

ICAC BRIEFINGS

*T*he Committee spent two days receiving briefings from officers of the Hong Kong ICAC - Monday 13 and Tuesday 14 April. Monday started with a discussion between the Chairman of the Committee and the Commissioner, Mr Peter Allan. This was followed by a full day of briefings from the Operations Department. Tuesday morning was spent with the ICAC's Corruption Prevention Department and Tuesday afternoon with the Community Relations Department. The briefings with the ICAC concluded with a cocktail party at which the Committee met with members of the ICAC's Advisory Committees.

OPERATIONS DEPARTMENT

The briefings from the senior staff of the Operations Department began with a video on the organisation and work of the department. This video included descriptions of a number of the ICAC's more celebrated investigations. Other matters of interest raised in the video were the training programs for investigative staff offered by the Operations Department Training School and the development of panels of professionals (such as accountants) who are prepared to provide advice to the Department and its investigators. The Training School offers 24 full time courses ranging from recruit training and refresher courses for investigators to command courses and training in interview techniques. Officers from various Government Departments in Hong Kong attend these courses as have overseas officers (including from the Australian Customs Service). The Panel of Accountants was established with the assistance of the Hong Kong Society of Accountants. It includes 11 volunteer accountants who have been prepared to provide advice to ICAC investigators in respect of complex banking, insurance, stockbroking and import/export matters under investigation. Investigating officers directly contact members of the panel in order to seek advice in appropriate cases.

The Committee then received a briefing from the Director of Operations, Mr Graham Stockwell OBE, on a number of current issues. These included the affects of the Bill of Rights, the process of localisation of the Operations Department, and the ICAC's increasing workload in respect of electoral matters in the context of democratisation. He also spoke about the role of the Operations Review Committee (ORC). He asserted that the ORC is not a rubber stamp, that it is a very real accountability mechanism. He said that Assistant Directors and investigators regularly appear before the Committee to answer questions.

The Deputy Director of Operations, Mr Jim Buckle, then addressed the Committee. He will become Director of Operations when Mr Stockwell retires later this year. Mr Buckle spoke in some detail about the accountability mechanisms which operate in relation to the Department and the Department's internal monitoring mechanisms. In relation to the ORC, he noted that the ICAC conducts security checks on proposed members before they are appointed. In relation to complaints about ICAC staff, Mr Buckle said there were two different approaches depending on the source of the complaint. Complaints from members of the police go before the Complaints Review Committee, a high powered Committee which subjects the ICAC to quite intense scrutiny in respect of complaints. Mr Buckle emphasised that, although this committee could make things quite difficult for the Commission, the ICAC accepted that it played an extremely valuable role. In addition to this committee Mr Buckle noted that the Operations Department included an internal monitoring group, which works direct to him as Deputy Director of Operations. He said that in dealing with wrong-doing within the ICAC it was important for the Commission to be able to dismiss staff without giving reasons.

The Committee then received briefings from each of the four Assistant Directors of the Operations Department. Each of these Assistant Directors heads an investigation branch, which includes a number of investigative groups covering particular areas of Government or the private sector.

The first of these briefings was from Mr (Tony) KWOK Man-wai, the head of Investigation Branch 1, which has responsibility for the investigation of public sector matters generally, including the Royal Hong Kong Police. He pointed out that in recent years most complaints about police corruption concerned lower level police officers than in the 1970's. Furthermore, complaints about police corruption were now regularly referred to the ICAC by senior police. In relation to public servants generally, he noted that the most useful investigative tool had been the power under s.10 of the Prevention of Bribery Ordinance concerning the need for public servants living beyond their means to be able to justify their assets.

The second Assistant Director of Operations to address the Committee was Mr (Alex) TSUI Ka-kit, the head of Investigation Branch 2. Investigation Branch 2 has responsibility for investigating private sector corruption. He said that the key issue in investigations into private sector corruption in Hong Kong is whether or not a principal of a company has authorised the acceptance of a commission or other advantage by a staff member. In effect, the principal of a company must be able to confirm that such commissions or advantages are not allowed before there can be a prosecution of a staff member for accepting an illegal commission.

The Committee then received a briefing from the head of Investigation Branch 3, Mr Mike Bishop. This branch has a range of responsibilities including complex

corruption related fraud matters (eg. large banking fraud), other complex corruption investigations which require the establishment of task forces, liaison with the People's Republic of China and intelligence. In relation to intelligence Mr Bishop described in general terms the sources of the ICAC's intelligence and the work of "G group" in analysing and assessing this intelligence. On the subject of liaison with the People's Republic of China he outlined the links which had been established with the Quandong People's Provincial Procuratorate.

OPERATIONS REVIEW COMMITTEE

After lunch in the ICAC Staff Club mess the Committee received a very detailed briefing on the Operations Review Committee from Mr Peter Graham. Mr Graham is the head of Investigation Branch 4 and was the Secretary to the Operations Review Committee. Mr Graham outlined the process by which a complaint is investigated, from its receipt in the ICAC Report Centre through to either prosecution or review by the Operations Review Committee (ORC).

Complaints or reports of possible corruption are received 24 hours a day throughout the year in the Operations Department Report Centre. Complaints may be received directly in the Report Centre, by telephone, personal visit or in writing, or through one of ICAC's eight local offices. Every day the Report Centre compiles a report sheet which summarises all incoming complaints/reports. Once a complaint is logged on one of these report sheets it cannot be removed (that is, an investigation cannot be stopped) until it has either reached the courts in a prosecution or it has been reviewed by the Operations Review Committee.

These report sheets are considered each day at a morning meeting of the senior officers of the Operations Department, along with the Commission's Chief Press Information Officer. A decision is taken at these meetings whether a complaint is to be investigated by the ICAC or referred to another government department. Referrals to other government departments are usually made within 24 hours. Complaints are acknowledged and complainants informed either by the ICAC or the other department concerned of the outcome of the investigation.

The terms of reference and membership of the Operations Review Committee (as at 31 December 1990) appear on the next page. In addition to receiving reports from the ICAC on all investigations and prosecutions, the ORC advises the ICAC on how to pursue cases which are not to be the subject of prosecutions. The Committee meets every six weeks on a Wednesday. In 1991 the ORC met eight times and advised on 140 reports covering 263 investigations which had not resulted in prosecutions. In order to ensure that the Committee does not become overwhelmed with paperwork and bogged down dealing with minor matters, a sub-committee meets on the Monday two days before the ORC meeting to consider reports on minor investigations and matters which are impracticable to review. In 1991, 1073 reports

on minor investigations and 679 reports on matters which were impracticable to pursue were considered. This sub-committee is chaired by one of the non ex-officio (unofficial) members of the ORC.

**TERMS OF REFERENCE AND MEMBERSHIP OF
THE OPERATIONS REVIEW COMMITTEE AS AT
31 DECEMBER 1991**

Terms of Reference

- (1) To receive from the Commissioner information about all complaints of corruption made to the Commission, and progress reports on the manner in which the Commission is dealing with them.
- (2) To receive from the Commissioner reports on the investigations the Commission has completed and to advise on how those cases that on legal advice are not being subject to prosecution or caution, should be pursued.
- (3) To receive from the Commissioner reports on the results of prosecutions of offences within the Commission's jurisdiction and of any subsequent appeals.
- (4) To advise the Commissioner on what information revealed by investigations into offences within its jurisdiction shall be passed to Government departments or public bodies, or other organisations and individuals, OR, where, in exceptional cases, it has been necessary to pass such information in advance of a Committee meeting, to review such action at the first meeting thereafter.
- (5) To advise on such other matters as the Commissioner may refer to the Committee or on which the Committee may wish to advise.

Membership

Commissioner of the Independent Commission Against Corruption
(*Chairman ex-officio*)

Mr Denys E Connolly, OBE, JP

The Hon LAU Wah-sum, OBE, JP

The Hon Eric LI Ka-cheung

Mr YEUNG Po-kwan, OBE, CPM, JP

Mr Peter WONG Po-kei

The Hon Simon IP Sik-on, JP

Attorney-General (or his representative) }

Commissioner of Police (or his representative) }

Director of Operations (or his Deputy) }

Secretary: *An officer of the ICAC* }

(*ex-officio*)

Once the ORC advises that a complaint either has not been substantiated or should not be further investigated, letters are sent to the subject of the complaint advising of this fact. Copies of sample letters are reproduced on the next two pages.



INDEPENDENT COMMISSION
AGAINST CORRUPTION

總督特派廉政專員公署

File Ref:

[date]

Dear Sir,

Under Section 12(a) of the Independent Commission Against Corruption Ordinance, Cap 204, the Commissioner of the ICAC is required to receive and consider complaints alleging corrupt practices and investigate such of these complaints as he considers practicable.

As you are aware, a complaint was made against you and the Commission was obliged by law to investigate the complaint.

The investigation is now complete, and a report has been laid before the Operations Review Committee. The Committee has agreed that the allegation has not been substantiated and has advised that no further investigative action by the ICAC is justified. The Commissioner has accepted this advice.

I am directed to inform you of this fact and to express regret for any inconvenience caused as a result of the investigation.

Yours faithfully,

(J.N.Parkinson)
Secretary
Operations Review Committee

[Name & Address]

Operations Department, Murray Road Carpark Building, 8th-10th floors, 2 Murray Road, Hong Kong Tel:
GPO Box 1000 Telex: 65198 ICAC HX Cable: ICAC HK Fax:
執行處 香港美利道美利道停車場大廈九至十一樓 香港郵政總局信箱 1000 號 專用電訊：65198 ICAC HX
電報掛號：ICAC HK 電話： 圖文傳真：



INDEPENDENT COMMISSION
AGAINST CORRUPTION

總督特派廉政專員公署

File Ref:

[date]

Dear Sir,

Under Section 12(a) of the Independent Commission Against Corruption Ordinance, Cap 204, the Commissioner of the ICAC is required to receive and consider complaints alleging corrupt practices and investigate such of these complaints as he considers practicable.

As you are aware, a complaint was made against you and the Commission was obliged by law to investigate the complaint.

The investigation is now complete, and a report has been laid before the Operations Review Committee. The Committee has advised and the Commissioner, ICAC has agreed, that on the basis of the facts now known, no further investigative action by ICAC of that complaint is justified.

Yours faithfully,

(J.N.Parkinson)
Secretary
Operations Review Committee

[Name & Address]

Operations Department, Murray Road Carpark Building, 8th-10th floors, 2 Murray Road, Hong Kong Tel:
GPO Box 1000 Telex: 65198 ICAC HX Cable: ICAC HK Fax:
執行處 香港美利道美利道停車場大廈九至十一樓 香港郵政總局信箱 1000 號 專用電訊：65198 ICAC HX
電報掛號：ICAC HK 電話： 圖文傳真：

INSPECTION OF OPERATIONS DEPARTMENT PREMISES

Following the detailed briefing from Mr Graham on the Operations Review Committee and considerable discussion on this subject, the Committee received a tour of the Operations Department premises. This included the Reports Centre, the Identity Parade Room and the Detention Centre. Of most interest was the inspection of the ICAC's facilities for the video interviewing of suspects. The ICAC began an experiment in video taping interviewing of suspects on 01 March 1989 and continued this experiment through 1990. A detailed report on this experiment was produced in June 1991 which concluded that the experiment had been successful. (The Committee has a copy of this report.) It also concluded that the ICAC's system of video interviewing was in the process of acceptance and had become a part of the ICAC investigation and prosecution process, that the quality of evidence had improved and that disputes over the admissibility of evidence had decreased. The Committee was certainly impressed by what it saw in terms of the physical facilities for the video taping of interviews of suspects.

CORRUPTION PREVENTION DEPARTMENT

Tuesday 14 April began with the Committee receiving a briefing from the ICAC's Director of Corruption Prevention, Mr Tony Scott. Mr Scott spoke first about the staffing and structure of the Corruption Prevention Department. He said the department included 45 professional staff, with two-thirds of the departments staff being at the same level as a Police Superintendent or senior to this level. These staff come to the ICAC with considerable experience, often in Government, and work on contract. In relation to the Department's work he said that matters were regularly referred from the Operations Department, and that the department also responded to approaches for assistance. The department is also advised of new legislation and asked to comment on it from a corruption prevention viewpoint before it is introduced. Mr Scott said that most draft reports were aimed to be completed within 3 months. The final recommendations were made confidentially to client departments. He said the Department was currently considering the question of introducing a user-pays system for its advice, particularly in respect of the private sector.

There was considerable discussion about the role of the Corruption Prevention Advisory Committee. Reproduced on the following pages are the terms of reference and membership of the Corruption Prevention Advisory Committee (effective as 31 December 1990) together with a list of the reports presented to the Committee in 1990. The Committee has a number of important roles including advising the ICAC on further action to be taken in relation to corruption prevention reports. The Committee includes 12 unofficial members, who may serve up to 3 one-year terms. These unofficial members come from a range of professional backgrounds. The

Committee meets once a month. In 1990 it considered 90 reports. Each paper is assigned specifically to one or two members to read before-hand so they can comment in some detail at the meeting. A sub-committee meets about six times a year to advise on priorities for the Corruption Prevention Department.

**TERMS OF REFERENCE AND MEMBERSHIP
OF THE CORRUPTION PREVENTION ADVISORY COMMITTEE
AS AT 31 DECEMBER 1990**

Terms of Reference

- (1) To receive and call for reports from the Commission about practices and procedures of Government departments, public bodies and the private sector which may be conducive to corruption and to advise the Commissioner what areas should be examined and the degree of priority to be accorded to each.
- (2) To consider recommendations arising from such examinations and to advise the Commissioner on further action to be taken.
- (3) To monitor action to implement recommendations made on the advice of the Corruption Prevention Advisory Committee.

Membership

Commissioner of the Independent Commission Against Corruption
(*Chairman ex-officio*)

Mr Ronald CHAN Tat-hung

Mr Cowen B C CHIU

Mr G L CREW

Mr Wyman LI

Mr John F MCMEEKAN

Mr Peter NGUYEN

Mr E W D RADCLIFFE

Mr L L THOMPSON

Mr TSANG Chiu-kwan

Mr Peter WONG Po-kei

Mr Thomas WONG Kam-chuen

Secretary for Constitutional Affairs

(or his representative) }

Commissioner of Police (or his representative) } (*ex-officio*)

Director of Corruption Prevention }

Secretary: *An officer of the ICAC* }

CORRUPTION PREVENTION DEPARTMENT
ASSIGNMENT AND MONITORING REPORTS PRESENTED TO THE
CORRUPTION PREVENTION ADVISORY COMMITTEE IN 1990

<i>Client</i>	<i>Subject Area</i>	<i>Type of Report</i>
I Government Departments		
Agriculture and Fisheries	Control of ivory	Assignment
	Veterinary Health Certificates for Export of food and animal by-products	Assignment
	Allocation of parking spaces in temporary wholesale markets	Assignment
Agriculture and Fisheries and Buildings and Lands	Crop compensation in land resumption	Assignment
City and New Territories Administration	Supervision of Minor Works Projects	Monitoring
Civil Aviation	Security of examination paper for Professional Pilots' Licence	Assignment
Correctional Services	Security of visit	Assignment
	Private food/clothing for remand inmates	Assignment
	Property procedure	Assignment
Customs and Excise	Examination of containerised sea cargo	Assignment
	Cargo processing at Mankamto, Shataukok and Lokmachau Control Points	Assignment
Drainage Services	Survey of Duties and functions of Drainage Services Department	Assignment

<i>Client</i>	<i>Subject Area</i>	<i>Type of Report</i>
Education	Appointment, promotion and termination of service of aided school teachers	Assignment
	School-based curriculum project scheme	Assignment
	Management of Adult Education Centres	Assignment
	Kindergarten Fee Remission Scheme	Assignment
Electrical and Mechanical Services	Survey of duties and functions of Gas Standards Office	Assignment
	Gas Standards Office - Approval of gas fittings	Assignment
Environmental Protection	Noise Legislation - Control and enforcement procedures	Assignment
	Enforcement of the Waste Disposal (Livestock Waste) Regulations	Assignment
	Marine Dumping Licence	Assignment
Environmental Protection/ Trade	Licensing and quota procedures for the control of chlorofluorocarbons	Assignment
Government Secretariat	The UK Construction Industry (with Hong Kong comparison)	Assignment
	Appointment and control of consultants through the Central Consultancy Selection Board	Assignment
Government Supplies and Electrical and Mechanical Services	Disposal of unserviceable goods	Assignment
Government Supplies/ Water Supplies	Supply of stores for waterworks	Assignment
Highways	Computerisation of the measurement and financial control of maintenance works	Monitoring

<i>Client</i>	<i>Subject Area</i>	<i>Type of Report</i>
Housing	Administration of the Home Purchase Loan Scheme	Assignment
	List of building contractors - Performance Assessment Scoring Scheme	Assignment
	Management of flatted factories	Monitoring
	Control of hawkers in public housing estates	Assignment
	Implementation of the Housing Subsidy Policy	Assignment
Immigration	The work of the Immigration Microfilm Records Office	Assignment
	Security of Watch Lists and Special Interest Indices	Assignment
	Issue of entry permits and re-entry visas to Taiwanese visitors	Monitoring
	Procedures for processing applications under the importation of Labour Schemes	Assignment
Industry	Hong Kong Laboratory Accreditation Scheme	Assignment
Inland Revenue	Assessment of property tax	Assignment
Judiciary	The work of the Supreme Court Registry	Assignment
	Supreme Court - The work of the Clerk of the Court's Office	Assignment
	The work of the Supreme Court Accounts Office	Assignment
Labour	Work of the Pressure Equipment Division, Report 1: Appointment and control of Appointed Examiners	Assignment
	Work of the Pressure Equipment Division, Report 2: Examination and control of	

<i>Client</i>	<i>Subject Area</i>	<i>Type of Report</i>
	competent Persons	Assignment
Legal	Prosecutions Division - Assignment of Counsel	Monitoring
	Prosecution procedures in magistrates' court	Monitoring
Legal Aid	The work of Legal Aid Assistants	Monitoring
Marine	Work of the Seamen's Recruiting Office	Assignment
	Functions and procedures of Marine Department Tender Board	Assignment
	Control and issue of Macau and China Ferry Terminal passes	Assignment
Post Office	Procedures for speedpost	Assignment
	Approval and allocation of overtime duty in Postal Service Branches	Assignment
Printing	Functions and procedures of the Printing Department Tender Board	Assignment
Regional Services	An overview	Assignment
Registrar General's	Official Receiver's Office - Investment of funds	Assignment
Royal Hong Kong Police Force	Policy and procedures for the issue and control of Frontier Closed Area Permits, Closed Road Permits and Curfew Passes	Monitoring
	An overview of past and future studies	Assignment
	Procedures in Accident Investigation Units	Assignment
Social Welfare	Control of procurement and payment procedures of subvented agencies	Assignment

<i>Client</i>	<i>Subject Area</i>	<i>Type of Report</i>
Transport	Franchised Public Light Buses (Maxicab) services	Monitoring
	Examination of franchised buses	Monitoring
	Review of driving test procedures	Assignment
	Private car testing procedures at designated car testing centres	Assignment
Urban Services	Corruption prevention review and profile	Assignment
Works Branch	Administration of lists and approved contractors	Assignment
Works Branch and Housing	Site supervision of works projects (Works Department)	Assignment
	Site supervision of works projects, 4th Assignment Report (Architectural Services Department)	Assignment
	Site supervision of works projects, 5th Assignment Report (Summary and comparison)	Assignment
II Public Bodies		
China Light and Power Co Ltd	Acceptance of and payment for goods	Assignment
City Polytechnic of Hong Kong	Maintenance and minor works	Assignment
Hong Kong Polytechnic	Maintenance and minor works	Assignment
Open Learning Institute of Hong Kong	Student admission procedures	Monitoring
Provisional Hospital Authority	Review of personnel policy and procedure manual	Assignment

<i>Client</i>	<i>Subject Area</i>	<i>Type of Report</i>
The Community Chest of Hong Kong	Allocation and administration of funds	Assignment

***CORRUPTION PREVENTION DEPARTMENT INFORMATION REPORTS
PRESENTED TO THE CORRUPTION PREVENTION ADVISORY COMMITTEE
IN 1990***

<i>Client</i>	<i>Subject Area</i>
Buildings and Lands	Kowloon Walled City - panel on unregistered medical and dental practitioners
Environmental Protection	Livestock Waste Control Scheme
Government Secretariat	Control of real estate agents
Housing	Reorganisation and implementation of Integrated Information System in the Housing Management Branch
Immigration	Private Consultancy Report on the Strategic Review of Information System in the Immigration Department
Post Office	Postal Service Branches - Management review
Transport	Appointment Booking Computer System
-	Advisory Services Group activities, CPD, ICAC
-	Review Groups on electoral arrangements for the Legislative Council, District Board and Municipal Council elections.

Mr Scott was frank on his assessment of the effectiveness of the Corruption Prevention Advisory Committee. He said that it was sometimes frustrating that recommendations in reports were altered by the Committee when members may have a limited understanding of the issues involved - at least more limited than that of the officer who had prepared the report. However, he was convinced that the benefits of the Committee far outweighed the disadvantages. Members brought considerable expertise, professional experience and common-sense to the Committee. The Committee imposed a structure and discipline upon the work of the Corruption Prevention Department (eg. deadlines). The Committee was also important in terms of community participation in this area of the ICAC's work. Finally, the Committee could sometimes be referred to in justifying work to clients.

The Committee then received briefings from the two Assistant Directors of the Corruption Prevention Department and a number of Group heads and their staff. Assistant Director, Corruption Prevention 1, Doug Roots, and Group Head, Thomas CHAN briefed the Committee on the key problems within government administration which the ICAC saw as providing opportunities for corruption. They emphasised the importance of the environment created by legislators in terms of non-enforceable laws placing law enforcement officers in the position of having too much discretion. They also spoke about bureaucratic delays leading to corruption, the need for staff instructions and departmental policies to be clear, and the need for procedures to be transparent. Assistant Director Corruption Prevention 2, Alastair Carstairs, and Senior Assignment Officers, Dominic WONG and Ray Bange, then outlined the department's work in the public works and construction areas. Recent work in this area has covered the Public Works Departments lists of approved contractors, including the administration of the lists, the monitoring of tendering systems, and methods to place reasonable limits on the extent of sub-contracting. Other projects discussed included improvement of site supervision of contractors performance on major Government building sites. Each of those who briefed the Committee were interested in the work of the NSW Building Industry Royal Commission. In view of the democratisation process in Hong Kong and the ICAC's increasing workload in relation to electoral matters, they were also very interested in the work of the Joint Select Committee on the Process and Funding of the Electoral System.

COMMUNITY RELATIONS DEPARTMENT

On the afternoon of Tuesday 14 April the Committee received briefings from the Director of the Community Relations Department, Mr Leo KWAN, and the two Assistant Directors, Benjamin TANG and Eddie SO. They gave an outline of the work of the department and also discussed the Citizens Advisory Committee on Community Relations. They asserted that an aggressive public education program was an essential part of a strategy to foster sustained intolerance of corruption. The Community Relations Department has 17% of the ICAC's staff and 18% of its overall budget. They identified four targets of the ICAC's preventive education program:

- 1 Young People: All school students receive at least one lesson on the ICAC and corruption as part of their social science syllabus. One problem raised was the fact that the ICAC is now in competition with many other government agencies seeking to get their messages into the classroom, through teachers. (Competitors include health authorities with anti-smoking programs and environmental protection authorities with anti-pollution messages.) The department aims to send a speaker to address each graduating class from both High Schools and colleges.
- 2 Public Servants: The department seeks to address each group of new public servants during their induction programs, as well as selected groups of newly promoted public servants who assume a supervisory role (eg. Police Sergeants).
- 3 Private Sector: The department has received increasing co-operation and interest in its work from the private sector since the bank collapses in Hong Kong in 1983/84. A recent strategy of the department has been the preparation of industry specific manuals which include relevant case studies and draft anti-corruption guidelines. Marketing letter for these packages are sent out by direct mail, with follow-up telephone contact made by officers with the requisite training and expertise to go and speak with company managers and their staff. The objective is to work with interested companies to assist them to develop corruption prevention programs.
- 4 Elections: The democratisation process has resulted in the department becoming increasingly involved in briefings and the preparation of explanatory material on the relevant anti-corruption laws for election candidates, their agents and voters generally.

The Committee was then briefed on the department's publicity work which seeks to project the image of the ICAC and keep the issue of corruption at the forefront of the community. The Committee was shown a number of examples of the ICAC's TV advertisements ("Announcements of Public Interest") and drama series on completed ICAC investigations. The Committee was provided with a video-tape of some of these.

There was considerable discussion about the role and functions of the Citizens Advisory Committee on Community Relations. This Committee's terms of reference and membership are reproduced on the next page. The members include educationalists, publicists and media representatives. It was put to the Committee that the Citizens Advisory Committee on Community Relations enabled considerable expertise to be brought to bear not only in an advisory capacity, but also in terms of the committee members becoming involved in projects. The Committee's work is largely conducted through its four functional sub-committees, each of which is chaired

by an unofficial member. These are the Community Liaison; Community Research; Mass Media; and Public Education sub-committees.

**TERMS OF REFERENCE AND MEMBERSHIP OF THE
CITIZENS ADVISORY COMMITTEE ON COMMUNITY RELATIONS
AS AT 31 DECEMBER 1990**

Terms of Reference

- (1) To advise the Commissioner of the Independent Commission Against Corruption the measures to be taken to foster public support in combating corruption and to educate the public against the evils of corruption.
- (2) To receive and call for reports on action taken by the Community Relations Department of the Commission in pursuance of (1) above.
- (3) To monitor community response to the Commission's work and public attitudes towards corruption in general.

Membership

Commissioner of the Independent Commission Against Corruption
(*Chairman ex-officio*)

Mr AU YEUNG Ying-cheong
Miss Cecilia CHAN Lai-wan
Mr CHAN Wing-tai
Miss Annie CHENG
Mr Peter CHOI Pak-cheung
The Hon CHUNG Pui-lam
Mr FUNG Yee-wang
Dr KUAN Hsin-chi
Mr Lawrence LAM Yin-ming
Dr Michael LUK Yan-lung
The Hon POON Chi-fai
Mr TANK Kwai-nang
Miss Carlye W L TSUI
Miss Dorothy WONG Man-wah
Mr Jonathan YU Hoy-gin
Director of Community Relations }
Secretary: An officer of the ICAC } (*ex-officio*)

The Committee was then taken to the Hong Kong East Regional Office of the ICAC which is in the Wan Chai district of Hong Kong Island. The Committee was conducted on a tour of the office and received a detailed briefing on its work. The ICAC has eight regional offices, which receive complaints and serve as an interface between the ICAC and community organisations at the local level. The Committee was impressed by the work of Regional Offices in actively contacting local companies to promote the industry specific anti-corruption packages referred to above. The Committee was given samples of the anti-corruption packages prepared for the building industry and real estate agents.

The Committee's two days with the ICAC concluded with a function at the Royal Hong Kong Yacht Club. The ICAC invited members of the various ICAC advisory committees to this function. This provided Committee members an opportunity to explore, in a non-official setting, issues concerning the ICAC's accountability with advisory committee members. It was also the venue for some official presentations between the Committee Chairman and the Commissioner of the ICAC.

G GROUP

Later in the week the Committee Chairman, Malcolm Kerr MP, together with Peter Nagle MP, Bryce Gaudry MP and the Committee's Project Officer, returned to the ICAC to meet with officers of G Group. The Committee's delegation met with the head of G group, Tony Godfrey. G Group is the unit within the ICAC's Operations Department which has responsibility for collating, monitoring and assessing the intelligence which the Commission receives. Consequently the group is involved in liaising with other Government agencies and overseas agencies, and managing informants. Furthermore the group receives information on complaints which come into the Operations Department, including all non-pursuable (often anonymous) complaints.

The Committee delegation was most interested in the strategic intelligence work of G Group. Mr Godfrey described in general terms the methods used by G Group in assessing its intelligence holdings and identifying trends. They said that two basic steps were involved. The first was the codification of information and its input into a properly developed computer program. They indicated that the ICAC had developed its own programs for this purpose. The second step was one of reading and analysis, which involved hard, painstaking work, looking for trends. Significantly, they said that there was no threshold level of intelligence required before trends could begin to be identified in this way. The end result of this work includes the preparation of profiles of certain areas of Government activity or departments, the identification of individuals requiring proactive targeting, and the identification of trends in corruption. Jim Buckle gave a paper at the Fifth International Anti-Corruption Conference which described trends in corruption in Hong Kong and identified what the ICAC saw as the

key corruption issues in Hong Kong over the next few years.

GOVERNMENT OFFICIALS

On Wednesday 15 April the Committee met with a number of key Hong Kong Government officials to seek their views on the ICAC, particularly its effectiveness and accountability.

OMBUDSMAN AND POLICE COMPLAINTS COMMITTEE

The first of these meetings was with the Commissioner for Administrative Complaints (Ombudsman), Mr Arthur Garcia, and the Secretary of the Police Complaints Committee, Mr NG Hon-wah. Also in attendance were two senior staff of the Police Complaints Committee and one from the Office of the Commissioner for Administrative Complaints. Mr Garcia began by outlining the role of the Office of the Commissioner for Administrative Complaints, which deals with complaints against fifty Government departments excluding the ICAC and Police. However, Mr Garcia is an ex-officio member of the specifically constituted committees which oversee complaints against these two agencies. At present complaints to the Ombudsman must be forwarded through Unofficial Members of the Legislative Council.

Mr NG then outlined the procedure by which complaints against Police are investigated in Hong Kong. This involves initial investigation by the Complaints Against Police Office (CAPO) within the Internal Investigations Branch of the Royal Hong Kong Police. Once the CAPO investigation is completed, all documents are referred to the Police Complaints Committee for review, initially by its Secretariat and then by the Committee itself. The Committee then either endorses the CAPO investigation or requires further work to be done. Action to be taken as a result of investigations is in the hands of the Police Commissioner and Attorney-General. The Police Complaints Committee was established in 1986 to relieve Unofficial Members of the Legislative Council of the high workload that had developed in relation to their oversight of police complaints.

There was considerable discussion during the meeting about the recent Hong Kong initiatives in relation to the procedures for dealing with minor complaints against Police, and the question of how sub-judice complaints should be dealt with. These issues were of particular interest to the Committee in view of the common membership of the ICAC and Ombudsman Committees. Indeed the members of the Ombudsman committee noted a significant degree of commonality in the approach being taken on these issues in Hong Kong and NSW. There was also considerable discussion about Mr Garcia's proposal for the Legislative Council to establish a select Committee upon the Office of the Commissioner for Administrative Complaints, and

the role of the Ombudsman Committee in NSW. This was a most fruitful meeting both for the Committee and for Mr Garcia and Mr NG. The Committee was given copies of recent annual reports and both the Commissioner for Administrative Complaints and the Police Complaints Committee and, like the other documents brought back, these are available for inspection in the office of the Committee Secretariat.

LEGISLATIVE COUNCIL

The Committee then proceeded to the Legislative Council chambers for a meeting with the following members of the Executive and Legislative Councils: Rt Hon Baroness Dunn; Hon Mrs Miriam LAU; Hon Emily LAU; Hon Andrew WONG; and Hon LAU Wah-sum.

This group included both appointed and elected members and represented a range of political opinions. The meeting began by the Committee Chairman outlining the role of the Committee and the NSW ICAC, and the reasons behind the Committee's visit. Baroness Dunn then gave an overview of the evolving role of the Legislative Council. She identified the key issues as an increasing separation between the Executive and Legislative Councils, and the development by the Legislative Council of its role in monitoring the administration. She said there was currently discussion about the development of a formalised committee system in the Council.

Baroness Dunn chairs the ICAC Complaints Committee, and was able to give a useful description of the work of that Committee. (The terms of reference and membership of the Complaints Committee are reproduced on the next page.) The Committee contains a number of members of the Executive and Legislative Councils. It receives between ten and twenty complaints each year. These range from rudeness of staff (eg. unsympathetic treatment of a complainant by a person taking details of a complaint over the telephone) to the release of the identity of an ICAC informer. Baroness Dunn said that, wherever possible, the committee sought to draw lessons or principles from particular complaints.

**TERMS OF REFERENCE AND MEMBERSHIP OF THE ICAC
COMPLAINTS COMMITTEE AS AT 31 DECEMBER 1990**

Terms of Reference

- (1) To monitor, and where it considers appropriate to review, the handling by the ICAC of complaints by anyone against the ICAC and officers of the ICAC.
- (2) To identify any faults in ICAC procedures which lead or might lead to complaints.
- (3) When it consider appropriate to make recommendations to the Commissioner of the ICAC, or when considered necessary, to the Governor.

Membership

The Hon Dame Lydia DUNN, DBE, JP (*Chairman*)

The Hon Allen LEE, CBE, JP

The Hon Peter POON, OBE, JP

Dr the Hon Henrietta IP, OBE, JP

The Hon Edward HO, JP

The Hon J F Mathews, CMG, JP

Dr WANG Gung-wu

Mr Wilfred CHAN, JP

Commissioner for Administrative Complaints

Joint Secretaries: *Secretary General of the OMELCO* } (*ex-officio*)
 Assistant Director/administration of the ICAC }

Mr LAU Wah-sum had until recently been a member of the Operations Review Committee. Mr LAU emphasised the role of the sub-committee which meets two days before the full ORC to consider non-pursuable complaints. He said that the ICAC cannot drop an investigation without referring the case to this sub-committee. He said the ORC played another valuable role by recommending alternative approaches to a complaint when the Attorney-General recommends against prosecution. In answer to a question from the Committee Mr LAU stated that he saw no conflict between his role on the ORC and his Legislative Council duties.

Emily LAU spoke about the ad-hoc Legislative Council Committee which is presently reviewing the ICAC ordinance and the Prevention of Bribery ordinance in view of the Bill of Rights. Some of the issues under consideration include: s.30 of the Prevention of Bribery ordinance which prohibits the media from publicising the identity of persons under investigation by the ICAC; s.10 of the same ordinance which places the onus of proof upon suspects to satisfactorily explain the source of their assets; and the ICAC's detention powers.

Each of the members of the Executive and Legislative Councils said there was strong community support for the ICAC. However, Emily LAU was concerned that the ICAC was insufficiently accountable. She also expressed concern about the use to which the ICAC may be put after 1997. There was considerable discussion about the role of the Parliamentary Joint Committee in NSW and support, at least from Emily LAU, for the establishment of such a committee in the Hong Kong Legislative Council.

Following this meeting, the Committee were guests at a lunch hosted by the Hon John Swaine, CBE, QC, Deputy President of the Legislative Council.

ATTORNEY-GENERAL

After lunch the Committee went to the Attorney-General's chambers and met with: the Attorney-General, Mr Jeremy Matthews; the Director of Public Prosecutions, Mr John Wood; the head of the Commercial Crime Unit of the Legal Department, Mr Clive Grosman; and an Australian who is working in the Commercial Crime Unit, Mr Mike McMahan. Mr Matthews began the meeting by describing the effects of the work of the Hong Kong ICAC over the last 18 years. He said there had been a perceptible generational change in attitude in Hong Kong so that corruption was now viewed as morally wrong. There was some discussion about the future of the Hong Kong criminal justice system after 1997 and also about the effects of the Bill of Rights on the ICAC.

The Commercial Crime Unit is the section of the Legal Department which advises on and conducts prosecutions arising from ICAC investigations. Mr Grosman and Mr

McMahon said that briefs received from the ICAC were of a high quality and they were very complimentary about the capabilities of ICAC investigators. They said the conviction rate for prosecutions arising from ICAC investigators was high. Cases which had been lost in the past had largely been lost due to concerns about statements or records of interview. This problem now appears to have been resolved by the introduction of video-recording of interviews of suspects.

ROYAL HONG KONG POLICE

The last meeting on Wednesday 15 April was with the following senior representatives of the Royal Hong Kong Police: Senior Assistant Commissioner R C Smallshaw, Director of Management and Inspection Services; Assistant Commissioner J S Main, Deputy Director Inspection Services; and Chief Superintendent J H Walker, Complaints and Internal Investigations Branch.

The meeting began with a briefing from Mr Smallshaw and Mr Main on the relationship between the Royal Hong Kong Police (RHKP) and the ICAC. It was stated that, unlike the situation in the 1970's, there is now a high level of liaison between the police and the ICAC and a generally close relationship. This relationship is fostered both through contact at the local level through ICAC regional offices and regional police commands and also through more formal structures. In terms of formal structures it was pointed out that the Police Commissioner is a member of the ORC and Mr Smallshaw is a member of the Corruption Prevention Advisory Committee. It was noted that there have been a number of joint ICAC/RHKP investigations in recent years into areas relating to organised crime. However, there is sometimes a blurring of the two agencies' roles and some overlap in investigations. An example cited was the current investigations into credit card fraud. Generally though jurisdictional issues are resolved and matters referred either in writing or by personal contact at a senior level on significant matters.

The discussion then turned to police corruption. The ICAC's work in the 1970's, particularly its use of its s.10 power concerning the justification of assets by public servants, had largely addressed the problem of syndicated corruption. The complaints dealt with by the ICAC nowadays were individual uses.

The discussion then focussed on the role of the Complaints Against Police Office (CAPO). The Committee was provided with copies of recent CAPO annual reports, and was particularly impressed by the detailed nature and sophistication of the statistics contained in these reports. (As with other documents brought back by the Committee, these reports are available in the office of the Committee Secretariat.) These statistics include breakdowns of the numbers of different complaints received by district, station and rank, as well as categories of complainants. This enables trends to be discerned. The Committee was also impressed by the success which had been achieved in the informal resolution of minor complaints of the level of 27%! It

was suggested that requiring a police officer to front to their local Superintendent over a complaint may have more effect than a CAPO investigation, and is likely to decrease the number of complaints in the future.

PRIVATE SECTOR

On the morning of Thursday 16 April the Committee met with a number of representatives of the private sector in Hong Kong. The purpose of these meetings was to enable the Committee to seek the views of these representatives on the ICAC's work in the private sector. This was seen to be particularly important in view of the major ICAC investigations into fraud and corruption in banks and other financial institutions in recent years. The most recent annual report described ICAC investigations into the Bumiputra/Carrian Group, the Ka Wah Bank, the Far East Bank and the Stock Exchange of Hong Kong Ltd.

BANKERS ASSOCIATION

The first representative private sector organisation the Committee visited was the Hong Kong Association of Banks. The Committee met with Mr Mark Waller, Chief Financial Officer of the Standard Chartered Bank (and alternate to the President of the Association) and Ms Grace Law, Assistant Secretary of the Association. Mr Waller gave an overview of the role of Bankers Association and indicated that it had very little to do with the ICAC. He said that he thought it was a common view that the ICAC was a force to be reckoned with, fiercely independent and basically had a free hand to investigate whatever it wished to investigate, including both minor and major matters in relation to the banking industry. He said the ICAC's work in the private sector was useful in terms of raising standards in areas such as the building industry. With regard to anti-corruption initiatives taken by the banking industry, Mr Waller said that each December an advertisement is circulated to bank staff warning them not to accept advantages. He also provided the Committee with a copy of the Association's guidelines to prevent and report money laundering.

STOCK EXCHANGE

The second representative private sector organisation that the Committee visited was the Stock Exchange of Hong Kong Ltd. The Committee met with the Chief Executive, Mr Paul Chow, and the Exchange's Director of Compliance, Mr Paul Phoenix. Mr Chow and Mr Phoenix said that ICAC staff annually address Stock Exchange representatives and that Exchange staff also talk to ICAC officers in order to inform them of developments at the Exchange. However, they said that the Exchange had more to do with the Commercial Crime Unit of the Legal Department than the ICAC itself. Mr Chow and Mr Phoenix gave the committee a frank (and strictly confidential) assessment of the ICAC's investigation into the Stock Exchange

Council in 1990 which resulted in the imprisonment of the former Chairman. They made it clear that the ICAC had certainly had an impact upon the private sector in its work over recent years. This was a most useful meeting.

ACADEMICS AND LAWYERS

*T*he Committee's program on the afternoon of Thursday 16 April was arranged with assistance of Mr Ian Dobinson, an Australian academic who is presently a Senior Lecturer in Law at the City Polytechnic of Hong Kong. Mr Dobinson arranged for the committee to have lunch with a senior member of the Hong Kong Bar Council, Mr Michael Lunn. Mr Lunn has appeared both for and against the ICAC in a number of cases and he was able to give the Committee an interesting insight into the ICAC. He was complimentary about the quality of the briefs he had received from the ICAC and he spoke favourably of the ICAC's move to video-tape interviews.

After lunch the Committee visited the University of Hong Kong a met with a number of academics. These included, from the Law faculty: Gary Heilbronn (Associate Dean), Professor Peter Wesley-Smith, Andrew Byrnes, Johannes Chan, Janice Brabyn, and Janet Burton; Dr Ian Thyne from the Political Science Department; and of course Ian Dobinson.

The academics indicated that there had been very little academic work carried out in relation to the Hong Kong ICAC. They attributed this to the fact that the ICAC was a secretive organisation about which little information was available. However, they did acknowledge that a large body of case law concerning the ICAC had built up over the last 18 years and that this would provide a significant amount of information for a study of the ICAC. Mr Johannes Chan and Mr Andrew Byrne edit the "Bill of Rights Bulletin" which compiles information on cases arising from the introduction of the Bill of Rights. Such cases obviously include a number concerning the ICAC.

Much of the discussion with the academics focussed on the ICAC's accountability. A number of the academics identified a difference between consultation and accountability, and suggested the ICAC's advisory committees were consultative rather than accountability mechanisms. They expressed concern that the ICAC's finances were not subject to any effective form of Parliamentary scrutiny. They said that the ICAC's accountability had to be viewed in the context of more fundamental questions of the structure of Government and level of democracy in Hong Kong.

Professor Peter Wesley-Smith has subsequently sent the Committee a detailed bibliography of materials on the Hong Kong ICAC. This has been reproduced as an appendix to this report.