecution shall not request a determination under subsection (4) unless it has given notice to the person of its intention to seek such a determination, and unless such notice has been given prior to the plea last entered by the person or within such further time as may have been allowed by the court under subsection (6).

(6) If a person has pleaded guilty to a specified offence and it appears to the court, having regard to the time at which the prosecution was informed of the accused's intention to plead guilty, that it would be in the interests of justice to allow the prosecution further time within which to give the notice provided for in subsection (5), the court may order accordingly and may specify such period for that purpose as it considers reasonable in the circumstances, and if notice is given pursuant to an order under this subsection the court may allow the accused to withdraw his plea of guilty.

(7) The court shall not make a determination under subsection (4) that a specified offence was an organized crime unless, subsequent to his receipt of the notice required to be given under subsection (5), the person convicted has been given an opportunity to be heard on the matter.

(8) If in making a determination under subsection (4) the court determines that the specified offence was an organized crime by reason of its connection with the activities of a particular triad society, the prosecution may furnish information to the court regarding the nature and extent of those activities and the way in which the offence was connected with those activities.

(9) The court may receive and take into account regarding a matter referred to in subsection (8) any information which it considers reliable in the circumstances.

(10) Where the prosecution seeks to furnish information to a court under this section regarding any matter referred to in subsection (2) or (8), the court shall allow the person convicted an opportunity to object to the reception of the information, and where any such information is received by the court the court shall allow the person an opportunity to furnish information regarding that same matter.

(11) Subject to subsections (12) and (13), where a court is satisfied beyond reasonable doubt -

- (a) that the specified offence was an organized crime; or
- (b) as to any information furnished under subsection (2) or (8),

or where any such matter is agreed by the person convicted, the court shall have regard to such matter when it passes a sentence on the person for the relevant specified offence and may, if it thinks fit, pass a sentence on the person for that offence that is more severe than the sentence it would, in the absence of such matter, have passed.

(12) If an application has been made for a confiscation order under section 8, the court shall not have regard for the purpose of subsection (11) to any proceeds of a specified offence or organized crime to which the application for the confiscation order relates.

(13) A sentence passed pursuant to subsection (11) shall not exceed the maximum penalty permitted by law for the offence.

(14) This section operates without prejudice to any other information that may be furnished to a court before a person is sentenced, or to any other information to which a court shall or may have regard when sentencing a person for any offence.

(15) This section does not apply to a person who is convicted of a specified offence committed before the commencement of this section."

Clause 28

That clause 28(4) and (7)(b) be amended, by deleting "認為" and substituting "覺得".

That clause 28(10) be amended, by deleting "訴訟" and substituting "法律".

Clause 29

That clause 29(3) be amended —

- (a) by deleting "認為" and substituting "覺得".
- (b) by deleting "訴訟" and substituting "法律程序".

Clause 31

That clause 31 be amended —

- (a) by deleting "The" and substituting "Subject to the approval of the Legislative Council, the".
- (b) by adding "the amount specified in section 8(3) and" after "amend".

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 4 to 6, 8 to 12, 14 to 17, 20 to 29 and 31, as amended, proposed, put and agreed to.

Clause 2(1) (definition of "organized crime")

CHAIRMAN: Both the Secretary for Security and Mr Martin LEE have given notice to move amendments to the definition of "organized crime" in clause 2(1). In accordance with Standing Order 25(4), I will call upon the Secretary for Security to move his amendments first.

SECRETARY FOR SECURITY: Mr Chairman, I move that the definition of "organized crime" in clause 2(1) be amended, and that clause 2 be further amended by adding subclause (1A) as set out under my name in the paper circulated to Members.

I have dealt with this at some length in my speech on the Second Reading. One-off serious organized crimes are very harmful to our society and at present we do not have adequate powers to investigate or to prosecute them. I urge Members to accept the Administration's revised definition of "organized crime" to include one-off serious organized crime. Excluding crimes of this sort from the ambit of the Bill would seriously undermine our ability to tackle organized and serious crimes and would create a loophole which criminal syndicates would quickly learn to exploit. It would also go against the widespread public support of more effective powers against organized and serious crimes. I hope therefore Members would support our definition and reject Mr Martin LEE's proposed amendment.

Proposed amendments

Clause 2

That clause 2(1) be amended —

- (a) by deleting the definition of "criminal activity".
- (b) by deleting the definition of "organized crime" and substituting -
 - "organized crime" (有組織罪行) means a Schedule 1 offence that -
 - (a) is connected with the activities of a particular triad society;
 - (b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or
 - (c) is committed by 2 or more persons, involves substantial planning and organization and involves -
 - (i) loss of the life of any person, or a substantial risk of such a loss;

- (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or
- (iii) serious loss of liberty of any person;"

(c) by adding —

"(1A) For the purpose of the definition of "organized crime" (有組織罪行) in subsection (1) -

- (a) a conspiracy to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if the pursuit of the agreed course of conduct would at some stage involve that matter;
- (b) an attempt or incitement to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if what the person attempting or inciting the commission had in view would involve that matter."

(d) by adding -

"premises" (處所) includes any place and, in particular, includes -

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

"reward" (酬賞) includes a pecuniary advantage;

"society" (社團) has the same meaning as in section 2(1) of the Societies Ordinance (Cap. 151);

"triad society" (三合會) includes any society which -

- (a) uses any ritual commonly used by triad societies, any ritual closely resembling any such ritual or any part of any such ritual; or
- (b) adopts or makes use of any triad title or nomenclature."

That clause 2(1) be amended —

- (a) in paragraphs (b) and (c) of the definition of "享有法律特權的品目", by deleting "法律訴訟" and "訴訟" wherever they appear and substituting "法律程序".
- (b) in the definition of "被告人", by deleting "訴訟" and substituting "法律程序".
- (c) in the definition of "債務處理人" -
 - (i) in paragraph (a), by deleting "破產管理官" and substituting "破產管理署署長";
 - (ii) in paragraph (b)(i), by deleting "破產管理人" and substituting "受託人".

CHAIRMAN: I will call upon Mr Martin LEE to speak on the amendments proposed by the Secretary for Security as well as his own amendments, but will not ask Mr LEE to move his amendments unless the Secretary for Security's amendments have been negatived. If the Secretary for Security's amendments are approved, that will by implication mean that Mr LEE's proposed amendments are disapproved.

MR MARTIN LEE: Mr Chairman, this is the first of my three proposed amendments to this Bill. But before I speak to this amendment I wish to make a general observation. The role of the OSCB and the Criminal Procedure (Amendment) Bill should not be to make the jobs of prosecutors and police officers easier. If that is the intention, we might as well repeal the Bill of Rights. As the police are given greater and greater powers, they often become more sloppy in their investigations and tend to rely too much on their newly acquired powers. It is a slippery slope, and I do not want to see Hong Kong walking closely to it, especially when stormy weather may be arriving in just two and a half years' time.

Mr Chairman, my first proposed amendment is to remove limb (c) from the Government's revised definition of "organized crime" because if limb (c) were not removed, it would permit the special OSCB powers to be used against one-off offences.

Let me explain why this is important. I need not remind Members yet again that the original and primary purpose of this Bill is to crack organized crime syndicates — the triads — special powers to break into especially well defended fortresses. The OSCB powers were not intended for one-off offences because they do not present the police with the same kinds of difficult problems that the triads do.

In triad organizations, its members are bound by a special oath of secrecy — that is what makes them such difficult nuts to crack. Criminals who have committed one-off offences are not involved in this sort of behaviour.

The difference between organized crimes and one-off crimes is also a question of degree: Look at the harm to the community. A triad group, networked together throughout Hong Kong, is in continuous operation — their crimes are ongoing and ever-present. But a one-off crime is a one-time affair. It takes place, it is terrible, but it is over. I am not saying that one-off crimes are not harmful; of course they are harmful, but they do not present the same kind of continual danger to the community that triad-connected crimes do, nor present police with those special problems that makes combating organized crime so difficult.

Let me now turn to the definition. Limb (a) is by its own terms directed at the triads. Limb (b) covers crimes committed by two or more people for the purpose of committing further crimes later on — note that this language describes the very nature of crimes perpetrated by criminal organizations. If the police cannot link a criminal syndicate with triads, they can use limb (b) to invoke OSCB powers.

But limb (c) has the potential — even the likelihood — of covering crimes that have absolutely no link to a criminal syndicate. It simply covers serious crimes that are well planned and committed by two or more persons. This terminology could very easily bring within the OSCB's reach most of the violent crimes currently under investigation in Hong Kong. That was not what was originally intended.

The Administration is trying to expand the use of the broad OSCB powers beyond what was originally contemplated when the Bill was drafted. The police already have laws with which to fight one-off crimes — that is why our crime rate is so low. So when the police ask for extra powers, we have to be extra careful — extra careful to defend our liberties against excessive government encroachment. Let me remind Members yet again that it is our duty as legislators to grant the Administration only those powers that have been narrowly tailored to address specific and critical problems in our community. And we can permit nothing more than the minimum necessary infringement on our basic freedoms.

In response to my arguments, the Security Branch has replied in a paper that "The Bill is intended to tackle both organized and serious crimes." I disagree. The original intent of the OSCB is, as I have stated repeatedly, to address crimes that are at the same time both organized and serious. Even assuming the Administration's argument is correct, it leads to a patently absurd situation: if two people commit one single murder, it would be covered by the Bill, but if one person commits serial murder, or serial rape as in Tuen Mun, it would not!

The Administration is scraping the bottom of the barrel when it finds it necessary to make a funny little argument in defence of limb (c). It has stated in the same paper that if one-off offences are not covered by this Bill, shrewd organized crime bosses would learn to disband after successfully committing an organized and serious crime, and then constitute a new syndicate every time they want to commit another one, thus evading the reach of the OSCB.

This is plainly absurd. For what crime boss would not stick to the same gang which successfully carried out his criminal designs? The Administration is implying that professional criminals would plan on getting caught and then work backwards from that assumption. Really, Mr Chairman, if the Administration has no better argument than that, then surely they owe it to our public to support my proposed amendment and I hope other Honourable Members will also support it.

DR PHILIP WONG: Mr Chairman, I reported at the resumption of the Second Reading debate the ad hoc group's concerns with regard to the definition of organized crime. The majority of Members supported the amendments proposed by the Administration in restricting the definition, which are as now moved by the Secretary for Security. It was the majority view that the definition should also cover one-off offences that involve substantial planning and organization and are of a very serious nature. It was strongly felt that many one-off offences, for instance, kidnapping, armed robbery, and so on, are very serious and organized, and are disturbing our society. These cases should not be allowed to slip through any loophole just because they are not apparently connected with a criminal group.

Mr Chairman, I share this majority view of the ad hoc group. I support the amendments moved by the Secretary for Security.

Question on the Secretary for Security's amendments put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MR MARTIN LEE claimed a division.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: Will Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Dr LEONG Che-hung, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Miss Emily LAU, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Ms Anna WU and Mr James TIEN voted for the amendments.

MR Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr MAN Sai-cheong, Dr YEUNG Sum and Mr WONG Wai-yin voted against the amendments.

THE CHAIRMAN announced that there were 31 votes in favour of the amendments and 13 votes against them. He therefore declared that the amendments were carried.

CHAIRMAN: As the Secretary for Security's amendments to the definition of "organized crime" in clause 2(1) have been agreed, I will not call upon Mr LEE to move his amendments to the same part in clause 2(1) since his amendments are inconsistent with the decision already taken.

Clause 2

SECRETARY FOR SECURITY: Mr Chairman, I move that clause 2 be further amended as set out under my name in the paper circulated to Members. The purpose of these amendments I have already explained this afternoon.

Proposed amendments

Clause 2

That clause 2(2) be amended, in the table, by deleting —

"Benefited from crime

(從犯罪中獲利) Section 8(4)".

That clause 2(4) be amended, by adding "or organized crimes" after "offences" where it twice appears.

That clause 2 be amended, by deleting subclause (5) and substituting —

"(5) For the purposes of this Ordinance -

- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Ordinance) in connection with the commission of an offence are his proceeds of that offence; and
- (b) the value of his proceeds of that offence is the aggregate of the values of those payments or other rewards.

(5A) For the purposes of this Ordinance -

- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Ordinance) in connection with the commission of one or more organized crimes are his proceeds of organized crime; and
- (b) the value of his proceeds of organized crime is the aggregate of the values of those payments or other rewards.

(5B) For the purposes of this Ordinance, a person who has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with the commission of an offence or an organized crime has benefited from that offence or organized crime, as the case may be."

That clause 2(6) be amended, by adding "or organized crime" after "offence".

That clause 2(4) be amended, by deleting "訴訟" where it twice appears and substituting "法律程序".

That clause 2(9) and (10) be amended, by deleting "破產管理人" wherever it appears and substituting "破產案受託人".

That clause 2(12) be amended, by deleting "訴訟" in the first, second last, and last places where it appears and substituting "法律程序".

That clause 2(12)(a) and (b) be amended, by deleting "令狀" and substituting "手令".

That clause 2(13) be amended, by deleting "訴訟" in the first, second, and last places where it appears and substituting "法律程序".

Question on the amendments proposed, put and agreed to.

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

Clause 3

CHAIRMAN: Both the Secretary for Security and Mr Martin LEE have given notice to move amendments to clause 3. I will call upon Mr Martin LEE to move his amendments first in accordance with Standing Orders 25(4) and 46(2).

MR MARTIN LEE: Mr Chairman, I move that clause 3 be amended as set out under my name in the paper circulated to Members. This proposed amendment has the support of the Honourable Simon IP, who unfortunately is unable to attend this meeting today. But he has asked me to mention this fact to this Committee. Under this provision, the High Court may authorize the Attorney General to require a person to answer questions and produce "material" that reasonably appears relevant to an investigation.

The problem here is that the Attorney General may invoke an order under this clause not just against persons whom the police can identify but also against — and I quote the Bill — "persons of a particular description." This language is too vague, which is exactly what the Administration would like, I suppose. Under such broad terminology, it is an easy matter for the police to pull in anyone they please for questioning even though they cannot identify that person by name. This can only lead to sloppy police work and harm to our rule of law.

The Security Branch for this time stated in the same paper that if my amendment were to be passed, it would face "great operational difficulties in its investigation work."

But this begs the question, Mr Chairman: What investigation work? I am worried because the Administration seems to think that the OSCB will be some sort of crime-fighting genie, who will emerge from its magic lantern with a slight rub of the hand and mysteriously produce witnesses where the police have come up empty. The reality is that there is no genie — if you have got nothing, then you have got nothing — Bill or no Bill.

I do not think that it would be an unreasonable burden on the police to ask that they identify the individuals they wish to question. If they believe, in the example given to us, that all drivers on a certain public light bus route are being threatened by triads, how difficult could it be to find out the name of but one driver? And if investigators have no leads on even one person, then how can

they say at the same time that they have a lead on all the persons of a particular description?

The Security Branch has also argued that an adequate safeguard is to be found in the Attorney General's application to a High Court Judge. But I have already dismissed this weak reason.

I therefore urge Members to support my proposed amendments.

Proposed amendments

Clause 3

That clause 3(1) be amended, by deleting "or to persons of a particular description".

That clause 3(2) be amended, by deleting ", or persons of the particular description,".

That clause 3(3)(b) be amended, by deleting ", or state the particular description of persons,".

That clause 3(3)(c) be amended, by deleting "or persons".

That clause 3(4)(b) be amended, by deleting the paragraph and substituting

"(b) that there are reasonable grounds for suspecting that the person to whom the application relates has information, or is in possession of material, likely to be relevant to the investigation; and".

That clause 3(4)(c) be amended, by deleting the paragraph.

That clause 3(4)(d) be amended —

(a) by deleting sub-paragraph (iv) and substituting -

"(iv) to the circumstances under which the person may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates),".

(b) by deleting "or those persons" at the end.

That clause 3(7)(a) be amended —

(a) by deleting sub-paragraph (iii) and substituting -

"(iii) a statement to the effect that the order is made in respect of that particular person;"

(b) by deleting sub-paragraph (iv).

(c) in sub-paragraph (vi), by deleting "and" at the end.

That clause 3(7) be amended —

(a) by adding -

"(aa) have annexed to it a copy of the order made under this section, but there may be excluded from such copy -

(i) any reference in the order to a particular person other than that person; and

(ii) any details in the order that relate only to such particular person; and".

(b) by deleting paragraph (b) and substituting -

"(b) be substantially in the form specified in Schedule 4 in relation to such notice and in addition shall set out or have annexed to it subsections (8) to (10) and section 7".

Question on Mr Martin LEE's amendments proposed.

SECRETARY FOR SECURITY: Mr Chairman, I do not agree with Mr LEE's proposed amendments, which, if passed, would seriously weaken the special investigative power provided in clause 3. In many cases, it will not be possible at the early stages of investigation to identify precisely the person who have information relevant to that investigation. The special power of investigation may therefore need to be applied to persons of a particular description in order for the police to gather central information. We have already built in the Bill a number of statutory safeguards to prevent the abuse of this part. I therefore urge Members to reject Mr Martin LEE's amendments and support the Administration's proposed amendments.

DR PHILIP WONG: I rise to report on the ad hoc group's consideration with regard to this provision, that is, clause 3 is also applicable to persons of a particular description. The ad hoc group considers that the provision would allow a very wide coverage for clause 3, leaving room for abuse. After a series of exchanges, the majority of Members agreed to the Administration's proposal to retain the provision but to restrict its application. The amendment of the Administration will enable judicial scrutiny of the use of the provision and will effectively limit the room for abuse and help prevent fishing expeditions. It is also practical since it expressly refers to taking into account the operational difficulties in certain situations in particularizing the person who has the information.

Mr Chairman, I share the above view and support the amendments proposed by the Secretary for Security.

Question on Mr Martin LEE's amendments put.

Voice vote taken.

MR MARTIN LEE: Division please.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: Will Members please proceed to vote?

CHAIRMAN: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

MR Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr MAN Sai-cheong, Dr YEUNG Sum, Mr WONG Wai-yin, Mr Roger LUK and Ms Anna WU voted for the amendments.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Dr LEONG Che-hung, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr James TIEN voted against the amendments.

THE CHAIRMAN announced that there were 16 votes in favour of the amendments and 28 votes against them. He therefore declared that the amendments were negatived.

CHAIRMAN: As Mr Martin LEE's amendments to clause 3 have not been agreed, I will now call upon the Secretary for Security to move his amendments to this clause.

SECRETARY FOR SECURITY: Mr Chairman, I move that clause 3 be amended as set out under my name in the paper circulated to Members. The effect of this amendment will be as I have explained earlier in my speech on the Second Reading.

Proposed amendments

Clause 3

That clause 3(2) be amended, be deleting "subsection (4)" and substituting "subsection (4) (a), (b) and (d) or subsection (4) (a), (c) and (d)".

That clause 3(3)(c) be amended, in subparagraphs (i) and (ii), by adding "reasonably" before "appears" wherever it appears.

That clause 3(3)(d) be amended, by adding after "interest" —

", but nothing in this paragraph shall be construed as authorizing the court to order the detention of any person in custody without that persons consent".

That clause 3(4) be amended, by deleting paragraph (c) and substituting —

- "(c) where the application relates to persons of a particular description, that -
- (i) there are reasonable grounds for suspecting that some or all persons of that description have such information or are in possession of such material; and
 - (ii) the organized crime could not effectively be investigated if the application was required to relate to a particular person, whether because of the urgency of the investigation, the need to keep the investigation confidential or the difficulty in identifying a particular person who has relevant information or material;"

That clause 3(4)(d)(iv) be amended, by adding after "material" —

"(including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates)".

That clause 3(5) and (6) be amended, by adding "reasonably" before "appears" wherever it appears.

That clause 3(7)(a)(vi) be amended, by deleting "and" at the end.

That clause 3(7) be amended —

(a) by adding -

"(aa) have annexed to it a copy of the order made under this section, but there may be excluded from such copy -

(i) any reference in the order to a particular person other than that person, or to persons of a particular description not including that person; and

(ii) any details in the order that relate only to such particular person or persons of a particular description; and".

(b) by deleting paragraph (b) and substituting -

"(b) be substantially in the form specified in Schedule 4 in relation to such notice and in addition shall set out or have annexed to it subsections (8) to (10) and section 7."

That clause 3 be amended, by deleting subclause (12) and substituting —

"(12) A statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings against him except as follows -

(a) in evidence in proceedings under subsection (14) or section 36 of the Crimes Ordinance (Cap. 200); or

(b) for the purpose of impeaching his credibility in proceedings in respect of any offence where in giving evidence he makes a statement inconsistent with it."

That clause 3(13) and (14)(ii) be amended, by deleting "of \$100,000" and substituting "at level 6".

That clause 3 be amended, by deleting subclauses (15), (16) and (17) and substituting —

"(15) Where an order under subsection (2) has been made the Attorney General, or a person authorized in writing by the Attorney General for the purpose of this subsection, may, after satisfying any conditions that may be prescribed by rules of court in this respect, obtain a copy of the order; but subject to the foregoing part of this subsection and to subsection (7)(aa), no person is entitled to obtain a copy of the order or any part of the order.

(16) Where a requirement imposed on a person under this section relates to material which consists of information recorded otherwise than in legible form -

- (a) the requirement shall have effect as a requirement to produce the material in a form in which it can be taken away;
- (b) an authorized officer may by notice in writing served on the person require the person to produce at a specified time and place, or at specified times and places, the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the requirement to produce the material in the form in which it is recorded.

(17) An application for the discharge or variation of an order made under this section may be made by any person on whom a requirement is imposed under the order.

(18) Rules of court -

- (a) shall provide for applications by any person on whom a requirement is imposed under an order made under this section for the discharge or variation of such order;
- (b) may provide for -
 - (i) proceedings relating to orders under this section;

- (ii) conditions that must be satisfied before a person may obtain a copy of such order.

(19) The Secretary for Security shall prepare a code of practice in connection with -

- (a) the exercise of any of the powers conferred; and
 (b) the discharge of any of the duties imposed,

by this section, and any such code shall be laid before the Legislative Council and shall not be promulgated until the code has been approved by the Legislative Council."

That clause 3(13) be amended, by deleting "解釋" and substituting "辯解".

That clause 3(14)(a) and (b) be amended, by deleting "失實" and substituting "虛假".

That clause 3(14)(b) be amended, by deleting "魯莽" and substituting "罔顧後果".

Question on the amendments proposed, put and agreed to.

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

Clause 7

MR MARTIN LEE: Mr Chairman, I move that clause 7(1) be amended as set out under my name in the paper circulated to Members.

Clause 7 defines the crime of prejudicing an investigation. The purpose behind criminalizing the disclosure of an OSCB investigation is to protect the integrity of the investigation, as well as the reputation of anyone being questioned. These are not unreasonable aims. The Bill as revised will not punish a person who has made a disclosure unless he intends to prejudice an investigation, but it says nothing about whether that disclosure has or is likely to have any harmful effect.

Again, we come back to our balancing act. On the one hand we have the need to protect OSCB investigations, and on the other, we have one of the most fundamental rights listed in ICCPR and BOR — the right to freedom of expression.

I believe that despite the Government's revisions, this clause still tips the balance too far against the freedom of expression, since it criminalizes every disclosure intended to prejudice an investigation, including those which clearly have no adverse effects.

Surely it is not fair, nor necessary to prosecute an individual under the OSCB for an act that does no harm. Perhaps the Administration's definition would catch a stupid reporter who thinks he has an important story and, believing that it will harm an organized crime investigation, he publishes it anyway, no doubt as a scoop. But in fact, unknown to the reporter, the police already released the information in question. Now why should we punish such a person?

Let me mention a practical and realistic point as well. The Government is right — it is difficult to prove intent in our courts; you have to get at what the defendant was thinking in his mind, and this is not a simple task.

So, how do we prove intent? We look at the consequences of a person's actions and then work backwards from there and draw the necessary inference. When relying on clause 7, the prosecution would inevitably have to show the effect of the accused's disclosure in order to prove guilty intent. If a disclosure had no compromising effect on an investigation at all, then, realistically, it will be tough to show the accused intended to prejudice the investigation. The prosecution will therefore have to show that a disclosure actually had an adverse effect on an investigation before winning any conviction; so why not add an additional safeguard to the Bill and require as a matter of law that the Government also prove a disclosure was "likely to prejudice" an investigation?

The Security Branch's only substantive response is that it should be enough to convict a person if he makes a disclosure about an investigation "with criminal intent." I have just explained why I would require more than just a showing of intent and why even if intent alone were required, the prosecution would inevitably have to prove harmful effect anyway.

The point is, we are looking at draconian powers here, and by having additional safeguards, we are merely ensuring that these powers are as unintrusive as possible. There can be nothing wrong with that. So, my amendment would strengthen protections of our right to free expression, while still protecting police investigations from truly dangerous disclosures.

For these reasons, I urge Members to support this proposed amendment. Come on, this is my last amendment today.

Proposed amendment

Clause 7

That clause 7(1) be amended, by deleting the subclause and substituting —

- "(1) Where an order under section 3 or 4 has been made or has been applied for and has not been refused or a warrant under section 5 has been issued, a person who, knowing or suspecting that the

investigation in relation to which the order has been made or applied for or the warrant has been issued is taking place -

- (a) without lawful authority or reasonable excuse makes any disclosure that is likely to prejudice the investigation, intending that the disclosure should prejudice the investigation; or
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of any material -
 - (i) knowing or suspecting that the material is likely to be relevant to the investigation; and
 - (ii) intending to conceal the facts disclosed by the material from persons carrying out the investigation,

commits an offence."

Question on Mr Martin LEE's amendment proposed.

SECRETARY FOR SECURITY: Mr Chairman, the Administration does not agree with this proposed amendment. If a person makes a disclosure intending to prejudice an investigation, he just should not escape liability just because perhaps by chance or mistake, he fails to do so. The intention of prejudice should be sufficient to account for an offence. I urge Members to reject this amendment and support our proposal.

DR PHILIP WONG: I rise to report the consideration of the ad hoc group on the proposed amendments to clause 7. The majority of the ad hoc group supported that clause 7 should be restricted along the suggestion of the Administration.

For subclause 1(A) the amendment proposed by the Administration in raising the *mens rea* of the offence would largely restrict its application. It should be sufficient to constitute an offence if the person concerned has a wilful intention to prejudice an investigation regardless of whether the wilful act has succeeded. Further restrictions restricting the provision would render it ineffective.

Mr Chairman, it is essential to protect investigations of organized and serious crime, and in particular the person who assists in these investigations. I share the majority view of the ad hoc group and support the amendments

proposed by the Secretary for Security, and oppose the amendments proposed by the Honourable Martin LEE.

MRS SELINA CHOW: Mr Chairman, I am a strong supporter of the Bill of Rights. I have unreserved support for the freedom of expression, but listening to Mr Martin LEE, one cannot help but come to the conclusion that the Bill of Rights and the freedom of expression are being used, or are being, you can say, abused by the way he has put them forward as the basis for his amendments because, first of all, this clause is not intended for only the reporting of information. It is specifically for the disclosure of information with the intention to prejudice an investigation.

If that does not by itself constitute an offence, if an offence is only constituted with that intention as well as the effect of actually prejudicing the investigation, then how do you actually prosecute the person who actually has the intention to prejudice without having the consequence of achieving that intention?

In another respect, I think as far as the prosecution is concerned, they have actually to prove intent. That actually is already quite difficult enough to establish, so I think that reason must dictate that an intention to prejudice any investigation, particularly investigation of this serious nature, must be enough to justify prosecution as well as an offence.

Question on Mr Martin LEE's amendment put.

Voice vote taken.

MR MARTIN LEE: Division please.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: Will Members please proceed to vote.

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr MAN Sai-cheong, Dr YEUNG Sum and Mr WONG Wai-yin voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 13 votes in favour of the amendment and 33 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: As Mr Martin LEE's amendment to clause 7(1) has not been agreed, I will now call upon the Secretary for Security to move his amendment.

SECRETARY FOR SECURITY: Mr Chairman, I move that clause 7(1) be amended, and subclause (1A) be added to clause 7, as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 7

That clause 7(1) be amended —

- (a) by deleting ", in relation to an investigation into a specified offence,".
- (b) by adding after "the investigation" where it first appears -
 - "in relation to which the order has been made or applied for or the warrant has been issued".
- (c) in paragraph (a), by deleting everything after "any disclosure" and substituting -
 - "intending to prejudice the investigation; or".

That clause 7 be amended, by adding —

"(1A) Where a person has been arrested in connection with an investigation specified in subsection (1), that subsection shall not apply as

regards any disclosure in respect of the investigation made after such arrest."

That clause 7(1) be amended, by deleting "檢控官已提出申請根據第 3 或 4 條發出命令" and substituting "已有要求根據第 3 或 4 條發出命令的申請提出".

That clause 7(1) be amended, by deleting "令狀" and substituting "手令".

That clause 7(1)(a) be amended, by deleting "解釋" and substituting "辯解".

That clause 7(1)(b) be amended, by deleting "脫手" and substituting "以其他方式處置".

Question on the amendment proposed, put and agreed to.

Question on clause 7, as amended, proposed, put and agreed to.

New clause 32A Prohibition of excessive interest rates

New clause 32B Time limitation for instituting certain proceedings

New clause 32C Ordinance referred to in sections 17 and 17A

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

SECRETARY FOR SECURITY: Mr Chairman, I move that new clauses 32A, 32B and 32C as set out in the paper circulated to Members be read the Second time.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

SECRETARY FOR SECURITY: Mr Chairman, I move that new clauses 32A, 32B and 32C be added to the Bill.

Proposed additions

New clauses 32A, 32B and 32C

That the Bill be amended, by adding after the heading "**Consequential Amendments**" —

"Money Lenders Ordinance

32A. Prohibition of excessive interest rates

Section 24(4) of the Money Lenders Ordinance (Cap. 163) is amended by repealing everything after "shall be" and substituting -

"liable -

- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 10 years."

32B. Time limitation for instituting certain proceedings

Section 32A is amended by repealing "24 or".

Customs and Excise Service Ordinance

32C. Ordinances referred to in sections 17 and 17A

Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342) is amended by adding -

"Organized and Serious Crimes Ordinance (of 1994)".

Question on the addition of the new clauses proposed, put and agreed to.

Schedule 1

SECRETARY FOR SECURITY: Mr Chairman, I move that Schedule 1 be amended as set out in the paper circulated to Members.

Proposed amendment

Schedule 1

That Schedule 1 be amended —

- (a) by deleting items 5 to 9 and substituting -

"5. Import and Export
Ordinance (Cap. 60)

section 6A	import or export of strategic commodities
section 6C	import of certain prohibited articles
section 6D (1) and (2)	export of certain prohibited articles
section 6E	carriage, etc. of prescribed articles in Hong Kong waters
section 18	importing or exporting unmanifested cargo".

(b) by deleting item 19.

(c) in item 21, by deleting "crime" and substituting "indictable offence".

Question on the amendment proposed, put and agreed to.

Question on Schedule 1, as amended, proposed, put and agreed to.

Schedules 2 and 3 were agreed to.

New Schedule 4 Notice Requiring Attendance to
 answer Questions or
 Furnish Information

Schedule read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(7).

CHAIRMAN: Both Mr Martin LEE and the Secretary for Security have given notice to move the addition of new Schedule 4, which is related to clause 3, to the Bill. As the Secretary for Security's amendments to clause 3 have been agreed, that will by implication mean that Mr Martin LEE cannot move the Second Reading of his new Schedule 4 which is inconsistent with the decision already taken. I will now call upon the Secretary for Security to move the Second Reading of his new Schedule 4.

SECRETARY FOR SECURITY: Mr Chairman, I move that new Schedule 4 as set out under my name in the paper circulated to Members be read the Second time.

Question on the Second Reading of the new schedule proposed, put and agreed to.

New Schedule 4 read the Second time.

SECRETARY FOR SECURITY: Mr Chairman, I move that new Schedule 4 be added to the Bill.

Proposed addition

That schedule be amended, by adding —

"SCHEDULE 4 [s. 3(7) (b)]
ORGANIZED AND SERIOUS CRIMES ORDINANCE
(OF 1994)

SECTION 3

NOTICE REQUIRING ATTENDANCE TO ANSWER
QUESTIONS OR FURNISH INFORMATION

TO:
(name and address of person)

1. On, in the High Court, Hong Kong an
(date)

order was made by the Hon. Mr. Justice.....under section 3 of the Organized and Serious Crimes Ordinance (of 1994) for the purpose of an investigation into an organized crime. A copy of the order as it relates to you is annexed to this Notice.

2. Particulars of the organized crime under investigation are -

- (a) Offence :
- (b) Date of offence :
- (c) Place of offence :
- (d) Other particulars :

*3. The order was made in respect of you.

or

- *3. The order was made in respect of....., and
(description of persons)
- you are a person of that description.
4. The order authorizes the Attorney General to require a person referred to in paragraph 3 above -
- * (a) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation;
- * (b) to produce any material that reasonably appears to the Attorney General to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him to so relate.
5. This Notice requires you -
- * (a) to attend before..... ,
(name and description of authorized officer)
- at..... on
(place of interview) (date and time of interview)
- to answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation;
- * (b) to produce at..... the following material
(time (s) and place(s))
- or class of material -
6. The order also requires.....
(other terms of the order relevant to
.....
(the person)
7. **NOTE:** 1. **This Notice has important legal consequences. It is in your interests to read the provisions of the Ordinance set out with this Notice, and to seek legal advice in relation to your rights and obligations under the Notice.**

2. **You may be accompanied by a solicitor and a barrister when you attend to answer questions or furnish information in compliance with paragraph 5(a) of the Notice, or to produce material in compliance with paragraph 5(b) of the Notice.**

Dated this day of 19 .

.....
for and on behalf of the
Attorney General.

* Delete as appropriate."

Question on the addition of the new schedule proposed, put and agreed to.

CRIMINAL PROCEDURE (AMENDMENT) BILL 1992

Clause 1

SECRETARY FOR SECURITY: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members. This is purely technical amendment to update the title of the Bill.

Proposed amendment

Clause 1

That clause 1(1) be amended, by deleting "Ordinance 1992" and substituting "(No. 3) Ordinance 1994".

Question on the amendment proposed, put and agreed to.

Question on clause 1, as amended, proposed, put and agreed to.

Clause 2 was agreed to.

CONSUMER GOODS SAFETY BILL

Clauses 1 to 12, 14 to 21, 24 to 27, 29, 31 and 33 to 36 were agreed to.

Clauses 13, 22, 23, 28, 30 and 32

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The amendments to clauses 28(1)(a), 28(3) and 30(2)(a) seek to bring the Bill in line with the Criminal Procedure (Amendment) Ordinance enacted in July 1994. The others are minor technical amendments to the Chinese text.

Thank you, Mr Chairman.

Proposed amendments

Clause 13

That clause 13(1) be amended, by adding "感到" before "受屈".

Clause 22

That clause 22(6)(c) be amended, by deleting "真偽" and substituting "後果".

Clause 23

That clause 23(2)(b) be amended, by deleting "真偽" and substituting "後果".

Clause 28

That clause 28(1)(a) be amended, by deleting "of \$100,000" and substituting "at level 6".

That clause 28(3) be amended, by deleting "of \$10,000" and substituting "at level 3".

Clause 30

That clause 30(2)(a) be amended, by deleting "of \$100,000" and substituting "at level 6".

Clause 32

That clause 32(2)(c)(v) be amended, by deleting "招紙" and substituting "標籤".

That clause 32(3) be amended, by deleting "從爲" and substituting "爲就".

Question on the amendments proposed, put and agreed to.

Question on clauses 13, 22, 23, 28, 30 and 32, as amended, proposed, put and agreed to.

Schedule

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the Schedule be amended as set out in the paper circulated to Members.

The amendment seeks to refine the Chinese version of "hang-gliders".

Thank you, Mr Chairman.

Proposed amendment

Schedule

That Schedule, paragraph (c) be amended, by deleting "懸掛式滑翔機" and substituting "滑翔風爭".

Question on the amendment proposed, put and agreed to.

Question on Schedule, as amended, proposed, put and agreed to.

SALE OF GOODS (AMENDMENT) BILL 1994

Clauses 1 to 6 were agreed to.

SUPPLY OF SERVICES (IMPLIED TERMS) BILL

Clauses 1 to 3 and 5 to 8 were agreed to.

Clauses 4 and 9

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members. These are minor technical amendments to the Chinese version of clauses 4 and 9.

Thank you, Mr Chairman.

*Proposed amendments***Clause 4**

That clause 4(2) be amended, by deleting "負舉證責任" and substituting "由該人證明其所聲稱之事".

Clause 9

That clause 9 be amended, in the Chinese text, by deleting subclause (1) and substituting

"(1) 本條例 —

- (a) 不影響任何對提供人施加比第 5 或 6 條所施加予更嚴緊責任的法律規則，或
- (b) 在符合(a)段的規定下，不影響規定將與本條例沒有抵觸的條款，隱含於服務提供合約內的任何法律規則。".

Question on the amendments proposed, put and agreed to.

Question on clauses 4 and 9, as amended, proposed, put and agreed to.

UNCONSCIONABLE CONTRACTS BILL

Clauses 1, 2, 4 and 8 were agreed to.

Clauses 3 and 5 to 7

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The amendment to clause 6(1) is proposed by the Bills Committee. It seeks to clarify that the five judicial guidelines for the court in determining unconscionability are not exhaustive. The others are minor technical amendments to the Chinese version of clauses 3, 5 and 7.

Thank you, Mr Chairman.

*Proposed amendments***Clause 3**

That clause 3(2) be amended, by deleting "雖然" and substituting "即使".

That clause 3(3) be amended, by deleting "負舉證責任" and substituting "由該人證明其所聲稱之事"。

Clause 5

That clause 5(1)(a) be amended, by adding "強制" before "執行"。

That clause 5 be amended, in the Chinese text, by deleting subclause (1)(b) and substituting —

“(b) 強制執行合約中不合情理部分以外的其餘部分；”。

That clause 5(2) be amended, by deleting "負舉證責任" and substituting "由該人證明其所聲稱之事"。

Clause 6

That clause 6(1) be amended, by adding "(among other things)" after "regard to".

Clause 7

That clause 7(2) be amended, by deleting "縱有" and substituting "即使"。

Question on the amendments proposed, put and agreed to.

Question on clauses 3 and 5 to 7, as amended, proposed, put and agreed to.

HONG KONG AIRPORT (CONTROL OF OBSTRUCTIONS) (AMENDMENT) BILL 1993

Clauses 1, 4, 5, and 7 were agreed to.

Clauses 2, 3 and 6

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clauses 2(a), 3(f) and 6 be amended as set out in the paper circulated to Members.

Clause 2(a) is amended by deleting "includes" and substituting "means" in the proposed definition of "Hong Kong Airport". The amendment serves to clarify the definition of the "Hong Kong Airport".

The amendment to clause 3(f) seeks to restrict the terms and conditions I may impose on the granting of an order for exemption from the Airport Height Restrictions.

The amendment to clause 6 is proposed in accordance with the Criminal Procedure (Amendment) (No.2) Ordinance 1994 which sets fines up to \$100,000 by reference to "level" instead of "amount".

The amendments have been discussed and agreed by the Bills Committee formed to study the Bill and Members' comments have been reflected in the amendments.

Thank you, Mr Chairman.

Proposed amendments

Clause 2

That clause 2(a) be amended, in the proposed definition of "Hong Kong Airport", be deleting "includes" and substituting "means".

Clause 3

That clause 3(f) be amended, in the proposed subsection (3A), by adding "required for or related to the safety of aircraft" before "as he may impose";

Clause 6

That clause 6 be amended, by deleting paragraph (b) and substituting —

"(b) by repealing "of \$2,000" and substituting "at level 6";".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 3 and 6, as amended, proposed, put and agreed to.

ROAD TRAFFIC (AMENDMENT) BILL 1994

Clauses 2 to 19, 21 to 23 and 25 to 31 were agreed to.

Clauses 1, 20 and 24

SECRETARY FOR TRANSPORT: Mr Chairman, I move the amendments specified in the paper circulated to Members.

The amendments to clauses 1 and 24 of the Bill are strictly technical in nature.

Clause 20 has been redrafted to make it clear that the Commissioner for Transport has the powers to specify not only traffic signs but also road markings in designating the places where multi-cycles may be used. None of these three amendments affects the substance of the Bill.

Mr Chairman, I beg to move.

Proposed amendments

Clause 1

That clause 1 be amended —

- (a) by renumbering the clause as clause 1(1).
- (b) in subclause (1) by adding "(No. 2)" after "(Amendment)".
- (c) by adding -

"(2) This Ordinance shall come into operation on 28 October 1994."

Clause 20

That clause 20 be amended, by deleting the proposed subsection (1A) and substituting —

- "(1A) (a) No person shall ride or otherwise use a multi-cycle except in a manner and on a road or in a place specified for the purposes of this subsection by the Commissioner.
- (b) Where the Commissioner specifies a road or place under paragraph (a), he may also specify 1 or more traffic signs or road markings which are to be used as regards that road or place.
- (c) Where the Commissioner exercises a power under paragraph (a) or (b), he shall as soon as may be cause to be published in the Gazette a notice giving particulars of anything specified in exercise of the power."

Clause 24

That clause 24(c) be amended, in the proposed subsection (6) by adding "(No. 2)" after "(Amendment)".

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 20 and 24, as amended, proposed, put and agreed to.

7.44 pm

CHAIRMAN: I think before I proceed to the next Bill where there will be a debate on proposed amendments, I shall need to take a break and I will suspend the sitting for half an hour.

8.18 pm

PRESIDENT: Council will now resume. But as it is after eight o'clock, under Standing Order 8(2), this Council should adjourn.

ATTORNEY GENERAL: Mr President, with your consent I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

Question proposed, put and agreed to.

Council went into Committee.

RESIDENTIAL CARE HOMES (ELDERLY PERSONS) BILL

Clauses 1 to 5, 10 to 16, 18 to 20 and 22 were agreed to.

Clauses 6, 17, 21 and 23(4)

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The purpose of the proposed amendment to clause 17 is to include registered nurses as persons eligible for appointment as inspectors of residential care homes for elderly persons.

The proposed amendments to the other clauses are to amend the fines provisions in the Bill to bring them in line with the new standard scale of fees recently introduced under the Criminal Procedure (Amendment) (No.2) Ordinance 1994.

Proposed amendments

Clause 6

That clause 6(1) be amended, by deleting "of \$100,000" and substituting "at level 6".

Clause 17

That clause 17 be amended, by deleting the clause and substituting —

"17. Appointment of inspectors

The Director may by notice in writing appoint -

- (a) any officer of the Social Welfare Department;
- (b) any officer of the Buildings Department;
- (c) any person who is registered as a medical practitioner, or who is deemed to be so registered under section 29 of the Medical Registration Ordinance (Cap. 161); and
- (d) any person whose name appears on the register of nurses maintained under section 5 of the Nurses Registration Ordinance (Cap. 164),

to be an inspector of residential care homes."

Clause 21

That clause 21(7) be amended, by deleting "of \$100,000" and substituting "at level 6".

Clause 23

That clause 23(4) be amended, by deleting "\$100,000" and substituting "level 6".

Question on the amendments proposed, put and agreed to.

Question on clauses 6, 17, 21 and 23(4), as amended, proposed, put and agreed to.

Clauses 7, 8 and 9

MR HUI YIN-FAT (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The amendments are to remove the fee charging provision in respect of certificate of exemption or licence for residential care homes (elderly persons) from the Bill. I have explained the reasons for the amendment earlier, so I am not going to repeat them.

Mr Chairman, I beg to move.

Proposed amendments

Clause 7

That clause 7(3) be amended, by deleting paragraph (c).

That clause 7(5) be amended, by deleting "and on payment of the prescribed fee".

Clause 8

That clause 8(4) be amended, by deleting paragraph (c).

Clause 9

That clause 9(3) be amended, by deleting "renewal of a licence under this section shall not take effect except on payment of the prescribed fee and the".

Question on the amendments proposed.

SECRETARY FOR THE TREASURY: Mr Chairman, the effect of the Honourable HUI Yin-fat's amendments would be to remove the proposed power of the Government to charge fees for the issue or renewal of licences and certificates for residential care homes. Let me explain why Members should not agree to such an amendment.

It is our firm policy to charge fees to recover the full cost of providing various services. In maintaining a low tax economy it is important that we do all we can to observe the principle that people should pay for what they use unless we can ascertain that they would suffer hardship if they did so. Thus if we introduce a licensing scheme, we will normally recover the full costs of operating the scheme through charging the licence holders.

As I understand it, some Members have formed the opinion that we should not make the elderly shoulder the cost of the licensing scheme. I can sympathize with that view. In particular, however, some Members fear that our proposed charges would be passed on directly to elderly residents, causing at least resentment, if not hardship. I do not agree with this view.

To start with, we have accepted, as concession that we should use public funds to subsidize 75% of the cost of the elderly home licensing scheme. At a 75% subsidy, the operator of a typical care and attention home with 40 places would only pay a licence fee of about \$680 a month. The Government subsidy towards the licensing scheme as a whole would amount to \$13 million a year.

Secondly, the licensing scheme will cover both profit-making homes and non-profit making ones. Where the operator is a subvented or non-profit making organization, the Government will reimburse the licence fee through the subvention system. There is thus no question of the charges being passed on to residents of subvented and non-profit making homes. For the profit-making homes, we believe that the proposed licence fees will not pose a burden on the operators. Taking a typical care and attention home with 40 places as an example, we estimate that the proposed licence fee will represent only about 0.2% of its operating cost.

This goes to show how unfounded is the fear that the licence fee will push up the charges of private residential care homes. The amount of the licence fee would be extremely small when compared with a home's total operating cost, and the operator could easily absorb it. Even if the operator passes the licence fee onto the residents in full, it would only mean about \$3 to \$20 per resident a month. About 50% of the residents in private homes are Public Assistance recipients. In the unlikely event that the charge were passed onto them by the operators, the Government would pick up the tab for residents on public assistance.

On the point made by a few Members that, since we do not charge for the licensing of child care centres, we should not also charge for the licensing of elderly homes. This argument is fallacious. Free licensing of child care centres is very much historical. It goes back to the mid-1970s when there was neither a clear fee charging policy nor vigorous system for monitoring cost recovery. While we have to review the child care centre issue in slower time, we must not revert to the anarchy in fee charging of the 1970s. The Public Accounts Committee of this Council has severely criticized this in the past. As I said, in a low tax economy like ours, it is important for the Government to maintain a

rational and soundly-based fees and charges system. It is equally important to assure the community that we, the Administration and the legislature, will not use taxpayers' money to subsidize a service which a profit-making organization receives in the pursuit of its profit. To pass the amendments proposed by the Honourable HUI Yin-fat will undermine this fundamental principle.

I hope I have made it clear that we have given very thorough and careful consideration to all relevant factors before we propose the charging scheme and the fee levels. The key considerations are: established government policy on cost-recovery, proposed fees being heavily subsidized, subvented homes and CSSA recipients unaffected and the minimal impact on commercial operators.

Mr Chairman, in all the circumstances, there is no case for providing a completely free licensing service. I would urge Honourable Members to allow the proposed charging scheme to be implemented, and reject the amendments.

Question on the amendments put and agreed to.

Question on clauses 7, 8 and 9, as amended, proposed, put and agreed to.

MR HUI YIN-FAT (in Cantonese): Mr Chairman, as Standing Order 46(4) and 46(5) stipulate that new clauses shall only be brought up and considered after the clauses of a bill have been disposed of, may I seek leave to move that Standing Order 46(4) and 46(5) be suspended in order that new clause 24 may be considered before the moving of the amendment to clause 23 (1)(r).

CHAIRMAN: Yes, as the power resides in the President, I therefore order that Council now resumes.

Council then resumed.

PRIVATE MEMBER'S MOTION

SUSPENSION OF STANDING ORDER

MR HUI YIN-FAT moved the following motion:

"That Standing Order 46(4) and (5) be suspended to enable the Committee of the whole Council to consider Mr HUI Yin-fat's new clause 24 before his amendment to clause 23(1)(r) of the Residential Care Homes (Elderly Persons) Bill."

MR HUI YIN-FAT (in Cantonese): Mr President, with you permission, I move that Standing Order 46(4) and 46(5) be suspended.

Question on the motion proposed, put and agreed to.

Council went into Committee.

New clause 24 No Fee Payable in Respect of Certificate of
 Certificate of Exemption or Licence

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

MR HUI YIN-FAT (in Cantonese): Mr Chairman, new clause 24 is added to the Bill to specify that no fee is payable in respect of certificate of exemption or licence for residential care homes (elderly persons). I move that this new clause as set out in the paper circulated to Members be read the Second time.

Mr Chairman, I beg to move.

Question on the Second Reading of the clause proposed, put and agreed to.

Clause read the Second time.

MR HUI YIN-FAT (in Cantonese): Mr Chairman, I move that new clause 24 be added to the Bill.

Proposed addition

New clause 24

That the Bill be amended, by adding —

"24. No fee payable in respect of certificate of exemption or licence

No fee shall be payable -

- (a) on an application for the issue or renewal of a certificate of exemption;
- (b) on an application for the issue or renewal of a licence;
- (c) for the issue or renewal of a certificate of exemption; or

(d) for the issue or renewal of a licence."

Question on the addition of the new clause proposed, put and agreed to.

Clause 23(1)(r)

MR HUI YIN-FAT (in Cantonese): Mr Chairman, I move that the clause be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 23(1)(r)

That clause 23(1)(r) be amended, by adding "subject to section 24," before "the".

Question on the amendment proposed, put and agreed to.

Question on clause 23(1)(r), as amended, proposed, put and agreed to.

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 1994

Clauses 1 to 3 and 5 to 14 were agreed to.

Clauses 4 and 15

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the clause specified be amended as set out under my name in the paper circulated to Members.

The Criminal Procedure (Amendment) (No. 2) Ordinance 1994 (No. 58 of 1994), which was brought into operation on 1 August, introduces six broad levels of fines for offences to replace fines indicated in discrete dollar amounts.

Consequently, it is necessary to make amendments to clauses 4 and 15 of the Smoking (Public Health) (Amendment) Bill 1994, which describe a fine of \$15,000. These are replaced by a penalty at the corresponding level in the Criminal Procedure (Amendment) (No. 2) Ordinance 1994, that is level 4.

Proposed amendments

Clause 4

That clause 4 be amended, in the proposed section 6A(3) by deleting "of \$15,000" and substituting "at level 4".

Clause 15

That clause 15 be amended, in the proposed section 15C(1) by deleting "of \$15,000" and substituting "at level 4".

Question on the amendments proposed, put and agreed to.

Question on clauses 4 and 15, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

ORGANIZED AND SERIOUS CRIMES BILL

CRIMINAL PROCEDURE (AMENDMENT) BILL 1992

CONSUMER GOODS SAFETY BILL

SUPPLY OF SERVICES (IMPLIED TERMS) BILL

UNCONSCIONABLE CONTRACTS BILL

HONG KONG AIRPORT (CONTROL OF OBSTRUCTIONS) (AMENDMENT) BILL 1993

ROAD TRAFFIC (AMENDMENT) BILL 1994

RESIDENTIAL CARE HOMES (ELDERLY PERSONS) BILL and

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 1994

had passed through Committee with amendments and the

SALE OF GOODS (AMENDMENT) BILL 1994

had passed through Committee without amendment. He moved the Third Reading of the 10 Bills.

PRESIDENT: I will take the Criminal Procedure (Amendment) Bill 1992 separately from the other nine Bills. The question is: That the following nine Bills be read the Third time and do pass:

ORGANIZED AND SERIOUS CRIMES BILL

CONSUMER GOODS SAFETY BILL

SALE OF GOODS (AMENDMENT) BILL 1994

SUPPLY OF SERVICES (IMPLIED TERMS) BILL

UNCONSCIONABLE CONTRACTS BILL

HONG KONG AIRPORT (CONTROL OF OBSTRUCTIONS)
(AMENDMENT) BILL 1993

ROAD TRAFFIC (AMENDMENT) BILL 1994

RESIDENTIAL CARE HOMES (ELDERLY PERSONS) BILL and

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 1994

Question on the Third Reading of the nine Bills put and agreed to.

Bills read the Third time and passed.

PRESIDENT: The question is: That the following Bill be read the Third time and do pass:

CRIMINAL PROCEDURE (AMENDMENT) BILL 1992

Question on the Third Reading of the Criminal Procedure (Amendment) Bill 1992 put and agreed to.

Bill read the Third time and passed.

PRIVATE MEMBER'S MOTIONS

APPOINTMENT OF SELECT COMMITTEE

MR ALBERT CHAN moved the following motion:

"That a select committee be appointed to enquire into the Kwun Lung Lau landslip and related issues; and that in the performance of its duties the committee be authorised under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance."

MR ALBERT CHAN (in Cantonese): Mr President, I move the motion standing in my name in the Order Paper. The motion urges the Legislative Council to

appoint a select committee to enquire into the Kwun Lung Lau landslip and related issues.

Around 9 pm on 23 July 1994, there was a landslip on the slope below Block D, Kwun Lung Lau, Kennedy Town, resulting in a tragedy in which five were killed and three injured.

After the incident, this Council has discussed the matter and related issues with the Administration on four occasions, namely the joint conference held by five panels on 27 July 1994 and the Lands and Works Panel meetings held on 17, 23 and 30 August respectively. The House Committee of the Legislative Council also held a special meeting on 5 August 1994 and endorsed a resolution which urges the Governor to appoint an independent committee to enquire into the incident and related issues. Yet, it is a pity that the Governor in Council kept delaying making a decision on this matter and turned down the proposal of setting up an independent committee of enquiry immediately.

On 30 August 1994 the Governor in Council decided to reject the request made by the House Committee of the Legislative Council and indicated that an independent committee of enquiry would not be appointed before the completion of a technical investigation by a geotechnical expert, Professor MORGENSTERN. A majority of legislators were dissatisfied with such a decision. Since Professor MORGENSTERN's investigation is limited to the technical causes of the landslip and will not cover the "question of responsibility" which in this case is an issue of public concern, its inadequacy should be patent to all.

A landslip resulting in casualties occurred at Cheung Shan Estate two years ago. Government enquiry conducted after this incident was also limited to the technical level. Findings of similar investigations normally simplify the causes as natural causes such as extraordinarily heavy rainfall but neglect the loopholes and drawbacks in the systems concerned and in the execution of slope safety projects. For this reason, the importance of setting up an independent committee of enquiry is beyond question.

The functions of the independent committee of enquiry which Members of this Council originally urged the Government to establish include the following five duties:

- (1) To enquire into the causes of the Kwun Lung Lau incident and find out whether the landslip could have been prevented;
- (2) To assess the adequacy of existing legislation, policy and resources in the prevention of landslips;
- (3) To review the adequacy of existing contingency measures for emergencies and study the need of adopting other contingency measures by taking reference from the Kwun Lung Lau incident;

- (4) To propose any improvement or new measures that can be adopted to prevent recurrence of similar incidents;
- (5) To identify the person(s) or department(s) that should be held responsible in the Kwun Lung Lau incident.

A considerable number of legislators think that it would not be necessary to delay the aforesaid enquiry until after the completion of the expert's investigation report. In fact, the Governor set up an independent committee of enquiry x after the occurrence of the Whitehead Detention Centre incident and the Lan Kwai Fong incident. Furthermore, Professor MORGENSTERN's report will not be available before late November. If the independent committee of enquiry is set up after the completion of the report, it will bring about unnecessary delays to the execution of the aforesaid duties. However, as the Governor in Council and the Legislative Council are having divergent views over this issue and the Government obviously is adopting a stalling tactic, this state of affairs is unacceptable to this Council. Furthermore, since Members of this Council are entrusted with the mission of overseeing the execution of government policies, several of my colleagues in this Council and I are seeking to invoke the Legislative Council (Powers and Privileges) Ordinance for setting up a select committee of enquiry so that the aforesaid duties can be performed as soon as possible. This can be regarded as an expedient measure to be adopted when there is presently a lack of co-ordination between the Administration and the Legislative Council and when the views of the Legislative Council are still not being respected.

Since this incident involves wide-ranging and complicated issues, the functions of the select committee must be flexible and manoeuvrable. In this connection, the wording of this motion is based on the precedent set by the Security Panel and a resolution of greater flexibility will be adopted. Yet, the specific areas to be investigated by the select committee are more or less the same as the proposed terms of reference of an independent committee of enquiry originally put forward by the Legislative Council to the Government. Panel members responsible for setting up this select committee explicitly indicated at a panel meeting that the Legislative Council had for the time being no intention to invite some other experts to carry out investigation. I believe the enquiry will be mainly conducted through hearings and mostly based on the investigation report made by the Canadian expert. Yet, the actual *modus operandi* is still not finalized until after the establishment of the select committee.

Mr President, in urging the Legislative Council to set up a select committee, I am not seeking to deny or negate the Government's past achievements in dealing with slope safety. Neither is this motion intended to find a scapegoat. However, it is certain that the occurrence of a landslip will cause considerable damage to our citizens' life and property or even the smooth running of society. It is observed that the Government is still passive in terms of its readiness to take warning from the landslip tragedy and to introduce new

precautionary measures. Given the fact that the Government has made no explicit commitment to improve slope safety in the Policy Commitments annexed to this year's policy address, the validity of such an observation is corroborated and confirmed and this also reflects the need for the Legislative Council to take a more active role in this regard so as to perform its important duty of overseeing the execution of government policies.

Mr President, with these remarks, I move the motion.

Question on the motion proposed.

MR EDWARD HO (in Cantonese): Mr President, the Kwun Lung Lau landslide tragedy which caused five deaths and injuries to three people in July has aroused much concern from the public over the issue of slope safety territory-wide. Their utmost concern is whether or not slopes would pose a landslide threat to the large number of tenements and pedestrian accesses in the vicinity, and whether there is any improvement measure to forestall similar incidents from recurring. Whether somebody should be responsible for the tragedy has a direct bearing on the victims and their families. The latter may then seek compensation by taking civil proceedings. On this issue, the Legislative Council should focus its attention on identifying the real problem through investigation and thence to extend the exercise to cover a comprehensive review and improvement of the safety of slopes throughout the territory.

According to the Government, the continuous downpour of rain in July this year was the heaviest in one hundred years. It is therefore difficult to come to a conclusion as to whether the tragedy involves any man-made error. It is imperative that we should keep an open mind and be far-sighted when conducting the investigation and review to ensure a safe living environment for the people.

We all know that the Government has appointed a Canadian expert to investigate into the technical aspects of the Kwun Lung Lau landslide and a report is forthcoming in December. In view of this, the select committee is not going to duplicate the work of the expert but rather to stress on other levels of investigation and scope of review, such as the safety standard of the gradient design, the risk rating criteria, the method of checking, maintenance, work progress on landslide prevention, resources allocation and the adequacy of contingency measures after the incident and so on.

The position of the Liberal Party and the consensus reached at the House Committee meeting earlier on all request the Government to set up a select committee in the wake of the tragedy to fully review the overall issue of slope safety. Apart from the technical aspects, the area of study also involves the review and enforcement of policies and law and the legal relationships between the landlords and the tenants, and the landlords and the public. In view of this, it is most appropriate for the Government to set up an independent committee of

inquiry, as it did in the past, and to appoint members of the judiciary to chair or sit on such a committee of inquiry. It is regrettable that the Government does not respond to the call by this Council and the community and procrastinates in appointing an independent committee of inquiry.

Being a government which is brave enough to face the reality, it should adopt an open and positive attitude to conduct a comprehensive review of the problem so as to relieve the public of anxiety. In other words, the initiative to set up an independent committee of inquiry should come from a responsible executive entity, that is, the Government, rather than from the legislature, that is, the Legislative Council. It is a bad practice for this Council to move a motion to set up a select committee.

Mr President, in view of the public's heightened concern over the question of slopes and in view of the above-mentioned factors, the Liberal Party supports the motion that a select committee be appointed to enquire into the Kwan Lung Lau landslip and related issues.

DR YEUNG SUM (in Cantonese): Mr President, the Kwun Lung Lau landslip has not only revealed the technical problems and possible human negligence involved but also shown up policy loopholes.

I support the setting up of a select committee for the following reasons:

- (1) There has been shirking of responsibility by the Government and the Hong Kong Housing Society after the incident, with each party saying that the other should bear the responsibility. This shows that either the government officials do not have a good grasp of the relevant policy or the government departments are uncertain as to their scope of responsibilities in respect of slopes within private premises. This makes people doubt whether the operational procedures are reasonable and efficient.
- (2) The consultancy report received by the Hong Kong Housing Society in June failed to point out that the retaining wall in question was not up to international standard. It only said that there were defects on the surface of the slope without recommending any large-scale reinforcement works. It is understood that the scope of the current slope investigation and the method adopted are similar to those of the consultants. This inevitably makes people doubt the credibility of the findings of the investigation. Whether the Government has monitored the discharge of professional duties required of slope engineering consultants appointed by private individuals, and whether such consultants have adopted the guidelines on geotechnical engineering of slopes as the standard for inspection are questions which have to be clarified.

- (3) Since the Government did not lay down any geotechnical engineering standard for slopes until the late 1970s, all artificial slopes and retaining walls built before then are mostly not up to standard. The retaining wall at Kwun Lung Lau is but one of the examples. According to record, the then Geotechnical Control Office conducted an investigation on the retaining wall at Kwun Lung Lau in 1987, and the condition of the wall was assessed to be fair or good. Obviously, it failed to address the question that the thickness of the retaining wall was not up to standard. Such an example reveals that government departments have not given special treatment to slopes which do not meet the current required standard. This is a very serious flaw.
- (4) The international expert, Professor MORGENSTERN, has pointed out that had the thickness of the retaining wall in question been up to international standard, the soil of the slope would not have come down so rapidly and the tragedy could have been avoided. The government officials have argued that the standard is not based on the thickness of retaining walls but on the safety coefficient. The present incident reflects that there may be deficiencies in the existing standard which has to be reviewed.
- (5) Since the squatter huts below the slope at Kwun Lung Lau had been cleared at the time when the then Geotechnical Control Office conducted the investigation in 1987, the Office lowered the risk rating of the slope from "high risk" to "moderate risk". The point is that as the slope is very close to the foundation of some buildings in the vicinity of Kwun Lung Lau, any landslips there are prone to cause structural problems to such buildings. Therefore, it seems inappropriate to have the risk rating lowered. This could also delay further investigation and improvement works.

The select committee can play the following three roles:

- (1) To peruse widely the relevant documents and reports of the various government departments and public bodies so as to enhance the transparency of the relevant policy.
- (2) To gain a deeper understanding of the incident through interview of witnesses and consultation of experts.
- (3) To inquire into the question of responsibility, to suggest policy and advise on the setting up of a fair and rigorous standard.

Of course, the Government may well suggest deferring the setting up of the select committee until the publication of the expert's report. I would like to state briefly the reasons against this suggestion:

- (1) The investigation work conducted by the geotechnical engineering expert and the setting up of the select committee demanded by us are not necessarily dependent on nor exclusive of each other. Therefore, it would not be necessary to defer the setting up of this select committee.
- (2) The select committee's review of the system and law could make up for the deficiencies of the technical study and would be conducive to early submission of policy recommendations so that the remedial works could be funded and commenced early. Therefore, the work of the select committee should not be stalled.
- (3) The work of the select committee would be conducive to early clarification of the question of responsibility which is very important to the families of the victims. This would be useful to their claims for compensation and would serve to show respect for their right to know.

SECRETARY FOR WORKS: Mr President, it is for the Legislative Council to decide whether or not it should conduct its own enquiry into the Kwun Lung Lau (KLL) case and related issues. However, may I ask that Members seriously consider whether or not they will be in a better position to judge the need for a select committee, under the stated Ordinance, following the full technical report on the tragedy at KLL becoming available in about seven weeks from now.

The very complex ongoing technical investigations and analyses are required to determine the causes of the slope and the wall failure. It must ask the question as to whether a select committee, in view of this complication, is better placed to carry out this task rather than the independence of an international expert such as Professor MORGENSTERN and the present team of experts in the Geotechnical Engineering Office. Parallel lines of inquiry could well lead to confusion, not clarity.

We have already completed much of the comprehensive investigation, including the archive research, the interviews, the topographic surveys, surveys of existing services, geological mapping, drilling and sampling, excavation of trial pits, study of groundwater conditions, laboratory testing, and are now proceeding to the extensive engineering analyses. This work will continue as quickly as possible until conclusions can be drawn as to the causes of the failure. Only then will it be possible to determine whether the landslip could have been prevented.

Professor MORGENSTERN has also accepted in his brief a requirement that in addition to his findings on the cause of the KLL collapse, he shall also advise the Government on the adequacy of our current approach to slope safety. This advice can include any further measures that he considers could improve slope safety in Hong Kong.

Reviewing the excellent progress thus far with the investigation gives me assurance that enquiry completion by the end of November within four months of the incident, although a very demanding task, can be achieved. For this reason, the professionals in the Geotechnical Engineering Office are concentrating their efforts on this task, without being distracted by other issues. This is to ensure that the progress and the quality of the report will receive absolute priority, a priority that could well be adversely affected by another line of enquiry being opened at this time.

We have given public assurance that we will be open and transparent. Thus far we have published our initial report on the investigation and the related reports from the Housing Society consultants. We will also publish in full our final findings as well as Professor MORGENSTERN's independent report. I do not see full transparency to be a problem. All relevant public bodies and officers are available to co-operate fully with the Legislative Council Members, no matter under the Legislative Council (Powers and Privileges) Ordinance or not.

The Honourable Member has today restated the views which we put forward in connection with a Commission of Inquiry:

- the causes of the landslip and whether it could have been prevented.
- the adequacy of our existing legislation, policy and resources.
- the adequacy or otherwise of contingency measures for emergency services.
- any improvement and remedial measures that can be adopted to prevent recurrence.
- and identifying those who should be held responsible.

I believe that the Select Committee, if appointed, would indeed be tasked to inquire into these similar concerns and in this regard, the following comments may be helpful.

As to the first concerns, that is, the cause of the failure, parties responsible and improvement measures to be adopted, it will not be possible to address these properly without a full technical investigation report. Hence the decision by the Governor in Council to await the report before deciding on a Commission of Inquiry. This is not a stalling tactic. It addresses the reality of the situation while still utilizing the best available of expertise to deal with this first critically important stage of inquiry into this matter.

As to the adequacy of the legislation, policy and resources in the prevention of landslips, the Works branch is currently overseeing a focused review into these matters. This is being completed with separate resources but

in parallel with the technical investigation, and I will be pleased to report to Members on the outcome of our review, in as much detail as Members require. I would also add that departmental reviews of slope safety policy have been undertaken at various times since the 1980s. And furthermore, it is clearly a matter of record that since the establishment of the Geotechnical Engineering Office, there have been significant improvements in the safety of slope since that time. As to the adequacy of the resources that we are currently using, this will be touched upon in our review, and I will bring this to Honourable Members for their careful consideration in due course.

On the contingency measures for emergency situations, the facts of the measures that were taken immediately following this emergency have already been laid before Members by way of a detailed report. It is sufficient to say that the information shows that all, police, Fire Services, Housing Society, Buildings Department, district engineers from Geotechnical Engineering Office and Social Welfare Department, were on site promptly. A command post was set up by 9.16 pm and about 2 500 residents were safely evacuated by 10.30 pm. Temporary shelters were opened; meals, blankets and relief articles were provided; a 24-hour hotline was set up by the district office to facilitate enquiries. All of these and other post-incident actions took place promptly in very difficult conditions. And I arrived back from London just a few hours before the incident in time to visit the site that night and the following morning to see the effectiveness of these measures.

Members will wish to be assured that in the event that the technical investigation does provide evidence that further inquiry is needed into the conduct of public bodies or public officers in the circumstances of the tragedy, the appropriate action will be taken. The Chief Secretary is on record to confirm that the Government is not avoiding this issue. Whilst the essential first step is to identify the cause of the slope failure, this technical inquiry phase does not preclude further inquiry on the question of responsibility, but indeed, this present phase is essential to provide the body of evidence needed to determine responsibility.

Mr President, to sum up, technical investigation is now well in hand. The independent report from Professor MORGENSTERN and the findings of our own technical investigation should be available in just a few weeks. Our actions are open and transparent. The existing communication channels between the Legislative Council and the Administration are effective and available to Members at all times. The appointment of a select committee at this time will not add to the present inquiry, and indeed, may well have an adverse effect on the progress and quality of the current investigation. Mr President, may I ask Honourable Members to keep this important point in mind when they make their individual decisions. Thank you.

PRESIDENT: Attorney General, do you wish to declare an interest?

ATTORNEY GENERAL: Mr President, thank you. I wish to declare my interest as a member of the Executive Committee of the Hong Kong Housing Society which owns the estate and slope in question, and in the circumstances I shall abstain from voting on this motion.

MR ALBERT CHAN (in Cantonese): Mr President, I would like to thank the two Honourable Members who have just spoken in support of the motion. The arguments and information as contained in the reply of the Secretary for Works have been repeatedly put forward at the relevant Legislative Council Panel meetings and at the Joint Panel meetings. I do not intend to respond to each and every argument raised, but there is one particular point that I would like to address.

The Secretary for Works questioned why the establishment of, or a decision to set up, a select committee to conduct the enquiry could not wait until the release of the investigation reports prepared separately by the expert and by the Government. As a matter of fact, Dr YEUNG Sum had the foresight to say that the Government would refute today's motion on this ground. I totally agree with the arguments forwarded by Dr YEUNG Sum.

Here I would like to ask the Government why an independent committee was not established immediately after a motion requesting the Government to do so was passed by this Council's House Committee in early August this year. The timing of the establishment of such a committee is of great significance. The serious tragedy which claimed five lives and injured three people involved many government departments and a lot of people. If an independent committee had been instantaneously set up to conduct a prompt investigation, then a lot of vital information would not have been lost or wrongly recorded as time took its toll on witnesses' memory or some witnesses could no longer be located. For this reason, the Government is the only party which should be blamed for not heeding the opinions of the public and the Legislative Council in early August.

Therefore, I think that it is already late to set up a select committee to carry out the enquiry. If we were to wait for the publication of the expert's investigation report, the committee could not be set up until after December, or five months after the tragedy and by then, a lot of investigations, in particular those into several crucial areas, will be seriously hampered. In this connection, I insist that a select committee should be set up.

Question on the motion put and agreed to.

PRESIDENT: We will now proceed to the debate on Miss Emily LAU's motion on British Citizenship. I have accepted the recommendations of the House Committee as to time limits on speeches for the motion debate and Members were informed by circular on 10 October. The mover of the motion will have 15 minutes for her speech including her reply; other Members will have seven

minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

BRITISH CITIZENSHIP

MISS EMILY LAU moved the following motion:

"That in view of the fact that the number of applications under the British Nationality Selection Scheme has far exceeded the quota of 50,000 families, this Council urges the British Government to review its policy and to honour its obligation to all British Dependent Territories Citizens/British Nationals (Overseas) in Hong Kong by extending to them full British citizenship."

MISS EMILY LAU: Mr President, honour is not a word often used in contemporary British politics. But it is often used here in Hong Kong as the benchmark of people's expectations of Britain, as it retreats from its last major colonial obligation.

Not too long ago, Foreign Secretary Douglas HURD said Hong Kong is the final chapter of the history of the British Empire, and he hoped it would not end in a shabby way.

With less than 1 000 days to go before the handover, 993 days to be exact, there are signs that the British withdrawal could end in ignominy and shame. I am, of course, referring to the decision to hand over several million people to communist rule in 1997, an act which is unprecedented in human history.

Mr President, Britain is probably the only country in the world which does not allow the right of entry to its own nationals. There are six forms of British nationality of which only one, British citizenship, allows its holders entry to Britain.

The process of division began 32 years ago in 1962, when the Commonwealth Immigrants Act excluded some British nationals and Commonwealth citizens from free entry to Britain.

The Nationality Act of 1981 turned these people into second-class citizens, including among them, three million-odd Hong Kong British Dependent Territory Citizens, the so-called BDTCs.

BDTC status not only offended Hong Kong people's sense of pride and identity, it also signalled an abandonment of British responsibility for its own nationals and a surreptitious detachment from Hong Kong. Understandably, it stirred up bitterness and resentment.

It was and still is widely perceived that if Britain had offered full citizenship to the Hong Kong subjects, it would have both increased the sense of security here and raised the stakes in the negotiations with China, making Peking more deeply aware that not all the cards were on its side.

Such sentiment was succinctly articulated by you, Mr President, when you spoke as a Member at a debate in this Council on 15 October 1984. You said you were not persuaded that Britain did all in her power for Hong Kong:

"I think she went to the negotiating table with one arm tied behind her back. She disabled herself a long time ago, when she closed the door to Hong Kong. She did this by a series of immigration and nationality acts which turned the Hong Kong passport holder into a second-class citizen.

"If you do not want them, how hard will you negotiate on their behalf? Just as important, what is the Chinese perception of your negotiating stance?"

Mr President, I could not have agreed with you more.

The question of nationality was apparently too difficult to be resolved in the Sino-British Joint Declaration and so Britain and China dealt with it in an Exchange of Memoranda which accompanied the agreement, but was not part of it.

The British memorandum commits the United Kingdom to abolishing the BDTC status, replacing it with that of British National (Overseas), the so-called BN(O), a meaningless and unclear status which carries no right of abode anywhere, cannot be passed on to children and is little more than a travel document facility. Mr President, to many Hong Kong people, BN(O) means "Britain says NO".

As it was, the agreement with China was a calculated risk, in that Britain made the calculations while Hong Kong bore the risk. Only last week, Governor Chris PATTEN reminded us that it is Britain and China who hold our destiny in their hands. However if things go wrong, it is the Hong Kong people who have to pay. In a nutshell, the Governor has highlighted the irony of the situation.

The difference between the commitment of Hong Kong and Britain is rather like that between a pig and a hen when asked to provide a bacon and egg breakfast: As the pig said to the hen, "For you, it is a contribution; for me, it is a total commitment. What's more, the breakfast will have to be served, come what may."

As Anglo-Chinese co-operation founders, many Hong Kong people look to the uncertain future with anxiety and foreboding. The recent bombshell revelation that the wife and daughter of the leader of the pro-Peking political

party, the Democratic Alliance for the Betterment of Hong Kong, Mr TSANG Yok-sing, have emigrated to Canada should underline the depth of apprehension within the community. Mr President, in these trying times, citizenship is the only promise Britain can be sure of honouring, the only definite commitment it can make towards the future of Hong Kong.

In 1985, Britain refused to share even some of the risk about the future with Hong Kong when it turned down a request to restore the right of abode to several thousand non-Chinese ethnic minorities who would effectively become stateless after 1997.

Britain's outright rejection of such a reasonable demand did not argue for a very deep-rooted confidence in the Joint Declaration it had so warmly recommended to Hong Kong.

If the British Government believes its own public statements to the Hong Kong people, who are constantly assured that the agreement is watertight and trust in China is absolute, the offer of British citizenship would be a blank cheque which would never need to be honoured.

Yet the offer would be of great symbolic importance: it would signal to Peking that Britain was retaining a watching brief on its nationals in the Hong Kong Special Administrative Region. It would also signify acceptance of a residual moral responsibility for the people of Hong Kong.

Furthermore, an effective nationality would give the people of Hong Kong some power. Mr President, one of the most disturbing facts about Hong Kong is that the people feel totally powerless, as though they were observers on their own future.

They have no direct influence in Britain, the country which makes decisions about them, or in China, the country which will decide their future. As one local resident told me: "There are only two things we Hong Kong people can do to affect our future: the middle class can emigrate; the others can riot."

Whenever the issue of nationality is raised with British politicians, with few exceptions, they would go into a hysteria worthy of Enoch POWELL, saying it was impossible to admit several million people from Hong Kong. Such insensitive and pathological fear of non-white immigration has irrevocably damaged Anglo-Hong Kong relations.

Ironically, just 40 miles across the South China Sea from Hong Kong, the people of Macau can enjoy the right to enter and work in the United Kingdom. Macau is a Portuguese territory which will be handed over to Chinese rule in 1999, but all those people born or naturalized there are given Portuguese citizenship. As Portugal is a full member of the European Union, all its

nationals, including about 100 000 people from Macau, can freely enter the United Kingdom.

Some British MPs say the nationality issue is all about numbers. It is perhaps useful to note that millions of people have an absolute right to enter Britain. They include Commonwealth citizens from Australia, Canada and New Zealand, over 260 million people from the European Union and one million white South Africans.

Almost all these people concerned are white; their right to enter Britain is unquestioned and does not lead to any public fears of being "swamped" by immigrants. Yet whenever the question of 3 million-odd Hong Kong BDTCs of Chinese origin is raised, MPs would push the panic button to guillotine any debate. In the face of this, can anyone still deny that this is mainly a question of colour and race?

Compared to other colonies, Mr President, Hong Kong has also drawn the short straw. The people of Gibraltar have the right to register as full British citizens should they wish to do so. People of the Falkland Islands were given full citizenship in 1983 after the Falklands War.

The Hong Kong people's demands for British citizenship reached a crescendo after the June 4 massacre in Peking in 1989, when confidence in the colony plunged to an all time low.

After more than a year of agonizing, Parliament finally approved the Nationality Selection Scheme, which offered citizenship to 50 000 "key" people and their families. The scheme is selective and elitist. It is also humiliating and embarrassing to see that Britain is only prepared to accept the rich and the well educated.

Applications to the scheme have far exceeded the quota and many categories were over-subscribed. Instead of the original estimate that 225 000 people would benefit, the Hong Kong Government recently revealed that only 135 000 people would be registered. On hearing this, members of the Nationality Subcommittee feel cheated and short-changed.

Members feel strongly Britain has a moral responsibility for all her subjects, and hence this Council should urge Parliament to consider restoring full citizenship to all the BDTCs and BN(O)s in Hong Kong.

Mr President, Britain's position on nationality is stated in the Memorandum attached to the Joint Declaration. As the Memorandum is not part of the agreement, a change in policy should not be interpreted as a breach of the accord. I hope the Hong Kong Government will stand shoulder to shoulder with the Hong Kong people in pressing this demand.

Mr President, this will probably not be the last time that this Council debates the emotional question of British nationality. We have a powerful and legitimate case and Britain has an unshirkable responsibility. I call on all Members to support the motion.

Question on the motion proposed.

MRS SELINA CHOW (in Cantonese): Mr President, Members from the Liberal Party and I are in support of all British Dependent Territories Citizens (BDTCs) and British Nationals (Overseas) (BNOs) in Hong Kong being given full British citizenship by the British Government. My saying so is by no means intended to encourage these people, who form the backbone of Hong Kong, to emigrate. Quite on the contrary, with a view to stabilizing the confidence of the people of Hong Kong, I would like Britain to show Hong Kong people that she is profoundly confident in the future of Hong Kong and that she is not in the least worried that the people of Hong Kong will emigrate. Besides, I uphold the spirit that the people of Hong Kong are not to be deprived of the rights they are entitled to in any case. In saying so, I do not intend to put Britain to any trouble. All I hope for is that Britain will honour her moral obligation. This is actually a matter of principle. It is because Britain has divested Hong Kong British subjects of the right to reside and work in Britain. Today I call on Britain to reinstate the right to which the people of Hong Kong, as British nationals, are entitled.

Is it not the intention of Britain to stop the brain drain problem in Hong Kong through the implementation of the British Nationality Selection Scheme (BNSS)? Why are her deeds as the sovereign power, which has ruled Hong Kong for more than a century, a far cry from her words by giving stingily and selectively a mere 50 000 households the right of abode in Britain and continuing to deprive the remaining Hong Kong British subjects of the right to choose that they are entitled to?

Indeed, I absolutely believe that Hong Kong British subjects should, as a matter of principle and in terms of moral obligation, have such right to choose. In fact, many are convinced that a great majority of Hong Kong British subjects will not exercise such right and will choose to remain in Hong Kong instead. It is because conditions in Hong Kong are far better than those in Britain in aspects ranging from weather to economic outlook. But I have to point out and insist that it should be the Hong Kong British subjects themselves who decide on whether to exercise such right. It should not be used by the British Government as a pretext for shirking responsibilities.

The British Government has all along stressed its endeavour to make Hong Kong a better place and kept on saying that it has confidence in Hong Kong. In fact, the rationale that the British Government bases itself on in the implementation of the right of abode scheme is that those who are conferred the right of abode will not subsequently leave Hong Kong. The right of abode

merely serves them as an insurance with which they will have the confidence to stay in Hong Kong to develop their career or business. Since the British Government holds such view, why does it not extend the scheme to all Hong Kong residents who are holders of the British Dependent Territories Citizen Passport and the British National (Overseas) Passport? Can it be that the British Government is confident only in respect of those who participated in the right of abode scheme believing that they will not leave Hong Kong behind but has doubts about the rest of the people of Hong Kong? Or are the undertakings and expression of confidence that Britain used to make in regard to the future of Hong Kong simply a pack of lies? Giving all Hong Kong British subjects British citizenship is not only an indication of Britain's confidence in Hong Kong, but also a test which reflects whether or not Britain is sincerely devoted to the development of Hong Kong.

Mr President, while we are looking into the question of whether Hong Kong British subjects should enjoy the status equivalent to that of British citizens, we must bear in mind that there is a group of non-Chinese British subjects who have long remained in Hong Kong and been making contributions. Their situation is all the more imperative because they might become stateless persons after 1997. But the British Government has simply turned a blind eye to their predicament and refused to make even the barest moral commitment towards them. What a shame this attitude is. I call on the British Government to stop procrastinating and recognize those British subjects of non-Chinese ethnic origins as British citizens as soon as possible.

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

DR TANG SIU-TONG (in Cantonese): Mr President, the British administration in Hong Kong will have to lower its flag and return to the United Kingdom (UK) after 993 days. Discussing that issue during this latter part of the transition period may easily mislead the British Government into thinking that Hong Kong will be unable to survive without it, and that Hong Kong people are eager to follow the colonial government withdrawing to the UK, maybe to "wash dishes" or "peel potatoes" there. If the British Government ever has this thought, it is undoubtedly filled with parochial arrogance. We clearly understand that even if the motion is carried today, the UK will still shut her door. Even a Hong Kong fly, not to say a Hong Kong person, will be unable to enter her territory. The motion of Miss Emily LAU is actually like negotiating with a tiger for its skin, little difference from attempting to square a circle. However, I think that this topic for discussion is not entirely meaningless. It is because we have to represent the public in Hong Kong to ask the British Government for justice, for restoration of the right to which Hong Kong people are entitled.

Mr President, it has been 150 years. The colonial government has been ruling the Hong Kong people for one and a half centuries, and should have gained some measure of benefit or advantage from Hong Kong. Now that the

UK has to retreat, what has she done for us? Has she fully performed the moral obligation of a sovereign state? According to historical record, every time the UK withdrew from her colony, she would leave an awful mess, causing a headache to the new government. Will Hong Kong be an exceptional case?

The UK is well known for being experienced and astute in dealing with political issues. Many years ago, the British Government began quietly amending the Immigration and Nationality Acts time and again, taking away British citizenship from the British nationals in Hong Kong, so as to prevent a large number of people in Hong Kong from emigrating to the UK. That is total repudiation of the moral obligation of a sovereign state to its colony. Although such move has been widely censured by the Hong Kong people, the British Government still sticks to its own way and turns a deaf ear to the cries of Hong Kong people. Can that be a fair and open measure acceptable to the Hong Kong people?

The British Government has been criticized by the Chinese Government for breach of faith and breach of promise. Judging from the above example, it seems that this criticism is justified.

Mr President, if the British Government only shuts its door to the Hong Kong people without any other move, we will not be so indignant. The biggest problem is that the British Government, in order to retreat in an honourable manner and to continue getting benefits from Hong Kong after 1997, has gone so far as to change her friendly policy towards China in recent years. It has adopted an antagonistic or confrontational stance towards China over transitional issues relating to Hong Kong. The British Government has even boasted that it is fighting for the interests of Hong Kong. In fact, it is placing the Hong Kong people on the negotiation table as the counters in political gambling. The Hong Kong people are deeply grieved at the UK's pursuit of her own glory or honour at the expense of Hong Kong people's political well-being.

The British Government may say that the UK has provided a chance for 50 000 families in Hong Kong to obtain British citizenship, and that by granting the right of abode (ROA) to roughly 225 000 people under the ROA quota, she has already fulfilled her responsibility. I believe that no one will be satisfied with that answer.

The so-called British Nationality Selection Scheme (BNSS) is in fact a scheme for the UK to selectively absorb people who are the elite of Hong Kong. To the 3.4 million British nationals in Hong Kong, the quota is absolutely too small. Besides, according to the Hong Kong Government's estimation in September this year, only about 130 000 Hong Kong people will be able to obtain full British passports through the BNSS, which is 95 000 short of the original expected figure under the scheme. The British Government has also stated that the unfilled part of the quota will not be relaxed or reallocated. The British Government has thus come out in its true colours, which the Hong Kong people should also see clearly.

Mr President, it is definitely not a miracle that Hong Kong has developed from a fishing port to an international financial centre. It is wholly founded on Hong Kong people's unswerving determination, assiduousness and enterprising spirit. Although there were social disturbances, we were still able to stand fast to whatever station each of us were at and continue to propel society forward. Such attitude of always remaining unruffled even in a crisis is precisely a pleasing feature of Hong Kong, which serves to prove that Hong Kong is a blessed land full of talented people. At present, although the confidence of Hong Kong is being affected by the strained Sino-British relations, I definitely believe that, with the pooled efforts of Hong Kong people, Hong Kong can surely tide over the difficulty and continue to be stable and prosperous. How can the Hong Kong people ever desert such a good place and go to the UK?

Mr President, the British Government's worry that the UK will be swamped with Hong Kong people is totally unfounded. Now even if the British Government offers the right of abode to 3.4 million Hong Kong people, how many of them will be willing to give up everything they presently possess in Hong Kong in order to settle in the UK? Are they really going to make their living for the rest of their life by "washing dishes" or "peeling potatoes"? Why is the British Government being so mean for no justifiable reason? Therefore, I hope that, in the remaining 993 days, the British Government will really do something for us, shoulder its due responsibility, and will not make an awful mess of the place, so that Hong Kong will have a smooth and stable transition to 1997 and beyond.

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

MR FREDERICK FUNG (in Cantonese): Mr President, the June 4th Incident dealt a heavy blow to the people of Hong Kong. It has heightened the "communist phobia" of the people of Hong Kong and triggered the emigration tide from Hong Kong.

Since Sino-British relations turned sour, Chinese officials have been inexorably hard and unyielding in the way they deal with Hong Kong affairs. What they say often scare Hong Kong people. For example, on the question of democratization; on certain political issues and on certain infrastructure projects, what has been said by the Chinese side runs counter to the wish of Hong Kong people. And this impacts unceasingly on Hong Kong people's confidence in the Chinese Government. Faced with the above-mentioned situation, I, as an ethnic Chinese who loves Hong Kong, really find it heartbreaking and regrettable.

To certain Hong Kong people, there are two options, one of which is to emigrate and leave for good. But I am not in favour of such a negative course of avoidance. On the contrary, I think we should take positive action to unite together and, without any fear of taboos, express our views against the unreasonable policies of China so as to fight for the protection of the rightful interests of the people of Hong Kong. Democracy and freedom are not

bestowed by those who rule, but are gained after a long period of sustained striving for them by the people. If only people would stay in Hong Kong, I believe that we would be able to strive for and get a greater measure of democracy in Hong Kong after 1997.

The motion moved by the Honourable Emily LAU today spells out the hope that the British Government will grant citizenship and the right of abode in Britain to 3.4 million people in Hong Kong. This is an untimely motion which will only lead Hong Kong people into asking for something impractical. Miss Emily LAU and I are both sceptical about the future. But the conclusion she has arrived at is exactly opposite to mine. In view of Hong Kong's uncertain future, she is hoping that 3.4 million Hong Kong people may have extra protection. But I think it is precisely because of the uncertain future that there is need for all the 6 million Hong Kong people to be of one mind and to stay in Hong Kong to contribute to it. In my view, since the future is uncertain, if it did happen that 3.4 million Hong Kong people were really gone, then it would be disastrous for Hong Kong's future. This is because if only a little over 2 million people remained in Hong Kong, not only would democracy be incapable of implementation, it would also be impossible to maintain our status as an international financial and trading centre. I absolutely would not wish to see this happen. But it is my worry that should Miss Emily LAU's motion be acted upon, it could destroy Hong Kong; it could destroy a community within Chinese territory made up of Hong Kong people which might otherwise have developed into a democratic community.

I studied in Britain in the past, and I keenly felt that the Britons were discriminatory against people of other ethnic origins. Besides, culturally, the British and the Chinese simply cannot get along. If we go and beg for the status of British citizenship, I trust that the British would look down upon us even more. To demand from the British the right of abode in Britain is just like asking a tiger for its skin. Since the 1960s, be it a Tory or a Labour government, the British Government has been trying to exclude non-white people from Britain. And they have succeeded.

The Commonwealth Immigration Acts of 1962 and 1968, the Immigration Act of 1991 and the British Nationality Act of 1981 are all to deprive us of free entry into Britain and to deny us the right of abode there.

The fact has it that Britain is not a place where Hong Kong people can stay, live and have fun. So why should we demean ourselves in asking a hypocritical British Government to give Hong Kong people British citizenship? We should learn a lesson from bitter experience and say to the British Government "We will not take it even if you give it to us!"

However, I agree with Miss Emily LAU that Britain's refusal to give Hong Kong people citizenship is in fact discrimination against non-white people, which is immoral. Britain has a moral obligation towards those Hong Kong people who are British nationals. So, for these two reasons, I will not oppose

Miss Emily LAU's fight for British citizenship for the 3.4 million Hong Kong people. But I cannot support it. Therefore, I will abstain from voting.

In Hong Kong, there are many opportunists who are looking forward to currying favour with China on various matters, come 1997. In order to change the situation, we need many more people to stay in Hong Kong to make their contribution, in particular, those who are pro-democracy, who are working to improve the livelihood of Hong Kong people and who are committed to Hong Kong. Therefore, may I urge my colleagues in this Council not to encourage, hasten or support the departure from Hong Kong of Hong Kong people. We should encourage them to stay and to endeavour to build a democratic and free Hong Kong.

Thank you.

DR LEONG CHE-HUNG: Mr President, legend has it that the fabled island Atlantis first described by Plato submerged and disappeared into the bottom of the Atlantic Ocean. Yet, well before the crisis, its respected Queen Antinea has already made provision for her subjects to seek safe haven. Many stay, the fable goes, and perish with the sinking island, out of choice, out of respect and out of dedication.

It may of course be argued that this is only a fable. Yet, it showed a basic principle — the principle of the fact that any responsible government would strive her best for her subjects especially in period of needs.

Here in Hong Kong with reference to our current sovereign state, we are receiving the exact opposite treatment. Our sovereign has forsaken us, her citizens. For with a stroke of a pen the right to claim proper and full British nationality acquired either by birth or by naturalization has been usurped from us.

Unlike what my Honourable friend, Mr Frederick FUNG, says, we are not begging for full British nationality for the BDTCs and BNOs of Hong Kong. We are demanding that our rights be reinstated.

Let me hasten to add that I am in no way "crying wolf". Hong Kong will not sink and I am in no way suggesting that we should all leave Hong Kong. Let me categorically stress too that I have stood, and will stand, by the transfer of sovereignty. Yet, it is the principle that counts and the mockery is that Hong Kong British born subjects, British naturalized subjects have never been given a choice to choose to remain as British nationals or otherwise.

Mr President, in 1989, in the aftermath of the Tiananmen incident, Her Majesty's Government, obviously bowing to Hong Kong pressure, proposed that British Nationality Selection Scheme. There was at that time in Britain then an

aura of benevolence. Yet, the British Nationality Selection Scheme (BNSS) was packed with flaws from the very outset.

How was, for example the magic figure of 50 000 families derived? Was it a figure plucked from the air? Was there a scientific formula to base on? At best, so it could be construed as the United Kingdom's and the Hong Kong Government's unilateral decision that that was the number of people in the "high echelon" that Hong Kong would need to continue our complicated governmental and societal machinery. The irony of course was Hong Kong people were never asked how many would want to stay in Hong Kong and would be in need of a "psychological boost" in the form of a British passport.

Mr President, facts prove themselves for in the second phase of the BNSS, a total of 41 567 applications were received against 13 156 spaces. In the case of my constituency, the medical profession, there was a total of 862 applications against a 183 quota. In the first phase, for example, in the medical profession 469 out of a total of 1 663 applications from medical doctors were granted the British nationality, representing only a 28% success rate compared to the overall 55%.

It may have been said, Mr President, that Hong Kong people have accepted the "gift" already and why are we back to ask for more? Let me categorically state that there has been nothing and there is nothing for Hong Kong people to accept. For the right of abode in Britain or for that matter, full British nationality must be the inborn right of Hong Kong born and the acquired right of the naturalized Hong Kong British subjects.

It has also been argued that providing more full British nationality to Hong Kong people may open the floodgate for a mass influx of Hong Kong people. Facts speak stronger than words, for government figures from Hong Kong will show that only an insignificant number of successful applicants of the first phase of the BNSS have actually sought the "greener pasture" of Britain.

Mr President, recent figures have shown that brain drain appears to be set on the increase. This was also confirmed by the Administration as quoted in a reputable newspaper yesterday. Even our dedicated political leaders have joined the emigration queue. This is, Mr President, not surprising considering the continuous unco-operative attitude of the British and Chinese Governments undermining Hong Kong people's confidence.

Mr President, if Britain is set to contain her honour, if Britain wants to show that she cares for Hong Kong, and Hong Kong British subjects, if Britain is true in her belief that giving full British passports to Hong Kong people is to keep people in Hong Kong, then she must review her policy and, to honour her obligation to all British Dependent Territory Citizens and British Nationals (Overseas) in Hong Kong by extending to them full British citizenship.

So I call upon this Government in Hong Kong to stand by this request of this Council. I support the motion.

MR LAU CHIN-SHEK (in Cantonese): Mr President, I support the motion moved by Miss Emily LAU. The reason is very plain and simple. As a sovereign state which has ruled Hong Kong for more than a century, Britain definitely has the responsibility to grant the right of abode in Britain to the people of Hong Kong. However, even if the British Government one day decides to shower the people of Hong Kong with benevolence and gives the 3.4 million British subjects the right of abode in Britain, it can only be said that the people of Hong Kong succeed in having the right that they deserve restored to them. But worries at the back of their minds still cannot be eliminated.

A considerable number of the 6 million people of Hong Kong are holders of Certificate of Identity. These people cannot obtain the right of abode in Britain because they were not born in Hong Kong. Even if the right of abode in Britain is granted to the 3.4 million, I am sure most of them will not leave Hong Kong. As these people have slogged their guts out here, they would not hastily come to a decision to leave Hong Kong. If China is a politically open society which respects democracy, human rights and freedom, 1997 will not be a "deadline". If Chinese officials do not make frequent comments on matters, big or small, of Hong Kong with the air of a monarch, the people of Hong Kong will have more confidence in the future and the right of abode in Britain will not matter that much to the people of Hong Kong. Having said that, the right of abode in Britain is, after all, closely related with Hong Kong people's confidence in the future. We certainly have to fight for the right of abode in Britain which is a right that the people of Hong Kong deserve, but I strongly believe that the more important thing is that the British and the Chinese Governments can really work for the interests of the people of Hong Kong to restore their confidence in the future.

I wish to raise a more important question in this debate: what can the people of Hong Kong do to prevent 1997 from becoming a deadline? I think those who are prepared to stay and slog away in Hong Kong should not adopt a submissive, fatalistic and pessimistic attitude towards China. The people of Hong Kong should be united and comment on any move which is harmful to the "one country, two systems" model which has a high degree of autonomy. The people of Hong Kong should not attach themselves to the bigwigs in order to inflate their individual power, nor should they involve themselves in any political speculation, doing things which are harmful to the self government and the high degree of autonomy of Hong Kong. It is only along this way that we can have a promising future.

Perhaps what we see now is but a hazy sky. The "one country, two systems" model might die a premature death, but I believe if the people of Hong Kong can be united and pull together, the model will experience a rebirth after 1997 too. If so, our debate on the right of abode in Britain will merely be a piece of evidence to nail the British Government to the stake of disgrace.

Mr President, with these remarks, I support Miss Emily LAU's motion.

MISS CHRISTINE LOH: Mr President, once, the people of Hong Kong were British citizens as of right. Then we became British Dependent Territories Citizens (BDTC). An ironic choice of words, because Hong Kong people who wanted to depend upon Britain soon found that Britain was not dependable at all when it came to important things like nationality and passports. Perhaps BDTC should have been understood to stand for British Disposable Temporary Citizenship.

And very temporary it proved to be. Because we are now, if we want to be, British Nationals (Overseas). We have the opportunity to acquire a uniquely useless passport that does not even entitle us to enter the country that has issued it as a matter of right, let alone to live and work there.

There are probably many people in the Foreign and Commonwealth Office, at the Home Office, and among some Members of Parliament at Westminster, who see nothing wrong with this conjuring trick whereby Hong Kong British subjects' claim upon Britain have been made to vanish before their eyes. Perhaps those who drafted, and those who have since defended the 1981 Nationality Act, and the more recent amendments of it for Hong Kong, feel that they have been acting in Britain's best interests by denying many non-white British citizens the right to land on Britain's shores.

But what a terrible light that casts upon Britain's moral and political standards; upon its lack of self-respect; upon its indifference to history; upon its contempt for its own disowned citizens. The British Government's shoddy treatment of the wives and widows of ex-servicemen; and its unwillingness to grant full British citizenship to the several thousand ethnic minorities in Hong Kong, are the worst examples of Britain's prejudice.

Can the leaders of Britain really believe that Britain is strengthened and ennobled by the denial of its own national obligations? I think not. It is merely diminished, by a show of prejudice and timidity.

Many people in this Chamber will remember the long arguments about nationality that dominated the hearings of the House of Commons Foreign Affairs Committee in 1989, when anxiety over the territory's future was high in the wake of the Tiananmen massacre.

Mr President, you might even remember the outburst — it can scarcely be called anything else — of Peter TEMPLE-MORRIS, a Member of Parliament and a barrister, when he was being pressed by the Honourable Simon IP to explain why Britain would not give full British passports to its 3 million plus BDTs here. Mr TEMPLE-MORRIS replied:

"Do you realize, quite apart from principles and morals, the political difficulty of admitting 3.25 million people Can you tell me whether all those 3.25 million have been to England, know England, speak English, or have any association with England, or in reality bear any allegiance to it?"

As a matter of fact, the 3 million or so BDTs have an association with England to the extent of having been subjects of the Crown, and that Hong Kong has been British territory with a British Governor and English law since 1841. If government backbenchers place such a low value on principle and morals, relative to political expediency, they would probably do better not to boast about it.

I am not optimistic about changing Britain's mind on the issue of British nationality for Hong Kong. The British National Selection Scheme has more or less run its course, and those people whom British does not think it would be profitable to take will almost certainly be abandoned when British sovereignty is relinquished here in 1997 days.

And yet, there is still a virtue in protesting against this betrayal, however fatalistic we may feel; and however tired we may be of the hypocrisy and high-handedness with which such protests are received in London. Our purpose must be to make it clear to Britain, and to the world, how wrong and how short-sighted we consider this betrayal to be.

If we cease to protest for a moment, we merely make it easier for British civil servants and ministers to murmur that nationality is not really an issue in Hong Kong any longer, and that Hong Kong people really do not feel that strongly about it after all, so Britain need not really care about its obligations to them.

We do care. We are not going to go quietly. We owe it to ourselves to ensure that we can never be accused of complicity in our own unhappy treatment. When the history of this last, inglorious chapter of British empire comes to be written, we would like it to be crystal clear that the British parliament's fear of non-white immigration from Hong Kong led to the indecent and immoral abandonment of British subjects in what was once a British territory.

To achieve only that might seem a small consolation. A number of my colleagues tonight have alluded to that. But when morals and principles are all that one has, then one has to make the best of them. We should be grateful to

the Honourable Emily LAU for her tireless effort to continue to remind us and to remind the British Government of their obligations

Mr President, I support the motion.

MR HOWARD YOUNG (in Cantonese): Mr President, the British Nationality Selection Scheme (BNSS), which is commonly known as the "right of abode scheme", has come to an end. The purpose of Britain in implementing the scheme is to retain some of the elite in Hong Kong, thereby to curb the flood of emigration. The spirit of the scheme is positive and constructive.

It was originally planned that BNSS would bestow on 50 000 households the right of abode in Britain. The Administration reckoned that each household had four to five members and therefore a total of some 220 000 people would be benefited. It was also mentioned at the time when the scheme was debated in the British Parliament that 220 000 British subjects in Hong Kong would be conferred the right of abode. However, the reality in presentday Hong Kong is that each family has only two to three members on average and so the total number of people being granted the right of abode in Britain has fallen short of the figure 220 000. Since people have been so keen to apply for the right of abode, why is the British Government not being generous enough to revise the ceiling of 50 000 households in order to benefit more Hong Kong people?

The law is not incapable of revision. The Governor has categorically said in the policy address that the British Government has to retreat from Hong Kong in an honourable way and that the British Government has historical commitments. In this connection, why does it not lift the ceiling of 50 000 households? If the ceiling is lifted, Britain can really retreat in an honourable way and at the same time honour her obligations as a sovereign power.

The motion which seeks to grant all British Dependent Territories Citizens (BDTCs) and British Nationals (Overseas) (BNOs) full British citizenship is highly aspiring but, to me, what this proposal tries to achieve is a bit too much. The party across the negotiation table is not a hawker who is given to price-haggling, but the government of a nation. I believe that it is very difficult to convince the other party unless there is a miracle. I am even worried that such a negotiating style with a staggering "asking price" upfront will frighten the other party and eventually all efforts will be to no avail.

In fact, the most pressing task at the moment is to acquire British nationality for Hong Kong residents who are of non-Chinese ethnic origin as mentioned by the Honourable Selina CHOW earlier. Most of the people of Hong Kong will become Chinese nationals automatically after 1997 but those other people might become stateless then. For that reason, they are in greater need of British nationality than we are.

We have stated time and again that we have to fight for full British citizenship for the benefit of all BDTCs and BNOs. But there is a group of people who have long been neglected. They are the holders of the Certificate of Identity (CI). Over the years, the British Government has made no commitment to these people. To date, the way CI holders are being treated when they travel overseas is still very much different from the way the passport holders are treated. They are not second-class citizens in Hong Kong and they form a part of Hong Kong. I am, therefore, of the view that the motion has neglected this group of people. We should also fight for the reasonable rights of these people so as not to split the people of Hong Kong into two categories thus indirectly causing division among the people of Hong Kong.

I am in support of this motion although a few flaws are contained therein. We should make an effort to fight for the rights of the people of Hong Kong and make these requests to the British Parliament.

MS ANNA WU: Mr President, as a firm believer in the right of all British Dependent Territories Citizens and British Nationals (Overseas) in Hong Kong to full British citizenship, I am happy to support the motion.

Britain has been steadily chipping away at the rights and privileges of its overseas nationals at least since the 1960s, when, contrary to the customary international principles governing nationality, the notion of British nationality was for the first time severed from the right of abode in Britain.

Since then, periodic changes in British nationality law have thrown up a confusing welter of statuses including CUKCs, non-patrials, belongers, BDTCs, BOCs and BN(O)s.

The guiding principle, however, has remained simple. Hong Kong's British subjects stayed British, but they also stayed out of Britain. They are not quite British Citizens but rather "British Dependent Territory Citizens": that is, their rights and privileges as British nationals are bound to this territory and to no other place.

This simplicity vanished when Britain undertook in the Joint Declaration to hand the territory over to China. The Joint Declaration threw Hong Kong people's status into the realm of absurdity. What kind of British nationality is it that can be bound to a territory that soon will no longer be British?

Because Britain manifestly cannot offer any form of British protection inside Hong Kong after 1997, it points instead to the Joint Declaration as an international guarantee of Hong Kong people's rights and freedoms at home.

The Joint Declaration is an international treaty, registered with the United Nations. It purports to guarantee the continued application to Hong Kong of the two most important human rights treaties, the International Covenant on Civil

and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together, these two treaties constitute the "International Bill of Rights," overseen by the United Nation's human rights committee and backed up by the sanctions of international law and of the United Nations system.

Today, the United Kingdom Government refuses to consult the United Nations Human Rights Committee on the meaning of the continued application of these major Covenants to Hong Kong. The United Kingdom Government regarded its obligation as a "mere urging" of China to become a party to these Covenants and to discuss with China as to how the reporting obligation should be fulfilled. Neither side is willing to guarantee that the periodic reports to the United Nations which are the core of the treaties' enforcement mechanism will continue after 1997. Instead, it appears that in a few years' time these treaties will be severed from any form of international oversight.

Instead of providing certainty about Hong Kong's future, the Joint Declaration has become a document of uncertainty and a source of constant disagreement between the two countries.

Morally, Britain has a simple choice: it can confer full British nationality on its Hong Kong subjects, or it can abdicate its responsibility to them entirely.

Frightened by the spectre of unrestricted immigration, which also underlies the lack of confidence Britain has in the future of Hong Kong, Britain has abandoned principle for political expediency. This short-term expediency may prove to be a long-term embarrassment. In contrast to Hong Kong, where it appears that there will be no international supervision of rights and freedoms in the future, Britain will remain, as it has in the past, under the scrutiny of the international community.

The international community did not accept political expediency as an excuse for injustice in the mid-1960s when Britain turned its back on 200 000 of its British Asian dependants in East Africa. Victims of ethnic Africanization policies, these British Asians were forced out of the former British dependencies in East Africa.

Rather than granting them safe haven in the United Kingdom, Parliament, fearing an influx of ethnics, rushed the Commonwealth Immigrants Act of 1968 through all its parliamentary stages in only three days. Though neutral on its face, this patently racist measure effectively revoked the rights of the British Asians to enter and reside in the United Kingdom.

Ultimately the European Commission for Human Rights saw the polite fiction of the 1968 Act for what it really was: degrading and racially discriminatory in intent and in effect. The Government was forced to bow to the opinion of the Commission and accept the entry of its British Asian citizens into the United Kingdom.

What is to become of Britain's 3.4 million subjects in Hong Kong? As it stands today, the ambiguous British nationality afforded Hong Kong people after 1 July 1997 will be called "British National (Overseas)". This does not confer a right of abode or nationality. In effect, the United Kingdom Government has stripped its Hong Kong subjects of their nationality. A BN(O) passport is nothing more than a travel document. It is not clear what use such a passport will be to its holders when travelling abroad. What is clear is that it will not open the door to the United Kingdom.

To extend full citizenship and greater protection for its 3.4 million subjects in Hong Kong beyond 1997 would be the honourable thing for Britain to do.

Of the three remaining British territories with disputed title, Hong Kong and its people have fared the worst with respect to rights of citizenship. Britain gave its subjects in Gibraltar the option to determine by referendum whether they should be returned to Spanish governance or remain British. Ninety per cent voted to stay with Britain.

An even more compelling precedent is Britain's treatment of its Falkland Islands citizens. Following the war with Argentina, residents of the Falklands were granted full United Kingdom citizenship. In light of the opportunities Britain afforded to its subjects in Gibraltar and in the Falklands, why is it that Britain proposes to dispose of its 3.4 million British Asian dependants in Hong Kong after 1997? A little consistency and good faith on the part of the Government is in order.

The Governor in last week's policy address appealed to the wisdom of a late philosopher. In the spirit of the Governor's clever paraphrase of Thomas a Kempis, I thought I would close with a few lines from Immanuel KANT: "True politics can never take a step without rendering homage to morality the rights of men must be held sacred, however much sacrifice it may cost the ruling power. One cannot compromise here and seek the middle course of a pragmatic conditional law between the morally right and the expedient. All politics must bend its knee before the right."

Thank you, Mr President.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, in the mid-19th century, at the zenith of its power, Britain had colonies all over the world. At that time the British subjects were all under an obligation to show permanent allegiance to the British crown, but they all enjoyed the freedom of entry to the United Kingdom.

In 1946, Canada passed the Canadian Citizenship Act on its own initiative. In 1947, the Irish Republic withdrew from the British Commonwealth. Soon afterwards, in 1948, the British Parliament promulgated the British Nationality

Act, dividing British citizens into four classes, namely: (1) Citizens of the United Kingdom and its colonies, who enjoyed the freedom of entry to or right of abode in Britain. The people of Hong Kong fell within this class then; (2) Commonwealth citizens who enjoyed the right of entry to Britain; (3) British subjects who did not have full citizenship and who were therefore not entitled to the right of abode in Britain; and (4) the British protected persons who did not enjoy the right of abode either in Britain or in any other countries.

According to the British Nationality Act, for any newly independent colony, its citizens will forfeit their status as citizens of the United Kingdom and its colonies. However, if the newly independent colony becomes a member of the British Commonwealth, as is the case with Australia and Canada, its nationals automatically become Commonwealth citizens.

In 1962, 500 000 non-white British subjects fled from India, Pakistan and the West Indies and entered Britain, triggering vigorous sentiment against the immigration of coloured people into Britain. In response, the British Parliament immediately enacted the Commonwealth Immigration Act, imposing restrictions on the entry of colonial citizens into Britain. According to this legislation, only people born in Britain or people who hold passports issued by Britain are eligible for entry and right of abode in Britain. This is the first step taken by Britain in restricting the immigration of Hong Kong and coloured people into Britain.

In the mid-1960s, two British colonies, namely Uganda and Kenya, became independent one after the other, and a large number of their nationals, as many as 200 000, who were suffering from persecution, attempted to emigrate to Britain but were all rejected. Though censured by the European Commission For Human Rights, Britain turned a deaf ear to all the criticism. It is thus obvious that the British Government did not take up any moral obligations in respect of its colonial subjects.

In 1971, Britain promulgated the Immigration Act, which further restricted colonial residents from emigrating to Britain. The nationality issue was further complicated by the British Nationality Act, which came into effect in January 1983. Under the Act, neither British Dependent Territories Citizens nor British Nationals (Overseas) are qualified for emigration to Britain.

The several rounds of amendment introduced by Britain to its laws on immigration show that Britain has only one objective in mind, and that is to prevent an influx of colonial subjects into Britain. This shows that Britain has always adopted an abandoning attitude towards its colonial subjects, not to mention honouring its moral obligations.

Mr President, with the situation being what it is, we should no longer cherish any illusions about Britain. Although Governor Chris PATTEN kept on saying that Britain would retreat from Hong Kong in an honourable manner, he need only take one look at the British laws on immigration to see how Britain

has committed breaches of faith. What Mr PATTEN need to do now is to create the best possible environment for Hong Kong to undergo a smooth transition.

The British Government is definitely under an obligation to grant to the people of Hong Kong the right of abode in Britain. This is its responsibility. Mr President, I fully support today's motion.

MRS PEGGY LAM (in Cantonese): Mr President, I rise to support the Honourable Emily LAU's motion on the principle that nationality is a right by birth and it is an inalienable human right.

Many Hong Kong people have no plans of leaving Hong Kong, in particular those who were born in Hong Kong or those who have already acquired British nationality by naturalization. Even if many claim that they will be leaving the territory, they may not necessarily settle in the United Kingdom since there are many other alternatives, apart from the United Kingdom. Many people, including myself, think that it would not do the British administration any good to have adopted such a narrow-minded and calculating attitude towards the granting of full nationality to the people of Hong Kong.

Many people hold the view that this is the right to which they are entitled. They may give up this right on their own accord but it must not be stripped away wilfully. I wish to take this opportunity today to say that the people of Hong Kong, the Hong Kong-born people and those who have acquired British nationality by naturalization should be left to decide whether they give up British nationality. After all, it should never be a decision made by the British administration.

For the above reasons, I support Miss Emily LAU's motion.

MR WONG WAI-YIN (in Cantonese): Mr President, Jean-Paul SARTRE, the great existentialist of France, once said, "An actor acts not so much to earn a living, but to deceive himself as well as others, to become a person that he can never be. We act the heroes because we are cowards. We act the saints because we are villains." Maybe that description could best be applied to the British Government's retreat from its colonies, especially from Hong Kong.

As Members have already pointed out, this Council has had many debates on the issue of Hong Kong people's nationality. On questions ranging from Hong Kong's British Dependent Territories Citizens (BDTCs), non-Chinese ethnic minorities to ex-servicemen's wives or widows, this Council has rarely had such unanimity of views — namely, we strongly urge the British Government not to shirk its constitutional and moral responsibilities to the above-mentioned people. The former Chief Secretary, Sir David FORD, during the Legislative Council debate on that issue on 5 July 1989, also clearly stated

the Hong Kong Government's stance in supporting the Legislative Council. He said, "I believe the intellectual arguments against granting the right of abode to British nationals in Hong Kong are fundamentally flawed."

Here I would like to formally reiterate on behalf of the newly formed Democratic Party that the BDTCs and the above-mentioned people in Hong Kong have the basic right to full British nationality. Such kind of right cannot be abrogated simply by an Act passed by Parliament, nor can it be replaced by other kinds of second or third class travel documents; nor should we reapply for such nationality by undergoing a point-scoring procedure tantamount to the screening procedure of illegal immigrants, before we are informed whether we are lucky enough to obtain that nationality again. Behind all the existing legislation, policies and measures concerned, we can only see a hypocritic mask of the British Government. The situation is thus similar to what SARTRE said, namely, that one has to act to deceive himself as well as others.

Besides, I would also like to clarify some viewpoints. The first point is related to the British Nationality Selection Scheme (BNSS). I believe that it is the basic right of the above people to have full British nationality. And this is the most important premise. Whether there is oversubscription for the right of abode is not necessarily related to whether we should continue to fight for their citizenship right. As a matter of fact, oversubscription only reflects one of those situations when there are still many Hong Kong people earnestly seeking ways to protect themselves after being deprived of their nationality right. Besides, tens of thousands of Hong Kong people have to overcome enormous difficulty in order to emigrate to other countries like Australia, the United States and Canada. They are required to stay in a foreign land to meet the residence requirement, being separated from their relatives and friends, facing the job-seeking difficulty due to local economic depression, while readjusting themselves to the new life abroad. Who, given that other alternatives are available, will make such an unwise move? Therefore, from the very beginning, it is unreasonable to deprive the British nationals in Hong Kong of their rights and to let them suffer such kind of sorrow and pain unnecessarily. Since such kind of pain should not have existed, whether there is oversubscription for the right of abode in the United Kingdom is irrelevant. Of course, I also clearly understand that if at present there are only a total of 135 000 people benefitting from the BNSS, which number is far from the originally estimated number of 251 000 people, and yet the British Government refuses, for various reasons, to increase the application quota just to use up the original one, that naturally indicates that the British Government is once again going back on its words on that issue.

The second point of clarification is that asking to "restore" (but not "confer") full British citizenship is not equal to asking to encourage the Hong Kong people to leave Hong Kong or not to have faith in its future. On the contrary, we are asking to dispel the worries of some people, so that they can feel at ease staying in Hong Kong to develop their career or business. I believe that it is already a well-known argument, and thus I am not going to repeat it.

What I want to point out is that the restoration by the United Kingdom of British nationality to the Hong Kong people will actually be only giving them the right of choice that they are entitled to. Frankly speaking, even if the United Kingdom gives me a full British passport, I will not accept it, not to say settling there. I believe that most of my colleagues and an overwhelming majority of the Hong Kong people will share the same feeling. Nevertheless, the renunciation of British nationality by some people does not mean we can give up fighting for other people's right that they are entitled to. As Mr SZETO Wah in one of the previous debates has said, "We have to be strict to ourselves but generous to others. When a person admires a martyr who died for a just cause, he should also respect the others' right to be free from fear or panic. This is a kind of human right, and is also a kind of human feeling." I very much agree with this view. Even in as close a relationship as husband and wife, the husband has no right to refuse to let the wife apply for emigration. There are many such examples in the political arena, are there not? Besides, what we are now discussing is not the question of whether to apply for emigration, but whether we should force others to give up their own rights!

In the past whenever I read some analytical reports or essays on the colonists' retreat from their colonies after the Second World War, I would notice a certain supposition called "honourable retreat". Frankly speaking, I always think that it is a sort of political myth to deceive others. What actually is the criterion of being "honourable"? Will that be to maintain a prosperous economy, to establish a democratic government, to build monumental works, to reduce the incidence of social turmoil to a minimum, or to leave all matters for the assessment of "history"? I am not so sure what it is. What I know is, when a country abandons her more than 3 million overseas nationals and amends the law so as to take away their nationality, there is no way that such action can be regarded as "honourable" however much one may claim it to be.

Eighty years ago, when the former British Prime Minister, David LLOYD GEORGE, vowed to defend Belgium even to the extent of going to war against Germany since Britain had signed a treaty of defence with Belgium, he said, "Why is our honour as a country involved in this war? It is because we are bound by honourable obligations to defend the independence, the liberty, the integrity of a small neighbour." He went on to say, "She could not have compelled us. She was weak. But the man who declines to discharge his duty because his creditor is too poor to enforce it is a blackguard."

DR HUANG CHEN-YA (in Cantonese): Mr President, the debate here in this Council today is itself a tragedy. I say tragedy because the coming of 1997 should have been welcomed by the Chinese people. It is a tragedy because the end to the humiliation that has lasted over a century should have been welcomed by China. But, unfortunately, the people of Hong Kong today do not share the feeling that Hong Kong's reversion to Chinese sovereignty will mean that we will become the citizens, the masters and that we will be able to enjoy the human rights, democracy and freedoms that citizens should be entitled to.

The views expressed by the Preliminary Working Committee and Beijing officials have clearly shown that democracy for Hong Kong people will be eroded; that there will be no guarantee for human rights and the rule by law. We can also see from the example of HAN Dongfang that, as a Chinese citizen, one in fact cannot enjoy the right to return to one's own country and one simply does not have the rights a citizen is entitled to. What 1997 is bringing along is not cheers. It is bringing along worries and the desire to emigrate. It is really a tragedy of and a shame on China.

To the Chinese people, emigration is nothing new. At the beginning of the Qing Dynasty, many people emigrated to overseas countries for political reasons. From time to time, people also emigrated for the reason of making a living, as the Chinese Government was so corrupt that people could barely make a living, and so they emigrated. I myself belong to the fourth generation of Chinese emigrants in Singapore. This does not mean that Chinese people who have emigrated do not love China. They are innocent and there is no shame on them. If the people want to emigrate, it is not because they do not love their own country, but because voting with their feet is the only way they know to show their discontent with the government. I believe no matter what places they have emigrated to, the people of Hong Kong still love Hong Kong and China, just like myself and my family who always have China on our mind and this sentiment will continue from generation to generation. However, they have the right to free themselves of worries and fears. They want to be able to walk tall, to be ordinary people, to live the life of ordinary people and to breathe free air the way ordinary people do. Therefore, I support the Honourable Emily LAU's motion to urge Britain to grant the right of abode in Britain to those people of Hong Kong who are British subjects. But please also remember that it is not those people alone who have worries; some other people, namely, those who are CI holders, also have worries and fears and they also want to emigrate. Therefore, I think Britain has the obligation to help and must not instead treat CI holders as second class citizens of Hong Kong. I do not believe Britain will give this category of Hong Kong people the right of abode, though.

For over one hundred years Britain has been treating Hong Kong people as her colonial subjects. Britain has been having its own democracy, but Hong Kong people have had none. If Britain had years ago given democracy to Hong Kong people, there would have been no cause for the communists today to object to democracy for Hong Kong, would there? Since 1984, we have been observing that Britain has really been selling Hong Kong people down the river in the interests of Britain and keeping Hong Kong people in the dark. So far, she has been unwilling to put in place better human rights safeguards for Hong Kong. Therefore, I agree that we should demand of Britain to let more people have the right of abode in Britain. But this is really to "ask the tiger for its skin" which will be to no avail. Nevertheless, I think we still have to make this solemn and reasonable request to Britain. It Britain wants to be the villain, if Britain wants to go down in history as a disgraced power, this is her choice. But we will never let her escape from the censure of history. I believe that the future of Hong Kong depends on our efforts, that it depends on the efforts of

the Chinese people working for the common good of China, that it depends on the continuous fight for democracy, freedom and human rights. As long as we are determined to fight to the end, I believe that victory will be ours eventually. I hope that we will try our best to make emigration an option that Hong Kong people will never find it necessary to go for.

SECRETARY FOR SECURITY: Mr President, nationality and right of abode have a direct bearing on Hong Kong people's lives. They are subjects in which Hong Kong people have a special and direct interest. They are among the issues of the heart of the transition.

The motion before us today proposes that all British nationals in Hong Kong should be granted British citizenship and thereby the right of abode in the United Kingdom. This has been debated previously in this Council. It has been thoroughly debated in the British Parliament and it has and is often discussed in the community at large. The issue was discussed at length by the Legislative Council in the latter half of 1989. At that time the Hong Kong Government made its position clear. We believe that the best solution would be for Britain to grant the right of abode in the United Kingdom to all British nationals in Hong Kong. That was our position then and it remains our position today. Our lobbying effort and the efforts of many Members of this Council resulted, in late 1989, in the establishment of the British Nationality Selection Scheme. This scheme did not go as far as we wished. Nevertheless, despite its limitations, I believe that it has helped, as was its aim, to encourage people to remain in Hong Kong and to ensure that business and administration continue to function effectively and successfully. We will continue to urge the British Government to go further.

But Members will be aware of the extensive debate that has already taken place in Britain on the matter. The question of granting full British citizenship to Hong Kong BDTCs was considered carefully and thoroughly by the Parliament when it debated the British Nationality (Hong Kong) Act in 1990. It is not a position that has the support of either the British Government or the major opposition party in Britain. We have, in preparation for this debate, consulted the British Government on this subject once more. And the British Government has reiterated its position. In their view, the award of citizenship to 50 000 heads of household was the right response which has helped to boost confidence in Hong Kong. Nothing has happened since the Scheme was set up to change their view. The British Government are not prepared to award citizenship to all the approximately 3.5 million BDTCs. They consider that they could not bind the future of British Government with such a large potential immigration commitment. They consider the great majority of BDTCs have made clear that they wish to continue to live in Hong Kong and they are confident that the Joint Declaration makes provision for all BDTCs who wish to continue to reside in Hong Kong to do so. We will continue to press the British Government and put our position and the position of this Council to them. But I have to say to Members that on the basis of all most recent contacts and on the

basis of the consistently expressed position of the British Government in recent years, it would be unrealistic to expect a change of policy.

In line with our consistent position, we will be voting for this motion today. But we believe also that our energy should be directed to ensuring that Hong Kong remains a place where Hong Kong people want to remain, that its way of life and its prosperity are preserved and underpinned, that the letter and the spirit of the safeguards for Hong Kong's future provided by the Joint Declaration are honoured in full.

Mr President, I should also like to speak about the special case of British citizenship for the ethnic minorities. Without detracting from our support for the grant for British citizenship to all Hong Kong BDTCs, we have given our support particularly for the grant of citizenship and right of abode in the United Kingdom to the ethnic minorities who are BDTCs. The British Government has not as yet accepted our arguments on behalf of the ethnic minorities, although these have the support of a considerable number of Members of Parliament including members of the Foreign Affairs Committee. We will continue to press that case.

Thank you, Mr President.

PRESIDENT: Miss Emily LAU, you are now entitled to reply and you have three minutes 26 seconds out of your original 15 minutes.

MISS EMILY LAU (in Cantonese): Mr President, of course, I am greatly disappointed by the Secretary for Security's relaying to us the position of the British Government, that is, it will not consider restoring British nationality to the people of Hong Kong. I am sure the Hong Kong Government understands that the nationality issue is a matter of great importance during the transition. It also understands that this issue will not die with the conclusion of this motion debate today. So I hope that the Government will press the case with the British Government together with Hong Kong people.

The Governor will go back to Britain for a briefing on his duties later this month. I hope that he would put the nationality issue very high on his agenda and bring up the case with the Prime Minister and the Foreign Secretary again.

I was astonished to hear some Members point out that it was unrealistic to move this motion today. If you ask people in the street whether they want the British Government to change its mind and restore British nationality to us, I am sure many of them would give you a positive answer. I do not understand why some elected Members should feel that this is unrealistic. Does it mean that we should not strive for something which we can hardly get or which is unlikely to be given? We fight for British nationality from Britain, much in the same

way as we fight for democracy from China. Does it mean that fighting for these two things are unrealistic and we should therefore not do it? Why would they say that if the motion did materialize we would be ruining Hong Kong? I doubt if the consequences are really so grave? We are not begging for anything from Britain, as many Members have quite clearly pointed out. It is our right! I am asking Britain for nothing more than restoring our nationality. I hope that Councillors will refrain from making such remarks outside this Chamber. No one is fawning on anyone. We are not begging for nationality from Britain. Nor are we begging for democracy from China. Both are rights to which we are justifiably entitled. If you are elected Councillors, I hope you would drum up your courage and speak for the people of Hong Kong. Do not mislead the people. I am sure you all know that we will definitely be in a stronger position to bargain with the Chinese and British Governments if all the six million people of Hong Kong have the right, or indeed the ability to leave the territory. So why are people making such statements? Is it an effort to divide the Hong Kong people? Under such a difficult situation, I believe we should unite to press our case with Britain and China!

The Honourable Howard YOUNG said that I was demanding an exorbitant price. If my fight for restoring the nationality of three million plus people is demanding an exorbitant price, why then was I accused for ignoring the one million plus Certificate of Identity holders? Adding up these two groups of people makes more than six million. Who is actually driving a hard bargain?

Honourable colleagues, we are not making a futile effort. Contrary to that, we are voicing the aspirations of Hong Kong people. Some people have said that we are fighting for a lost cause. Nevertheless, as elected Members, we know what people are thinking. Some people are worried. Some people are so very much worried that they have already left Hong Kong for good. In the less than a thousand days to go before the handover, more and more people may emigrate. In regard to the nationality of Hong Kong people, there is an important constitutional and moral obligation on the part of the United Kingdom. I hope that they will not forget it. I also hope honourable colleagues will not slacken their efforts in this fight after tonight's motion debate. I hope that the Hong Kong Government will continue to press for the legitimate rights of Hong Kong people.

Question on the motion put.

Voice vote taken.

MISS EMILY LAU: I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

PRESIDENT: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr SZETO Wah, Mr Andrew WONG, Mrs Peggy LAM, Dr LEONG Che-hung, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Man Sai-cheong, Mr Steven POON, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK and Ms Anna WU voted for the motion.

Mr Frederick FUNG abstained.

THE PRESIDENT announced that there were 32 votes in favour of the motion and no vote against it. He therefore declared that the motion was carried.

ADJOURNMENT AND NEXT SITTING

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 19 October 1994.

Adjourned accordingly at twenty-three minutes to Eleven o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Timber Stores Bill, Organized and Serious Crimes Bill, Consumer Goods Safety Bill, Supply of Services (Implied Terms) Bill, Unconscionable Contracts Bill and Residential Care Homes (Elderly Persons) Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWERS**Annex I****Written answer by the Secretary for Planning, Environment and Lands to Dr Sameul WONG's supplementary question to Question 1**

According to the Director of Agriculture and Fisheries, we do not have full record of the quantities of pesticides used by individual golf courses. We do, however, have some data provided by golf course managers. This data indicates that the amount used varies greatly from year to year and from one course to another. For example, one course used 12 450 kg of pesticide products in 1992 and 3 460 kg in 1993. This difference is not unexpected since chemical controls, when used, are to combat particular problems. Hence, the amount of chemical required will depend on the area and the degree the pest infestation.

Annex II**Written answer by the Secretary for Planning, Environment and Lands to Mr Marvin CHEUNG's supplementary question to Question 1**

Under the Pesticides Ordinance, pesticides are controlled through registration. Only those pesticides considered safe to man and the environment, if used as directed by the manufacturer/distributor, are considered for registration in Hong Kong. Furthermore, all registered pesticides must be packed in a properly labelled container with detailed directions on their correct use. Thus, strict observance of the labelling instructions by the user should ensure that land and water resources would not become polluted by the pesticides or herbicides concerned.

Annex III**Written answer by the Secretary for Home Affairs to Mr MAN Sai-cheong's supplementary question to Question 4**

A list of the relevant boards and committees is attached for the Member's reference.

Boards and committees that conduct their meetings in public

1. Central and Western District Board
2. Eastern District Board

WRITTEN ANSWERS — *Continued*

3. Kowloon City District Board
4. Kwun Tong District board
5. Sham Shui Po District Board
6. Southern Distinct Board
7. Wanchai District Board
8. Wong Tai Sin District Board
9. Yau Tsim Mong District Board
10. Islands District Board
11. Kwai Tsing District Board
12. North District Board
13. Sai Kung District Board
14. Sha Tin District Board
15. Tai Po District Board
16. Tsuen Wan District Board
17. Tsuen Mun District Board
18. Yuen Long District Board
19. Consultative Committee on the New Airport and Related Projects
20. Housing Authority
21. Area Committee (75)
22. Port Operations Committee (sometimes)
23. Boundary and Election Commission (sometimes)

WRITTEN ANSWERS — *Continued***Annex IV****Written answer by the Secretary for Home Affairs to Ms Anna WU's supplementary question to Question 4**

A list of the relevant boards and committees is attached for the Member's reference.

Boards and Committees that issue a press release after meetings
from time to time

1. Action Committee Against Narcotics
2. Advisory Committee on Agriculture and Fisheries
3. Advisory Committee on Teacher Education and Qualifications
4. Advisory Council on Aids
5. BN(O) Late Registration Appeals Advisory Committee
6. Board of Education
7. Broadcasting Authority
8. Chinese Textbooks Committee
9. Commission on Youth
10. Consultative Committee on the New Airport and Related Projects
11. Council for the AIDS Trust Fund
12. Council for the Performing Arts
13. Council for the Hong Kong Society of Accountants
14. Country Parks Board
15. Curriculum Development Council
16. Disciplined Services Consultative Council
17. Education Commission

WRITTEN ANSWERS — *Continued*

18. Employees Retraining Board
19. Energy Efficiency Advisory Committee
20. Gas Safety Advisory Committee
21. Hong Kong Council on Smoking and Health
22. Hong Kong Port Development Board
23. Hong Kong War Memorial Pensions Advisory Committee
24. Industry and Technology Development Council
25. Insurance Advisory Committee
26. Labour Advisory Board
27. Land and Building Advisory Committee
28. Model Scale 1 Staff Consultative Council
29. Pay Trend Survey Committee
30. Police Children's Education Trust (PCET) Management Committee
31. Police Education and Welfare Trust (PE&WT) Management Committee
32. Police Force Council
33. Rehabilitation Development Co-ordinating Committee
34. Research Grants Council
35. Senior Civil Service Council
36. Securities and Futures Commission
37. Social Welfare Advisory Committee
38. Staff Suggestion Committee
39. Standing Committee on Disciplined Services Salaries and Conditions of Service

WRITTEN ANSWERS — *Continued*

40. Town Planning Board
41. Transport Advisory Committee
42. University and Polytechnic Grants Committee
43. Working Group on Care for the Elderly
44. Working Group on Hong Kong Arts Development Council
45. Working Group on Regulation of Estate Agents
46. Central and Western District Board
47. Eastern District Board
48. Kowloon City District Board
49. Kwun Tong District Board
50. Sham Shui Po District Board
51. Southern District Board
52. Wanchai District Board
53. Wong Tai Sin District Board
54. Yau Tsim Mong District Board
55. Islands District Board
56. Kwai Tsing District Board
57. North District Board
58. Sai Kung District Board
59. Sha Tin District Board
60. Tai Po District Board
61. Tsuen wan District Board

WRITTEN ANSWERS — Continued

62. Tuen Mun District Board
63. Yuen Long District Board

Annex V**Written answer by the Secretary for Home Affairs to Miss Emily LAU's supplementary question to Question 4**

I am sorry that I am still not able to provide the Honourable Member with a list as requested because I do not have such a list. Although I said at the meeting that it would not be realistic to expect that some of the boards and committees could operate openly, I said it in the context of either the confidential nature of the business transacted by the boards and committees concerned or the commercially sensitive information considered by such boards and committees. There are obvious examples. Those that come to mind are the Textiles Advisory Board which advises the Government on international trade negotiation strategies; and the Exchange Fund Advisory Committee which advises the Government on monetary affairs.

I hope the Member will understand that it would be quite impossible to give her a comprehensive list of those boards and committees which we do not think it realistic to expect them to operate openly because that depends on the nature of business transacted. By the way, I have made no reference to boards and committees that can never be opened during the question and answer session.

Annex VI**Written answer by the Secretary for Health and Welfare to Dr LEONG Che-hung's supplementary question to Question 6**

There have indeed been occasions in the past when some private hospitals deviated from the operational guidelines. These problems were promptly brought to the attention of the hospital management involved before the licence renewal process, followed by discussions on possible improvement measures and site visits to ensure compliance.

So far private hospital have responded positively to the advice given by the Director of Health, thus obviating the need to invoke statutory powers for suspension of licence as a deterrent.

WRITTEN ANSWERS — *Continued***Annex VII****Written answer by the Secretary for Health and Welfare to Dr HUANG Chen-ya's supplementary question to Question 6**

The Hospital Authority has adopted medical audit as part of its quality assurance mechanism since 1993. In essence, this is a process widely used internationally whereby clinicians, through working as a peer group, conduct critical evaluation of case histories, medical records, diagnostic and treatment protocols as well as morbidity/mortality trends to identify and rectify practice which might affect the quality of patient care.

Collection of clinical and management information is essential to the process of medical audit. Generally speaking, data are required to reflect outcome of care in terms of hospital re-admission rate, mortality/infection statistics and length of stay; process of care including the degree of compliance with admission criteria to specific treatment or services; appropriate use of resources such as caesarean section rate and utilization of computerized tomography.

Two main sources of data are available to clinicians in public hospitals for the purpose of conducting medical audit: those relating to hospital activities like unplanned re-admission rate and duration of stay can be generated from the computerized Patient Administration System, while others relating to specific clinical specialties can be gathered either through the development of Department Clinical Information Systems or from the analysis of patients records or discharge summaries.

