SECOND REPORT

OF

THE COMMISSION OF INQUIRY

UNDER

SIR ALASTAIR BLAIR-KERR

Hong Kong

September 1973

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COMMISSIONS OF INQUIRY ORDINANCE CAP. 86

SECOND REPORT OF THE COMMISSION OF INQUIRY APPOINTED ON 13TH JUNE 1973 BY THE GOVERNOR IN COUNCIL, IN EXERCISE OF THE POWERS CONFERRED BY SECTION 2 OF THE COMMISSIONS OF INQUIRY ORDINANCE CAP. 86

1. Annexed to this report and marked "A" is a copy of the instrument appointing me Commissioner to inquire into the matters set out in paragraph 2 of the instrument, being, in the opinion of the Governor in Council, matters of public importance. The report of the Commission dated 3rd July 1973 dealt with the first of these matters, namely the circumstances in which a police officer named Peter Fitzroy GODBER, whose prosecution for an offence under section 10 of the Prevention of Bribery Ordinance was at an advanced stage of consideration, was able to leave Hong Kong. This second, and last, report deals with the remaining matters falling within the Commission's terms of reference, that is to say,

> "in the light of experience of the working of the Prevention of Bribery Ordinance, and having regard also to the need to preserve basic human rights under the law",

the Commission is required to:—

> "(i) report on the effectiveness of the Prevention of Bribery Ordinance and suggest amendments;
> (ii) suggest any other changes in current arrangements considered necessary."

2. The expression "current arrangements" appears to include all the existing machinery by which the provisions of the Ordinance are applied and enforced, namely the Anti-Corruption Office of the Royal Hong Kong Police Force, the Advisory Committee on Corruption and the Target Committee on Corruption. It would therefore appear that the Commission is required to examine this machinery; and, if any changes are considered desirable, to make appropriate recommendations.

3. I shall also assume that the machinery for dealing with Crown servants, as a matter of internal discipline, is included in the expression "current arrangements"; and that this calls for an examination of Colonial Regulations 54–66, and also compulsory retirement in accordance with the provisions of subsection (2) of section 8 of the Pensions Ordinance Cap. 89.

4. My inquiries regarding the matters covered by the second term of reference did not involve any public hearings. I made several appeals through the news media for information which might be of some assistance; but, perhaps not surprisingly, this elicited little of direct value having regard to the terms of reference. However, I also addressed letters to a considerable number of individuals and official bodies. These included members of the Executive, Legislative and Urban Councils, the Heads of a number of Government departments, the City District Officers, and members of both branches of the Legal Profession in private practice. The response to these letters has been fairly good, and I take this opportunity of thanking those who have so kindly written to the Commission.

I also had informal discussions with the following:—

Mr. F. de F. STRATTON, O.B.E.	Principal Crown Counsel.
Sir Ronald HOLMES, C.M.G., C.B.E., M.C., E.D., M.A.	Chairman, Public Services Commission.
Mr. Charles P. SUTCLIFFE, C.B.E., Q.P.M., C.P.M., J.P.	Commissioner of Police.
Mr. Christopher J. R. DAWSON, Q.P.M., C.P.M., J.P.	Deputy Commissioner of Police.
Mr. Desmond O'Reilly MAYNE, Q.C.	Director of Legal Aid.
Mrs. Elsie ELLIOTT	Member of the Urban Council.
Mr. Patrick YU	Barrister-at-Law.
Mr. A. SANGUINETTI	Barrister-at-Law.
Mr. Raymond MOORE	Solicitor, Deacons.
Mr. W. TURNBULL	Solicitor, Deacons.
Mr. Norman BARRYMAINE	Publisher.
Mr. MAK Pui-yuen Mr. MAK Ping-on	Members of the public.

Mr. SCEATS, Counsel for the Commission, also had interviews with members of the Target Committee, the Commissioner of Police, and the Director of the Anti-Corruption Office; and he reported to me on the substance of those interviews.

5. The main sources of information as to the history of the present Prevention of Bribery Ordinance were the Attorney General's legislation files. As regards the working of the Ordinance since it came into force in May 1971 and the organization of the Anti-Corruption Office, my main source of information was a report by the Director of the Anti-Corruption Office—Mr. MORRIN. Initially, a good deal of time was spent studying a considerable number of investigation files; but I found that it was quite impossible for me, in the time available, to do anything in the nature of a "case audit" covering a period of over 2 years. However, I was able to digest sufficient material to enable me to form definite views as to how the Ordinance might, with advantage, be amended in a number of respects. I shall also make certain recommendations regarding Colonial Regulations 54–66, as read with section 8 of the Pensions Ordinance. I shall also express a view as to the future of the Anti-Corruption Office, the Advisory Committee on Corruption and the Target Committee on Corruption. As regards those aspects of my inquiries, I am much indebted to the Establishment Secretary and the Attorney General who have made available to me, for perusal, a number of their files.

Current Arrangements

The Ordinance—its history

6. Bribery of public officers has always been an offence; and the Common Law is well summarised in Russell on Crime (12th Ed.) Vol. I. The learned editors say (p. 381):—

> "Bribery is the receiving or offering any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity . . . It is an indictable misdemeanour at common law to bribe or to attempt to bribe any person holding a public office, and for any person in an official position corruptly to use the power or interest of his position for rewards or promises, by asking for or accepting a bribe . . . It is immaterial whether the office is an office of state, or in a public department, or is judicial, or ministerial, or municipal, or parochial."

7. The common law of England has been in force in Hong Kong since 1843; but in 1898 the Legislature thought fit to enact the Misdemeanours Punishment Ordinance, sections 3 and 4 of which appear to have done no more than put into convenient statutory form the common law rules summarized in Russell.

8. That was the state of the law in Hong Kong until 1948 when it was decided to incorporate into our statute law the main provisions of the statute law of England dealing with corruption. These were, to a large extent, embodied in the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916. And so, the Hong Kong Legislature enacted the Prevention of Corruption Ordinance which was Cap. 215 in the "Griffin" (1951) Edition of our laws. A copy of that Ordinance is annexure "B" to this report.

9. After some years, it became evident that Cap. 215, modelled as it was on English legislation, was making no real impact on the problem of corruption in Hong Kong. As a result of representations made by the Commissioner of Police, it was decided that officers should visit Singapore and Ceylon to report on the anti-corruption laws in force in these countries. The Hon. D. T. E. ROBERTS (Attorney General) visited Ceylon and reported to the Governor on 18th April 1968. Mr. F. T. M. JONES (Crown Counsel) and Chief Superintendent J. C. LAW (then officer in charge of the Anti-Corruption Branch of the Royal Hong Kong Police Force) visited Singapore. Mr. JONES' report is dated 13th March 1968. Mr. LAW's report is dated 6th April 1968.

10. Following receipt of these reports, on 2nd May 1968 a working party was appointed. Its terms of reference were:

> "To consider amendments to the Prevention of Corruption Ordinance, based on the situation in Ceylon and Singapore as reported upon by the Attorney General, Mr. LAW and Mr. JONES."

The working party were of the opinion that it would be impossible to give effect to their recommendations by amending Cap. 215. They therefore expressed their views in the form of a draft Bill which incorporated a number of provisions similar to those in force in Singapore, Ceylon and Malaysia.

11. The report of the working party was accepted in principle by Government; and Counsel for the Crown in the Law Drafting section of the Attorney General's Chambers prepared a draft Prevention of Bribery Bill. Before it was presented for the consideration of the Legislative Council, the views of a large number of individuals and official bodies were sought. These included the Legal, and other, advisers to the Secretary of State in London, the two branches of the Legal profession in Hong Kong, the Advisory Committee on Corruption, and

the Staff Associations. It was also published in the *Government Gazette*; and ample opportunity was given for public criticism.

12. There was a good deal of criticism locally; and the Legal Advisers to the Secretary of State were very critical of several provisions. In fact, a number of drafts of the Bill were prepared and fully discussed during 1969 and 1970, and a large number of amendments were made in response to criticism from various quarters. The Bill was eventually passed by the Legislative Council as the Prevention of Bribery Ordinance on 16th December 1970; but it did not come into force until 14th May 1971. A copy of the Ordinance [included in the current edition of our laws as Cap. 201] is annexed to this report and marked "C".

13. There is no doubt that Cap. 201 is a more powerful weapon for the fight against corruption than the former Cap. 215. I shall endeavour to summarise its provisions in layman's language. Part II creates various offences. It strikes at both the "giver" and the "receiver" of a bribe; but the sections do not actually use the word "bribe". What is prohibited is offering, soliciting and accepting an advantage. For the purposes of the Ordinance, the word "advantage" is defined in section 2(1); and it would be difficult to imagine a broader definition. Similarly, section 2(2) defines the words "offers", "solicits" and "accepts"; and, again, it would be difficult to imagine broader definitions.

14. The first of the various offences created by Part II is contained in section 3. It applies to Crown servants only (i.e. officers of the Hong Kong Government); and, unlike the position under section 3(1) of the former Cap. 215, the advantage under section 3 of Cap. 201 does not have to be proved to have been solicited or accepted as an inducement to, or reward for, or otherwise on account of, the doing, or not doing, of anything by the Crown servant. A mere indication of willingness to receive an advantage amounts to soliciting, and a mere agreement to take, receive or obtain an advantage amounts to accepting the advantage by reason of the comprehensive definitions in section 2(2).

15. The prohibition in section 3 is not absolute. It is the acceptance of an advantage "without the general or special permission of the Governor" which is prohibited; and in the Acceptance of Advantages Regulations [a copy of which is annexed to this report and marked "D"] the Governor has signified his general permission to Crown servants in regard to the acceptance of a number of specified advantages, and regulates the procedure in regard to the grant of special permission in respect of any other advantage. Indeed, it was the drafting of these regulations which caused the delay in bringing the Ordinance into force.

16. The term "public servant" is widely defined in section 2(1). It includes not only persons employed by the Government but also members of the Executive, Legislative and Urban Councils and employees of a number of public utility companies and other public bodies enumerated in the Schedule to the Ordinance. Section 4 applies to all public servants. It is in two parts. Subsection (1) makes it an offence for any person, without lawful authority or reasonable excuse, to offer any advantage to a public servant; but the prosecution must prove that such offering was for the purpose of inducing the public servant to abuse his official position, or as a reward for his having abused it, in any of the ways indicated in the section. Subsection (2) makes it an offence for a public servant, without lawful authority or reasonable excuse, to solicit or accept any advantage as such inducement or reward. The Ordinance makes no attempt to define what is "lawful authority or reasonable excuse". It is left to the courts to decide, in the circumstances of each case, whether this defence has been established.

17. Sections 5 and 6 deal with—

(1) persons who induce or attempt to induce public servants to use undue influence in the promotion, execution or procuring of public contracts and allied sub-contracts;

(2) persons who induce or attempt to induce others to withdraw or not make tenders for such contracts;

(3) public servants and others who solicit or accept an advantage for such purposes.

18. Section 7 makes it an offence to induce, or attempt to induce, others not to make bids at auctions conducted by or on behalf of any public body, and to solicit or accept any advantage for this purpose, unless there is some lawful authority or reasonable excuse for such conduct.

19. Section 8 makes it an offence for a person, who has dealings with a public body, to offer any advantage to a public servant employed by that public body, or in the case of the Government, a Crown servant employed in that section of Government with which he has dealings.

20. Section 9 prohibits dishonest transactions by and with agents. "Agent" is defined in section 2 as including "a public servant and any person employed by or acting for another". Section 9, therefore, deals with dishonest transactions in both the public and commercial sectors of society. The section is in much the same terms as section 1 of the Prevention of Corruption Act 1906. So far as my researches go, this was the first occasion in England that the Legislature frowned upon "corrupt" behaviour in commercial life. At any rate, the provision was re-enacted in Hong Kong in 1948 as section 4 of Cap. 215. No offence under section 9

of Cap. 201 is committed unless done "without lawful authority or reasonable excuse"; and subsection (4) of section 9 gives an example of "reasonable excuse" for an employee soliciting or accepting an advantage for himself, namely if his employer gives permission for such soliciting or acceptance.

21. Section 10 makes it an offence for a Crown servant or ex-Crown servant to maintain a standard of living not commensurate with, or to possess property disproportionate to, his present or past official emoluments, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard or how such property came under his control as the case may be. The recommendation in my first report regarding section 10 has been accepted by the Legislature. Subsection (2) has been repealed; and therefore the Attorney General, before giving his consent to the institution of a prosecution is not now forced to give the suspect "an opportunity to make recommendations".

22. Section 11 emphasises that where a bribe is offered for a particular purpose [e.g. to induce a public servant to use undue influence in the promotion of a public contract] then it is immaterial whether or not that purpose could, in fact, be carried out or, if it could, whether or not the person to whom the bribe is offered intends to carry it out in any way.

23. Under Cap. 215 the maximum general penalty for corruption was a fine of $5,000 and imprisonment for 2 years on summary conviction or, on conviction on indictment, a fine of $10,000 and imprisonment for 5 years. Under section 12 of Cap. 201, the maximum general penalty is a fine of $50,000 and imprisonment for 3 years on summary conviction; and, on conviction on indictment, a fine of $100,000 and imprisonment for 7 years. However, for offences under sections 5 and 6, the maximum term of imprisonment is 10 years. The offence under section 3 attracts lower penalties [$20,000 and 1 year's imprisonment] because that section does not deal with Crown servants abusing their official position. Section 4(2), which attracts the higher general penalty, deals with that.

24. Under section 5(2) of Cap. 215, the Court was given a discretion as regards ordering the person convicted of corruptly receiving a bribe, to pay up the same. Under section 12 of Cap. 201 so far as offences under sections 4–9 are concerned, the Court *shall* make such an order. It no longer has any discretion in the matter.

25. Part III of Cap. 201 deals with powers of investigation. It was in this sphere that Cap. 215 was considered to be quite inadequate. Under section 13 the Attorney General, if "satisfied that there are reasonable grounds for suspecting" that an offence under the Ordinance has been committed by any person, may, for the purpose of an investigation into such offence, authorise in writing a named police officer of or above the rank of senior inspector, or a named Crown servant, to investigate, inspect, require the production of, and obtain all information relating to, any account of any kind whatsoever, safe-deposit box, books (including banker's books, etc.), documents or articles of or relating to any person. The secrecy requirements of the Inland Revenue Ordinance are, however, preserved. But, subject to that, any person who fails to disclose any information lawfully required under the Attorney General's authorization, is guilty of an offence, the maximum penalty for which is a fine of $20,000 and imprisonment for one year. Equally, any person who falsely represents that such an authorization has been given by the Attorney General is liable on conviction to similar penalties.

26. Under section 14, the Attorney General may, in the course of any investigation into a suspected offence, by written notice, require the person suspected of having committed the offence and any other person who can assist the investigation or who appears to be acquainted with the facts, to submit a statement or a statutory declaration disclosing information relative to the investigation. As originally drafted, it was to be an offence for any person (including the suspect himself) to fail to comply with a notice of this kind. However, the legal advisers to the Secretary of State considered that the section in that form amounted to a departure from a fundamental principle of the British judicial system in that it could be used to compel a person, whose activities were under investigation, to make an incriminating statement during the investigation and before charges were even contemplated. They recognized that provisions of this kind were to be found under the French investigatory procedure, but they considered that it was a fundamental departure from British principles. Section 14 of the Bill was therefore amended so as to make it an offence for any person *other than the suspect* to neglect or fail to comply with the notice, unless he could show some reasonable excuse for such neglect or failure.

27. As a general rule, what a legal adviser, in his professional capacity, learns from his client is privileged from disclosure, because of the need for full and unreserved dealings between client and lawyer. Although this privilege will not protect from disclosure communications made in furtherance of any crime, whether the legal adviser was a party to, or ignorant of, the illegal object, its protection is generally displaced only by definite evidence of illegality adduced in judicial proceedings. Consequently, the position of legal advisers in possession of privileged information which is required for the purpose of an investigation of an alleged offence under the Ordinance is regulated by section 15, which preserves the general privilege, except for certain limited exceptions expressly dealt with in this section. In the absence of such a provision, there would be a danger that persons might evade discovery by getting a solicitor to deal with the proceeds of corrupt transactions, relying on the rule

against disclosure of privileged information. Section 15 is not, however, intended as a means of finding out what instructions an accused has given to his legal advisers for the purpose of obtaining legal advice on any judicial proceedings begun or in contemplation, and this is expressly so provided.

28. Sections 16 and 17 regulate the entry and search of premises by persons conducting investigations, the former section being concerned with the premises of public bodies and the latter with other premises. Lawyers' offices are not liable to entry and search under these provisions unless the lawyer or his clerk or servant is the subject of the investigation.

29. Section 17A was enacted on 1st August 1973 following a recommendation in my first report. On the application of the Director of the Anti-Corruption Office, a magistrate may, by written notice, require a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under the Ordinance, to surrender to the Director his travel documents. If he fails to do so immediately, he may be arrested and committed to prison unless he surrenders the document when he appears before the magistrate. He may be imprisoned for up to 28 days; but there is provision for his release at any time if the travel document is surrendered.

30. Section 18 empowers a magistrate to require any person who, in the course of an investigation, is about to leave the Colony, to furnish bail or commit him to prison until he does so, for up to 28 days. The provision was intended to prevent suspects from escaping from Hong Kong as soon as investigations start.

31. Part IV of the Ordinance deals with evidence. Section 19 makes it clear that, in any proceedings for an offence under the Ordinance, it is not a defence to show that the giving or accepting of an advantage is "customary" in the particular profession, trade, vocation, or calling.

32. As I have said, as section 14 stands at present, the suspect commits no offence at all by ignoring the Attorney General's notice under that section. However, if the investigations lead to his prosecution for an offence under the Ordinance, any statement or declaration which he may have given or made, and his refusal to give a statement or make a declaration, is admissible in evidence at his trial and may be made the subject of comment by the prosecution or the court. [section 20].

33. Section 21 enables evidence of unexplained resources to be given in support of a charge under Part II other than a charge under section 10. It says that such evidence may be treated as tending to substantiate the truth of testimony that the accused solicited or accepted an advantage and as showing that the advantage was solicited or accepted as an inducement or reward; and, it is not only evidence of unexplained resources in the possession of the accused which may be tendered. Under the section, and for the purpose of corroboration under the section, the accused is presumed to be in possession of pecuniary resources or property or to have obtained an accretion thereto, where such resources are held by

> "any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused".

Wives and near relatives, bankers, etc. might well be held to fall within this category.

34. Section 22 modifies the law as to accomplices which, generally speaking, obliges a court of law to have specific regard to the danger of convicting a person on the uncorroborated evidence of an accomplice. If a person is accused of accepting a bribe, the person who gave him the bribe would be regarded as an accomplice and vice versa. Section 22 modifies the rule of law by providing that the person who gave or received the bribe shall not be regarded as an accomplice by reason only of the fact that he paid money to, or received money from, the accused.

35. Section 23 empowers a court, at the request of the Attorney General, to inform a person who has committed an offence under Part II, that if he gives full and true evidence of the matter he will not be prosecuted. Section 24 provides that the burden of establishing lawful authority or reasonable excuse will be upon the accused. Section 25 provides that, in a prosecution under section 4 (which deals with bribery affecting a public servant's official duties) or section 5 (which deals with public contracts and allied sub-contracts), if it is proved that the accused gave or accepted an advantage, there will be a rebuttable presumption that he gave or accepted the advantage for the reason alleged in the charge. This section is not dissimilar to section 11 of Cap. 215, except that the presumption of corruption raised by that section was limited to cases involving public contracts.

36. In criminal trials, the general rule is that although the prosecution may not comment to the jury on an accused person's failure to give evidence on oath, the judge may do so. But, recent decisions have demonstrated that this is fraught with dangers. Section 26 makes it clear that "notwithstanding any law or practice to the contrary", so far as bribery trials are concerned, the judge may comment to the jury on the accused's failure to give evidence on oath.

37. Part V of the Ordinance deals with a number of miscellaneous matters. Section 27 enables the court to report to the Attorney General frivolous, false, or groundless allegations. Section 28 empowers the Supreme Court and the District Court to award costs to a defendant who is acquitted of an offence under Part II. Section 29 makes it an offence to make a false report of the commission of an offence under the Ordinance or otherwise to mislead a police officer or person named in an authorization given under section 13. Section 30 prohibits the unauthorised disclosure of the fact that a particular person is subject to investigation or any details of the investigation. This provision was apparently enacted because it was felt that such a disclosure, by alerting the suspect, could frustrate the investigation. Section 31 prohibits the institution of a prosecution for an offence under Part II without the consent of the Attorney General. He may delegate his power as regards offences under Part II other than section 10. But no prosecution for an offence under section 10 may be instituted without the personal consent of the Attorney General or the Solicitor General. However, section 31 permits the preliminary steps of arrest and remand in custody or on bail before such consent is given. Section 32 empowers the court, on the trial for an offence under Part II, to convict the accused of any of the other offences under that Part, if the evidence justifies this. Where there is a variance between the particulars of the offence charged and the evidence adduced, the court may make the necessary alterations in the particulars. Section 33 disqualifies persons convicted of offences under Part II from being registered as electors or voting at Urban Council elections or from being members of any public body for a period of 7 years.

38. The extent to which the Prevention of Bribery Ordinance Cap. 201 was inspired by similar legislation in Singapore, Malaysia and Ceylon may be seen from the table annexed to this report and marked "E".

The Advisory Committee on Corruption

39. The Advisory Committee was formerly known as the Standing Committee on Corruption. The original committee was appointed on 31st October 1956. The Chairman was a Principal Crown Counsel nominated by the Attorney General and the other members were the Establishment Officer and the Director of the Anti-Corruption Branch of the Royal Hong Kong Police Force. Its terms of reference were:

"(i) to keep under review the incidence of corruption in the public service;

(ii) to advise the Government on measures to be taken to reduce corruption and the opportunities for it and to facilitate its discovery;

(iii) to examine the measures taken by departments to reduce corruption and to advise Government how these can be improved or co-ordinated."

It was never the intention that the Committee should be an executive body. It was merely a standing advisory committee whose members were, at all times, available for consultation.

40. In 1960 it was felt that it should be strengthened; and on 16th March that year a new committee was appointed consisting of the following persons:—

Chairman: The Attorney General

Members: The Establishment Officer,
Deputy Commissioner of Police,
Three unofficial members of Executive Council.

The terms of reference were:

"to consider and keep under review the extent of the problems presented by corruption in relation to the public service of Hong Kong, and to make recommendations from time to time."

41. In their first report to the Governor, the new committee proposed that there should be established three working parties responsible to the committee with the following terms of reference:

"A. *Working Party on Public Co-operation*

To study how best to secure a new approach to the public and to prepare plans to this end.

B. *Working Party on Departmental Procedures*

To study the existing performance and procedures of Government Departments whose day-to-day contacts with the public render them most vulnerable to corrupt practices and to put forward proposals for improving the procedures.

C. *Working Party on Legal and General Matters*

To consider what new measures, legislative or otherwise, compatible with the rights of the individual in a free society, can be introduced to strengthen the hand of those responsible for bringing corrupt persons to book."

42. These proposals were agreed to. Each working party consisted of one or more members of the Committee together with others (mostly non-official personalities) co-opted by the Chairman of the particular working party.

43. Towards the end of 1960, Mr. Charles TERRY was appointed Chairman of the Advisory Committee. The other members were: Mr. R. C. LEE, Mr. C. Y. KWAN, Mr. BARTON, Mr. GOLDSACK, the Deputy Commissioner of Police and the Establishment Officer. During 1961, the Committee met 34 times and the Working Parties met 43 times. Several reports were submitted to the Governor the last of which (the 6th Report dated 29th December 1961) was a very comprehensive document which contained many valuable recommendations on a number of subjects including changes in the substantive law, changes in the procedure for dealing with disciplinary charges against Government servants, measures which Government should take to improve licencing procedure in the various departments concerned, measures which should be taken by Government with a view to changing the attitude of the public towards corruption (publicity campaign, instruction in the schools, etc.). There is no doubt that much was achieved by the Advisory Committee during the year 1961.

44. However, their 6th Report ended thus:

> "We feel that this report, together with the 3 reports which we have already submitted to your Excellency, contains all the recommendations which this committee is able to make at this stage . . . We think that if the recommendations now submitted to Your Excellency are implemented the functions of the Committee will become more of a 'watch-dog' nature, and much of the volume of work which it has necessarily borne over these exploratory months will be reduced."

45. It appears that no further reports have been made to the Governor. The 68th meeting was held on 3rd April 1968. Therefore if there were 34 meetings in 1961, there were a further 34 meetings during the 6 years 1962–68. The dates of the 77th and 78th meetings were 16th June 1972 and 3rd August 1973. The discussion at the 4 meetings held between February 1969 and March 1971 (70th–73rd) centred largely around the provisions of the new Prevention of Bribery Bill, and the question whether the Anti-Corruption Bureau (now termed Office) should remain under police control. There is no doubt that the Advisory Committee offered a great deal of valuable criticism and advice during this period. However, it is clear from the minutes of the 74th meeting in June 1971 that the then Chairman (Sir Cho-yiu KWAN) and Sir Sidney GORDON were beginning to feel that the committee was no longer able to perform any useful function; and at the 77th meeting in June 1972, Sir Sidney (who had been appointed Chairman) stated that he considered that the Committee had outlived its usefulness as the unofficial element in anti-corruption efforts was now represented on the Target Committee on Anti-Corruption. I accepted an invitation by the Advisory Committee to attend their 78th meeting on 3rd August; and similar sentiments were expressed by the Chairman on that occasion; but it was agreed that no further action with a view to disbanding the Committee should be taken until after this report had been considered by the Governor.

46. The present composition of the Advisory Committee is as follows:—

Chairman:	The Hon. Sir Sidney GORDON, C.B.E.
Members:	Mr. LI Yiu-bor, O.B.E., J.P.
	The Hon. E. R. ROSS, C.B.E., J.P.
	The Hon. Oswald CHEUNG, O.B.E., Q.C., J.P.
	Mr. R. G. B. BRIDGE, J.P.
Secretary:	Mr. Nicholas NG.

The Target Committee on Corruption

47. The Target Committee was set up in 1960 by the Commissioner of Police. It consisted of the Deputy Commissioner of Police (Administration), the Director of Criminal Investigation and the Senior Superintendent in charge of the Anti-Corruption Branch. Later, it included a senior officer representing the Establishment Officer. The Commissioner's object may be gathered from a memorandum written by him in April 1961. He said:—

> "The task of the committee is to evaluate and assess all information reported to the Branch with the object of ensuring that certain targets are given priority and the Branch is not overloaded with inquiries which could more properly be investigated by other formations, or are of no corruption interest. It follows that once having directed an inquiry the committee is responsible for evaluating the results. The terms of reference of the committee are, broadly, to assess and decide:—
>
> (*a*) if the allegation is a matter for Police inquiry;
>
> (*b*) the priority to be accorded each inquiry;
>
> (*c*) the Police formation responsible for initiating action; and
>
> (*d*) the results subsequently obtained from the inquiry."

48. In 1969, on the recommendation of the Advisory Committee on Corruption, the Target Committee was enlarged so as to include non-police and non-official members. By Gazette Notification No. G.N. 1058 dated 21st May 1971, the Governor appointed a new Target Committee on Corruption composed of the following persons:—

(*a*) A Deputy Commissioner of Police (*Chairman*)

(*b*) The Director of Criminal Investigation

(*c*) A Principal Crown Counsel

(*d*) The Director of Audit

(*e*) A representative of the Establishment Secretary

(*f*) Mr. Kenneth Lo Ching-ken, M.B.E., J.P.

(*g*) Mr. W. H. HENDERSON.

In 1972, Professor S. MACKEY, O.B.E., J.P., Professor of Engineering at Hong Kong University, replaced Mr. HENDERSON on the Committee.

49. The terms of reference of the new committee were gazetted; and they read as follows:—

"(*a*) To receive and consider, directly or through the Director of the Anti-Corruption Office (hereinafter called 'the Director') all complaints of bribery, whether against Crown servants, public servants, or other persons.

(*b*) Subject to the statutory powers of the Attorney General, to instruct the Director as to which complaints of bribery shall be investigated and in what priority.

(*c*) To require from the Director reports, at such intervals as the committee may decide, as to the action taken by his office to investigate complaints of bribery.

(*d*) To report to the Governor, at such intervals as the Governor may require, on the work of the Office and the incidence of bribery in the Colony.

(*e*) To determine what information about complaints of bribery shall be passed on to the Establishment Secretary or to other Government Departments or to other branches of the Police Force.

(*f*) The exercise of the above supervisory functions shall not affect the responsibility of the Director for the manner in which the investigation of a particular complaint is carried out."

50. The Target Committee is a very active body. It meets once a month. Each member receives a copy of the Anti-Corruption Office case diary which contains a record of all reports received by the Office, whether made in person or received by letter or telephone. All reports are entered initially in the miscellaneous reports book; and that is also available for inspection by the Target Committee. From the point of view of the Anti-Corruption office, the Committee performs a very valuable function in that it

(*a*) takes reponsibility for deciding on priorities, thus protecting the Office from allegations that reports are not investigated;

(*b*) gives advice in individual cases; and

(*c*) ensures that all reports are scrutinized at a proper level within a definite period, and the progress of the investigations monitored thereafter.

51. The Target Committee submits a report to the Governor annually.

52. I attended the meeting of the Committee on 7th August 1973 as a spectator. I was most impressed. A full-time secretary is employed, and several days before a meeting, each member receives a mass of reports covering progress on every case being handled by the A.C. Office during the preceding month. These papers take at least half a day to digest. Detailed minutes are kept of the proceedings at each meeting and these are distributed to each member.

53. It would be pointless in a report of this nature to go into details of individual cases or operations. Suffice it to say that at these meetings, the Committee scrutinizes progress made on all cases in respect of which they have, at some previous meeting, directed that further inquiries be carried out; they may, or may not, endorse recommendations from the Director that no further action is possible in certain cases; all new cases are reported; and directions are given in regard to priorities, the object being that the A.C. Office should utilize its time to the best advantage.

54. The impression I got was that each member had "done his homework" extremely well. Although the Director is not a member of the Committee, he is always present, and he brings with him the investigation files relating to each case. Questions are "fired" at him from all quarters; and he is required to answer them—

frequently after reference to the particular investigation file concerned. My impression was that the Committee could not be described as "a rubber stamp" for police decisions; and that it is very much a "watch-dog"; but, as I have said, I attended only one meeting.

55. Mr WARR, who was until recently Director of Audit, was a member of the Target Committee. He has retired and his place has been taken by the present Director of Audit. The present composition of the Target Committee is:

Chairman:	Mr. Christopher J. R. DAWSON	Deputy Commissioner of Police
Official Members:	Mr. J. B. LEES	Director of Criminal Investigation
	Mr. F. de F. STRATTON	Principal Crown Counsel
	Mr. G. E. LYTH	Director of Audit
	Mr. R. G. B. BRIDGE	Establishment Secretary's Representative
Unofficial Members:	Professor MACKEY	Professor of Engineering, University of Hong Kong
	Mr. Kenneth C. K. LO, M.B.E., J.P.	American Steel Import Co.; Chief Commissioner, The Scout Association.

The Anti-Corruption Office

56. In England, bribery and corruption cases are investigated by the C.I.D. in the ordinary way. However, in Hong Kong in 1952 the then Commissioner considered that it was desirable that a specialized unit should be established to investigate such cases; and in 1971 it was made a separate formation. Since then it has in fact been under the command of an Assistant Commissioner of Police, although under the Prevention of Bribery Ordinance it is not necessary that the Director should be a police officer at all. "Director" is defined in section 2 as "the person appointed by the Governor to be in charge of the Anti-Corruption Office."

57. Since the Prevention of Bribery Ordinance came into force in May 1971, a senior member of the Attorney General's Chambers [designated as the "Assistant to the Attorney General (Anti-Corruption)"] has been attached to the Anti-Corruption Office on a full-time basis. His duties are as follows:—

(*a*) to advise the Office on the law relating to bribery and corrupt practices;

(*b*) to examine evidence in individual cases under investigation in the Office (whether or not involving bribery) and to advise the Office as to what further evidence may be necessary before a charge can be laid;

(*c*) to decide as to whether or not to prosecute and as to the charges which shall be laid in the light of the evidence available;

(*d*) to exercise such powers as may be delegated to him by the Attorney General and to refer to the Attorney General any matter which requires the latter's personal decision;

(*e*) to refer to a Law Officer any matter which the Assistant to the Attorney General considers requires the attention of a Law Officer or concerning which a Law Officer has asked for information;

(*f*) to advise the office as to which matters should, or should not, be referred to the Establishment Officer in order that the latter may consider whether or not disciplinary proceedings should be instituted against a Government officer.

The Attorney General has delegated to his Assistant the power to act on his behalf under sections 13, 17 and 31 except that it is not open to the Attorney General to delegate his power to consent to the institution of a prosecution under section 10; and there has in fact been no delegation of power as regards section 14.

58. As I have said, at the present time the Anti-Corruption Office works under a Director who is an Assistant Commissioner of Police. The office consists of two groups, each headed by a Senior Superintendent, namely an Investigation group and a Support group. The Investigation group has three divisions: "A", "B" and "C" Divisions each of which is divided into five sections. Each Division is commanded by a senior superintendent who is usually an officer with not less than ten years police experience, at least 4 of which has been in the C.I.D. or Special Branch. The sections within the Divisions are commanded by Chief Inspectors of Police who usually have some C.I.D. experience and some command experience gained over no less than 6 or 7 years service in the police. Each section head is supported by 2 officers of inspector or senior inspector rank. No officer of inspector rank will be accepted by the Director unless he has a minimum of 3 years police experience and preferably some in C.I.D. Each section has two sergeants who will have had some investigation experience, and 4 or 5 detective constables.

59. The functions of the 3 divisions in the Investigation group differ. "A" Division works on Special Branch lines and is concerned essentially with the gathering of intelligence, that is to say ascertaining the pattern

of corrupt practices in selected areas of the Government service, for example "syndicated" corruption in the Police Traffic Branch or the Transport Department, etc. Since the Division began functioning for this purpose in 1968, it has carried out a considerable number of long-term in-depth investigations. These in-depth investigations are reported to the Target Committee. As a result of these long-term inquiries offences have been detected and a number of persons have been prosecuted to conviction, and others have resigned before they were prosecuted or dealt with disciplinarily. These in-depth inquiries have also revealed defects in Government procedures and consequently opportunities for corruption; and a number of corrective measures have been recommended for the consideration of the heads of various Government departments.

60. The function of "B" Division is to investigate by ordinary C.I.D. methods the day-to-day allegations of corruption received by the A.C. Office directly from the public or from other Police formations or Government departments with a view to prosecution under sections 3–9 of the Ordinance.

61. The resources of "C" Division are directed at individual targets with the object of instituting prosecutions under section 10 of the Ordinance. Personalities may come to the notice of this division as a by-product of an investigation by one of the other divisions or by a direction by the Target Committee. The Godber investigation was initiated by the Chairman of the Target Committee [The Deputy Commissioner] on information, and on direct instructions, from the Commissioner.

62. There has to be a balance between the manpower assigned for duty on in-depth and other investigations. The Deputy Commissioner told me he felt that, looking at the matter in retrospect, too much time had been spent on "A" Division work and not enough time on individual targets; and it would appear that there was a change of emphasis as from February 1972 as a result of a directive by the Target Committee.

63. Investigations are carried out by chief inspectors, senior inspectors or inspectors under the overall supervision of the Division's superintendent. Communications in respect of any particular investigation are vertical i.e. from investigator to section head and thence to divisional head. The need for lateral communications with adjoining sections or divisions is reduced to a minimum. N.C.O. and rank and file staff working with an investigator are given only as much information as is necessary for them to know to enable them to perform the particular duties assigned to them.

64. The Support group consists of the following:

(*a*) Administration unit;

(*b*) a Research unit;

(*c*) Surveillance teams;

(*d*) a Security unit; and

(*e*) a Technical Aids unit.

The Administration unit provides clerical, interpretation, translation, transport and other ancilliary services using mostly civilian staff but also some police personnel. The function of the Research unit is to provide analysis of materials already on files in the office. The Surveillance teams operate under the direction of a chief inspector. The Security unit's role is directed at maintaining physical security of the premises and documents, and checking that information available within the office is contained within the "need to know" principle described in paragraph 63. Two officers of the inspectorate grade perform these duties. The Technical Aids unit is designed to provide modern detection aids such as marked money, photographic and electronic equipment.

65. The structure of the Anti-Corruption Office as described in the foregoing paragraphs is based on its approved establishment. Unfortunately, in common with other police formation, actual strength has generally been below establishment; and the Director has been forced to deploy a number of inspectors in the Support group to strengthen the Investigation group. Priority has been given to maintaining the strength of "B" Division to fulfil its role in responding to complaints without undue delay. Investigators in "A" Division's long-term investigations have not been readily assignable to other tasks without damage to the work of that Division. As a result of these staff difficulties, inevitably "C" Division has carried the brunt of the staff shortages.

66. Appendix "F" shows the establishment and actual strength of the Anti-Corruption Office for each year from 1968 to 1973. Attention is directed to the footnote to this Appendix which shows the actual number of officers available to conduct investigations as independent case workers. These figures may be compared with the statistics shown in paragraph 72 below which set out the number of complaints received and investigations undertaken by the Anti-Corruption Office over the same period.

67. Appendix "F" shows that in 1970 the actual strength of the Anti-Corruption Office exceeded its approved establishment in anticipation of the coming into force of the new Ordinance. In each of the following years there has been a build-up in both approved establishment and in actual strength; but the actual strength in the

vital inspectorate grade in 1973 is still well below the establishment figure for this grade for the year 1971. They have in fact 39 inspectors as against an establishment of 54.

68. A large number of reports received by the A.C. Office are anonymous. A report is classed as anonymous if the caller or writer refuses to disclose his real name or in cases where investigation reveals that a fictitious name or address has been given. Prior to 1971 all anonymous complaints were considered by the Target Committee; but since then this work has been delegated by the Committee to a sub-committee consisting of the Director of Criminal Investigation and one non-police member. Most anonymous complaints are found to contain insufficient information to warrant further investigation. For example:

"All members of the Housing Department are corrupt.
(*Sgd.*) *a citizen.*"

Some anonymous complaints are patently malicious; but in some instances they may contain useful information on persons or subjects already under investigation.

69. All complaints alleging corrupt activity are subjected to a preliminary examination in order to decide whether further inquiry is likely to be productive. The Target Committee has delegated a limited authority to the Director to decide whether further inquiries should be made. Any member of the committee may question the correctness of his decision after reference to the office case diary. But, in the majority of cases, a decision that further inquiry is not warranted is reached by the Target Committee itself.

70. The Target Committee may direct that further action be taken, either by the A.C. Office or that the case be referred to another police formation, or to the Establishment Secretary, or to the head of a department with or without specific recommendations or suggestions. The evidence may be insufficient to warrant the institution of criminal proceedings; but it may indicate that a Government officer has been guilty of breach of discipline or that remedical action should be taken to correct departmental procedures.

71. The following are statistics showing the number of reports received by the A.C. Office during the years 1968–73 inclusive. It will be noted that for the years 1969–1972 there were approximately twice as many anonymous complaints as all others put together; and with the exception of the year 1970, a very small proportion of these anonymous complaints contained any useful information. For example, in 1969 out of 717 anonymous complaints, only 5 contained usable information. The statistics below show 3 classes of complaints:

A Anonymous;

B Reports unconnected with corruption; and

C other complaints alleging corruption.

It is these so-called other complaints with which I am chiefly concerned. There is a break-down of these complaints; and the figures show the number of complaints alleging corruption against:

(i) The police

(ii) other Government departments

(iii) the public.

And there is a table showing how the complaints were disposed of. Column 2 shows the actual number of complaints against each of the 3 categories (police, other Government departments, public). Column 3 shows the number of complaints in respect of which the Target Committee directed that further inquiry would be unproductive. Column 4 shows the number referred elsewhere for further action. Column 5 shows complaints which resulted in one or more persons being taken to court during that particular year. Column 6 shows the number of complaints in which the initial investigation has not been completed at the end of the calendar year. In the following year these investigations would be completed and a decision made as to whether further inquiry would be productive or whether the complaint should be referred elsewhere for further action or whether any person should be prosecuted. Column 7 refers to those complaints in respect of which the Target Committee has directed that further investigation be undertaken and which further investigation has not been completed at the end of the calendar year in which the initial complaint was received.

72. The following are the figures I have referred to:—

1968

Total Number of Reports Received

A.	Anonymous Complaints Alleging Corruption:	284	
B.	Reports unconnected with Corruption:	40	
C.	Other complaints alleging Corruption:	461	Total: 785

A.	(i) Anonymous Complaints containing insufficient information to warrant further investigation:	275		
	(ii) Anonymous Complaints containing usable information:	9	Total:	284
C.	Other Complaints Alleging Corruption: 461			
	Directed against: (i) Police:	220		
	(ii) Miscellaneous Government Departments:	207		
	(iii) Public:	34	Total:	461

DISPOSAL OF OTHER COMPLAINTS ALLEGING CORRUPTION

Target	*No. of Allegations*	*N.F.A. by T.C. or D.A.C. (Initial investigation revealed further enquiry would be unproductive)*	*Referred elsewhere for further action*	*Court*	*To be investigated*	*Further investigation required*	*Total*
Police	220	105	67	8	15	25	220
Misc. Govt. Depts.	207	85	59	2	21	40	207
Public	34	11	7	2	11	3	34
Total	461	201	133	12	47	68	461

At the beginning of 1968 5 long term 'in-depth' investigations were being conducted. 57 additional such investigations were begun during the year.

1969

Total Number of Reports Received

A.	Anonymous Complaints Alleging Corruption:	717		
B.	Reports unconnected with Corruption:	7		
C.	Other complaints alleging Corruption:	324	Total:	1,048
A.	(i) Anonymous Complaints containing insufficient information to warrant further investigation:	712		
	(ii) Anonymous Complaints containing usable information:	5	Total:	717
C.	Other complaints alleging corruption: 324			
	Directed against: (i) Police:	123		
	(ii) Miscellaneous Government Departments:	169		
	(iii) Public:	32	Total:	324

DISPOSAL OF OTHER COMPLAINTS ALLEGING CORRUPTION

Target	*No. of Allegations*	*N.F.A. by T.C. or D.A.C. (Initial investigation revealed further enquiry would be unproductive)*	*Referred elsewhere for further action*	*Court*	*To be investigated*	*Further investigation required*	*Total*
Police	123	71	24	10	16	2	123
Misc. Govt. Depts.	169	57	52	17	39	4	169
Public	32	15	3	14			32
Total	324	143	79	41	55	6	324

The Anti-Corruption Branch completed the 47 initial investigations outstanding at the end of 1968 and continued further investigations begun in that year on 68 cases. 62 long term investigations begun in earlier years were continued and 96 new such investigations were commenced in 1969.

1970

Total Number of Reports Received:

A.	Anonymous Complaints Alleging Corruption:	747	
B.	Reports unconnected with Corruption:	55	
C.	Other complaints alleging Corruption:	295	Total: 1,097
A.	(i) Anonymous complaints containing insufficient information to warrant further investigation:	645	
	(ii) Anonymous complaints containing usable information:	102	Total: 747
C.	Other complaints alleging corruption: 295		
	Directed against: (i) Police:	108	
	(ii) Miscellaneous Government Departments:	148	
	(iii) Public:	39	Total: 295

DISPOSAL OF OTHER COMPLAINTS ALLEGING CORRUPTION

Target	*No. of Allegations*	*N.F.A. by T.C. or D.A.C. (Initial investigation revealed further enquiry would be unproductive)*	*Referred elsewhere for further action*	*Court*	*To be investigated*	*Further investigation required*	*Total*
Police	108	43	30	7	27	1	108
Misc. Govt. Depts.	148	61	39	12	25	11	148
Public	39	13	4	11	8	3	39
Total	295	117	73	30	60	15	295

The Anti-Corruption Branch completed 55 initial investigations outstanding at the end of 1969 and continued 6 further investigations begun in that year. 158 long term investigations begun in earlier years were continued and 18 new such investigations were commenced in 1970.

1971

Total Number of Reports Received:

A.	Anonymous Complaints Alleging Corruption:	762	
B.	Reports unconnected with Corruption:	95	
C.	Other complaints alleging Corruption:	373	Total: 1,230
A.	(i) Anonymous complaints containing insufficient information to warrant further investigation:	756	
	(ii) Anonymous complaints containing usable information:	6	Total: 762
C.	Other complaints alleging corruption:		
	Directed against: (i) Police:	137	
	(ii) Miscellaneous Government Departments:	153	
	(iii) Public:	83	Total: 373

DISPOSAL OF OTHER COMPLAINTS ALLEGING CORRUPTION

Target	*No. of Allegations*	*N.F.A. by T.C. or D.A.C. (Initial investigation revealed further enquiry would be unproductive)*	*Referred elsewhere for further action*	*Court*	*To be investigated*	*Further investigation required*	*Total*
Police	137	76	35	6	12	8	137
Misc. Govt. Depts.	153	74	40	10	15	14	153
Public	83	29	15	24	14	1	83
Total	373	179	90	40	41	23	373

The Anti-Corruption Office completed the 60 initial investigations outstanding at the end of 1970 and continued the 15 further investigations begun in that year. 176 long term investigations begun in earlier years were continued and 15 new such investigations were commenced in 1971. The Target Committee Report for this year referred to 'an additional 59 allied investigations' being started. These arose from enquiries into complaints under investigation in the course of the year.

1972

Total Number of Reports Received:

A.	Anonymous Complaints Alleging Corruption:	747	
B.	Reports unconnected with Corruption:	19	
C.	Non-anonymous complaints alleging Corruption:	401	Total: 1,167
A.	(i) Anonymous complaints containing insufficient information to warrant further investigation:	698	
	(ii) Anonymous complaints containing usable information:	49	Total: 747
C.	Non-anonymous complaints alleging corruption:		
	Directed against: (i) Police:	164	
	(ii) Miscellaneous Government Departments:	166	
	(iii) Public:	71	Total: 401

DISPOSAL OF OTHER COMPLAINTS ALLEGING CORRUPTION

Target	*No. of Allegations*	*N.F.A. by T.C. or D.A.C. (Initial investigation revealed further enquiry would be unproductive)*	*Referred elsewhere for further action*	*Court*	*To be investigated*	*Further investigation required*	*Total*
Police	164	83	45	18	12	6	164
Misc. Govt. Depts.	166	84	46	9	18	9	166
Public	71	31	14	21	2	3	71
Total	401	198	105	48	32	18	401

The Anti-Corruption Office completed the 41 initial investigations outstanding at the end of 1971 and continued the 23 further investigations begun in that year. 191 long term investigations begun in earlier years were continued and 47 new investigations of this type were commenced largely as a result of the decision that "C" Division should examine individual officers suspected of having unexplainable wealth. The discrepancy between the Target Committee's Report of 1250 cases and that of 1167 reports given above results from a number of reports referring to more than one suspect and additional suspects arising in the course of current investigations.

1st January 1973 – 30th April 1973

Total Number of Reports Received:

A.	Anonymous Complaints Alleging Corruption:	189	
B.	Reports unconnected with Corruption:	58	
C.	Other complaints alleging Corruption:	137	Total: 384
A.	(i) Anonymous Complaints containing insufficient information on which to base an enquiry:	171	
	(ii) Anonymous Complaints containing usable information:	18	Total: 189
C.	Other complaints alleging corruption:		
	Directed against: (i) Police:	58	
	(ii) Miscellaneous Government Departments:	53	
	(iii) Public:	26	Total: 137

DISPOSAL OF OTHER COMPLAINTS ALLEGING CORRUPTION

Target	*No. of Allegations*	*N.F.A. by T.C. or D.A.C. (Initial investigation revealed further enquiry would be unproductive)*	*Referred elsewhere for further action*	*Court*	*To be investigated*	*Further investigation required*	*Total*
Police	58	46	4	2		6	58
Misc. Govt. Depts.	53	21	9	1	11	11	53
Public	26	14	1	9		2	26
Total	137	81	14	12	11	19	137

The Anti-Corruption Office has completed the 32 initial investigations outstanding at the end of 1972 and continued the 18 further investigations begun in that year. At the beginning of this year 238 long term investigations begun in earlier years were still continuing and 7 new investigations of this type have been commenced.

73. I give below statistics showing the number of corruption charges and the number of persons brought before the courts during each of the years 1968–73. As Cap. 201 came into force on 14th May 1971, there are 2 sets of figures for 1971, one showing charges under the former Cap. 215 and the other showing charges brought under the present Cap. 201. The figures for 1973 include 3 persons whose cases are pending before the courts and 2 other cases where the Attorney General has consented to the institution of prosecutions but, at the time of writing, the persons have not been charged. The figures show 3 categories of defendant namely police, other Government departments, and members of the public. The police are treated as a separate category because more complaints are received by the A.C. Office against police officers than against officers in other departments. Consequently, more police officers are brought before the courts. The figures also show the number of persons charged with other criminal offences, evidence of which has been discovered by the A.C. Office in the course of an investigation into alleged corrupt activity. The figures also show the number of officers involved in cases where there was no, or insufficient, evidence to warrant criminal proceedings but whose cases were referred by the Anti-Corruption Office to the Establishment Secretary or to the appropriate departmental authorities for consideration for possible disciplinary action against the officers concerned. Persons charged with both corruption and other criminal offences are listed only under corruption statistics.

1968

(30 CHARGES WERE BROUGHT UNDER THE FORMER CAP. 215)

No. of Persons charged		*Convictions*
Police Officers	4	— (2 officers absconded before trial)
Other Government servants	5	3
Members of the public	2	2
Total	11	5
Persons charged with other criminal offences:		
Police	—	—
Other Government servants	1	1
Members of the public	4	3
Total	5	4

A total of 132 police officers and members of various government departments were referred by the A.C.O. for possible disciplinary action. A break down of this figure is not available.

1969

(80 CHARGES WERE BROUGHT UNDER THE FORMER CAP. 215)

No. of Persons charged		*Convictions*
Police officers	10	7
Other Government servants	21	15
Members of the public	8	6
Total	39	28
Persons charged with other criminal offences:		
Police officers	3	2 (1 absconded before trial)
Other Government servants	7	3
Members of the public	19	17
Total	29	22

No. of Persons referred for possible disciplinary action:—

Police officers	92
Other Government servants	47
Total:	139

1970

(47 CHARGES WERE BROUGHT UNDER THE FORMER CAP. 215)

No. of Persons charged		*Convictions*
Police officers	13	5
Other Government servants	14	8
Members of the Public	12	11
Total	39	24
No. of Persons charged with other criminal offences:		
Police officers	1	1
Other Government servants	3	3
Members of the Public	27	23
Total	31	27

Persons referred for possible disciplinary action:—

Police officers	42
Other Government servants	51
Total:	93

1971

(34 CHARGES WERE BROUGHT UNDER THE FORMER CAP. 215 AND 40 UNDER CAP. 201)

	No. of Persons charged	*Convictions*
Under the former Cap. 215:		
Police officers	5	4
Other Government servants	3	3
Members of the public	6	6
Total	14	13
Under Cap. 201:		
Police officers	4	1
Other Government servants	5	3
Members of the public	17	15
Total	23	19
Total under both Cap. 215 and Cap. 201	37	32
No of Persons charged with other criminal offences:		
Police officers	1	—
Other Government servants	5	5
Members of the public	25	24
Total	31	29
No. of Persons referred for possible disciplinary action:—		
Police officers		35
Other Government servants		24
	Total:	59

1972

(87 CHARGES WERE BROUGHT UNDER CAP. 201)

	No. of Persons charged	*Convictions*
Police officers	23	17
Other Government servants	7	4
Members of the public	18	18
Total	48	39
No. of Persons charged with other criminal offences:		
Police officers	2	2
Other Government servants	5	4
Members of the public	19	18
Total	26	24
No. of persons referred for possible disciplinary action:—		
Police officers		24
Other Government servants		67
	Total:	91

1973

(UP TO THE 15TH AUGUST 34 CHARGES HAVE BEEN LAID BEFORE THE COURTS AND THE ATTORNEY GENERAL HAS GIVEN CONSENT TO PROSECUTE IN RESPECT OF A FURTHER 10 CHARGES UNDER CAP. 201)

No. of Persons charged		*Convictions*	
Police officers	7	5	(In each case a decision is still pending.)
Other Government servants	8	6	
Members of the public	8	7	
Total	23	18	
Persons charged with other criminal offences:			
Members of the public	8	8	
Total	8	8	

No. of persons referred for possible disciplinary action to *30th April* (figures to 15th August were not available) were:—

Police officers	27
Other Government servants	27
Total:	54

74. It has not been possible to obtain an accurate year-by-year break-down of the nature of the charges preferred under Cap. 201; but since 14th May 1971, when the Ordinance came into force, to the 15th August 1973 the Attorney General has given his consent to prosecute 171 charges and these are broken down as follows:—

Under section:	*No. of consents:*
3	29
4(1)	48
4(2)	85
8(1)	4
9(1)	2
9(2)	2
10(1)	1
Total:	171

75. I do not think that much can be deduced from the figures for 1968. All specialized formations (including the A.C. Office, the Commercial Crimes Office, and the Narcotics Bureau) were affected by the civil disturbances which occured in 1967. However, by 1969 conditions had reverted to normal; and what it all boils down to is that in 1969, there were 80 charges of corruption involving 39 persons and a further 29 persons were prosecuted by the A.C. Office for other offences which came to light as a result of A.C. Office investigations and the cases against a further 139 Government officers were referred to other authorities for possible disciplinary action. In 1970, there were 47 charges of corruption involving 39 persons and a further 31 persons were prosecuted by the A.C. Office for other offences which came to light as a result of A.C. Office investigations and the cases against a further 93 persons were referred to other authorities for possible disciplinary action. In 1971 there were 74 charges of corruption involving 37 persons and a further 31 persons were prosecuted by the A.C. Office for other offences which came to light as a result of A.C. Office investigations and the cases against a further 59 Government officers were referred to other authorities for possible disciplinary action. In 1972 there were 87 charges of corruption involving 48 persons and a further 26 persons were prosecuted for other offences, and the cases against a further 91 Government servants were referred for possible disciplinary action. The same sort of pattern appears to be emerging in respect of the year 1973.

76. I do not think there is any point in attempting to reconcile the figures which I have given with those given by the Target Committee in their annual reports. Statistics maintained by the Anti-Corruption Office, and used by the Target Committee in its reports for the years 1971 and 1972, showing the number of persons prosecuted as a result of investigations conducted by the Office do not differentiate between prosecutions brought

under Cap. 201 and the former Cap. 215 and prosecutions for other criminal offences. These figures do not show the number of charges brought; and, in a number of instances, an examination of files showed that several persons had been charged jointly and in other instances that one person was charged with a number of separate charges. A further factor is that the figures given by the Target Committee relate to prosecutions of persons before the courts in the particular year under review in which the court had given its decision. Examination of the files showed that, in a number of instances, persons were charged in one calendar year but their cases were not disposed of by the courts until the following calendar year.

77. But, however one looks at the matter, there are no signs, so far, that there has been any spectacular break-through in the battle against corruption, despite the additional powers conferred by Cap. 201.

78. Since the Ordinance came into force in May 1971 no persons have been charged under sections 5, 6 or 7 of the Ordinance. Four persons have been "targets" for possible prosecution under section 10. The Attorney General issued letters in 2 cases under the recently repealed subsection (2) of section 10. One was the case of Chief Superintendent Godber and the other involved a relatively junior government officer. The Attorney General addressed 2 letters to this man under the repealed section 10(2) and finally accepted the officer's explanation. In the course of this investigation the Attorney General's Assistant issued one bank authorization under section 13(1) of the Ordinance. Prior to the service of the section 10(2) letter on Godber, the Attorney General's Assistant had issued a bank authorization under section 13.

79. Section 13 authorizations have also been utilized in 8 other cases in which 2 persons were subsequently convicted, 2 persons resigned while still under enquiry, and one case where the officer's contract was terminated as a result of the investigations. Two further cases are still under investigation; and in one case no charge could be brought because of a defect in section 10. This case is referred to in paragraph 123 below.

80. The provisions of section 14 of the Ordinance were first used in February 1973 when Superintendent Hunt and his wife received letters from the Attorney General. Letters under this section have been served on 7 occasions in connection with an investigation which is taking place at the time of writing this report.

81. The special powers to search premises under section 17 have been used by the Director on 12 different occasions but in one instance it was not necessary to execute the warrant as the suspect gave permission to search his premises. The 12 warrants related to 3 separate cases. One case involved 8 persons. It came to light as a result of a long-term investigation into a passport and illegal-immigrant racket in which no prosecutions resulted because of difficulties in disclosure of evidence obtained from under-cover sources but which did result in the breaking of this particular ring of racketeers and the sudden resignation of a number of junior government employees. The second case in which the Director issued 2 warrants under section 17 arose from another long-term investigation. In that case the homes of a member of the public and a police constable were searched. This long-term investigation is still continuing but to date no persons have been prosecuted; but the constable has deserted from the force. The third case was one of those referred to in paragraph 79 above where an officer under investigation resigned before the enquiry could be completed. In a number of instances the Attorney General's Assistant was not prepared to authorize the issue of warrants; and the Director issued them himself. The Attorney General's Assistant has issued a total of 6 search warrants in connection with the GODBER and other section 10 cases. In a number of other cases, the Commission was informed, search warrants have been obtained from magistrates under the provisions of section 50 of the Police Force Ordinance. The Anti-Corruption Office does not keep separate figures on this class of warrant, the duplicates of which are kept on individual case files.

82. Reverting to the statistics for 1971 and 1972 given in paragraph 73 above, in 1971 the cases against 59 officers for suspected corruption were referred by the A.C. Office to other authorities for possible disciplinary action. Presently, I shall be dealing with the existing arrangements on the disciplinary side and I will be making certain recommendations; but at this stage, it may be observed that from an examination of the files of the Establishment Secretary, it appears that during the year 1971, only 1 officer was dismissed as a result of disciplinary action and the services of 1 other officer were terminated. As regards 1972, the A.C. Office referred 91 officers for possible disciplinary action. Only 4 officers were in fact dismissed by disciplinary action during that year.

83. These, then, are the existing arrangements as regards the enforcement of the law against bribery and corruption; and I have given such information as I have been able to obtain as regards the working of the new Ordinance (Cap. 201) during the 2 years or so of its existence.

84. As I have said, this Ordinance is a more powerful weapon than its predecessor; but when compared with the original draft Bill, it is obvious that it had quite a few of its "teeth" drawn before it went on the statute book. Before deciding whether those "teeth" should be put back into the Ordinance I think it is necessary to ask oneself, and try to answer, 3 questions:

(1) Is there widespread corruption in the public service in Hong Kong?

(2) If so, why?

(3) Why is it so difficult to establish guilt in cases of bribery and corruption?

I shall deal with (1) and (2) together.

Is there widespread corruption in the public service in Hong Kong?
If so, why?

85. In attempting to answer these questions, I am reminded of a "note on the pattern of corruption in Hong Kong" dated 16th November 1967 written by Mr. Paul GRACE, at present Commander, Kowloon District. He said:—

> "Why is it that the man in the street in Hong Kong can so readily be persuaded to pay officials for facilities which the law says he shall have, whilst the man in the street in Birmingham would not only refuse indignantly to pay but would expect vigorous action against any official who might make such a suggestion?"

86. In attempting to answer that question, it is no good closing our eyes to the facts of history; and I cannot do better than quote the words of a highly-educated Hong Kong Chinese (a lawyer, and a much-respected member of this community) who, in answer to an invitation by me for assistance, wrote to the Commission as follows:—

> "Down to near the end of the T'sing Dynasty, the terms 'government' and 'citizen' were unknown in China. There were only the 'Emperor', his 'officials' and the 'subjects' (the 'hundred surnames'). There was no such creature as a 'Government servant'. Anyone appointed to any office was by grace and favour of the Emperor and he was called an 'official'. He owed no duty to those he ruled within his jurisdiction. The same principle applied to the lowliest amongst the subordinates of a mandarin. Such persons might be paid out of the emoluments of the mandarin. If so, he was the mandarin's personal aid or servant. If he was paid out of the revenue, he was an official. This system persisted down to the Nationalist regime, even though lip service was paid to the idea of modern government. Every act done by an official was regarded as a favour; and any omission a dispensation. Payment for such favour or dispensation was taken as a matter of course by a Chinese as a quid pro quo.
>
> Having understood this historical background, it is easy to reach the conclusion that a Chinese in Hong Kong is more ready to pay a bribe, as we understand it, without thinking of any moral issue. Indeed, for the majority of the Chinese in Hong Kong, most of the multifarious regulations and restrictions have no moral at all; and they do not see anything wrong in buying their way out . . . corruption and bribery in Chinese history was not confined to the uneducated. It was rampant amongst the educated who had been appointed to office through Imperial examinations. Even in the T'sing Dynasty appointments to minor public office could be acquired by purchase or bribery. Similarly . . . corruption in Hong Kong is just as prevalent in the more educated class."

87. Another highly-educated and much-respected Hong Kong Chinese wrote to the Commission as follows:—

> "Public attitude towards corruption is affected by the following factors which exercise considerable influence in the circumstances of Hong Kong:
>
> (1) A high proportion of the middle-aged or elderly residents came from China as refugees after 1949. In China they lived under the KMT Government which was riddled with corruption. They were conditioned to a style of Chinese Government suffering from the long heritage of dynasties of corrupt and oppressive rule with Government officials wielding unchallenged power. Undoubtedly, there were many just and clean officials as well. Indeed, some incorruptible historical figures became Chinese legends. However, the image of the Chinese Governments made the people believe that most officials were corrupt. The common Chinese proverb (天下烏鴉一樣黑—all the crows in the world are black) stemmed from this impression. A clean, fair Government, accountable to the public for its acts, and serving the public as its duty, was certainly the high political ideal advocated by ancient sages and the four traditionally upheld qualities of model officialdom (公正廉明—fairness, uprightness, integrity and acumen) all implied a categorical condemnation of corruption as a heinous crime. However, these ideals were often not fulfilled in practice. Deep-rooted impressions of the KMT regime rotting with corruption have made these immigrants believe, without too much critical examination, that many Hong Kong Government officers, like the Chinese officials they knew, may also be corrupt. This belief in itself breeds corruption because it leads to voluntary bribery by people who consider it normal practice in dealing with Governments.

(2) To these immigrants, Hong Kong Government is very much an alien Government, made rather mysterious and unapproachable by its complicated structure and a formidable language barrier. In the view of many of them, it is futile and unwise, and perhaps even dangerous, to challenge or query it. They may be very prone to grumble about it among themselves, but they are rather scared to take issue with it direct. Instead, they rather prefer the indirect approach, through some middleman, to take care of their problems. This attitude has probably changed quite significantly since 1967, in that even these people have, in the past few years, become more vocal and openly critical. However, this apathetic attitude still remains, particularly among the older, uneducated immigrant groups.

(3) Hong Kong in its unique development after the war has achieved a great deal. At the same time, many problems of considerable magnitude and complexity have been created by over-crowding and the shortage of necessary facilities resulting from the influx of refugees. Many people have had to put up with sub-standard conditions. Often the standard minimum requirements for operating a business legally cannot be met. They just try to do the best they can to eke out a livelihood. Illegalities of all sorts have become common—illegal hawking, illegal factories, illegal restaurants, illegal catering (particularly those serving lunches to office workers), illegal taxis (Pak Pai Che), etc. are trying to survive against current control legislation. Often such legislation has not been effectively enforced for various reasons. Control manpower may be inadequate. Such illegal services may have become essential in meeting some public need in the absence or shortage of legitimate alternatives. Government itself may feel inhibited by the thought of breaking too many rice bowls by seeking to eliminate them, particularly before some legitimate alternative can be provided. This kind of unsatisfactory situation breeds corruption. Illegal operators are only too willing to pay squeeze to avoid prosecution. Of course they do not wish to pay 'black money' if they can help it, but, given the choice, they would much rather pay than lose their livelihood. In making any general assumption that the public wish to pressurize Government to eliminate corruption, we should not lose sight of these important sectors whose vested interests make them dread the thought of a clean and effective Government which will force them to the wall. Without a comprehensive survey, it is impossible to estimate the total number of people (and their families) who are surviving by sufferance of non-enforcement, but it must be a very significant number—including some operating in politically highly sensitive sectors. They may grumble among themselves against Government for the squeeze they have to pay and they will never admit that they condone or connive in corrupt practices, but, in their heart of hearts, they probably pray to be allowed to continue to pay for non-enforcement, since it gives them a de facto licence, even though not a de jure one. This is the sort of unholy but realistic compromise which gives them breathing space for survival.

(4) In Hong Kong, economic pressures on the time factor are considerable. Getting something completed a month earlier may mean a gain of hundreds of thousands of dollars, or even more. Failure to get some procedure processed in Government in time may result in very heavy financial loss. Hong Kong people are quite prepared to buy time. Bribing someone to do something out of turn is in their view like a commercial deal of paying extra for speedy service. No matter how strongly our prominent businessmen often condemn corruption in public, some of them are not too scrupulous about practising corruption themselves when big business deals are at stake.

(5) Hong Kong's problem of people has produced long queues in many places: waiting for low cost housing accommodation, secondary school places, particularly in well established schools, etc. There is a strong temptation to get in by black market methods. Looking at our Government services objectively, we can be thankful that many of our application procedures are reasonably well controlled and insulated against corruption possibilities. But we must be on our guard that even normally law abiding people are sometimes prepared to offer bribes for something they need badly.

(6) It is difficult to determine to what extent corruption actually exists where rumours are widespread. Some shrewd people outside Government exploit the gullibility and ignorance of the public to obtain money by false pretences, claiming that they can "fix it", even promising to refund if they fail. It may well be something that they know the applicant is entitled to any way. The payment is happily made and the payer sometimes even introduces the middleman to relatives and friends. Government's image is thereby tarnished unfairly.

(7) Sometimes junior civil servants in extorting squeeze tell the payer that it has to be shared upwards with his superior officers. This statement thus enables him to ask for somewhat larger sums and at the same time warns the payer that it is futile to report it to the authorities because his senior

officers are all in it and will protect him against any allegations of corruption. To some extent this has helped to create the impression that corruption has spread quite far upwards.

(8) Many people may not like to pay squeeze but they are even more frightened of (麻煩—trouble)—the trouble of reporting corruption and being cross-examined by A.C. Branch, of appearing in court as a witness etc. They firmly believe that reporting a corrupt officer will result in reprisals. Even if the corrupt officer is dealt with, the informer's business or application may get on to some black list whereby other members of the same department will seize each and every excuse to prosecute him. It is believed that unless someone intends to wind up his business, it is very unwise to try to fight the corrupt official because usually a syndicate exists. They do not believe that it is useful to report this to some senior officers, because some clever explanation can always be given to justify the officer's course of action. If some inspector wishes to find fault with some licensed premises, he can easily list half a dozen valid reasons for prosecution. He can legitimately maintain that he is only doing a thorough job. Actually he is doing the right thing for the wrong reason, but it is extremely difficult to prove that he has an ulterior motive.

(9) The public often do not see the need or justification for stringent controls or high standards insisted upon. Operators often feel that the requirements are not always necessary and sometimes unrealistic. Failure to comply is unlikely to result in some major disaster which will attract public attention. All that remains to be done is to pay some enforcer to turn a blind eye. The bribe usually costs much less than the expenses for compliance. Again both parties are mutually happy and will jointly keep quiet.

(10) It is a Chinese custom to pay tea money to workers as a tip in the commercial sector. Tea money is often an accepted convention. A housewife may want to tip a mechanic or artisan from some public utility company, or even a commercial firm, to ensure that he gives good service. Government minor staff, e.g. postmen, are often offered tips, particularly at Chinese festivals. The payers do not appreciate or agree with Government regulations about such things and can see nothing wrong with the practice.

(11) Public attitude towards minor Government staff making some extra money is often one of sympathy. There is a feeling that the low grades are not paid an adequate wage to keep their families and some people find it most reluctant to report on minor staff which may result in breaking their rice bowls, whereas they believe that 'big corruption' exists elsewhere in Government and that should be Government's major concern and target. This attitude is reinforced by the knowledge that some minor Government staff have to do outside work, perhaps illegitimately, to make ends meet, particularly in these days of inflation.

(12) The younger generation, however, tend to take a much more critical view of Government about corruption. Their anti-establishment cast of mind easily lends itself to the belief that Government is very corrupt. They get very emotional about it. Representatives of the Federation of Students said emphatically at a recent meeting of the Social Causes of Crime Committee that the root causes of crime stemmed from corruption inside Government and that Government should begin by putting its own house in order before putting the blame for crime on young offenders.

(13) Even the more passive and pessimistic attitude of the docile middle-age group has recently taken a turn to be more critical of Government because of the upsurge in crime. There is widespread concern and anxiety about alleged police corruption and protection of vice-rackets which are believed to be a major cause of crime. The GODBER case gave rise to a great deal of public emotion, particularly when the BLAIR-KERR Report revealed that GODBER was in possession of an extensive list of vice-joints."

88. I also received very considerable assistance from Mrs. ELLIOTT; but I do not propose to quote from her communications to me because she frequently names individuals; and it is no part of the functions of this Commission to judge, much less cast aspersions on, any person. This is not a court of law trying specific charges. My concern is to form some general idea of the extent to which corruption permeates this society of ours (particularly the public service) to enable me to decide whether the problem should be tackled by means of "tougher" legislation, relaxation of disciplinary procedures, changes in current arrangements, or perhaps a combination of all three.

89. Hong Kong is now an industrialized society and it operates, to a very large extent, on 19th century laissez-faire lines. Since 1949, the population has risen from approximately 1 million to 4 millions. A large proportion of the people are the sons of those who, in the words of my informants, lived in a country ruled by a Government which was "riddled with corruption", and were members of a society which paid only "lip service ... to the idea of modern government". Many have no real roots here or a true sense of belonging; and because

of uncertainty as to the political future of the territory, many are afflicted by an overwhelming desire to make money quickly.

90. It is said that corruption is rife in the commercial and industrial sectors of society. As one of my informants put it:

"The whole of Hong Kong operates on a commission basis."

There is a great deal of truth in this; and I have good reason to believe that the vast majority of businessmen in Hong Kong would not have it otherwise. The only section of the Ordinance which strikes at corruption in the commercial sector is section 9; and sub-section (4) of that section is a complete "let-out" for what, in Government service, would undoubtedly be corrupt behaviour. It is not open to Government to "permit" a Crown servant to accept a "kick-back" on a Government contract. But "kick-backs" to employees in commercial firms is a matter of everyday occurrence, tacitly accepted by employers, if not expressly approved of by them.

91. There is tremendous scope for corruption in Government service, particularly in those departments which are in daily contact with the public. The majority of the allegations of corruption received by the Commission concern the following departments:—Police, Labour, Commerce and Industry, Public Works, Housing, Immigration, Transport, Urban Services and New Territories Administration. This should not be taken as implying that other departments on the Executive side of Government, or the Judiciary, are thought to be free from corruption, but merely that by far the greatest number of allegations which have been made to the Commission, concern the departments which I have named; and, as regards the Judiciary, such allegations as have been made concern the clerical grade only. I am happy to report that I have not been told anything which remotely suggests that any magistrate or judge is thought to be corrupt. But, as regards the departments which I have named, the Commission has received a very considerable amount of information alleging corruption—in some cases on an extensive scale.

92. The worst forms are what is described by the Anti-Corruption Office as "syndicated" corruption, that is to say a whole group of officers involved in the collection and distribution of money. For example, it is said that groups of police officers are involved in the collection of payments from pak pai drivers, the keepers of gambling schools and other vice establishments. Frequently the "collection" is far more than corruption in the true sense. It is plain extortion accompanied by veiled threats of violence at the hands of triad gangsters. The "collections" seldom take the form of direct payments to any member of the corrupt group of officers. Almost invariably there is the middleman. He is referred to euphemistically as "the caterer". He receives the money; and in some cases, it is said that vast sums are involved.

93. Opinions vary as to the extent of "syndicated" corruption; but it is widely believed that it exists in a number of departments, notably the police. It is said that in a number of cases these "syndicates" involve certain senior officers as well as those of intermediate and junior rank.

94. In the context of the present inquiry, the community is particularly interested in the extent to which "syndicated" corruption exists in the Police Force because of the burning issue as to whether the Anti-Corruption Office should continue to function as part of the Police. I think it is obvious from what I have said regarding the post-war history of Hong Kong that there are probably more opportunities for corruption in the Police Force than in other departments, although from time to time the opportunities for corruption in other departments have been very great e.g. looking back over the years at various times there have been tremendous opportunities for corruption in the Public Works Department. The same applies to the Commerce and Industry, Immigration, Housing and Labour Departments, and the New Territories Administration. But in the Police Force there are now, and there has been for the last 20 years, a great many opportunities for corruption. An A.C. Office report shows how syndicated corruption operates in the Traffic Branch. Sums of money are collected on a regular basis from all forms of illegal transport and even from taxi drivers and lorry drivers. It is said that if any of these vehicle owners are not willing to pay, they receive an unnecessary number of summonses for petty infringments of the traffic regulations. Perhaps the most frightening aspect of corruption in the Traffic Branch is the suggestion that the evidence in accident cases is sometimes tampered with and watered down in consideration of a money payment.

95. Apart from syndicated corruption in the Traffic Branch it is said that a major source of corruption has been what is described rather glibly as "social" offences e.g. hawking (either with or without a licence) gambling, brothels, etc. I do not think that the illegal sale of narcotics could possibly be described as a "social" offence; but it is said that this also is a lucrative source of corruption.

96. The police have always felt particularly frustrated because of the attitude of the judiciary to these so-called "social" offences. They say that the fines imposed by magistrates have been ridiculously low; and on the rare occasions when a magistrate has decided to take a firm stand regarding, say, hawking and obstruction, etc., his sentences have been drastically reduced on appeal to the Supreme Court, the result being that the lower judiciary have received no encouragement from the superior courts to take a firm line. But, apart from that,

it is said that the attitude of many magistrates has been that it is unjust to pass high sentences on people who are only trying to eke out some sort of livelihood in extremely difficult situations and that it is up to the Executive Branch of Government to solve such "social" problems— presumably by legalising gambling, organizing a proper system of public transport, providing conditions such as would enable hawkers to trade without breaking the law and so on. Presumably, it has never been suggested that brothels and other vice-establishments (including those for the sale of narcotics) should be legalized. Be that as it may, it is said that the low fines imposed by the courts are regarded by many hawkers, keepers of gambling establishments, drug peddlers, etc. as nothing more than a small "overhead" to be taken into consideration in the running of their business. Indeed, it is alleged that in many instances the actual guilty parties do not even appear in court, but arrange with some "stooge" (for a suitable payment, of course) to stand in the dock of the court and admit to something for which he was not guilty at all. Many police officers, so it is said, have simply lost heart in their endeavour to deal with a number of "social" offences and have joined the ranks of those who "squeeze" the operators rather than take them to court.

97. Other factors said to contribute to "syndicated" corruption include the necessity for detectives to pay information money to their informants. It is well-known that the police would be unable to detect serious crime without information which usually comes from the criminal classes themselves or persons associating with criminals. Information money from official sources is said to be insufficient to pay-off these informers and the detectives and others are forced to "squeeze" the operators of vice-establishments, etc. to obtain extra funds. It is also said that corruption exists in connection with recommendations for promotion—so much to become a corporal, so much to become a sergeant and so on. Of course, if this is true, it necessarily involves senior officers because the promotion boards are composed of very senior officers.

98. It is said that Police corruption is, for the most part, "syndicated" and that corruption on an individual basis is frowned upon by the organizers of these "syndicates"—indeed anyone operating on his own is liable to be "fixed". The organizers are good psychologists. New arrivals in the Force are tested to see how strong is their sense of duty. The testing may take various forms—sums of money placed in their desks, etc. If an officer fails to report the first overture of this sort he is really "hooked" for the rest of his service, and is afraid to report any corrupt activities which may thereafter come to his notice.

99. On a number of occasions during this inquiry I have been told that there is a saying in Hong Kong:—

(1) "Get on the bus" i.e. if you wish to accept corruption, join us;

(2) "Run alongside the bus" i.e. if you do not wish to accept corruption, it matters not, but do not interfere;

(3) "Never stand in front of the bus" i.e. if you try to report corruption, the "bus" will knock you down and you will be injured or even killed or your business will be ruined. We will get you, somehow.

100. The reaction of honest young police officers on hearing this kind of talk may well be imagined. They either join the "bus" or mind their own business. They may, so it is said, even accept payments but nevertheless continue to do their public duty as conscientious police officers. In other words, they are paid, but do nothing for it.

101. Apart from "syndicated" corruption, it is said that in departments other than the Police there is a great deal of corruption which involves only small groups of officers. One series of files which I perused related to extensive inquiries by the Anti-Corruption Office regarding entry permits, identity cards, false birth certificates and passports issued to a number of illegal immigrants. This involved small groups of officers in the Immigration, and Registration of Persons Departments. The Anti-Corruption Office were fortunate in being able to infiltrate an agent into the Registration of Persons Department; and two persons were convicted and sentenced to 4 years imprisonment in 1971.

102. As regards the Labour Department, in Hong Kong there are a large number of factories which are either not registered, or fail to comply in some way with the numerous regulations applicable to factories. It is said (at any rate in the past) that a large number of such factories have paid as much as $500 per month for the privilege of being allowed to operate. Such payments, it is alleged, are made to members of the Labour Department, New Territories Administration, Public Works Department and so on. If, say, 10,000 factories each pay $500 per month, corrupt receipts from that sector alone would amount to $5 million per month!

103. There are allegations concerning the New Territories Administration—allegations that for substantial sums, clerks and land bailiffs pass on their knowledge of Government policy in regard to land utilization thereby enabling land speculators to buy agricultural land at ridiculously low prices well knowing that such land will shortly be converted to building land.

104. Of course, in some cases what may have been extremely lucrative fields for corruption a few years ago, may not be so today. For example, about the mid-60's, certain amendments were made to the Buildings Ordinance; and it paid land developers to get their plans approved by the Buildings Office before a certain date. It was alleged to the Commission that during a certain period a number of very large corrupt payments were made to certain persons in return for their speeding up approval of certain building plans.

105. I was told that narcotics has always been a tremendously lucrative source of corruption. A police officer or group of police officers or Preventive Service officers may shut their eyes to the importation of a large quantity of heroin. Indeed, one informant said that it was quite possible for a police officer to make more money in one corrupt transaction of this kind than he could earn honestly after 20 years service.

106. I could go on and on in this vein. But perhaps I have said enough to demonstrate that a large section of the public believe that corruption exists to a greater or lesser extent in many areas of the public service, and that it is rife in certain departments, particularly those which I have named.

107. As I have said, I am not sitting as a judge making findings of fact on specific charges. No person, or group of persons, is on trial. But, for the purpose of deciding whether to recommend that more "teeth" should be put into the Ordinance, whether disciplinary procedure should be relaxed, and so on, I feel that I must assume, for the purpose of this inquiry, that there is a great deal of truth in what the public believe and allege.

108. Judging by statements made in the news media and elsewhere, one gets the impression that the public think that heads of Government departments are either ignorant as to the extent to which corruption exists in the public service or connive at it or even approve of it. It is a great pity that there should be this communication gap between the Government and the people. The public can rest assured that the heads of certain departments are fully aware of the fact that corruption exists in their departments. I do not wish to draw any invidious distinctions between the reactions of the various heads to whom I have written; but I cannot speak too highly of the reaction of the Commissioner of Police and the Director of Immigration. They are not the "babes in the wood" that some members of the public would have us believe. They, and other heads, are able men who are fully conversant with the opportunities for corruption in their commands, and feel utterly frustrated that they are unable to do more about it.

109. I shall now say a word or two about the sheer difficulty of obtaining evidence in corruption cases.

Why is it so difficult to establish guilt in cases of bribery and corruption?

110. As is well-known, corruption takes many different forms. To start with a simple and, of course, purely hypothetical example: Supposing a land developer wished to have speedy approval of his building plans and that he managed to achieve his object by bribing some official in the Buildings Office to so arrange matters that the particular plans were considered earlier than they would otherwise have been considered in the ordinary course. How could an offence of that sort ever see the light of day? The chances are that if the "advantage" took the form of a money payment, this would not take place before witnesses. It would either be made in secret, or in some very indirect way. The two parties to the corrupt transaction would be satisfied parties. Unless the public official happened to be a specially "planted" agent provocateur he would certainly not complain against the building contractor; and vice versa.

111. It is said that in many cases corrupt payments are made not in respect of any particular transaction, but to create an atmosphere of goodwill which the giver hopes to benefit from in his dealings with the public officer in the future. The giver, of course, runs a distinct risk as regards his first payment. The recipient may not be a satisfied party. His sense of honesty and public duty may result in the giver being brought to justice. But, it is said, givers are good psychologists. There is always the tentative approach. They have usually summed-up their man before incriminating themselves; and so once again we have two satisfied parties.

112. It is said that payments are frequently made on a kind of conditional basis. Take the case of a certificate of origin issued by the Commerce and Industry Department. Supposing the Department has to be satisfied that all materials used in the manufacture of a particular article which is scheduled for export is of Hong Kong origin; and supposing a corrupt manufacturer uses cloth of Chinese origin because it is cheaper. Supposing, a corrupt factory inspector is prepared to turn a blind eye to this in consideration of, say, $500 per month. If one of his superiors in the department happens to carry out an unexpected check and discovers that cloth of Chinese origin has been used, the inspector simply apologises to his superior for his negligence, and returns the $500 in respect of that particular month to the manufacturer saying that he regrets that something has gone wrong. Although the Commerce and Industry Department may have strong suspicions, they could not possibly obtain a conviction on such evidence. The money would be returned secretly; and, again, there would be 2 satisfied parties—the inspector and the manufacturer.

113. There would be the same difficulty if the particular corrupt transaction involved a number of officers. Provided each was satisfied with his "cut", it would be impossible to persuade one of the group to testify against the others. Supposing the "giver" happens to be an illegal immigrant from Taiwan who wants to be allowed to become a Hong Kong citizen. He would require an entry permit, and a Hong Kong identity card. This would involve bribing certain officials in the Immigration Department and the Registration of Persons Department. To "square" them might cost anything up to $20,000. But he would not pay any official direct. The payment would be made to a middleman, who would be in contact with the corrupt group, or groups. Ninety-nine times out of a hundred, the "giver" would be a satisfied party. The middleman would take his "pound of flesh"; and he would be a satisfied party; and unless an agent provocateur was "planted" in the corrupt group, the chances of ever bringing anyone to justice would indeed be slim. I am not saying it is impossible. Earlier in this report, I mentioned an actual successful prosecution. But it involved a great deal of hard work on the part of the Anti-Corruption Office, and one or two illegal immigrants had to be persuaded, much against their will, to tell the truth.

114. When one comes to consider the big "syndicates" which are alleged to exist—notably in certain branches of the Police Force—there are further difficulties facing any law-enforcement agency. Every police force acts on information. Information costs money, sometimes more money than is available from official sources. Frequently, the information concerning serious crime is supplied by persons who are themselves criminals, or the associates of criminals. It is said that it is those who run vice-establishments and who endeavour to eke out a living, or supplement their income, by running pak pais, and so on, who are forced to pay regularly firstly to enable the gangsters to be sufficiently well-paid so that they supply necessary information regarding serious crime, and perhaps to enable payments to be made for promotion within the service. Some of the allegations in the reports which I have received concerning such "syndicates" have a mafia-type ring about them. There are frightening suggestions that non-payment by anyone who is required to do so may result in his being seriously beaten-up or that his livelihood may otherwise be put in jeopardy.

115. If even half of what is alleged is true, I despair of the chances of any law-enforcement agency, operating a British-type system of criminal investigation and court procedure, of being able consistently to break into, much less smash, organizations of this kind. Occasionally, the Police manage somehow to do so. But it is a difficult, time-consuming and soul-destroying process. As I have said, payments are said to be made, sometimes willingly, sometimes unwillingly. From time to time, one reads of small "fry" at the base of the "pyramid" being prosecuted for some offence. But that is no solution. The ultimate object must be to smash the whole corrupt organization, if that is humanly possible. But how is any law-enforcement agency to do it? It is not the function of this Commission to discuss police methods. But looking at the matter purely from the point of view of obtaining admissible evidence to support a prosecution and reverting to the "bus" analogy, provided everyone in the "bus" is satisfied with his "cut", the chances are that no one will "split". Those "running alongside the bus" i.e. those who know the racket is going on and *could* testify, because of fear of reprisals, or otherwise, they choose to do nothing about it; and it is said that those who do get "in front of the bus" [that is to say, give information to the authorities and offer to testify in court] they are, frequently, bought off, or frightened off, before the trial.

116. I think it must be obvious from all this that the difficulties involved in the successful prosecution of persons suspected of bribery and corruption are very great indeed. It is perhaps not too much to say that bribery and corruption cases differ from every other class of case in the criminal calendar in that the Crown seldom, if ever, is in a position to call direct evidence of the alleged offering, soliciting or acceptance of the bribe because the other party to the corrupt transaction is satisfied and unwilling to testify—perhaps also frightened of the consequences of his so doing. Defending a corruption case in a Hong Kong court is a defence lawyer's "dream"! Indeed, having regard to the complicated manner in which some of these corrupt set-ups operate, and the frequent impossibility of obtaining evidence from witnesses other than the suspects themselves, it is not too much to say that the adversary system of trial which obtains in British and Hong Kong courts is singularly unsuited to the trial of bribery and corruption cases. I examined the case files on two investigations where an almost inescapable impression of corruption arose but in each case the inquiries proved abortive. In each case, the head of the department and the Anti-Corruption Office were completely satisfied that the persons concerned were, and are, corrupt. For lack of evidence in each case, it was impossible to charge the suspects in the criminal courts; and, in one case, the minor irregularities which were proved against them in the disciplinary proceedings could not possibly have justified dismissal by the Governor. The result is that these corrupt men are still in the public service.

117. The attitude of certain members of the public to a situation of this kind is perfectly understandable. For the most part, they do not understand the necessity for the strict rules of evidence and procedure which govern the conduct of a criminal trial. They do not even know of the inhibiting effect of Colonial Regulations or how difficult it is to dismiss officers from the service or retire them compulsorily. The public does not know of the efforts which the Government has made during the last few years (in the face of opposition from the Staff

Associations and from the Secretary of State) to relax and simplify these Colonial Regulations with a view to dealing with staff on a more master/servant basis. What members of the public see is a number of corrupt officers retained in the public service. They conclude that Government is unwilling to bring them to trial, unwilling to dismiss them, unwilling to retire them compulsorily; and the public concludes that Government connives at, indeed approves of, corruption in the public service. Anyone who knows how the Hong Kong courts, and Government disciplinary procedures operate, also knows that Government does not deserve to be criticised in this way. But the attitude of the public is perfectly understandable.

118. It appears from Mr. LAW's report on his visit to Singapore in 1968 that the Singapore authorities never take a corruption case before the courts unless the evidence is such that they feel absolutely certain that there will be a conviction. I think that the Singapore approach is sound. On the other hand, the Hong Kong public feel that corrupt officers should be punished by the courts whenever possible, although there is also universal agreement that if court action is impossible, and that disciplinary proceedings with a view to dismissal is also impracticable, then Government should have the power, in appropriate cases, to retire officers compulsorily, irrespective of their age.

119. However, to return to the Ordinance. It is, of course, desirable that persons who are alleged to be corrupt should be tried and, if found guilty, punished by the courts; and in my view the Ordinance should be amended in a number of respects in order to facilitate investigation and lighten the burden of proof which ordinarily lies upon the prosecution. The amendments which I have in mind will no doubt result in protests from certain members of the legal profession who may find it more difficult to defend, and obtain the acquittal of, persons charged with corruption. But such protests should be put into proper perspective. It is the old story of balancing the interests of the accused with the interests of society. It is certainly in the interests of persons charged with bribery and corruption that they be acquitted. It cannot be in the public interest that an unduly large number of guilty men should go scot free; and, in my view, none of the amendments which I am about to recommend for the consideration of the legislature, infringe basic human rights under the law.

Suggested amendments to the Ordinance

Section 10

120. As this section stands at the moment, it is only if the prosecution can show that the Crown servant *himself* is maintaining a standard of living not commensurate with his official emoluments, or if *he* is in control of pecuniary resources or property disproportionate to those emoluments, that the suspect may be called upon to give an explanation to the court. In 1971, the legislature recognized that, in a great many cases, it was simply impossible to get witnesses to come forward and say that they gave the Crown servant a bribe and it was decided that, in appropriate cases, the onus should shift to the accused to satisfy the court that he came by his wealth honestly. But, the fundamental reason for an enactment of this kind is the fact that in Hong Kong witnesses, for the most part, simply refuse to give evidence in support of charges laid under sections 4(2), 5(2) and other sections creating offences of a similar nature in Part II of the Ordinance. In other words the rationale for section 10 is that the unexplained wealth was obtained by the accused by corruption.

121. Indeed, this is evident from section 21(1). That section says that in cases where the accused is charged with accepting a bribe and a witness testifies that he paid money to the accused, and the court is looking for corroboration of that fact, it may accept as corroboration any evidence which the prosecution may bring to the effect that, at about the time of the alleged offence, the accused was in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. It is a rather strange provision in that all the elements necessary to establish an offence under section 10(1)(*b*) are given probative value in proceedings where the object is to establish a bribery charge under another section of Part II of the Ordinance. The legislature clearly had in mind a situation in which the prosecution could prove that the officer had a great deal of money but it might only be able to lay a bribery charge which involved a comparatively small sum. The charge sheet need not contain a charge under section 10 as well as the charge under another section in Part II of the Ordinance.

122. It is not only evidence of the *accused's* excessive, and unexplained, pecuniary resources which may be tendered for purposes of corroboration. Under section 21(2), an accused is presumed to be in possession of excessive resources where any person whom, having regard to his relationship to the accused or to any other circumstances, is believed to be holding resources on behalf of the accused, or as a gift from the accused. In other words, on a prosecution for an offence under, say, section 4(2), the prosecution is not only entitled to tender evidence that the accused himself is in control of excessive pecuniary resources. It may tender evidence that the wife or mother of the accused has suddenly acquired great wealth in some unexplained way.

123. The enactment of section 21(2) showed, if I may say so, a true appreciation of the criminal mind. A corrupt officer seldom leaves his ill-gotten gains in his own bank account. The Anti-Corruption Office has

found that, in a number of cases, money is given to a relative or nominee to be held in trust for him. One particular case file I examined illustrates this point. All the evidence pointed to the fact that the officer's family was relatively impecunious. He had no known sources of income other than his salary and that of his wife. He joined a Government Department in a relatively junior capacity in 1967. His salary was about $1,600 per month; his wife earned $100 per month. Within a matter of 2 years or so, his wife, his mistress and his mother, between them, has amassed a fortune of $357,730.27. One may well ask: where did this money come from? As usual, not one of those members of the public who, it was suspected, had bribed the officer would come forward with evidence to support charges under sections 3 or 4(2) of the Ordinance. The officer denied all knowledge of how his relatives and mistress had come by their wealth. The mother told the police a cock-and-bull story about having made $200,000 "smuggling" during the Japanese occupation; that she had kept this huge sum of money in cash in a box under her bed for over 20 years, and had then decided to invest it in the purchase of flats, etc.!

124. No court would have believed such a story. But that would not have taken a prosecution under section 10 any further. The point was: since there was not a scrap of evidence to connect the officer himself with this fortune the Attorney General could not have consented to a prosecution under section 10. Indeed, he was not asked to do so. The Target Committee agreed entirely with the police that no further action was possible as the law now stands.

125. If, however, there had been a provision in section 10 comparable to that in section 21(2), which would have enabled the court to presume (until the contrary was shown) that the officer *himself* was in control of his relatives' wealth, a charge under section 10 could have been laid against him. The relatives would have had to give evidence on behalf of the officer; and it would then have been a straight issue of fact. If the court had disbelieved the story about "smuggling" and keeping $200,000 "in an old sock", so to speak, for over 20 years, the effect of that would have been that the officer would have failed to displace the statutory presumption; and he would have been found guilty.

126. Therefore, I strongly recommend that consideration be given to the enactment in section 10 of a provision comparable to section 21(2). The presumption should cover not only pecuniary resources and property in the name of:

> "a person who (having regard to his relationship to the accused or to any other circumstances) there is reason to believe is or was holding such resources or property, or obtained such accretion, in trust for, or otherwise on behalf of, the accused, or as a gift from the accused."

If possible, the presumption should cover the maintenance of a standard of living by the officer's near relatives or a mistress or girl friend, not commensurate with the officer's emoluments. After all, he is ordinarily "the bread-winner" in the family. But, if, despite the fact that his wife and other near relatives have no known sources of income, they are nevertheless able to purchase expensive motor cars, entertain lavishly at expensive hotels, go for holidays abroad, send their children to expensive schools in Europe or America, and so on [the wife, or the mother, etc. doing all the paying, of course] the whole object of section 10 is defeated.

Section 12

127. Under section 12(1), upon conviction of a person in respect of an offence under Part II, other than an offence under section 3, the court, in addition to the other penalties prescribed, is required to order the accused to pay the amount or value of any "advantage" received by him. This relates to offences under sections 4 to 9. Unexplained wealth under section 10 could not be said to be an "advantage". In other words, under the law as it how stands, a Crown servant may retain all his ill-gotten gains, although he has been found guilty of an offence under section 3 or section 10. In my view, this is most unsatisfactory; and I recommend that the most careful consideration be given to revising the penalties at present prescribed by section 12.

128. In their 6th report dated 29th December 1961, the Advisory Committee on Corruption recommended the enactment of a provision on the lines of what is now section 10(1). The view they took was that such an offence is much more serious than any other offence in the former Cap. 215. They said:—

> "The punishment on conviction of being in possession of the proceeds of corrupt transactions must be drastic . . . and in our opinion should be of the order of a fine of $100,000 and seven years imprisonment. Even such a punishment provides very little deterrent to a man who may have obtained over a million dollars through corrupt practices; but it is not possible to increase this penalty without putting it out of proportion to penalties for other offences."

That was said at a time when the maximum penalty for offences under sections 3 and 4 of the former Cap. 215 was $10,000 and five years imprisonment [in those days it was 7 years in the case of improper conduct in relation to public contracts]. In fact the general penalty for offences under Cap. 201 (other than sections 5 and 6) is

now $100,000 and seven years; but the legislature has now fixed the maximum penalty for offences under sections 5 and 6 at $100,000 and ten years. [sections 5 and 6 deal with improper conduct in relation to public contracts.]

129. I agree with the Advisory Committee that one can imagine cases under section 10 which might well be regarded by society, and the courts, as deserving of a higher penalty than for any other offence under Part II of Cap. 201. According to the information supplied to the Commission, it is believed by many people that, during the past few years, certain individuals have made vast sums by corruption—sums far in excess of the figure which the police are in a position to prove (if they ever get the chance) in the case of Godber.

130. I therefore recommend that consideration be given to increasing the maximum penalty which may be imposed upon conviction under section 10 to a level not less than that for offences under sections 5 and 6.

131. The Advisory Committee, in their 6th report, also said this in relation to the penalties for conviction under what is now section 10:—

> "It is accepted that Government has a right to recover, through civil proceedings, monies which have been proved to have been gained by corruption. The weakness of this is that where an accused is found to be in possession of, say, one million dollars and is unable to explain satisfactorily how he obtained the whole of this sum, the only amount which can be recovered by civil action is the amount which could be shown positively to be the proceeds of corrupt transactions. We therefore suggest that, if our recommendations . . . are agreed, where an accused is unable to establish satisfactorily that it" (i.e. his wealth and property) "was acquired honestly, he should be liable to be ordered by the court to pay to the Government the amount, or value, of such resources."

132. With these sentiments I am in complete agreement. The principle that a law-breaker should not be permitted to retain the fruits of his ill-gotten gains is not in dispute. The statute laws of England and Hong Kong contain forfeiture provisions; and the tax and customs legislation of most Commonwealth countries enable the courts to order a person who has been convicted of attempting to evade tax or customs duty, to pay several times the amount of such tax or duty in addition to imposing heavy fines and long terms of imprisonment.

133. I therefore recommend that consideration be given to enacting a provision which would enable a court, upon conviction of a person of an offence under section 10, to make an order which would operate as a forfeiture order or a judgment in favour of the Crown that is to say in respect of such proportion of the pecuniary resources or property, the control of which the accused is unable to explain satisfactorily. In a matter of this kind, speed is essential. My point is that upon the making of such an order, the Crown (acting on behalf of society as a whole) should not be placed in the position of having to institute civil proceedings for the recovery of the unexplained financial resources or property. It should be in a position to issue execution forthwith against financial resources and property located locally and to register the order as a judgment in any foreign country to which the suspect has transferred such assets. Experience has shown that corrupt officers may not keep their ill-gotten gains in banks in Hong Kong, but transfer them abroad.

134. Of course, orders of this nature would, in all probability, prove nugatory in the vast majority of cases unless some procedure is devised whereby the suspect's assets are "frozen" at an early stage of the investigation. Once alerted, a suspect will undoubtedly use every conceivable means of concealing his assets. I fully appreciate that our legislation does not have the force of law abroad; but I see no reason at all why assets located locally should not be "frozen" at an early stage of the investigation.

135. I therefore recommend that consideration be given to the enactment of legislation which would enable the Attorney General to make an order in the nature of an order for attachment which would have the effect of preventing banks and similar institutions from honouring instructions of a client in relation to assets in their possession which have been "frozen" by the attachment order, unless with the consent of the Attorney General.

136. Applying all this to a hypothetical case, with section 10 in the form as recently amended following my first report, a Crown servant who was alleged to be in possession of say $3 million, half a million of which was in banks in Hong Kong, an order for attachment of that half million dollars could be made forthwith, if legislation were enacted to implement my recommendation made above.

137. If bail were refused and the Crown servant remained in custody until his trial, at which he was convicted, if there were a provision in section 12 (such as I am now recommending) which would enable the court to make an order in respect of such portion of the $3 million, control of which the Crown servant was unable satisfactorily to explain, steps could then be taken immediately to register this judgment in whatever jurisdictions abroad, the Crown servant was known to have assets.

138. Far be it from me to suggest that a person could not be "one jump ahead" of the authorities even if the Ordinance were in the form I now suggest; but, at least, there would be some machinery whereby some attempt could be made to deprive a convicted person of his ill-gotten gains.

139. As regards section 3, consideration should also be given to the enactment of a provision either requiring the court to make an order in respect of the advantage which the Crown servant has accepted, or at least giving the court a discretion in the matter, that is to say an order which would operate in the same way as the order I recommend in respect of section 10.

Section 13

140. One of the most important investigatory sections in the Ordinance is section 13. Experience has shown that the police seldom obtain clear-cut information of corrupt transactions from persons whom they are in a position to call as witnesses. For the most part, their information is of the most nebulous nature. It has therefore been recommended to the Commission that the Attorney General should be given the power to authorize the investigation and inspection of bank, and other, accounts referred to in section 13 operated by Crown servants, or their relatives, quite irrespective of any question of a suspected offence.

141. I strongly support this recommendation. There must be very few honest Crown servants who would object to this. It has been suggested that there should be periodic "spot checks" based on nothing except the fact that the Crown servant's name has been drawn out of a hat. For myself, I would certainly have no objection to that; and I am sure the majority of Crown servants, who have nothing to fear, would feel the same way. But, it may not be necessary to go as far as that. What frequently happens is this: The head of a Department may believe that certain officers in his department are corrupt. He may have no direct information to prove this. His belief may be based on the officer's general reputation, or on an intimate knowledge of the working of the department and the officers in it, coupled with an assessment of the suspected individual—for example the individual's reaction to a proposal that he be transferred to another appointment. There may be hundreds of small matters which mean little or nothing to lawyers and which could not possibly influence a court, but which are of significance to the head of that particular department and which may well play a part in creating in the mind of the head, a belief that the officer in question is corrupt.

142. Beliefs based on material of this kind are sometimes brushed aside as little more than "hunches" and therefore worthless—although if the manager of a commercial firm were to hold the same beliefs and were to dismiss an employee in consequence thereof, society would think nothing of it and the employee would have no redress against his employer if reasonable notice of termination, or salary in lieu, were given.

143. Such material may fall short of what would cause a magistrate to issue a search warrant. It may fall short of what the Assistant to the Attorney General attached to the Anti-Corruption Office may insist upon getting before he exercises his statutory powers under section 13, as that section is phrased at present. Nevertheless, anyone who has worked closely with experienced and responsible senior police officers and heads of executive departments must surely have the highest respect for their "hunches" based as they are on direct experience of the day-to-day workings of departmental procedures.

144. In my view, where suspicion of corruption exists, that should be sufficient to enable an investigation of the kind envisaged by section 13 to be commenced.

145. At present the Attorney General is required to be:

> "satisfied that there are reasonable grounds for suspecting that an offence . . . *has* been committed."

What is sufficient to "satisfy" one person may not be sufficient to satisfy another; and the Commission was informed that since the Ordinance came into force in May 1971, the Director has, on a number of occasions, felt frustrated because the information available to him was not sufficient to satisfy the Principal Crown Counsel attached to the Anti-Corruption Office to whom the Attorney General had delegated his powers under section 13. The result has been that, in those cases, no authorization under section 13 was sought or granted; and, as a result, the investigation never got "off the ground", so to speak. I can not discount the possibility—indeed probability—that some corrupt officers have not been brought to trial as a result of the investigation having been "still born".

146. I would not wish this statement to be taken as criticism of any person. One only has to glance at the Attorney General's legislation files to appreciate how much criticism was levelled at the draft Prevention of Bribery Bill prior to its enactment in 1970. Much of that criticism emanated from the legal advisers to the Secretary of State; but there were also some misgivings locally. The Attorney General gave Legislative Council solemn assurances that his new powers would not be abused; and there can be no doubt that all concerned in the operation of the Ordinance since it came into force have been acting cautiously—in my view over-cautiously.

147. However, apart from over-caution as regards the grant of authorizations under section 13, it may be that the phraseology of the opening words of the section are unduly restrictive. As I have said, at present the Attorney General (or his delegate) must be "satisfied that there are *reasonable grounds* for suspecting that an offence . . . has been committed." There is an objective as well as a subjective aspect to such phraseology. In any particular case, it might well be open to a suspect to seek a ruling from the courts as to the reasonableness of the grounds on which the Attorney General exercised his discretion. To my mind, the mere possibility that a successful investigation might be stifled in this way at its very inception is not in the public interest; and I therefore recommend that section 13 begin thus:

> "Where it appears to the Attorney General that an offence under this Ordinance may have been committed, by any person, he may" etc.

Or, better still,

> "Where it appears to the Director that an offence under this Ordinance may have been committed" etc.

Or, better still,

> "The Attorney General [or Director] may" etc.

Section 14

148. This section empowers the Attorney General to issue a notice to a suspect and to any other person whom the Attorney General believes to be acquainted with the facts relevant to an investigation, requiring them all to submit information to the Director of the A.C. Office. As I have said earlier in this report, as originally drafted it was to be an offence under sub-section (4) for any person (including the suspect) to neglect or fail to comply with the Attorney General's notice. I have scrutinized the Attorney General's legislation files; and I am satisfied that there was no objection locally to this draft provision. However, the legal advisers to the Secretary of State objected on the ground that, in complying with the notice, the suspect might be forced to incriminate himself. The reaction of the ordinary man "on the Shamshuipo omnibus", so to speak, might well have been: "And why not?" However, sub-section (4) was amended so as to make it an offence for any person, *other than the suspect,* to neglect to comply with the notice; and a new provision [now section 20(*b*)] was added. That simply says that if the suspect is ever brought to trial the prosecution and the court may comment on his failure to comply with the Attorney General's notice.

149. Of course, the result of the amendment to subsection (4) of section 14 was that the whole section looked somewhat ridiculous. The Attorney General does not need statutory power to address a suspect in the manner envisaged by subsection (1) of the section. He can do that anyway; and experience has shown that, in the absence of a penal sanction, suspects do not comply with notices of this kind. The section is a dead letter so far as they are concerned.

150. I do not propose to go into the history of the so-called "right of silence and privilege against self-incrimination." From a purely evidential point of view, given proper safeguards designed to ensure that the suspect, or accused, is not subjected to pressure of any sort, the effect of which might be to cause him to say something which is untrue, self-incriminatory evidence is probably the best form of evidence. A suspect may be "framed" by others. Provided he is not subjected to pressure from any quarter, he does not usually "frame" himself. Nevertheless, the so-called right of silence is something dear to the heart of every criminal. Jeremy BENTHAM, whose common sense has always appealed to me, once said:

> "If all the criminals of every class had assembled, and framed a system after their own wishes, is not this rule the very first which they would have established for their security? Innocence never takes advantage of it: innocence claims the right of speaking, as guilt invokes the privilege of silence."

Elsewhere, BENTHAM gives a number of reasons for the rule, one of which undoubtedly accords with one aspect of the British character. He says:

> "This consists in introducing upon the carpet of legal procedure the idea of 'fairness' in the sense in which the word is used by sportsmen. The fox is to have a fair chance for his life: he must have . . . leave to run a certain length of way for the express purpose of giving him a chance for escape . . . In the sporting code these laws are rational . . ."

No doubt they are. But do they merit any place at all in a serious inquiry designed to establish the guilt or innocence of a person suspected of having committed a crime? They may not merit a place; but they certainly do have a place in our system of criminal justice.

151. However, my point is that the so-called right of silence is not, and never was, a basic human right under the law. In olden times those who had an interest in the outcome of court proceedings were incompetent to act as witnesses in them. It was not until 1898 in England (and 1906 in Hong Kong) that the incompetency of an accused person to testify in his own defence was finally removed. He was made a competent witness for

the defence, but not a compellable one. However, as early as 1849, Parliament decreed that a bankrupt, in his public examination, was bound to answer all questions touching matters relating to his

> "trade dealings or estate or which may tend to disclose any secret grant conveyance or concealment of his lands, tenements, goods, money, or debts".

He committed an offence if he failed to answer questions on these topics. Today, in Hong Kong (as in England) in the public examination of a debtor

> "the court may put such questions to the debtor as it may think expedient".

He is examined on oath. Failure to answer any question is a contempt, punishable as such. His answers may be recorded; and may be used in evidence against him.

152. A similar situation obtains under the Inland Revenue Ordinance. Under various sections of the Ordinance, officials of the Inland Revenue Department may issue notices requiring the taxpayer to submit information for the purpose of tax assessment, and they may summons the taxpayer to answer questions. Failure to comply with such notices and to answer questions renders the taxpayer liable to a penalty [section 80]; and if he gives a false answer to any question, he is liable to a number of financial penalties and to imprisonment for 3 years [section 82]. If the taxpayer has been guilty of tax evasion, it is not open to him to argue that by answering the questions put to him he would be incriminating himself, and that he may therefore plead some kind of "right of silence and privilege against self-incrimination".

153. In *Clinch* v. *Inland Revenue Commissioners*[1], Mr. Justice ACKNER said:—

> "The so-called 'right of silence' currently alleged with such emphasis and fervour by many lawyers as going to the very root of British notions of justice, seems to find no place in the field of tax avoidance—a fortiori where tax evasion is concerned. Mr. POTTER [counsel for the Commissioners] tells me that in the field of Value Added Tax the inquisitorial powers of the Customs and Excise Commissioner far exceed those of his clients . . . . far from being entitled to remain silent, the individual is subject to penal sanctions if he refuses to supply the very information that may lead to his conviction. Had such powers been reserved for use in the detection of the most serious offences in the criminal calendar, doubtless there would have been, not acclamation, but a public outcry, judged by the emotion that has been generated by the recent suggestion of a very learned Law Reform Committee . . . when one explores this aspect of legal philosophy, there seems to be much that is irrational."

With these observations I respectfully agree. If that is the modern enlightened view taken in matters of tax evasion, I see nothing extraordinary in asking the legislature to take an equally realistic view as regards suspected corruption. The innocent have nothing to fear in answering a notice issued under section 14(1) of Cap. 201; and I see no reason why a suspect should be permitted, with impunity, to ignore such a notice.

154. I therefore recommend that subsection (4) of section 14 be restored to its original form by the deletion of the words

> "other than the person referred to in paragraphs (*a*) and (*b*) of subsection (1)".

Section 17

155. Subsection (1) of this section reads:

> "17(1) If it appears to the Attorney General, or to the Director, that there is reasonable cause to believe that in any place, other than an office, registry or other room of or used by a public body, there is any document or thing containing any evidence of the commission of an offence under this Ordinance, the Attorney General or the Director may, by warrant directed to any police officer, empower such police officer to enter such place, by force if necessary, and there to search for, seize and detain any such document or thing."

156. I do not know why it was considered necessary to give equal power to the Attorney General and the Director. In one case which was brought to my attention, the question arose as to whether a search warrant should be executed with a view to obtaining evidence in support of a section 10 prosecution. The Attorney General had delegated his powers under section 17 to his Assistant. The Assistant took the view that there was not reasonable cause to believe that there was any document or thing containing evidence of the commission of an offence; and he refused to sign a search warrant. There is a note in the relevant Anti-Corruption Office records which reads:

> "The A.G. 'will not sponsor a witch hunt' ".

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(1) [1973] 2 W.L.R. page 862 at page 870.

The police felt frustrated and inhibited. To them the information in their possession was quite sufficient to make it "appear" to the Director that there was reasonable cause to believe etc. After a delay of some months, the Director decided to act on the powers conferred on him by section 17. The warrant was executed; and a mass of incriminating documents were in fact discovered.

157 It appears that the reason why the Assistant to the Attorney General refused to act under section 17(1) was that he took the view that the Director, or A.G. "must have some specific document or thing in mind" before signing a search warrant and that the section did not "allow a general fishing expedition".

158. I agree that powers of search should not be used for the purpose of a general fishing expedition. But there is a world of difference between a general fishing expedition based on nothing and a genuine belief that there are in the premises to be searched documents of some sort which contain evidence of the commission of an offence under the Ordinance. It appears that what troubled the Assistant to the Attorney General was the word "is" in the 4th line of section 17(1) and because he took the view that the Director should be able to say that in the premises there were specific documents capable of being described with precision, he did not think it proper to sign a warrant.

159. With the greatest respect, it seems to me that this is taking a very narrow view of the section, and that the legislature never intended that the Anti-Corruption Office and the Attorney General should act with such extreme caution.

160. The whole thing is most unsatisfactory. Firstly, if the legislature considers that the Director may, without reference to the Attorney General, execute a warrant of this nature, then the section should be amended by the delection of all reference to the Attorney General. Secondly, section 17, like section 13, is a most important investigatory section; and it seems to be utterly wrong that the hands of the police should be tied, and a successful prosecution stifled at birth, so to speak. The Director is not a junior officer. He is a responsible police officer of Assistant Commissioner rank; and the public are entitled to expect that he will act with care and discretion. I see no reason at all why the section should not read:

> "If it appears to the Director that in any place . . . there may be any document or thing containing any evidence of the commission of an offence under this Ordinance, he may, by warrant" etc.

Section 26

161. As in the case of section 14(1), this section as it now stands, is rather superfluous. A court always has had the power to comment on the failure of an accused person to give evidence, although, in a number of cases, appeals have been allowed because the Court of Appeal considered that the judge went too far and that he may have given the jury the impression that there was some sort of burden on the accused to prove his innocence.

162. Section 26, as originally drafted, gave the *prosecution* the power to comment on the failure of an accused to give evidence, a power which they never had at Common Law; and that appears to have been the reason why it was drafted in the first place. The only logical reason for leaving the section as it is now is that it might possibly be argued that the words "notwithstanding any law or practice to the contrary" are intended to abrogate the effect of the various Court of Appeal decisions on the subject, and that, so far as bribery trials are concerned, the judge can express himself in any way he likes.

163. I do not think that was the intention. Apparently, the section was simply left in, despite the fact that it had lost all its purpose as a result of the amendment.

164. I recommend that it be restored to its original form, that is to say that, in bribery cases, both the prosecution and the court may comment on the failure of the accused to give evidence "notwithstanding any law or practice to the contrary". This accords in every way with the views of the Criminal Law Revision Committee. Paragraph 110 of their 11th Report, which was published in June 1972, reads in part:—

> "In our opinion the present law and practice are much too favourable to the defence. We are convinced that, when a prima facie case has been made against the accused, it should be regarded as incumbent on him to give evidence in all ordinary cases. We have no doubt that the prosecution should be entitled, like the judge, to comment on his failure to do so."

165. But I go further. The Criminal Law Revision Committee say (paragraph 111):—

> "Similar considerations in our view apply to corroboration. At present the failure of the accused to give evidence is not allowed to be treated as corroboration. We disagree with this rule. It seems to us clearly right that, when the prosecution have adduced sufficient evidence of a fact to be considered by the jury or magistrate's court, the failure of the accused to give evidence denying the fact should be capable of corroborating the evidence of it."

I entirely agree with this recommendation; and adopt it as my own at any rate so far as the trial of bribery cases under Cap. 201 is concerned. Whether or not the legislature ever enacts a provision to this effect which would apply generally to the trial of all offences matters not. I make no apology for recommending the enactment of special provisions as regards the trial of bribery cases.

Section 30

166. The 1968 Working Party recommended a section reading as follows:—

> "Any person who, without lawful authority, discloses to another either the identity of any person who is the subject of an investigation under this Ordinance or any details of such investigation, shall be guilty of an offence . . ."

It was felt that, if the suspect were alerted, he could frustrate the investigation. The draftsman of the Ordinance obviously felt that a suspect could be alerted not only by disclosure to the suspect himself but also by disclosure *to some other person* who in turn would make disclosure to the suspect. And so, he added the words

> ". . . or discloses to any other person either the identity of any person who is the subject of such an investigation or any details of such an investigation . . ."

But when a section 14 letter has been received by a suspect or when his house has been searched (section 17), he has been alerted; and it is pointless for everyone to go on maintaining silence after that. In GODBER's case, there was no point in maintaining silence after 4th June. Indeed, it probably played a part in facilitating his departure from Hong Kong. If, through the news media, the public had been informed of the section 10 letter and the fact that his flat had been searched, many people (including police officers) might have observed GODBER's movements more closely.

167. It may not be possible to amend the section; but the practical objections to it as it stands might be overcome by the Anti-Corruption Office asking the Government Information Services to give the press "lawful authority" after a certain point in the investigation. After all, the offence is disclosure "without lawful authority or reasonable excuse."

Disciplinary Procedure—current arrangements

168. As I said at the beginning of this report, I assume that the expression "current arrangements" in my terms of reference oblige me to consider the regulations governing matters of internal discipline in the public service. I now proceed to do so.

Officers on the Pensionable Establishment

169. Colonial Regulations 54–66 [a copy of which is annexure "G" to this report] were re-drafted in May 1971. They apply to all officers confirmed to the pensionable establishment and govern the manner in which such officers may be punished for disciplinary offences.

170. Colonial Regulation 55 states the general principle governing employment under the Crown, namely that an officer holds office subject to the pleasure of the Crown. If the pleasure of the Crown is that he shall cease to hold office, such pleasure may be signified by the Secretary of State. The Crown is not required to give reasons for terminating the services of an officer in this way; and no prior formalities are necessary. In practice, however, a convention has grown up whereby this regulation is invoked only in cases of espionage and other types of disloyalty.

171. If the Governor is of the opinion that the misconduct alleged may be serious enough to warrant dismissal, he orders an investigation under C.R.57. Such an investigation is carried out in accordance with the Disciplinary Proceedings (Colonial) Regulations [annexure "H" to this report] and general directions by the Governor [annexure "I" to this report].

172. Under C.R.58, if an officer has been convicted of a criminal charge, the Governor, upon a consideration of the court proceedings, may dismiss the officer without ordering any further investigation.

173. It appears, therefore, that an officer may be dismissed:

(i) under C.R.55;

(ii) under C.R.57—after an investigation which establishes serious misconduct; and

(iii) under C.R.58—following conviction for a criminal offence.

However, the Governor is not permitted to punish officers without first consulting the Public Services Commission [C.R.65]; and if the officer

(*a*) holds an office, the appointment to which is subject to the approval of the Secretary of State; or

(*b*) was selected for appointment by the Secretary of State; or

(*c*) has pensionable emoluments exceeding $3,500 per month,

the Governor, before inflicting any punishment, is required to get the prior approval of the Secretary of State [C.R.66].

174. An officer who has been dismissed forfeits all claims to pension, gratuity and such-like benefits [C.R.63].

Termination of service—officers not on the pensionable establishment

175. This is regulated by the Establishment (Disciplinary) Regulations [annexure "J" to this report]. An officer on contract may be dismissed in the same manner as an officer on the permanent establishment; but the contract may also be terminated in accordance with its terms. Such contracts usually provide for termination on notice or on payment of salary in lieu of notice by either side.

176. Staff who are neither on the pensionable establishment or on contract may terminate their service, or have it terminated, on giving one month's notice or on payment of one month's salary in lieu of notice. This class of employee may be dismissed for misconduct without any formalities. Indeed, the master-servant relationship is the same as in the case of a private employer.

177. Finally, as regards officers on probation, termination of service is dealt with by Establishment Regulation 303. The services of such an officer may be terminated by one month's notice, or salary in lieu

> "if general unsuitability of temperament, personal characteristics, misconduct, or the inefficient performance of his duties make it undesirable that the officer should continue to hold office."

Establishment Regulation 303 provides that the officer must be informed of the intention to terminate his services; and he must be given in writing the reasons therefor; and he must be invited to submit any representations which he may wish to make.

Disciplinary Procedure—suggested amendments

178. In a memorandum to the Establishment Secretary dated 9th May 1972, the Solicitor General wrote as follows:—

> "It has long been a cardinal principle that Government does not institute disciplinary proceedings in respect of criminal offences which it cannot prosecute for lack of evidence."

This so-called cardinal principle has been the subject of much public criticism. Admittedly, Government officers who commit crimes should not be treated favourably. They should be tried and punished by the courts like other members of the community. But, for the same reasons as I shall give presently in support of my recommendation that Colonial Regulations 61 and 62 should be revoked, I strongly recommend that Government should not act on the principle stated by the Solicitor General. I can well imagine a case in which the evidence in support of an allegation of corruption would be amply sufficient to satisfy a disciplinary tribunal, although such evidence might not be strong enough to satisfy a criminal court; and it seems utterly wrong that Government, well knowing that the officer is corrupt, should feel compelled to permit him to continue in the public service. This is carrying security of tenure ("the iron rice bowl", as the public call it) to ridiculous lengths.

Suggested amendments to Colonial Regulations

Officers on the pensionable establishment

179. Colonial Regulations 61 and 62 read as follows:

> "61. If criminal proceedings are instituted against an officer, disciplinary proceedings based upon any grounds involved in the criminal charge shall not be taken pending the determination of the criminal proceedings.
>
> 62. An officer acquitted of a criminal charge shall not be punished in respect of any charges upon which he has been acquitted but he may nevertheless be punished on any other charges arising out of his conduct in the matter which do not raise substantially the same issues as those on which he has been acquitted and the appropriate proceedings may be taken for the purpose."

180. In regard to these regulations, I cannot do better than quote the views of a former Chief Justice who, when Colonial Regulations 54–66 were being re-drafted in 1969, said:—

"I am sorry to see that it is proposed to retain Colonial Regulations (61 and 62) in the form now drafted, particularly the latter. I don't know whether there is any possibility of reconsidering it; but this woolly-minded regulation, whilst inspired by the best of motives, has done great damage to the public service by lowering the standards required for retention in office and, in effect, introducing a provision that anyone not proved to be a criminal and not involved in the pettier forms of misconduct is fit for the public service. It tends to favour those whose misconduct is more serious as against those who are responsible for minor errors.

It is inspired by the thought that those who are suspected of crimes are entitled to the full protection of our methods of criminal procedure. This is entirely right and proper when the question at issue is a man's liberty or any other form of criminal punishment. It is quite out of place when neither of these are involved. Our criminal procedure surrounds an accused with a number of safeguards. These are now thought to be excessive in some respects and owe a good deal to the history of our criminal law which at one time involved excessively severe punishments. They include not only the obligation to prove a case beyond reasonable doubt, an expression which has given rise to much difficulty in recent years, but also provide for the exclusion of material which is freely admissible and frequently cogent when the matter at issue is one of civil liability and not of criminal punishment. If the question at issue is the position of an officer in the public service, it is quite wrong to make that dependent on tests higher, and more exacting, than those which apply in a court of law dealing with a civil process.

As an illustration of what I mean, I would mention a case in which I was once concerned where a man was acquitted on a charge of arson. Subsequently on a claim under an insurance policy, the company successfully repudiated liability on issues substantially the same as those involved in the arson charge because they were able to adduce evidence not admissible on the criminal charge and to satisfy the standard of proof attributable to civil liability.

In effect, what these regulations say is that provided your conduct is bad enough and serious enough, we will make it more difficult to get rid of you because we raise the standard of proof required and exclude matter that would be admissible if your alleged errors were less serious. That is all very well if you are visiting him with criminal penalties; but why should we have standards of proof higher than those applicable in the civil courts when we are determining whether a man is fit to remain a public servant?

Not only do these regulations err in their basic conception but the manner of their drafting throws up unintentional obstacles. We are told not to penalize conduct if we thereby raise substantially the same issues as those on which a man has been acquitted. This assumes a precision that is lacking from, for example, a jury trial, which results in a general verdict of not guilty. For a finding of guilty it may have been necessary for a jury to have come to positive answers on a number of separate and distinct issues. Their verdict does not tell you on which issue the prosecution failed; but not knowing which, you are, by these regulations, precluded from relying on any of them.

The result of all this is to create a situation in which those responsible for good discipline in the public service are tempted to feel that it is better not to prosecute where there is any danger of an acquittal and I think I would be right in saying that because those concerned, or some of them, are in a position to determine whether a prosecution will or will not be launched, decisions have sometimes been taken not to file charges. This is wrong, tending as it does to confer a measure of immunity on civil servants that is not available to the general public. Would it be suggested that a prosecution should not be instituted because failure might make it more difficult for an ordinary civilian employer to terminate the employment of the accused?"

181. I agree with every word of that. The rule that a criminal charge must be proved beyond reasonable doubt was designed to achieve a degree of certainty of guilt which, so far as humanly possible, would ensure that no innocent person would ever be convicted. According to the British conception of criminal justice, it is better that ten guilty men should go scot free than that one innocent man should be found guilty and punished for something of which he was in fact not guilty according to law. Anyone who has been associated with the criminal courts for any length of time must realise how heavily weighted are our rules of evidence and procedure in favour of an accused person. To a Frenchman, a British criminal trial is not a serious inquiry into the guilt or innocence of an accused person, but some sort of game in which the dice are loaded heavily in favour of the accused.

182. For many years, I have felt that the "dice" are too heavily loaded. Be that as it may, when an employer is considering whether the conduct of an employee is such as to merit his dismissal, why should the employer have his hands tied behind his back by the stringent rules applicable to an English (and Hong Kong) criminal trial?

183. The unreasonableness of Colonial Regulation 62 can be demonstrated in this way: a criminal charge may involve 4 essential elements. A criminal court will not convict an accused person unless each of those 4 elements has been proved beyond reasonable doubt. The prosecution may have proved 3 of those elements up to the hilt. But, for one reason or another, the court may feel that there is an element of doubt as regards the 4th element; and so it acquits. After all, many things can happen in a criminal court. One of the commonest things is that some essential witness does not say what he told the police he was going to say. He may have been "got at" in the meantime. Or a doubt may be raised in the mind of the court as a result of clever cross-examination by a defence lawyer. Some prosecutors are more experienced than others. The judge or magistrate may have misapprehended or misapplied the law; in which case the matter will be put right by an appellate court —the result, of course, being that the conviction is quashed. But the point is: By quashing the conviction, the appellate court is not questioning the truth and the strength of the prosecution evidence in any way. It is simply saying that, because the judge misdirected the jury, or the magistrate misdirected himself, on some point of law, the accused *may* have lost his chance of being acquitted.

184. The fact that there are only two verdicts in an English (and Hong Kong) criminal court has, in my view, caused a great deal of confused thinking. It is said that when an accused has been found not guilty he must be presumed always to have been innocent! No one may point a finger at him. But surely this is utterly illogical. All it means is that the person's guilt, according to English (and Hong Kong) criminal law, has not been established with that degree of certainty which is called for in a criminal court, or someone connected with the judicial process has made a mistake. This must be obvious from the few examples which I have given, which are matters of everyday occurrence in the courts, as every lawyer knows.

185. I was brought up under a different system under which a jury is not forced to say "not guilty" if it feels that the high standard of proof demanded has not been reached. It may say "not proven", which means simply that the charge has not been proved with that very high degree of certainty which the law demands. Such a verdict may mean that one of the elements of the charge has not been proved beyond reasonable doubt although all the other elements have been so proved.

186. I agree that nowadays in criminal matters juries are required to bring in general verdicts. Generally speaking, they are not required to answer a number of specific questions, as they were in olden times. In other words, it is not possible, from a verdict of acquittal, to say whether (to take my example) the jury is satisfied beyond reasonable doubt as regards 3 of the essential elements but had some doubt as regards the 4th. But nowadays in Hong Kong the vast majority of criminal cases are tried by District Judges or Magistrates sitting alone without a jury. They are required to give reasons for their decisions. If they acquit, it should be perfectly obvious from those reasons where, and to what extent, the prosecution went wrong. Far from saying that no one is entitled to point a finger at the accused, it may be perfectly obvious that he is blameworthy in a number of respects.

187. Turning now to the regulations governing the procedure to be adopted by a disciplinary tribunal (annexure "H"). Obviously, such a tribunal is not a court administering criminal law. The duty of the tribunal is to investigate. It is essentially inquisitorial in character, although it is assisted by "the assisting officer" and "the friend of the officer". The tribunal does not put witnesses on oath [direction no. 13—annexure "I"]. It is not bound by the rules regulating the admissibility of evidence in a criminal court [regulation 8(4) of annexure "H"]. There is no minimum "standard of proof". The tribunal does not have to ask itself whether the matter before them is a "civil proceeding" or a "criminal matter"; and consequently they do not have to worry their heads about whether the matters on which they have to report to the Governor have been proved beyond reasonable doubt, or merely "on the balance of probabilities", which is the standard of proof in a civil action in a court of law. Regulation 8(5) [annexure "H"] reads:—

> "(5) The enquiries should not be conducted with undue formality and while there is no standard practice which would be applicable in every case, it is emphasised that the Investigating Officer or Committee is not exercising a legal function, but rather ascertaining the facts."

Obviously a disciplinary tribunal may well be satisfied of facts which could not be proved with that degree of certainty which is called for in a criminal trial. In other words, the tribunal is simply a body of men appointed by the Governor to find out the facts, using their common sense; and, perhaps, having available to them material which could not be produced before a criminal court. Having done so, they make their report to the Governor, stating the facts which they have found and expressing their opinion as to whether those facts amount to misconduct on the part of the officer [regulation 7(2) of annexure "H"].

188. From all this, it must be perfectly obvious that the "double jeopardy" rule [the rule in criminal law which says broadly that once a person has been acquitted, he may not be charged again *in a criminal court* with the same offence] should have no application whatsoever to disciplinary proceedings designed to assist the Governor in deciding whether or not an officer's conduct merits dismissal from the service, or indeed merits compulsory retirement in the public interest.

189. I am aware that in 1969 the Attorney General recommended that the Governor should be empowered to order disciplinary proceedings for the same offence of which an officer may have been previously acquitted by a criminal court; but this did not find favour with the legal advisers to the Secretary of State.

190. With respect, I entirely agree with the Attorney General, and disagree with the legal advisers to the Secretary of State. I see no reason at all why an officer should not be charged under disciplinary proceedings for the same offence of which he has been acquitted. As matters stand at the moment, an officer guilty of something not amounting to a criminal offence may well be dismissed from the service. But the criminals (and these include the corrupt) stand a very good chance of acquittal in a criminal court for the reasons which I have given; and the Governor's hands are then tied—thanks to Colonial Regulation 62.

191. I recommend that regulations 61 and 62 be revoked. I see no reason why disciplinary proceedings, in respect of conduct which may amount to a criminal offence, should not be instituted irrespective of whether criminal proceedings are in contemplation; and I see no reason why such proceedings should not be instituted despite the fact that the officer has been acquitted of the criminal charge.

Officers not on the pensionable establishment—contract officers

192. As I have said, Government contracts provide for termination by either party upon giving a certain period of notice or salary in lieu. If a contract officer wishes to terminate his services, all he need do is to write to the Establishment Secretary saying:

"In accordance with clause——of my contract I hereby give you——months notice of termination"

or words to that effect. The same applies if Government wishes to terminate the officer's contract. But, a practice has grown up in recent years of giving the officer reasons why his services are being dispensed with. What usually happens then is that the officer questions the correctness of the reasons and insists on being disciplined in accordance with C.R.57. Government refuses to be bullied in this way. A lengthy argument between the Establishment Secretary and the officer then begins—sometimes lasting several years—with threats of legal action. I seem to remember one case in which the officer took the matter up with his member of Parliament. The local press got hold of the news; and Government was made to look high-handed and unjust in the eyes of the public.

193. I recommend that this practice of giving reasons for termination of contract should cease. A contract officer is not entitled to be told why his services are being terminated. When he signs a contract of this nature, he does so with his eyes open. It is for Government to say whether he shall be disciplined in accordance with Colonial Regulations or whether he shall be given notice of termination, as in the case of an ordinary employer.

Officers on probation

194. When one reads Establishment Regulation 303, one realises why the public criticise Government for carrying security of tenure to ridiculous lengths. "The iron rice bowl", they say, gives the Government officer far too much protection.

195. I entirely agree. It is up to the officer on probation to "make the grade" and satisfy his employers that he is fit in all respects to be taken on to the pensionable establishment. The grounds for not confirming an officer should not be confined to

> "general unsuitability of temperament, personal characteristics, misconduct, or the inefficient performance of his duties."

The slightest suspicion of corruption during this initial probationary period should be ample ground for Government not confirming the officer to the pensionable establishment; and if Establishment Regulation 303 cannot be re-drafted in such a way as to include matters of this kind, I recommend that it be revoked.

Compulsory Retirement—current arrangements

Colonial Regulation 59 and the Pensions Ordinance Cap. 89

196. Colonial Regulation 59 is at annexure "G" to this report, and the relevant provisions of the Pensions Ordinance, and the regulations made thereunder, are contained in annexure "K" to this report. Compulsory retirement is not a "punishment" as defined in C.R.54(3); and an officer retired compulsorily will receive his full pension, provided he has served for at least 10 years [Pensions Reg. 4], is over 45 [section 8(2) of the Pensions Ordinance], and he has not been guilty of any negligence, irregularity or misconduct [section 5(2) of the Pensions Ordinance]. In certain circumstances, the Governor may grant a pension or a gratuity without all these requirements being fulfilled [section 7 of the Pensions Ordinance].

197. As regards C.R.59, an officer may be retired compulsorily if the Governor is of the opinion that this is "in the public interest". But there is a complicated procedure to be gone through. Firstly, the Governor is required to call for a report on the officer from the heads of all the departments in which the officer has served. Secondly, the officer must be informed of the grounds on which his retirement is contemplated and he must be given an opportunity of submitting a reply to those grounds. If, having considered the report and the officer's reply, the Governor forms the opinion that

> "having regard to conditions of the public service, the usefulness of the officer thereto and all other circumstances of the case, the termination of the officer's service is desirable in the public interest";

the Governor is then required to consult the Public Services Commission [C.R.65]; and if the officer

(*a*) holds an office, the appointment to which is subject to the approval of the Secretary of State;

(*b*) was selected for appointment by the Secretary of State; or

(*c*) has pensionable emoluments exceeding $3,500 per month;

the Governor is also required to refer the matter to the Secretary of State. The Public Services Commission have no power to veto the Governor's wishes; but the Secretary of State has this power as regards the 3 classes of senior officer mentioned in C.R.66. The Governor may not dismiss such officers "save with the prior approval of the Secretary of State."

198. If, after considering the record of an investigation held under C.R.57, or the proceedings of a court which has convicted the officer of some criminal charge, the Governor is of the opinion that no punishment, or further punishment, is called for, but that

> "the investigation or proceedings disclose grounds for requiring (the officer) to retire in the public interest"

the Governor may, after consulting the Public Services Commission in the case of a junior officer, require him to retire; but, again, in the case of senior officers, the Governor is required to obtain "the prior approval" of the Secretary of State.

199. Section 8(2) of the Pensions Ordinance applies only to officers over 45 years. Unlike C.R.59, it says nothing about calling for reports and entering into a discussion with the officer. It simply says that before requiring the officer to retire, the Governor must consider the advice of the Public Services Commission. He is not bound to accept their advice. But he may not retire senior officers except with the approval of the Secretary of State.

200. Naturally, the Public Services Commission cannot be expected to give any useful advice unless they know what the whole case is about; and equally the Secretary of State argues that he should not be asked to approve or disapprove of the proposed retirement unless he is given full information about the case. Therefore, as C.R.59 applies to all officers (not only those over 45) a practice has grown up of giving the officer prior warning of the intention to invoke section 8(2) and the reasons therefor.

Compulsory Retirement—C.R. 59 should be revoked and section 8(2) of the Pensions Ordinance should be amended

201. In paragraph 191 of this report I have recommended that C.R. 61 and 62 should be revoked so that disciplinary proceedings may be instituted irrespective of whether criminal proceedings are in contemplation and despite the fact that the officer may have been acquitted by a criminal court. But I go further. I recommend that C.R. 59 be revoked in toto and that section 8(2) of the Pensions Ordinance be amended by the deletion of the words "after he attains the age of 45 years".

202. A corrupt officer may have been acquitted on some technicality or because of a mistake on the part of the judge or magistrate. It may be obvious from the judge's, or magistrate's, reasons or the judgment of the appellate court, why an accused officer has been acquitted; and in certain cases it may be possible to fall back upon C.R. 59 with a view to retiring him compulsorily. On the other hand, experience has shown that any attempt to use C.R. 59 to retire an officer after he has been acquitted of a criminal charge leads to difficulties. It is necessary to go through the procedure in paragraphs (1) and (2) of C.R. 59; and, of course, the Public Services Commission has to be consulted in all cases, and in the case of a senior officer, the prior approval of the Secretary of State to the officer's retirement must be obtained. Despite all that has been said in paragraphs 181–190 above, the officer usually claims that his acquittal was tantamount to establishing his innocence and that the attempt to retire him is indicative of malice on the part of the head of his department. This line of argument may not appeal to the Governor; but it may appeal to the Public Services Commission or to the Secretary of State.

203. The Crown, as employer, has two procedures available to it in the case of pensionable officers aged 45 and over [apart from the specific grounds stated in section 6(*c*), (*d*) and (*e*) of the Pensions Ordinance]. For officers below 45 years of age, only C.R. 59 is available. This distinction in the treatment of officers by reference to an arbitrarily chosen age is difficult to justify on logical grounds; and, in my opinion, it is wrong in principle for there to be any distinction in treatment between officers over 45 years of age and those below that age. It is undesirable both from the officer's point of view and also the Government's. Surely the older officer will face greater difficulties in finding other employment than a younger man; yet in practice the present arrangements give greater security to the latter. From the point of view of the Government as employer, it should not find its hands tied in retiring any officer when there are cogent reasons for doing so, but in circumstances in which it may be undesirable to disclose those reasons under the C.R. 59 procedure.

204. From time to time, various reasons have been given for the fact that civil servants must have greater security of tenure than other members of the community. It is said that they do not have the same opportunities for making money on the stock market or by investing locally; that public service is a vocation; and that security of tenure, a reasonable salary and a pension at the end of a reasonable period in which to earn it, enables the public servant to get on with his job so that the service may function effectively.

205. In their reports submitted to the Governor in 1961, the Advisory Committee doubted whether such considerations should carry much weight today; and I feel that the whole question should be re-examined in the light of present-day conditions. For example, I was informed that half the senior posts in Government service are occupied by officers on contract terms. This is not confined to expatriate officers. Doctors graduating from Hong Kong University are offered contract terms. The contracts of all these officers may be terminated on notice or salary in lieu. They have no right to expect any greater security of tenure than is conferred by their contracts. Another factor against which the security of employment must be viewed is the nature of the functions directly undertaken by the Hong Kong Government. By virtue of the unique constitutional and political situation of Hong Kong, the central government carries on many activities which would, in larger territories and under different constitutional arrangements, be performed by regional authorities or state corporations the employees of which are not civil servants. The following are examples of Hong Kong Government activities which, elsewhere, would be performed by other public authorities:—

Hong Kong Government	*Alternative Public Authorities*
Marine Department	Harbour or Port Authorities
Medical and Health Department	Hospital Authorities
Urban Services Department	City, Borough or County Councils
Public Works Department:	
Buildings Ordinance Office	City, Borough or County Councils
Highways Office	
Waterworks Office	Water Authorities
Education Department	School Boards
Radio Hong Kong	State Corporation e.g. B.B.C.
Royal Hong Kong Police Force	County or City Councils
Fire Services Department	
Post Office	In the U.S.A. this was recently made a State Corporation
Kowloon-Canton Railway	State Corporation e.g. British Rail.

206. There may well be other departments where the major part of their activities are, under different constitutional arrangements, performed by bodies other than the Crown. Recently the Government itself has changed the method of control over higher technical education with a consequential change in the status of teachers engaged in this field. The Hong Kong Technical College was administered by staff of the Education Department. The Hong Kong Polytechnic, which was established by Ordinance as an independent body corporate, uses the same premises and largely the same staff, initially on secondment from the Education Department; but an education officer who transfers to the Polytechnic will cease to be a Crown servant.

207. I recommend that, having regard to conditions in Hong Kong, it would be in the public interest and in the interest of all members of the public service, if C.R. 59 were revoked and if section 8(2) of the Pensions Ordinance were amended by the deletion of the words "after he attains the age of 45 years". Consequential amendments to Colonial Regulations would be necessary by the deletion of all references to compulsory retirement under C.R. 59. If this suggestion were adopted Colonial Regulations 54–66 would continue to provide a code for dealing with disciplinary offences, and where proceedings under C.R. 56 or C.R. 57 gave rise to valid grounds for compulsory retirement and not for punishment, the provisions of the Pensions Ordinance would

be applied. The Public Services Commission and the Secretary of State should be given a full explanation for the proposed action. Provided that the full facts are made available to the Governor, the Public Services Commission and, in cases where it is necessary, the Secretary of State, there should be no risk of any injustice. There is always the residual safeguard provided by petition to the Governor or the Secretary of State to review a case by the exercise of the prerogative power.

208. I do not think that it would be desirable to assign reasons for compulsory retirement under an amended section 8(2) of the Pensions Ordinance. At present the section does not require such disclosure. Furthermore, compulsory retirement may be resorted to for a number of reasons none of which an officer can be expected to accept as valid in his own case. It might well be against the public interest to disclose that compulsory retirement was the only sanction available in cases where a civil servant had been acquitted of a criminal offence on a technicality or where there was evidence of corrupt misconduct which was inadmissible in a criminal court. Of course, the officer would have to be given reasonable notice, and he would have pension and/or other accrued benefits; but this is surely a small price to pay in the public interest for an efficient and honest public service. The alternative is the continuation of a situation which the public is quite unable to understand and which causes tremendous damage to public confidence in the administration and the morale of the majority of honest officers in it.

Suggested amendment to the Fugitive Offenders Act 1967

209. I do not think that this falls within my terms of reference; but the inability of the Hong Kong Government to obtain an order for the return to Hong Kong of Mr. P. F. GODBER has aroused so much public anger that it may not be out of place for me to say a word or two on the subject, even if I do not add anything to what has already been said by others.

210. I think it should be made clear to the public of Hong Kong that Her Majesty would be acting unconstitutionally if She made an order-in-council for the return of Mr. GODBER to Hong Kong, thereby by-passing the provisions of a United Kingdom statute to which She had previously assented. If GODBER is to be returned to Hong Kong, it must be by lawful means.

211. Prior to 1967, the law relating to the apprehension and surrender of fugitive offenders from one part of Her Majesty's dominions to another was contained in the Fugitive Offenders Act 1881. It applied to

> ". . . every offence . . . which is . . . punishable in the part of Her Majesty's dominions in which it was committed . . . by imprisonment . . . for . . . 12 months or more . . .";

and it did not matter at all that there might be no offence in England equivalent to, say, the offence in Hong Kong in respect of which the return of the fugitive was sought. Section 9 of the 1881 Act provided that the Act would apply

> ". . . to an offence notwithstanding that by the law of the part of Her Majesty's dominions in . . . which the fugitive is . . . it is not an offence . . .".

212. However, as certain former colonies began to govern themselves, Britain, on occasion, was faced with situations comparable to those envisaged at the time of the passing of the Extradition Act 1870 (i.e. the Act which governs extradition as between Britain and foreign countries). Sometimes the request was that a fugitive be returned for trial on, say, a theft charge; but the real reason for seeking his return might be to put him on trial for some political offence.

213. Therefore, a new Fugitive Offenders Act was passed in 1967 and the old 1881 Act was repealed. The new Act introduced a number of provisions comparable to those in the Extradition Acts. A distinction was drawn between a "designated Commonwealth country" and a "United Kingdom dependency". Hong Kong is a United Kingdom dependency. Provision was made for the return of a fugitive for trial for what is termed a relevant offence; and a relevant offence is defined in section 3(1) of the Act as follows:—

> "3(1) . . . an offence of which a person is accused . . . in a designated Commonwealth country or United Kingdom dependency is a relevant offence if—
>
> (*a*) in the case of an offence against the law of a designated Commonwealth country, it is an offence which . . . falls within any of the descriptions set out in schedule I . . . and is punishable . . . with imprisonment for . . . 12 months or any greater punishment;
>
> (*b*) in the case of an offence against the law of a United Kingdom dependency, it is punishable under that law . . . with imprisonment for 12 months or any greater punishment; and
>
> (*c*) in any case, the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of the United Kingdom if it took place within the United Kingdom . . .".

Mr. GODBER is accused of an offence under section 10 of the Prevention of Bribery Ordinance, an offence punishable with imprisonment up to 7 years. Therefore, it satisfies the condition in paragraph (*b*) of section 3(1). But it does not satisfy the condition in paragraph (*c*). There is no offence equivalent to our section 10 of Cap. 201 in the law of England. Indeed, I do not think that there is any English equivalent to our section 3; and there might even be arguments as to whether the "acts" described in some of the other sections in Part II of the Ordinance have any true equivalent in the law of England.

214. The present position is most unsatisfactory. There may, or may not, be very sound reasons for having paragraph (*c*) in the case of certain designated Commonwealth countries over which the United Kingdom has no control as regards the enactment of legislation creating new offences, or indeed governing by edict. But, I am quite unable to understand why this provision was made to apply to a Colony like Hong Kong. In this dependent territory we live under the rule of law; and Her Majesty the Queen has the power to disallow any new legislation which She may consider not to be for the "peace order and good government" of the Colony. She did not exercise Her power of disallowance in the case of the Prevention of Bribery Ordinance.

215. I suggest, therefore, that serious consideration be given to making representations to the Secretary of State that paragraph (*c*) of section 3(1) of the Fugitive Offenders Act 1967 be amended so as to make it apply only to offences against the law of designated Commonwealth countries; alternatively, that a proviso be added to the effect that it shall not apply to offences contained in Colonial legislation in respect of which Her Majesty has not exercised Her power of disallowance; alternatively that it be declared that paragraph (*c*) shall not apply to Hong Kong.

216. I also see no reason why such an amendment should not be made retrospective. That would not be legislating so as to create a new offence and making it retrospective. Section 10 has been on our statute book for 2½ years; and I can see no objection to amending section 3 of the Act with retrospective effect back to 1967. That, of course, would enable steps to be taken for the return of Mr. GODBER. But, whether or not it is made retrospective, it is very important that the Fugitive Offenders Act be amended so that persons fleeing to the United Kingdom may be returned to Hong Kong to be tried by our courts.

217. This, of course, would not solve the problem arising in cases where a fugitive flees to foreign countries. The position would be governed by the Extradition Acts which are based on the principle of reciprocity. Britain does have an extradition treaty with Portugal; but it would appear that there is no reciprocity as regards the bribery and corruption offences in Part II of our Ordinance. We do not even have any extradition arragements with Taiwan. It is exasperating to think that a corrupt officer would be able to escape to, say, Macau or Taiwan and the Hong Kong authorities would be powerless to bring him back to Hong Kong for trial.

Should the Anti-Corruption Office remain part of the Royal Hong Kong Police Force?

218. As far as I have been able to ascertain, this question was first considered by the Advisory Committee and dealt with by them in their 6th report dated 29th December 1961. The relevant paragraph reads as follows:—

> "30. There was a strong feeling among those who were heard by the Working Party on Public Co-operation that the Anti-Corruption Branch should not be a part of the Police Force. It was stated that the public are reluctant to complain to the Police of whom they are afraid and there was danger in using police staff in the Branch because they can put the techniques and knowledge which they so acquire to bad use when, as frequently happens, they are posted to other branches of the Force. We consider a further justification for this view is that nearly 50% of all complaints about corruption concern the Police Force itself. We have studied a report made by Mr. G. A. R. WRIGHT-NOOTH on his visit in 1954 to the Corrupt Practices Investigation Bureau, Singapore, which is divorced from the Police Force and is directly responsible to the Colonial Secretary. Civilian investigators are used who at the time of Mr. WRIGHT-NOOTH's visit were insufficiently trained to carry out proper investigations. This could be remedied. But there is also the danger that civilians permanently employed in such work would themselves become corrupted in which case the opportunity to post them to other duties and the discipline to deal with them effectively would be lacking. We have therefore reluctantly come to the conclusion that the Anti-Corruption Branch must continue to be staffed by serving members of the Police Force and must remain under the authority of the Commissioner of Police. While there is evidence that in recent years the public have become more willing to approach the police with general problems or complaints, we feel that, partly through fear and partly because the police themselves are felt to be corrupt, there still exists in the minds of the public a definite reluctance to become involved with the police in relation to complaints of corruption. On the other hand, the public does not appear to be any more willing to complain to a civilian body; between 1st January 1961 and 30th November

1961, 422 complaints alleging corruption were made to the police, while, in response to repeated publicity asking for the public to come forward with their grievances about corruption and delays in Government procedures, only 28 complaints have been received by this Committee."

219. This question was also very much in the mind of the then Attorney General during his visit to Ceylon and in the minds of Mr. JONES and Mr. LAW during their visit to Singapore in 1968. In his report dated 18th April 1968, the Attorney General said:—

"I consider that there would be considerable advantage in the establishment of a new and separate Anti-Corruption Office in Hong Kong, charged with the responsibility of investigating and prosecuting in the courts or before disciplinary tribunals, all offences of corruption in the public service. To avoid wasteful duplication, the office should also deal with other criminal or disciplinary offences which are disclosed during its investigations. There would be no difficulty in this extension of its jurisdiction if the office were to form part of the Attorney General's Chambers.

For a number of reasons, the most important of which seems to me to be to convince the public that the problem is really being tackled vigorously, it seems desirable that the office should be independent of the police.

I favour the Singapore system, under which the office comes under the control of the Attorney General, with its director of the rank of Principal Crown Counsel, assisted by a number of Crown Counsel and a substantial staff of experienced police officers.

While it is possible to argue in favour of recruiting investigators for this office on a permanent basis, I think that the balance of advantage lies in long-term secondments from the Police Force. These might be for minimum periods of about 5 years and the seconded officers should receive some special inducement to undertake this arduous and unpleasant work and should have their prospects of promotion fully protected. Perhaps it would help if the rank structure of the office were kept flexible, so that a seconded officer due for promotion by virtue of his seniority in the main police force would still receive it in the Anti-Corruption Office; thus the office would have an establishment of so many police officers, rather than of so many officers of each rank."

220. In his report dated 13th March 1968, Mr. JONES said:

"I believe the Corrupt Practices Investigation Bureau has enjoyed a large measure of success in its attempts to combat corruption in Singapore. I am also satisfied that this success is due, not only to the dedication and ability of its officers, but also to the fact that the Bureau is an organization completely divorced from and independent of the Police Force.

2. In the discussions I had with the Commissioner of Police, he acknowledged the successes enjoyed by the Bureau and I gained the impression that he recognized the advantage of having a body of trained investigators who, unlike police officers, were not liable to transfer from one branch of the Force to another but could devote their whole skill and ability to one end. Further, the fact was mentioned that it is never easy for a police officer to investigate a fellow officer, especially one with whom he has perhaps 'grown up' in the Force. It is unfortunately true that corruption is found from time to time in a Police Force as in any other organization.

3. The Bureau's activities extend into the realms of commerce and industry and Mr. CORRIDON informed me that a number of successful investigations had been concluded in this field. It does seem that the Bureau has succeeded in making its presence felt in Singapore and the reason for such success must, to a considerable degree, be due to the willingness of the officers to work such hours as may be demanded of them. Further, the Singapore Government has made it clearly understood that the Bureau is its principal weapon in its attempt to combat corruption and that the Bureau is there to assist anyone in need of advice or assistance.

4. I believe that an organization on lines similar to those of the Bureau could profitably be created in Hong Kong but I have reservations as to the full measure of its success. These reservations exist largely because of the different political atmosphere in Singapore. I trust I will not be misunderstood if I say that there appears to be a greater unity of purpose in the recently created Republic than is to be found in the Colony. This is reflected in what I can only describe as the obvious dedication of the officers of the Bureau and the spirit of co-operation which one can sense."

221. Mr. LAW in his report dated 6th April 1968 confirmed Mr. JONES' impressions in this respect.

222. In a memorandum dated 15th July 1968, the then Commissioner of Police Hong Kong, said:—

"There is now hope for the enactment of a realistic Prevention of Corruption Ordinance and a complete overhaul of Government's disciplinary procedure. When this is done greater success by A. C. Branch

against corrupt persons will ensure . . . My view is that A. C. Branch should be given the opportunity of proving itself under the proposed new procedures. If success cannot be achieved and confidence inspired in say 3 years, then there may well be a case for trying something else. . . .".

223. Arguments against separation of the Anti-Corruption Office from the police were contained in a further memorandum by the then Commissioner dated 12th February 1969. In it, the Commissioner said:—

"Armed with the new proposed Prevention of Corruption Ordinance, any Anti-Corruption Bureau, Police or otherwise, almost certainly must produce far better results before the public than has the case in the past . . . I believe . . . that the right course is to allow the A.C. Bureau to remain as a unit of the Police Force, anyway for the next 3 or 4 years, . . . a period of 3 or 4 years will provide a sufficient passage of time to enable an enlarged and reorganized A.C. Bureau to show its mettle armed with the law needed to do the job, provided we get it. If after that time it is demonstrated that the police A.C. Bureau has failed to curb corruption, then will be the time to consider turning to an independent Bureau provided the causes of failure prove to be police corruption or inefficiency."

224. In tendering their advice on the Prevention of Bribery Bill on 3rd June 1969, the Advisory Committee said:

"The Committee has given considerable thought to the advisability of setting up an independent Anti-Corruption Bureau separate from the Police Force and has felt unable to make recommendations on the Bill without considering this aspect . . . Whilst we feel that there is much to be said in favour of such a Bureau, our present recommendation is that in the prevailing circumstances the Anti-Corruption Bureau should remain with the Police Force."

However, as I have said, they went on to recommend that the Target Committee should be enlarged so as to include non-police and non-official members; and this recommendation was accepted.

225. In 1970, the Unofficial Members of Legislative Council were strongly in favour of separation; and it was agreed that a review of the role of the Anti-Corruption Office would definitely take place after the Ordinance had been in operation for 3 years. The Ordinance came into force on 14th May 1971; and I apprehend that, but for the departure of Mr. GODBER, the anticipated review would not have taken place till after May 1974. It would appear that the Commissioner of Police would have preferred the review to take place after May 1975. After all, the Ordinance has only been in operation for a little over 2 years.

226. The Colonial Secretary designate (The Hon. D. T. E. ROBERTS) recently visited three agencies established to deal with corruption in New York, Malaysia and Singapore. He has kindly supplied me with a transcript of notes taken by him during those visits.

Comparison with Singapore

227. It is said that the Corrupt Practices Investigation Bureau in Singapore is far more successful in the battle against corruption there than the A.C. Office is in Hong Kong. In deciding how much truth there is in this assertion, again it is no good closing our eyes to the obvious differences between the two territories. In this regard, I cannot do better than quote a few passages from Mr. LAW's report on his visit to Singapore. Referring to the tremendous influence exercised by the Prime Minister, Mr. LAW says:—

". . . his dominant personality is felt throughout all strata of Singapore society from cabinet ministers to hawkers in the street. As the firmly entrenched leader of a newly emergent nation, he sets a blistering pace for all in his administration to follow . . . One of his pet hatreds is corruption, an evil which he is determined to stamp out and control with all the forces at his disposal. His lead dictates the atmosphere in which his Anti-Corruption Bureau (. . . C.P.I.B.) operates. His influence is most marked and woe betide any Government officer of any rank who disregards his lead. Not only may his chances of promotion dwindle to nothing but that officer's career is liable to be terminated by the stroke of the pen."

Mr. LAW continues thus:—

"The great majority of the people who live and work there want to and feel that they must go it alone. They have a very definite stake in the future . . . and this factor engenders an enthusiasm, a sense of responsibility and indeed loyalty which is . . . in marked contrast to the attitude extant before Singapore became a Republic . . . in Hong Kong . . . the bulk of the population is here for one reason and one reason only, to make money. This is not to say that Singapore is not a commercial society, it is of course and is flourishing but it is not the only reason for the population being there."

Mr. LAW concludes his report thus:—

"*CONCLUSIONS*

41. The C.P.I.B. Singapore has made considerable progress in the battle against corruption and has been in this connexion, undoubtedly more successful than its counterpart in Hong Kong.

42. The C.P.I.B. is no more energetic nor does it employ sophisticated techniques unknown to Hong Kong to achieve its results.

43. The main reasons for success appear to be as follows:

(*a*) The influence wielded by and the obdurate attitude of the Prime Minister towards corruption.

(*b*) The general atmosphere of the newly emergent nation 'going it alone' which engenders a remarkable enthusiasm, sense of responsibility and loyalty in such a polyglot population.

(*c*) The realization by the bulk of the population, fostered by Government that they have a stake in the future in which corruption has no place.

(*d*) The wide legal powers enjoyed by the C.P.I.B. in investigation and prosecution.

(*e*) The uncompromising attitude of the Judiciary towards corruption cases, their liberal interpretation of the law as it stands there and the full use they make of the penalties provided.

(*f*) The realistic use which is made of the Disciplinary Rules to effect "Dismissals' 'Retirements in the Public Interest' and 'Warnings'.

(*g*) The co-operation received by the C.P.I.B. from all strata of society in Singapore, particularly by Heads of Government Departments and the unique awe and respect with which the Bureau is regarded by the general public.

(*h*) An energetic C.P.I.B., full of enthusiasm for their task, which is entirely independent of other Government Departments and enjoys the maximum of freedom to perform its tasks.

(*i*) A realistic attitude that corruption is a 'dirty game' and 'dirty' or at least 'unorthodox' methods have to be employed to counter it.

44. Singapore has not wiped out corruption, it probably never will, but it undoubtedly has made a name for itself as the least corrupt nation in S.E. Asia with the possible exception of Communist China!

Sgd.
(J. P. LAW),
Chief Superintendent of Police,
Anti-Corruption Branch."

228. This report was written before the Prevention of Bribery Bill [now Cap. 201] was drafted and before it had some of its "teeth" drawn as a result of criticism in 1970—"teeth" which I am now recommending should be put back into it. But, perhaps, factors of far greater importance are:—

(1) A true "sense of belonging" in the hearts and minds of the people of Singapore;

(2) The tremendous personal influence exercised by the present Prime Minister;

(3) The fact that he and his Government do not suffer from the inhibiting effect of Colonial Regulations; and

(4) Even if there is insufficient evidence for court action, if all concerned in the administration are satisfied that an officer is corrupt, he is not permitted to continue in the public service; he is compulsorily retired with or without his pension—depending on the circumstances.

229. It is obvious from the figures in the schedule to Mr. JONES' report that in Singapore comparative few cases proceed to conviction in court. He gives the following figures for 1967:—

Persons convicted	12
Persons acquitted	3
Total	15

In addition, there were 20 cases pending court action. In Hong Kong in 1972 we have the following (paragraph 73 supra):—

Persons convicted	39
Persons acquitted	9
Total	48

I was not given the Singapore figures in respect of 1972.

230. In this inquiry I have endeavoured to assess public opinion on this question of separating the A.C. Office from the Police Force. Letters were addressed to members of the 3 councils, City District Officers, heads of Government departments, the Judiciary, the two branches of the legal profession in private practice and the press. I asked everyone to express their views on the question of separation—not only their own personal views but what they believed to be the views of the majority of members of the public; and, from the replies which I have received, it is clear that responsible bodies and individuals (including UMELCO, heads of departments and City District Officers) have endeavoured to assess public opinion. The vast majority of the replies received by the Commission advocate separation. Those in favour include:—

(i) The Chinese Press (unanimous)

(ii) Certain English language newspapers

(iii) UMELCO

(iv) The majority of heads of Government departments (including Sir Ronald HOLMES—Chairman of the Public Services Commission)

(v) The City District Officers

(vi) The Hong Kong Bar Association

(vii) The Law Society of Hong Kong

(viii) The Reform Club

(ix) The Hong Kong Civic Association.

231. *Arguments which have been advanced to the Commission in favour of separation.*

1. *That witnesses must be persuaded that they will be welcomed and not browbeaten when they make a report, subject, of course, to necessary safeguards to preclude reports based on rumour and revenge.*

It is an unfortunate fact that witnesses feel that they are "browbeaten" in police stations. But this applies to all classes of crime, not merely cases of corruption. Frequently, what complainants describe as "browbeating" is in fact, and is intended to be, close cross-examination on the part of the police for the express purpose of checking so far as possible that the report is not being made out of revenge or spite, or by some crank. This frequently happens as regards complaints alleging corruption. I do not see how this can be advanced as an argument in favour of separation. Any new agency would be faced with the same problem—unless they were prepared to waste a great deal of time investigating unfounded allegations and matters which, though morally wrong and socially undesirable, may not be crimes at all.

2. *That, in corruption cases, evidence should be given in camera and not reported (as in matrimonial proceedings); witnesses should be given protective labels (Mr. X etc.) as in blackmail cases.*

I am unable to understand how this can be advanced as an argument in favour of separation. No matter what law-enforcement agency is responsible for the investigation, under our adversary system of administering justice, an accuser must confront the person he is accusing in court. Whether it is in open court, or in camera, the accused will know who has complained against him. Many complainants are undoubtedly afraid of reprisals. (This applies also to cases with a Triad background); and although holding proceedings in camera and muzzling the press might reduce the chances of reprisals, there are serious objections to both hearings in camera and restrictions on court reporting. But, as I have said, all this has nothing to do with the question of separation.

3. *That witnesses are browbeaten in court by counsel for the defence.*

Counsel has a duty to test the truth of the evidence adduced in support of the prosecution case, and he can only do this by cross-examination. But, again, this is not an argument in favour of separation. It is only an argument in favour of some system of punishing persons alleged to be corrupt otherwise than after trial in court.

4. *That witnesses fear that their confidences will not be respected and that they will render themselves liable to revenge.*

This appears to be a variation of argument no. 2 above. The argument is: if, say, a pak pai driver refuses to pay a traffic police officer and gives evidence against him, the traffic police officer will harass the pak pai driver with unnecessary summonses, etc. But that is not an argument in favour of separation. Any new law-enforcement agency would be in the same position as the A.C. Office.

5. *That, in the field of corruption, it is impossible for anyone to come forward and report; that if he is the other party to the transaction he is an accomplice; and if he is being pressurised into making payments, he runs the risk of physical danger for himself and his family and financial disaster for himself.*

This is another variation of argument no. 2 above. It is really an argument in support of the view that court action and disciplinary proceedings (both of which involve the giving of evidence) are unsuitable, indeed impossible, methods of dealing with a great many cases of corruption. The argument has no bearing on the question of separation.

6. *The there is great esprit de corps in the Royal Hong Kong Police Force. They call each other "tze ge yan", meaning "one of ourselves". Since the riots in 1967, this strong sense of mutual loyalty has increased; and this inhibits officers from investigating suspected corruption of fellow officers.*

I feel certain that the public would not consider it a desirable thing that there should be little or no esprit de corps in the Police Force, or in any other disciplined public service. Of course, we are all familiar with the expression "dog will not eat dog". I have heard it used with reference to professional men, including doctors, lawyers, architects, journalists, army officers, etc. It is sometimes a temptation for a person to put "the good name of my profession" or "the good name of the regiment" before professional duty and the truth. But I have never heard it suggested that there should be a separate agency for the investigation of other offences committed by police officers, although I notice from Mr. JONES' report (paragraph 220 above) that the Singapore Commissioner of Police said that in his experience it is never easy for a police officer to investigate a fellow officer. If, of course, corruption is widespread in the Force, I can easily understand how it might be virtually impossible in many cases for "the pot to call the kettle black". But, otherwise, I do not think that there is a great deal in the "esprit de corps" argument, if it is examined in isolation.

7. *That Mr. Godber's admirable actions in 1967 may have rendered his colleagues less ready to act on the presumption of corruption on his part.*

This argument is put forward in support of the esprit de corps argument. GODBER was under investigation for 2 years as a result of information passed to the A.C. Office by the Commissioner himself. The case was reported regularly to the Target Committee; and at one stage, on the direction of the Target Committee, GODBER ceased to be a target—the evidence was simply not good enough. Then in late April, the Commissioner himself obtained further information of a more specific nature; and by the end of May, the A.C. Office had obtained enough evidence to justify the issue of the section 10 letter and the search warrant. The rest of the story is told in my first report.

There was not a scrap of evidence to suggest that the A.C. Office failed at any stage to pursue their investigations thoroughly. If, on the other hand, the argument is put forward in support of the view that those "running alongside the bus" were deterred from reporting GODBER's activities out of admiration for his bravery during the 1967 riots, I think it will be obvious from what I have said earlier in this report that there are many more compelling reasons why those "in the bus" and "running alongside the bus" do nothing to assist the A.C. Office.

8. *That an officer of the Anti-Corruption Office cannot be expected to carry out his duties with dispassion and integrity when under the strain of knowing that he will be returned to ordinary service in a year or so, and may well be serving under a senior officer whose corrupt activities he has investigated.*

To a great many people, this is a most compelling argument. On the face of it, it should apply as regards any offence—larceny, drunken-driving, etc. But, again, I suppose the argument is that it is very rare for senior officers to be found guilty of larceny, or drunken-driving; but that it would be rare for a junior officer to find himself working under a senior officer who was *not* corrupt. The argument again presupposes widespread corruption in the Police Force; and it has weight in regard only to the question of the thoroughness with which a junior police officer might be expected to investigate an allegation of corruption against a senior police officer—not to the manner in which the junior police officer might be expected to investigate senior officers in other departments, except in so far as the argument may suggest that no police officer thinks that corruption should be an offence anyway. But taking the argument in isolation and divorced from any suggestion of widespread corruption, I should have thought that in a very large police force such as we have in Hong Kong, it would have been a relatively simple matter to arrange departmentally that no junior officer would ever be asked to serve under a senior whose corrupt activities had come under observation by the A.C. Office.

Certainly, the GODBER case lends no support whatsoever to the argument. The investigation was not carried out at inspectorate level, but by officers of senior superintendent rank under the direct supervision of the Director [an Assistant Commissioner] who in turn was working under the watchful eye of the Deputy Commissioner (Mr. Dawson).

9. *That the Anti-Corruption Office is ineffective and has not made full use of the Prevention of Bribery Ordinance; that the quality of the staff as regards education, ability and experience is low.*

Taking the latter half of this argument first: The investigation of corruption cases is difficult work, perhaps more difficult than other C.I.D. work; and, indeed, I recommend that the A.C. Office (or any new agency) should be in a position to call in experts to advise on technical matters. Policemen are not experts in accountancy, motor mechanics, etc. It would not be necessary to have a great number of experts attached to the Office (or other agency) on a full-time basis, provided the investigators were in a position to call upon accountants, engineers, etc. to assist in the inquiries. The Accountant General, failing which a firm of civilian accountants, might be engaged to assist in cases involving matters of accountancy; and so on.

But, leaving expert knowledge aside, I have no reason to think that the officers of the Anti-Corruption Office are inferior policemen. Those I have come in contact with appear to be able investigators. The staff move every 2 years or so; and the Office is manned by officers with a number of years of C.I.D. and Special Branch experience.

As regards the first part of argument no. 9, it is quite true that the figures for 1971, 1972, and the first part of 1973 (paragraph 73 above) do not indicate that there has been any break-through in the fight against corruption. I have indicated earlier in this report (paragraphs 145–147 and 156–159) that, out of fear that there might be public criticism that the Office was engaging in witch-hunts, the Attorney General's Assistants have, with the greatest respect to them, acted on a number of occasions over-cautiously. Indeed, I was told that police officers sometimes felt frustrated because they were unable to obtain authorizations and search warrants. In this connection, I notice that in their annual report to the Governor for 1971, the Target Committee say (paragraph 18):—

> "... the Attorney General has ruled that (section 10) may only be used when there is insufficient evidence to support a charge under one of the more orthodox sections of the Ordinance. However, the ruling means that, in practice, section 10 is less of a powerful weapon than the Target Committee had hoped."

I have inquired about this so-called ruling of the Attorney General. There is nothing in writing; and, whatever the Attorney General did say, it appears to have been misunderstood. To take it at its face value would have been ridiculous. Take a purely hypothetical case. Assuming the police found that a Crown servant was in control of $3 million. There may be no evidence whatsoever to support a charge under section 3 or section 4(2) of the Ordinance. But supposing the A.C. Office found evidence to support, say, the corrupt receipt of $100 on one single occasion, it would be quite ridiculous to prefer a charge under section 3 in respect of the receipt of this small sum [maximum punishment on conviction: 1 year] and to ignore the fact that the Crown servant is in control of $3 million control of which called for an explanation under section 10 [maximum punishment on conviction: 7 years]. It does appear that the misunderstanding may have had an inhibitory effect as regards the investigation of possible section 10 cases.

Apropos of the argument that the A.C. Office has been "ineffective", there are other matters which should be borne in mind. Firstly, it is not possible to give publicity to the long-term investigations carried out by "A" Division. It is the successful prosecutions presented to the courts by "B" and "C" Divisions which are publicised. Secondly, investigations carried out by the Office have resulted in a considerable number of officers resigning. I do not think it is desirable that I should elaborate on how this came about, except to say that it involved a great deal of hard work on the part of the A.C. Office, and the fact that these undoubtedly corrupt men were not brought to trial was not the fault of the Office, but the "old-story": insufficient evidence to satisfy the high standards demanded by a criminal court.

But, when all is said and done, I feel that this argument that the A.C. Office is "ineffective" is simply a polite way of saying that the Office (as well as the rest of the Force) is corrupt from end to end and that one corrupt police officer will not diligently investigate alleged corruption on the part of another police officer—irrespective of the latter's rank.

10. *That lack of confidence in the honesty and integrity of the Police (including the A.C. Office) is the reason for the poor response of the public; and that people would come forward with information to a new law-enforcement agency which was independent of the police.*

In paragraph 218 above, I have quoted a passage from the 6th report of the Advisory Committee from which it can be seen that despite numerous appeals to the public to come forward with information during a period of 11 months in 1961, the Anti-Corruption Branch received 14 times as many complaints as the Advisory Committee! [In the one case 422; in the other 28]. Apart from members of official bodies, heads of departments, a few members of the legal profession, Mr. BARRYMAINE and Mrs. ELLIOTT, I have received no assistance from the public. It is simply "anyone's guess" as to whether the public would or would not furnish more information to any new agency. Apart from the fact that many people say they believe that this will happen, I have no information on which to form an opinion either way.

11. *That corruption is widespread in Hong Kong, including the public service, and is particularly widespread in the Police, including the A.C. Office itself; that corrupt officers cannot be expected to investigate with impartiality, honesty, zeal and diligence, allegations of corruption against any person, whether such person is in the public service or not.*

12. *That the mere fact that it is widely believed that the Police (including the A.C. Office) are corrupt, that mutual loyalty inhibits investigation of fellow-officers, etc. constitutes sufficient reason to take the Office out of Police hands, quite irrespective of how much truth there is in these allegations; that Government should respect public opinion irrespective of the evidence in support of that opinion, and that the formation of a new agency would demonstrate Government's determination to fight corruption and thereby enlist public support.*

The case for separation is really summed-up in arguments 11 and 12 above.

232. **Arguments against separation.**

1. *Corruption is a crime; and the investigation of crime is the task of officers trained in investigation work with court proceedings in mind. The investigation of crime is not within the province of lawyers and others.*

This is a powerful argument. True, officers of the Preventive Service, Labour, Fire Services, and other departments prosecute in our courts; but it is mostly for obvious infringements of the law which do not call for criminal investigation in any real sense. Good criminal investigators are not produced in a day. Young police officers, fresh out of Training School, make many mistakes; and in court they frequently find themselves being made to look very foolish when under cross-examination by defence lawyers. It takes years of experience to become a good criminal investigator as every judge, magistrate and police officer well knows. The Commissioner of Police has written to the Commission as follows:

> "All bribery offences are relatively complicated and their successful investigation requires the application of a high degree of professional skill, specialized training, experience, local knowledge, backed up by research, adequate records and substantial resources in men and equipment. . . . Anti-corruption work involves a considerable degree of intelligence-gathering. Indeed, where corruption arises from connivance at illegal activities and those involved are unlikely to complain, detailed knowledge of the corrupt practices can only be acquired by gathering intelligence over a long period, evaluating it and exploiting it so as to obtain further information. This aspect of anti-corruption work is akin to that of the Special Branch or certain specialist units of the C.I.D. and it is essential that a proportion of the officers engaged in work of this nature should have had experience in these formations . . . intelligence gathering . . . shows where administrative measures can be taken to reduce opportunities for future corruption."

2. *There is no source of trained investigators in Hong Kong outside the Royal Hong Kong Police Force.*

So far as I am aware, there is no other source of trained investigators in Hong Kong.

3. *It is unlikely that police officers of ability would wish to transfer to an anti-corruption bureau independent of the Police because such a bureau would offer very limited career prospects. It is likely that any officers who would be willing to transfer from the Police Force would be officers of limited ability with little prospects of promotion in the Force.*

This argument was put forward by the then Commissioner of Police in 1969 and is adopted by the present Commissioner. I am not in a position to comment either way. It would have

been highly improper for me to address the Royal Hong Kong Police Force, over the head of the Commissioner, in order to ascertain whether officers of ability would be willing to serve in an independent bureau.

4. *Apart from impairing their career prospects, officers of ability would find it distasteful to spend their working lives in an Anti-Corruption Bureau, independent or otherwise.*

Again, I am not in a position to comment either way except to draw attention to para. 2 of the extract from Mr. JONES' report quoted at paragraph 220 above. The views of the Singapore Commissioner of Police appear to differ from those of the Commissioner of Police, Hong Kong.

5. *The recruitment of police officers from overseas would prove difficult and, in any case, would take time.*

Again, I am not in a position to comment either way.

6. *An independent Anti-Corruption Bureau would lose the vast knowledge and resources which the Hong Kong Police can bring to bear against crime, including corruption, and the advice and counsel of the Commissioner, his Deputies, and the Director of Criminal Investigation.*

It is perfectly true that the A.C. Office works hand-in-hand with other specialist sections [Narcotics Bureau, Special Branch, etc.]. The Office also has access to criminal and intelligence Records. It has behind it the full resources of the Police Force and that includes means of communication with other Police Forces and security agencies. It would be virtually impossible to duplicate all this. Whether an independent bureau would "lose" (i.e. fail to get access to and have the benefit of) the vast knowledge and resources of the Royal Hong Kong Police Force would depend largely on the attitude of the Commissioner. Argument no. 6 was put forward by the then Commissioner in 1969 and again by the present Commissioner. I do not see how any independent bureau could function satisfactorily without the full co-operation of the Royal Hong Kong Police Force. I suppose the Commissioner could be ordered to co-operate. But, half-hearted co-operation would mean that an independent bureau would be seriously handicapped.

7. *There is no guarantee that corrupt elements would not soon infiltrate into an independent bureau. If that were to happen, it would be impossible for a small bureau to turn inwards upon itself in order to investigate itself, whereas it is a relatively simple matter for a vast organization like the Royal Hong Kong Police Force to investigate any part of itself. Corruption in an independent bureau would have to be investigated by the Royal Hong Kong Police Force.*

I have nothing to add to that argument.

8. *A bureau staffed by police investigators but responsible to persons other than the Commissioner of Police and his officers would be nothing more than an emphatic vote of no confidence in the senior officers of the Police Force and would be strongly resented by the officers of the Police Force. The morale of the Force is at stake. The result of any lowering of the morale of the Royal Hong Kong Police Force would be putting in jeopardy the peace order and security of Hong Kong.*

This is the substance of another argument put forward by the Commissioner. I have no reason to believe that the separation of the Immigration and Transport Departments from the Police several years ago adversely affected the morale of the Force; and in Singapore, Malaysia and Ceylon, it does not appear that separation had any adverse effect on the morale of the Police in these countries. But that is all I can say. I do not think that it would assist in the slightest if I said I agreed or disagreed with the Commissioner. It is his Police Force. He knows, or should know, his men. On the other hand, forecasting the effect of something-or-other on morale is always a matter of opinion—not a matter of law or a matter on which a Commission like this can make a finding.

233. These are the main arguments which have been put forward to the Commission for and against separation. The present Commissioner of Police is emphatically against separation; and he says:—

> ". . . no counter proposals for a practical alternative to the present arrangements have yet been made and the question of setting up an independent organization has not been examined in detail. No plans exist for recruiting, training and managing staff; the powers and responsibilities of an independent organization vis-a-vis those of the R.H.K. Police Force have not been defined; its prospects of success have not been studied."

UMELCO, City District Officers, and nearly all heads of Departments (including the District Commissioner, New Territories) say that the public is overwhelmingly in favour of separation, and they recommend separation. As regards the non-police members of the Target Committee, opinions vary. Mr. WARR (until recently Director of Audit) is in favour of separation. Professor MACKEY is against separation. Mr. STRATTON takes an inter-

mediate stand. He says that separation is not feasible because of recruitment difficulties, job promotion prospects and other organizational factors; and he recommends that the present A.C. Office should be answerable to a:—

> "form of non-police control comparable to that exercised by the Urban Council which by statute is a non-Government policy-making body which carries out its functions through the Urban Services Department, a department of Government. The Target Committee should be re-constituted. It should not contain any unofficial members . . . There should be only one police representative, preferably the Director of the A.C. Office. There should be a full-time Chairman of the Target Committee (perhaps a retired head of a department). His role would be akin to that of a managing director of a company (the Target Committee being the Board). The Director A.C. Branch would be akin to the General Manager of a company answerable to the Board and on a day-to-day level to the Managing Director."

It seems obvious from argument no. 8 against separation (paragraph 232 above) that such an arrangement would not be acceptable to the present Commissioner of Police.

234. Sir Ronald HOLMES says:—

> ". . . the arguments for retaining (the A.C. Office) in the Police Force are largely organizational and the arguments for removing it are largely political and psychological."

That states the problem very concisely. It is not one that is capable of being resolved judicially and I do not think that a firm recommendation by me either way would be of much assistance to the Governor. There are no issues of fact to be resolved. There are a number of "unknowns", and several arguments for and against separation are pure speculation. Take, for example, argument no. 10 in paragraph 231 namely that the public *will* give a great deal more information to an agency which is independent of the police. Responsible opinion [UMELCO, etc.] firmly believe that this *would* happen. From the nature of the offence, as described in paragraphs 110–116 above, and from past experience, I feel bound to say that I have grave doubts as to whether the public will respond any better than they have done in the past. Indeed arguments 1–5 in paragraph 231 appear to cut clean across arument 10. It is simply "anyone's guess" as to whether there would be a better public response.

235. I do not question the factual basis of arguments 1 and 2 in paragraph 232. Any new agency would have to be staffed by trained investigators. We cannot entrust a job of this kind to amateurs. That means that if there is to be immediate separation, any new agency would have to be manned by officers seconded from the Royal Hong Kong Police Force; and I have no means of assessing what weight to give to arguments 3 and 4 in paragraph 232. If a policy decision to separate is made, presumably the intention is to strengthen the new agency by bringing in "new blood" from abroad. But I have no means of assessing the weight to be given to argument no. 5 in paragraph 232. As regards argument no. 6, even if the Commissioner of Police was persuaded, or ordered, to co-operate, the degree to which co-operation would be practicable might depend on the composition of any new agency (police or civilian). Questions of security might be involved. As regards argument no. 8 in paragraph 232, UMELCO do not share the Commissioner's fears as regards the effect of separation on the morale of the Force. I have no reason to believe that separation of the Immigration and Transport Departments lowered the morale of the Force and there is nothing in the reports to indicate that the morale of the Police Forces in Singapore, Malaysia and Ceylon suffered in any way as a result of separation.

236. As regards the allegation of fact in argument no. 11 in paragraph 231 namely that the police are so corrupt that they are incapable of investigating allegations of corruption, this is not a matter which can be resolved judicially. The Royal Hong Kong Police Force are not on trial. All I can say is that many people have written to the Commission alleging that this is so.

237. On the other hand, what may well be a matter of great importance to the Governor in making a policy decision on the question of separation is the fact that there appears to be a widespread loss of confidence in the ability of the Police to investigate corruption cases with impartiality and zeal. UMELCO say that although this belief may not be justified—indeed may be very unfair to the police—no amount of assurance is likely to convince the public otherwise. Mr. Derek DAVIES, Editor of the Far Eastern Economic Review, writes:—

> ". . . so long as such a feeling exists, it is immaterial to argue whether it is justified or not."

Responsible bodies generally feel that the public will never be convinced that Government really intends to fight corruption unless the A.C. Office is separated from the Police. No doubt the GODBER case has caused a good deal of emotion and irrational thinking. But it is evident from the Advisory Committee's 6th report (paragraph 218 above) that the demand for separation is nothing new. It goes back over the last 12 years at least; and, it is difficult to see how this demand can be resisted any longer, provided the organisational problems involved can be solved. But, for the reasons I have given, I am not in a position to make a firm recommendation either way.

238. If it is decided to form a new agency for the investigation of bribery and corruption cases, I am in no doubt at all that it should be responsible to the Attorney General.

239. In regard to the head of the new agency, UMELCO say:—

"... (he) should not be a member of the Police Force, but other than that, it would not matter whether he is a local resident or someone brought in from outside the Colony. ... It would be desirable for him to have wide administrative experience and some knowledge of the law. It is not essential that he should be a lawyer although a lawyer who has the qualities listed above would be very suitable."

Preventive Measures

240. All I have said so far relates to improving our methods of detecting and dealing with corruption. But prevention is better than cure. Indeed, having regard to the tremendous difficulties involved in the investigation of corruption cases, prevention is all-important. Primarily the responsibility for this rests on the heads of departments; but representations have been made to the Commission that certain heads could do more towards reducing the opportunities for corruption and that Government should employ a Prevention of Corruption Officer on a full-time basis whose duties would be analogous to those of the Director of Audit, that is to say, to keep a constant check on departmental procedures to ensure that everything that is humanly possible is being done to reduce the opportunities for corruption. I realize that a great deal of useful information which emerges from the intelligence-gathering carried out by "A" Division of the A.C. Office is given by this division to departments. But any agency whose primary duty is crime detection should not also be asked to undertake crime prevention.

241. **Summary of Conclusion and Recommendations.**

(*a*) I have every reason to believe that what is regarded as corruption in the public service is widespread throughout Hong Kong, particularly in commerce and industry.

(*b*) There are strong indications that there is a great deal of corruption in the public service, particularly in certain departments which come in close daily contact with the public. Most of the allegations received by the Commission concern the Police, Immigration, Housing, Public Works, Fire Services, Urban Services, Commerce and Industry, and Labour Departments and the New Territories Administration.

(*c*) Despite the increased powers of investigation conferred by the Prevention of Bribery Ordinance, so far there are no signs that the A.C. Office have achieved any major break-through in the battle against corruption (paragraphs 72–81). The public allege that the reason for this is that the Anti-Corruption Office itself is corrupt. No person, or body of persons, was on trial before this Commission; and therefore I say no more about that allegation. There was evidence that too much time has been spent on intelligence-gathering by "A" Division and not enough time spent by "C" Division investigating individual targets with a view to prosecutions under section 10. The Target Committee has directed that "C" Division should be strengthened; and more effort is now being made to bring prosecutions under section 10. There was also evidence that the Attorney General was determined to fulfil his promise to Legislative Council that the increased powers of investigation conferred upon him by the Ordinance would not be abused. There is no doubt that both he and his Assistants have acted cautiously—in my respectful opinion, over-cautiously.

(*d*) Bribery is probably the most difficult of all offences to detect and prosecute successfully in the courts. Any law-enforcement agency entrusted with this difficult job deserves all the assistance which the Legislature feels it can reasonably give. I therefore recommend that the Prevention of Bribery Ordinance be amended as follows:—

Section 10. I recommend the enactment of a provision on the lines of section 21(2) the effect of which would be that the accused would be presumed (until the contrary is proved) to be in control of pecuniary resources or property if such

"are or were held by any other person who, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property in trust for or otherwise on behalf of the accused or as a gift from the accused."

If possible, the presumption should also be made to cover the maintenance of a standard of living by the officer's near relatives, mistress, etc. not commensurate with the officer's emoluments. (paragraph 126 above).

Section 12. I recommend that:

(1) the maximum penalty for an offence under section 10 be increased to a level not less than for offences under sections 5 and 6. (paragraph 130);

(2) the enactment of a provision which would enable a court, upon conviction of a person of an offence under section 10 to make an order which would operate as a forfeiture order or a judgment in favour of the Crown, in respect of such proportion of the pecuniary resources or property, the control of which the accused is unable to explain satisfactorily. (paragraph 133);

(3) The enactment of legislation which would enable the Attorney General to make an order in the nature of an order for attachment which would have the effect of preventing banks and similar institutions from honouring the instructions of a client in relation to assets in their possession which were the subject matter of an investigation in respect of an offence under the Ordinance, without the consent of the Attorney General. (paragraph 135);

(4) the enactment of a provision which would enable or require, a court, upon convicting under section 3, to order the accused to return the advantage received by him. (paragraph 139).

Section 13. I recommend that:

(1) the Attorney General be empowered to authorize the inspection and investigation of bank and other accounts operated by Crown servants, irrespective of any question of a suspected offence. (paragraph 140);

(2) in the alternative, that section 13 be amended to read

(*a*) "where it appears to the Attorney General that an offence under this Ordinance may have been committed by any person, he may" etc.

or (*b*) "where it appears to the Director that an offence under this Ordinance may have been committed" etc. (paragraph 147).

Section 14. A person suspected of an offence should not be permitted, with impunity, to ignore a notice issued by the Attorney General. I therefore recommend that section 14(4) be amended by the deletion of the words

"other than the person referred to in paragraphs (*a*) and (*b*) of subsection (1)."
(paragraphs 153–154).

Section 17. At present this investigatory section begins:

"If it appears to the Attorney General or to the Director . . .".

If the intention is that the Director should have power to issue search warrants, there is no reason why the section should make reference to the Attorney General. Furthermore, as in the case of section 13, section 17 is a most important investigatory provision; and it is most undesirable that successful prosecution should be "stifled at birth", so to speak. I recommend that section 17 be amended so as to read:

"If it appears to the Director that in any place . . . there may be any document or thing containing any evidence of the commission of an offence under this Ordinance, he may" etc. (paragraph 160).

Section 26.

(1) I see no reason why the prosecution should not be permitted to comment on the failure of an accused to give evidence; and that section 26 be amended accordingly. (paragraph 164);

(2) I recommend the enactment of a provision to the effect that when the prosecution have adduced sufficient evidence of a fact to be considered by a court, the failure of the accused to give evidence denying the fact should be capable of corroborating the evidence of it. (paragraph 165).

Section 30.

When a section 14 notice is issued or a search warrant under section 17 has been executed, a suspect has been alerted; and it is pointless for everyone to go on maintaining silence. The section is causing much confusion. It may not be possible to amend it; but the practical objections to it might be overcome if, after a certain stage in the investigation, the press were told that they would not be infringing section 30 by disclosing the name of the person under investigation. (paragraph 167).

(*e*) Colonial Regulations, and the practice in regard to disciplinary procedure, give Government servants far too much protection. Hitherto, it has been

"a cardinal principle that Government does not institute disciplinary proceedings in respect of a criminal offence which it cannot prosecute for lack of evidence." (paragraph 178).

Colonial Regulations 61 and 62 read:

"61. If criminal proceedings are instituted against an officer, disciplinary proceedings based upon any grounds involved in the criminal charge shall not be taken pending the determination of the criminal proceedings.

62. An officer acquitted of a criminal charge shall not be punished in respect of any charges upon which he has been acquitted, but he may nevertheless be punished on any other charges arising out of his conduct in the matter which do not raise substantially the same issues as those on which he has been acquitted and the appropriate proceedings may be taken for the purpose."

For the reasons given by me in paragraphs 180–190, I recommend that Colonial Regulations 61 and 62 be revoked and that the so-called cardinal principle mentioned in paragraph 178 be abandoned.

As regards officers on contract, when the Government terminates such a contract by giving the officer the appropriate notice or salary in lieu, it is undesirable that the officer should also be given reasons for terminating the contract; and I strongly recommend that a practice which has grown up of giving reasons in such circumstances should cease. (paragraphs 192–193).

As regards officers on probation, for the reasons given in paragraph 195, Establishment Regulation 303 should either be amended or revoked.

(*f*) *Compulsory Retirement.* For the reasons given in paragraphs 201–208, I recommend that Colonial Regulation 59 be revoked and that section 8(2) of the Pensions Ordinance Cap. 89 be amended by the deletion of the words

"after he attains the age of 45 years".

(*g*) *Fugitive Offenders Act 1967.* I suggest that serious consideration be given to making representations to the Secretary of State that paragraph (*c*) of section 3(1) of the Fugitive Offenders Act be amended so as to make it apply only to offences against the law of "designated Commonwealth countries"; alternatively, that a proviso be added to the effect that it shall not apply to offences contained in Colonial legislation in respect of which Her Majesty has not exercised Her power of disallowance; alternatively, that it be declared that paragraph (*c*) shall not apply to Hong Kong. I also recommend that the amendment should be made retrospective to 1967. (paragraphs 209–216).

(*h*) *Future of the Anti-Corruption Office.* The question whether the A.C. Office should be separated from the Police Force has been in issue for at least 12 years; and in paragraphs 218–229, I have outlined the history of the matter. The question was hotly debated when the Prevention of Bribery Bill was under discussion in 1970; and an assurance was given at that time that the question would be further considered in 3 years time.

In this inquiry, I have endeavoured to assess public opinion; and from the communications which I have received from responsible bodies and individuals, it appears that public opinion is overwhelmingly in favour of separation. Those in favour include:

The Chinese press
Certain English-language newspapers
UMELCO
The majority of the heads of Government departments (including Sir Ronald HOLMES—Chairman of the Public Services Commission)
The City District Officers
The Hong Kong Bar Association
The Law Society of Hong Kong
The Reform Club
The Hong Kong Civic Association.

In paragraphs 231–237, I have marshalled and analysed the arguments for and against separation. As Sir Ronald HOLMES said, the arguments for retaining the A.C. Office in the Police Force are largely organizational and the arguments for removing it are largely political and psychological. For the reasons which I have given in paragraphs 234–237, this Commission is not in a position to make a firm recommendation either way. My approach to the problem is summed up in paragraph 237 in these words:—

"... what may well be a matter of great importance to the Governor in making a policy decision on the question of separation is the fact that there appears to be a widespread loss of confidence in the ability of the Police to investigate corruption cases with im-

partiality and zeal. UMELCO say that although this belief may not be justified— indeed may be very unfair to the police—no amount of assurance is likely to convince the public otherwise . . . Responsible bodies generally feel that the public will never be convinced that Government really intends to fight corruption unless the A.C. Office is separated from the Police. No doubt the GODBER case has caused a good deal of emotion and irrational thinking. But it is evident from the Advisory Committee's 6th report (para. 218 above) that the demand for separation is nothing new. It goes back over the last 12 years at least; and it is difficult to see how this demand can be resisted any longer provided the organizational problems involved can be solved. But for the reasons I have given I am not in a position to make a firm recommendation either way."

If it is decided to form a new agency, I adopt UMELCO's recommendation that it be headed not by a police officer but by a person of wide administrative experience. If such a person happened to have legal qualifications, so much the better; but I would have thought that a person who has held high judicial office would *not* be the best type of head. Experience in Ceylon seems to support this view.

If it is decided to form a new agency, it should be responsible to the Attorney-General.

Prevention is better than cure; and in paragraph 240, I recommend that consideration be given to employing a Prevention of Corruption Officer on a full-time basis whose duties would be analogous to those of the Director of Audit, that is to say, to keep a constant check on departmental procedures to ensure that everything that is humanly possible is being done to reduce the opportunities for corruption in the public service.

I recommend that the Advisory Committee be now dissolved.

As regards the Target Committee, if it is decided that the A.C. Office remain as part of the Police Force, I can well understand that there might be difficulties in adopting Mr. STRATTON's recommendation that the Committee be made into something analogous to the Urban Council or a Board of Directors owing to the fact that the Police is a disciplined service and the present Commissioner has indicated his opposition to any changes in this direction. If, however, it is decided to form an agency independent of the Police, Mr. STRATTON's recommendation appears to have certain advantages. In this connection UMELCO say:

"Although in the overseas territories studied there is nothing similar to the Target Committee in Hong Kong, that committee could advantageously be retained in any new anti-corruption structure since it provides an additional safeguard as well as a useful mechanism for deciding priorities."

I too recommend that a Target Committee continue; but, depending on what decision is reached regarding separation, it may have to be re-constituted.

The Courts

242. Two further matters appear to be worthy of mention on an occasion of this kind.

Bail

243. In corruption cases, the danger that an accused will "jump" his bail is very great indeed. So often the amount involved in the charges which the prosecution are in a position to prefer represents only "the tip of the iceberg". The police may know that millions of dollars are involved, but they may not be in a position to prove it, and therefore it would be improper for them to mention it. Consequently Crown counsel can merely say to the magistrate; "I oppose bail". Courts frequently insist on being given full reasons for the Crown's opposition to bail; and if the Crown do not consider it proper to give full reasons, bail is then fixed at some figure which is no deterrent whatsoever to the accused departing from the jurisdiction of the court before the date fixed for his trial.

244. At one stage of this inquiry I seriously considered recommending the enactment of a provision which would have enabled the Attorney General, in appropriate cases, to issue a certificate, the effect of which would have been to take away the power of a magistrate to grant bail in the particular case. But, to muzzle judicial discretion is always a serious matter, as indeed it is to be forced to legislate specially for a particular type of offence; and I have decided not to recommend this. However, with the possibility that there will be an increase in the number of section 10 cases coming before the courts, the desirability of enacting a provision of this kind should be kept under review.

Sentence

245. The attention of the Commission was drawn to the sentences passed in 3 cases which have come before the courts since the enactment of the Prevention of Bribery Ordinance Cap. 201.

1. X went to the Seaman's Recruiting Office to register as a seaman. During his interview, he offered $600 to the Recruiting Assistant as an inducement to obtain employment on board a ship. He pleaded guilty to a charge under section 4(1) of Cap. 201. The maximum sentence for such an offence on summary conviction is a fine of $50,000 and imprisonment for 3 years. X was bound over by the magistrate to be of good behaviour.

2. The charge sheet against Y, a Crown servant, consisted of 4 counts under section 3 of the Ordinance and 4 counts under section 4(2). The charges arose out of an allegation that Y had accepted a total of $10,500 in consideration of his assisting certain persons who were attempting to obtain Hong Kong identity cards. Y pleaded guilty to one of the section 3 charges which alleged that he had accepted $2,000 in return for his assistance in obtaining an identity card for someone. The Crown offered no evidence on the other 7 charges. Y was fined $3,000. The maximum sentence for an offence under section 3 is a fine of $20,000 and imprisonment for 1 year. This was a District Court case.

3. Z, Chairman of a Rural Committee and, as such, a person having dealings with the Government through the District Officer, offered the latter $10,000 and a canteen of cutlery. He was charged with an offence under section 8 of the Ordinance, the maximum punishment for which is a fine of $100,000 and imprisonment for 7 years. Z pleaded guilty and was fined $30,000. A sentence of 18 months imprisonment was also passed but it was suspended for a period of 2 years, presumably under power conferred by section 109B of the Criminal Procedure Ordinance which reads:

> "A court which passes a sentence of imprisonment for a term of not more than 2 years for an offence . . . may order that the sentence shall not take effect, unless during a period of . . . not . . . more than 3 years from the date of the order, the offender commits . . . another offence punishable with imprisonment and . . . a court . . . orders . . . that the original sentence shall take effect."

Therefore, provided Z does not do the same thing again during the next 2 years, he will not have to go to prison at all; and his punishment consists of having to pay 3 times the amount of the bribe.

246. Judging by the information received by the Commission, these three court decisions have evoked a good deal of public criticism. The stock answer to such criticism is that only the court of trial, which has all the facts before it, is capable of deciding what sentence is appropriate and that "arm-chair" critics should keep quiet. True, the public seldom, if ever, know as much about a case as does the court of trial; but I would be the last to suggest that courts of law should be immune from public criticism.

247. In this report, I have recommended that the investigatory powers of the police be increased in certain respects and the relaxation of certain rules of evidence and procedure. I have also recommended that the Government, in its capacity as an employer, should adopt a more master and servant approach in its dealings with its own employees. The courts also have an important role in this battle against corruption; and, unless potential corrupters and Crown servants who are prepared to accept bribes feel certain that, if caught and prosecuted, they will be severely dealt with by the courts, there is little hope that this scourge of corruption will ever be eradicated by the ordinary judicial process.

ALASTAIR BLAIR-KERR,
Commissioner.

SUPREME COURT, HONG KONG.
1st September 1973.

COMMISSIONS OF INQUIRY ORDINANCE

(Chapter 86)

APPOINTMENT OF COMMISSION OF INQUIRY

In exercise of the powers conferred by section 2 of the Commissions of Inquiry Ordinance (hereinafter referred to as the Ordinance) the Governor in Council has appointed the Honourable Mr. Justice BLAIR-KERR, Senior Puisne Judge, as Commissioner to report on the matters set out in paragraph 2, being matters which are in his opinion of public importance.

2. The Commission is to—

(*a*) report on the circumstances in which a person whose prosecution under the Prevention of Bribery Ordinance was at an advanced stage of consideration was able to leave Hong Kong;

(*b*) in the light of experience of the working of the Prevention of Bribery Ordinance, and having regard also to the need to preserve basic human rights under the law—

(i) report on the effectiveness of the Prevention of Bribery Ordinance and suggest amendments;

(ii) suggest any other changes in current arrangements considered necessary.

3. The Commission is to report to the Governor—

(*a*) within three weeks, on the matter set out in paragraph 2(*a*) hereof; and

(*b*) within three months, on the matters set out in paragraph 2(*b*) hereof.

4. The Governor in Council, in exercise of the powers conferred by section 3 of the Ordinance, has directed that the Commission shall have and exercise the powers conferred by section 9 of the Ordinance to punish all or any of the contempts specified in section 8 thereof.

B. G. JENNEY,
Clerk of Councils.

COUNCIL CHAMBER,
13th June 1973.

"B"

Chapter 215

PREVENTION OF CORRUPTION

To amend the law for the prevention of corruption.

[30th July, 1948.]

Short title.

1. This Ordinance may be cited as the Prevention of Corruption Ordinance.

Interpretation.

2. In this Ordinance—

"advantage" includes any office or dignity, and any forbearance to demand any money or money's worth or valuable thing, and includes any aid, vote, consent, or influence, or pretended aid, vote, consent or influence, and also includes any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage, as before defined;

"agent" includes a public servant and any person employed by or acting for another;

"Consideration" includes valuable consideration of any kind;

"person" includes a body of persons, corporate or unincorporate;

"principal" includes an employer;

"public body" includes any executive, legislative, municipal or urban council, any Government department or undertaking, any local or public authority or undertaking, any board, commission, committee or other body whether paid or unpaid appointed by the Governor or Government or which has power to act under or for the purposes of any enactment in force in the Colony;

"public office" means any office or employment permanent or temporary and whether paid or unpaid of a person as a member, officer, or servant of such public body;

"public servant" means in addition to the meaning assigned to it by the Interpretation Ordinance, any employee or member of a public body as defined in this Ordinance, whether temporary or permanent and whether paid or unpaid.

Corruption in office an offence.

3. (1) Any person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree or receive for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of an offence.

(2) Any person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of an offence.

Corrupt transactions with agents an offence.

4. If—

(*a*) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Ordinance done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(*b*) any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Ordinance done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(*c*) any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal;

he shall be guilty of an offence.

Penalty for offences.

5. (1) Any person who commits an offence against section 3 shall be liable—

(*a*) on summary conviction to a fine of five thousand dollars and imprisonment for two years;

(*b*) on conviction on indictment to a fine of ten thousand dollars and imprisonment for five years;

(*c*) in addition be liable to be ordered to pay to such body, and in such manner as the magistrate or the court directs, the amount or value of any gift, loan, fee or reward received by him or any part thereof;

and in the event of a second conviction for a like offence, in addition to the foregoing penalties, be liable to be adjudged to be incapable for seven years of being registered as an elector of members of any public body, and any enactment in force in the Colony for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting.

(2) Any person committing an offence against section 4 shall be liable—

(*a*) on summary conviction to a fine of one thousand dollars and imprisonment for two years;

(*b*) on conviction on indictment to a fine of ten thousand dollars and imprisonment for five years,

and in addition to be ordered to pay to his principal and in such manner as the magistrate or the court may direct, any gift or consideration or any part thereof.

Increase of maximum penalty in certain cases.

6. A person convicted on indictment of an offence under section 3 or 4 shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with His Majesty or any Government department or any public body or a sub-contract to execute any work comprised in such a contract, be liable to imprisonment for a term not exceeding seven nor less than three years: Provided that nothing in this section shall prevent the infliction—

(*a*) in addition to imprisonment of such punishment other than imprisonment as may be inflicted under subsection (1) or (2) of section 5; or

(*b*) in lieu of the punishment provided for by this section of any punishment which by virtue of section 5 may be inflicted for an offence under section 3 or 4.

Savings.

7. A person shall not be exempt from punishment under this Ordinance by reason of the invalidity of the appointment or election of a person to a public office.

Restriction on prosecution.

8. A prosecution under this Ordinance shall not be instituted except by or with the consent of the Attorney General.

Evidence of accomplice.

9. Notwithstanding any rule of practice or procedure to the contrary in the event of a person being charged with an offence against section 3 or 4, a judge shall not be required to direct the jury that it is dangerous to convict on the evidence of an accomplice without corroboration in a material particular implicating the accused but it shall suffice if the judge shall give the jury such instructions regarding the reliability of the evidence of an accomplice as he may deem appropriate.

Special powers of investigation.

10. (1) Notwithstanding anything in any other law contained, the Attorney General if satisfied that there are reasonable grounds for suspecting that an offence against this Ordinance has been committed by any person may in writing specially authorize a police officer not below

the rank of assistant superintendent to investigate any bank account, share account or purchase account of such person and such authority shall be sufficient warrant for the production of such accounts and documents as may be required for scrutiny by the officer so authorized.

(2) Any person who fails to disclose such information to a police officer so authorized shall be guilty of an offence and shall be liable on summary conviction to a fine of two thousand dollars and imprisonment for one year.

Presumption of corruption in certain cases.

11. Where in any proceedings against a person for an offence under this Ordinance, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment whether permanent or temporary and whether paid or unpaid of His Majesty or any Government department or a public body by or from a person, or agent of a person holding or seeking to obtain a contract from His Majesty or from the Government of Hong Kong or from any Government department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in section 3 or 4 unless the contrary is proved.

Special rules of evidence.

12. In any trial or inquiry by a magistrate or a court in respect of an offence against this Ordinance it may be proved and taken into consideration by such magistrate or court that an accused person—

(*a*) is in possession or has disposed of pecuniary resources or property disproportionate to his known sources of income for which he cannot satisfactorily account; or

(*b*) has at or about the time of an alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account.

Chapter 201

PREVENTION OF BRIBERY

To make further and better provision for the prevention of bribery and for purposes necessary thereto or connected therewith.

Originally 102 of 1970.

[14th May, 1971.] L.N. 58/71.

PART I

PRELIMINARY

1. This Ordinance may be cited as the Prevention of Bribery Ordinance, and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. (1) In this Ordinance, unless the context otherwise requires—

Interpretation.

"advantage" means—

(*a*) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;

(*b*) any office, employment or contract;

(*c*) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(*d*) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

(*e*) the exercise or forbearance from the exercise of any right or any power or duty; and

(*f*) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (*a*), (*b*), (*c*), (*d*) and (*e*);

"agent" includes a public servant and any person employed by or acting for another;

"banker's books" means—

(*a*) any ledger, day book, cash book, account book or other book whatsoever, and

(*b*) any computer records,

used in the ordinary business of a bank;

"child" includes a child who is illegitimate or adopted, a foster child and a step-child;

"company books" means the annual return and balance sheets and any ledger, day book, cash book, account book, bank book or other book used in the ordinary business of a company;

"court" includes a magistrate hearing proceedings with a view to committal for trial under section 85 of the Magistrates Ordinance;

"Crown servant" means a person holding an office of emolument, whether permanent or temporary, under the Crown in right of the Government;

"Director" means the person appointed by the Governor to be in charge of the Anti-Corruption Office;

"entertainment" means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions;

"parents" includes parents-in-law and step-parents;

"principal" includes—

(*a*) an employer;

(*b*) a beneficiary under a trust;

(*c*) a trust estate as though it were a person;

(*d*) any person beneficially interested in the estate of a deceased person;

(*e*) the estate of a deceased person as though it were a person; and

(*f*) in the case of an employee of a public body, the public body;

"public body" means—

(*a*) the Government;

(*b*) the Executive Council;

(*c*) the Legislative Council;

(*d*) the Urban Council;

(*e*) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Governor or the Governor in Council; and

(*f*) any board, commission, committee or other body specified in the Schedule;

"public servant" means any employee or member of a public body, whether temporary or permanent and whether paid or unpaid, but the holding of a share in a company which is a public body shall not of itself constitute the holder a public servant;

"spouse" includes a concubine.

(2) For the purposes of this Ordinance—

(*a*) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;

(*b*) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and

(*c*) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

PART II

OFFENCES

Soliciting or accepting an advantage.

3. Any Crown servant who, without the general or special permission of the Governor, solicits or accepts any advantage shall be guilty of an offence.

Bribery.

4. (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's—

(*a*) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(*b*) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or

(*c*) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

(*a*) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(*b*) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or

(*c*) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

Bribery for giving assistance, etc. in regard to contracts.

5. (1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in—

(*a*) the promotion, execution, or procuring of—

(i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or

(ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or

(*b*) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in—

(*a*) the promotion, execution or procuring of, or

(*b*) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence.

Bribery for procuring withdrawal of tenders.

6. (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

Bribery in relation to auctions.

7. (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

Bribery of public servants by persons having dealings with public bodies.

8. (1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any Crown servant employed in that department, office or establishment of the Government, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

Corrupt transactions with agents.

9. (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

(*a*) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(*b*) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's—

(*a*) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(*b*) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document—

(*a*) in respect of which the principal is interested; and

(*b*) which contains any statement which is false or erroneous or defective in any material particular; and

(*c*) which to his knowledge is intended to mislead the principal,

shall be guilty of an offence.

(4) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting or accepting of any advantage by his agent shall, without prejudice to the generality of the defence of lawful authority or reasonable excuse, constitute a reasonable excuse.

Possession of unexplained property.

10. (1) Any person who, being or having been a Crown servant—

(*a*) maintains a standard of living above that which is commensurate with his present or past official emoluments; or

(*b*) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.

(2) In this section, "official emoluments" includes a pension or gratuity payable under the Pensions Ordinance.

Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.

11. (1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that—

(*a*) he did not actually have the power, right or opportunity so to do or forbear;

(*b*) he accepted the advantage without intending so to do or forbear; or

(*c*) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Penalty for offences.

12. (1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable—

(*a*) on conviction on indictment—

(i) for an offence under section 5 or 6, to a fine of one hundred thousand dollars and to imprisonment for ten years, and

(ii) for any other offence under this Part, to a fine of one hundred thousand dollars and to imprisonment for seven years; and

(*b*) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for three years,

and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify.

(2) Any person guilty of an offence under section 3 shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

PART III

POWERS OF INVESTIGATION

Special powers of investigation.

13. (1) The Attorney General, if satisfied that there are reasonable grounds for suspecting that an offence under this Ordinance has been committed by any person, may, for the purposes of an investigation into such offence, authorize in writing any police officer of or above the rank of senior inspector or any Crown servant specified in such authorization, to exercise the following powers on the production by him of the authorization—

(*a*) to investigate and inspect any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of whatsoever kind or description, any safe-deposit box, and any banker's books or company books, of or relating to any person named or otherwise identified in such authorization;

(*b*) to require from any person the production of any accounts, books, documents, safe-deposit box or other article of or relating to any person named or otherwise identified in such authorization which may be required for the purpose of such investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts and books or of any relevant entry therein.

(2) (*a*) Every authorization given under subsection (1) shall be deemed also to authorize the police officer or Crown servant specified therein to require from any person information as to whether or not at any bank, company or other place there is any account, book, document, safe-deposit box or other article liable to investigation, inspection or production under such authorization.

(*b*) A requirement under paragraph (*a*) shall be made in writing and any statement therein as to the existence of the appropriate authorization under subsection (1) shall be accepted as true without further proof of the fact.

(3) Any person who, having been lawfully required under this section to disclose any information or to produce any accounts, books, documents, safe-deposit box or other article to a police officer or a Crown servant authorized under subsection (1), shall, notwithstanding the provisions of any other law to the contrary save only the provisions of section 4 of the Inland Revenue Ordinance, comply with such requirement, and any such person who fails or neglects, without reasonable excuse, so to do, and any person who obstructs any such police officer or Crown servant in the execution of the authorization given under subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

(4) Any person who falsely represents that an appropriate authorization has been given under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Power to obtain information.

14. (1) In the course of any investigation into, or proceedings relating to, an offence alleged or suspected to have been committed by any person under this Ordinance, the Attorney General may by written notice require—

(*a*) such person to furnish to the Director a statutory declaration or, as the Attorney General sees fit, a statement in writing, enumerating—

(i) the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by, or which at any time during the year immediately preceding the date of such notice or during such shorter period as may be specified in such notice belonged to or was possessed by, such person, his agents or trustees, specifying in respect of each property enumerated whether it is or was possessed jointly (and, if so, with whom) or severally; and specifying the date upon which each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise, and, where it was acquired by purchase, specifying the consideration paid therefor; and in respect of any property enumerated which has been disposed of, whether by sale, gift or otherwise, at any time during the year immediately preceding the date of the notice or such shorter period as aforesaid, specifying how and to whom the same was disposed of and, where it was disposed of by sale, specifying the consideration given therefor;

(ii) all expenditure incurred by such person in respect of himself, his spouse, parents or children with regard to living expenses and other private expenditure during any period specified in such notice (not, however, being a period commencing earlier than one year from the date of the notice);

(iii) all liabilities incurred by such person, his agents or trustees, at such time or during such period as may be specified in such notice (not, however, being a time or a period commencing earlier than one year from the date of the notice), and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally;

(*b*) such person to furnish to the Director a statutory declaration or, as the Attorney General sees fit, a statement in writing of any money or other property sent out of the Colony by him or on his behalf during such period as may be specified in the notice;

(*c*) any other person to furnish to the Director a statutory declaration or, as the Attorney General sees fit, a statement in writing enumerating the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by him, if the Attorney General believes that such information may assist the investigation or proceedings;

(*d*) any other person whom the Attorney General believes to be acquainted with any facts relevant to such investigation or proceedings to furnish to the Director all information in his possession respecting such matters as are specified in the notice or, as the Attorney General sees fit, to appear before the Director or such other person specified in the notice and to answer orally on oath or affirmation any questions relevant thereto; and, on demand by the Director or such other person, to produce or deliver or otherwise furnish to him the original or a copy of any document in his possession or under his control which, in the opinion of the Director or such other person, may be relevant to such investigation or proceedings; for the purposes of this paragraph the Director or such other person shall have authority to administer any oath or take any affirmation;

(*e*) the person in charge of any public body or any department, office or establishment of any public body to produce or furnish to the Director any document or a copy, certified by the person in charge, of any document which is in his possession or under his control;

(*f*) the manager of any bank to give to the Director copies of the accounts of such person or of his spouse, parents or children at the bank as shall be named in the notice.

(2) Without prejudice to the generality thereof, the powers conferred by paragraph (*d*) of subsection (1) include the power to require information from, and to require the attendance for the purpose of answering questions of—

(*a*) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction; and

(*b*) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting any particular land or property transaction,

as to any of the following matters, that is to say—

(i) the full names (including aliases) and addresses of any of the persons referred to in paragraphs (*a*) and (*b*) and any other information in his possession which may be helpful in identifying or locating any such person;

(ii) any consideration, brokerage, commission or fee paid or received in respect of or in connexion with any such land or property transaction; and

(iii) the terms and conditions of any such land or property transaction.

(3) A notice under subsection (1) shall be served on the person to whom it is addressed either personally or by registered post addressed to his last known place of business or residence.

(4) Every person on whom a notice under subsection (1) is served shall, notwithstanding the provisions of any other law to the contrary save only the provisions of section 4 of the Inland Revenue Ordinance, comply with the terms of that notice within such time as may be specified therein or within such further time as the Attorney General may, in his discretion, authorize, and any person on whom such a notice has been served, other than the person referred to in paragraphs (*a*) and (*b*) of subsection (1), who, without reasonable excuse, neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Legal advisers and privileged information.

15. (1) Save as is provided in this section, nothing in this Ordinance shall require the disclosure by a legal adviser of any privileged information, communication, book, document or other article.

(2) Subject to subsection (4), the information referred to in subsection (2) of section 13 and in subsection (2) of section 14 may be required from a legal adviser as from any other person, notwithstanding that the effect of compliance with such a requirement would be to disclose any privileged information or communication.

(3) Subject to subsection (4), a legal adviser may be required by notice under paragraph (*d*) of subsection (1) of section 14—

(*a*) to state whether, at any time during such period as is specified in the notice, he has acted on behalf of any person named or otherwise identified in the notice in connexion with—

(i) the transfer by such person of any moneys out of the Colony; or

(ii) the investment by such a person within or outside the Colony of any moneys; and

(*b*) if so, to furnish information in his possession with respect thereto, being information as to—

(i) the date of the transfer or investment;

(ii) the amount of the transfer or investment;

(iii) in the case of a transfer, the name and address of the bank and the name and number (if any) of the account to which the money was transferred;

(iv) in the case of an investment, the nature of the investment,

notwithstanding that the effect of compliance with such a requirement would be to disclose any privileged information or communication.

(4) Nothing in subsection (2) or (3) shall require a legal adviser to comply with any such requirement as is specified therein to the extent to which such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any proceedings, begun or in contemplation, before a court or to enable him to give legal advice to his client.

(5) In this section "legal adviser" means counsel or a solicitor.

(6) The protection conferred by this section on a legal adviser shall extend to a clerk or servant of or employed by a legal adviser.

Powers of search, and to obtain assistance.

16. (1) Any police officer of or above the rank of senior inspector and any Crown servant conducting an investigation into an offence alleged or suspected to have been committed under this Ordinance—

(*a*) may apply to any Crown servant or any other person for assistance in the exercise of his powers or the discharge of his duties under this Ordinance;

(*b*) may for the purposes of such investigation, with the written consent of the Attorney General and with such assistance as may be necessary, enter and search any office, registry or other room of or used by a public body:

Provided that the Governor may by order exempt any office, registry or room from entry and search under the provisions of this paragraph.

(2) Any person who—

(*a*) when requested under paragraph (*a*) of subsection (1) to render assistance, without reasonable excuse neglects or fails to render such assistance; or

(*b*) obstructs or resists any police officer or Crown servant in the exercise of the powers of entry and search conferred by paragraph (*b*) of subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Further powers of search and seizure.

17. (1) If it appears to the Attorney General, or to the Director, that there is reasonable cause to believe that in any place other than an office, registry or other room of or used by a public body there is any document or thing containing any evidence of the commission of an offence under this Ordinance, the Attorney General or the Director may, by warrant directed to any police officer, empower such police officer to enter such place, by force if necessary, and there to search for, seize and detain any such document or thing.

(2) Without prejudice to any other law relating to entry and search, the chambers of counsel or the office of a solicitor are not subject to entry and search under this section or any warrant issued under this section except in the course of investigating an offence under this Ordinance alleged or suspected to have been committed by that counsel or that solicitor, as the case may be, or by his clerk or any servant employed by him in such chambers or office.

(3) Any person who obstructs or resists the Director or any police officer in the exercise of the powers of entry and search under this section shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Surrender of travel document.

17A. (1) A magistrate may, on the application of the Director, by written notice require a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Ordinance to surrender to the Director any travel document in his possession.

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith.

(4) If a person on whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may thereupon be arrested and taken before a magistrate.

(5) Where a person is taken before a magistrate under subsection (4), the magistrate shall, unless such person thereupon complies with the notice under subsection (1), by warrant commit him to prison there to be safely kept—

(*a*) until the expiry of the period of twenty-eight days from the date of his committal to prison as aforesaid; or

(*b*) until such person complies with the notice under subsection (1) and a magistrate, by order in that behalf, orders and directs the Commissioner of Prisons to discharge such person from prison (which order shall be sufficient warrant for the Commissioner of Prisons so to do),

whichever occurs first.

(6) In this section, "travel document" means a passport or other document establishing the identity or nationality of a holder.

Bail from persons about to leave Hong Kong after commencement of investigations.

18. (1) If, in the course of an investigation of an offence alleged or suspected to have been committed by any person under this Ordinance, it appears to the Director that such person is preparing or about to leave Hong Kong, the Director, or any gazetted police officer or Crown servant authorized in that behalf by the Director, may apply to a magistrate for a warrant for the apprehension of such person and his production before a magistrate; and where, on any such application, it is made to appear to the magistrate upon the oath of any person that there is reasonable cause to believe that the person whose apprehension is sought is preparing or about to leave Hong Kong and that, in all the circumstances, the investigation could not reasonably have been completed before the date of the application, he may issue a warrant to apprehend such person and to cause him to be brought before a magistrate as soon after apprehension as is practicable to be dealt with according to subsection (3).

(2) The provisions with reference to the forms of warrants of apprehension, the directions to be contained therein and the execution thereof contained in the Magistrates Ordinance shall apply, mutatis mutandis, to warrants issued under subsection (1).

(3) On the production before a magistrate of any person apprehended pursuant to a warrant issued under subsection (1), the magistrate shall, unless the person apprehended can satisfy the magistrate that he is not preparing or about to leave the Colony and that he has no intention of leaving the Colony, offer to admit him to bail, on his procuring or producing such surety or sureties as, in the opinion of the magistrate, will be sufficient to ensure his appearance on such day and at such time and place as the magistrate decides and, thereafter, on such subsequent day, and at such time and place on that day, as may from time to time on his appearing be decided by a magistrate; and thereupon the magistrate shall take the recognizance of such person and his surety or sureties conditioned for the appearance of such person on such day and at such time and place as that magistrate shall have decided and, thereafter, on such subsequent day, and at such time and place on that day, as may be decided from time to time on his appearing before a magistrate, and that he will then surrender and not depart without leave of a magistrate.

(4) In deciding the day on which a person admitted to bail under subsection (3) is to appear or to appear again, regard shall be had by the magistrate to the time reasonably necessary for completion of the investigation of the offence alleged or suspected to have been committed by such person and to any special hardship to such person likely to result from his being on bail, but the person shall not be required to appear or to appear again on a day later than twenty-eight days from the date of his apprehension pursuant to the warrant issued under subsection (1) unless the magistrate is of the opinion that, having regard to the gravity of the offence alleged or suspected to have been committed by such person, it is expedient to fix a later date.

(5) If any person offered bail under this section refuses to enter into the recognizance required or makes default in finding any surety or sureties as may be required, the magistrate shall, by warrant, commit him to prison there to be safely kept—

(*a*) until he enters into such recognizance or finds such surety or sureties, as the case may be; or

(*b*) until the expiry of the period of twenty-eight days from the date of his committal to prison as aforesaid; or

(*c*) until a magistrate, by order in that behalf, orders and directs the Commissioner of Prisons to discharge such person from prison (which order shall be sufficient warrant for the Commissioner of Prisons so to do),

whichever occurs first.

(6) The provisions of section 62 (power to reduce or vary security), section 63 (recognizance taken out of court), section 64 (mode of giving security and enforcement thereof) and section 65 (enforcing recognizance for appearance) of the Magistrates Ordinance shall apply, mutatis mutandis, to recognizances under this section.

(7) Proceedings before a magistrate under this section shall be deemed to be a proceeding which a magistrate has power to determine in a summary way within the meaning of section

105 and subsection (3) of section 113 of the Magistrates Ordinance, and, accordingly, the provisions of Part VII of that Ordinance (which relate to appeals) shall apply, mutatis mutandis, to appeals against an order or determination of a magistrate under this section.

(8) All proceedings before a magistrate under this section shall be conducted in chambers.

PART IV

EVIDENCE

Custom not to be a defence.

19. In any proceedings for an offence under this Ordinance, it shall not be a defence to show that any such advantage as is mentioned in this Ordinance is customary in any profession, trade, vocation or calling.

Admissibility of accused's declarations and statements.

20. In any proceedings against a person for an offence under this Ordinance—

(*a*) any statutory declaration or statement in writing furnished by him in compliance or purported compliance with the terms of a notice served upon him under paragraph (*a*) or (*b*) of subsection (1) of section 14 shall be admissible in evidence and, if such person tenders himself as a witness, any such declaration or statement may be used in cross-examination and for the purpose of impeaching his credit;

(*b*) the fact of his failure in any respect to comply with the terms of a notice served on him under paragraph (*a*) or (*b*) of subsection (1) of section 14 may be adduced in evidence and made the subject of comment by the court and the prosecution.

Evidence of pecuniary resources or property.

21. (1) In any proceedings against a person for an offence under Part II (other than section 10), the fact that the accused was, at or about the date of or at any time since the date of the alleged offence, or is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court—

(*a*) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any advantage; and

(*b*) as showing that such advantage was accepted or solicited as an inducement or reward.

(2) For the purposes of subsection (1) a person accused of an offence under Part II (other than section 10) shall be presumed to be or to have been in possession of pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such reasources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

Person giving or receiving bribe not to be regarded as an accomplice.

22. Notwithstanding any rule of law or practice to the contrary, no witness shall, in any proceedings for an offence under Part II, be regarded as an accomplice by reason only of any payment or delivery by him or on his behalf of any advantage to the person accused or, as the case may be, by reason only of any payment or delivery of any advantage by or on behalf of the person accused to him.

Power to secure evidence of parties to offences.

23. In or for the purpose of any proceedings for an offence under Part II, the court may, at the request in writing of the Attorney General, inform any person accused or suspected of such offence or of any other offence under Part II that, if he gives full and true evidence in such proceedings and, where such proceedings are proceedings held with a view to committal for trial under section 85 of the Magistrates Ordinance, in the trial before the Supreme Court of all things as to which he is lawfully examined, he will not be prosecuted for any offence disclosed by his evidence; and upon such person giving evidence in any such proceedings no prosecution against him for any offence disclosed by his evidence therein shall be instituted or carried on unless the court before which he gives evidence considers that he has wilfully withheld evidence or given false testimony and so certifies to the Attorney General in writing.

Burden of proof.

24. In any proceedings against a person for an offence under this Ordinance, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused.

Presumption of corruption in certain cases.

25. Where, in any proceedings for an offence under section 4 or 5, it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given and accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved.

Comment on failure of accused to give evidence

26. Notwithstanding any law or practice to the contrary, it shall be lawful for the court in any proceedings for an offence under Part II to comment on the failure of the accused to give evidence on oath.

PART V

MISCELLANEOUS

Frivolous, false or groundless complaints to be reported to the Attorney General.

27. At the conclusion of proceedings for an offence under this Ordinance, the court may, if of the opinion that the complainant or any other person has knowingly, and with intent to harm the accused, made a false, frivolous or groundless allegation against him, so certify in writing and transmit the certificate and the record of the proceedings to the Attorney General.

Costs on acquittal.

28. Where a person is acquitted after trial before the Supreme Court or the District Court for an offence under Part II, the court may award costs to that person, such costs to be taxed and paid out of the general revenue.

Offence of making a false report of the commission of offence, etc.

29. Any person who, during the course of an investigation into, or in any proceedings relating to, an offence alleged or suspected to have been committed under this Ordinance, knowingly—

(*a*) makes or causes to be made a false report of the commission of an offence under this Ordinance to—

(i) any police officer specified in an authorization given under section 13; or

(ii) any Crown servant specified in an authorization given under section 13; or

(*b*) misleads—

(i) any police officer specified in an authorization given under section 13; or

(ii) any Crown servant specified in an authorization given under section 13,

shall be guilty of an offence and shall be liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Offence to disclose identity, etc. of persons being investigated.

30. Any person who, without lawful authority or reasonable excuse, discloses to any person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Ordinance the fact that he is subject to such an investigation or any details of such investigation, or discloses to any other person either the identity of any person who is the subject of such an investigation or any details of such an investigation, shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Consent of Attorney General required for prosecution of offences under Part II.

31. (1) No prosecution for an offence under Part II shall be instituted except with the consent of the Attorney General.

(2) Notwithstanding subsection (1) of this section a person may be charged with an offence under Part II and may be arrested therefor, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail notwithstanding that the consent of the Attorney General to the institution of a prosecution for the offence has not been obtained, but no such person shall be remanded in custody or on bail for longer than three days on such charge unless in the meantime the consent of the Attorney General aforesaid has been obtained.

(3) When a person is brought before a magistrate before the Attorney General has consented to the prosecution, the charge shall be explained to the person accused but he shall

not be called upon to plead and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

(4) Neither section 7 of the Legal Officers Ordinance nor section 43 of the Interpretation and General Clauses Ordinance shall apply to or in respect of the giving by the Attorney General of his consent to the institution of a prosecution for an offence against section 10.

Alternative convictions, and amending particulars.

32. (1) If, on the trial of any person for any offence under Part II, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part II, the accused may, notwithstanding the absence of consent under section 31 in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly.

(2) If on the trial of any person for any offence under Part II there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is prima facie evidence of the commission of that offence, and in such a case the court may, notwithstanding the absence of consent under section 31 in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to the provisions of subsection (3), to call any further witness.

(3) If an amendment is made under subsection (2) after the case for the prosecution is closed no further witness may be called by the prosecution other than such and on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

(4) Nothing in this section shall exclude the application of any other law whereby a person may be found guilty of an offence other than that with which he is charged.

Effect of conviction of an offence under Part II.

33. Any person convicted of an offence under Part II shall, by reason of such conviction, be disqualified for a period of seven years from the date of such conviction from—

(*a*) being registered as an elector or voting at any election under the Urban Council Ordinance;

(*b*) being or being elected or appointed as a member of the Executive Council. the Legislative Council, the Urban Council and any other public body.

Extension of certain provisions in relation to offences under repealed Ordinance.

34. (1) The provisions contained in Part III shall apply to and in respect of offences suspected or alleged to have been committed under the Prevention of Corruption Ordinance repealed by section 36 as they apply to and in respect of offences suspected or alleged to have been committed under this Ordinance.

(2) The references in sections 27, 29 and 30 to this Ordinance shall be deemed to include a reference to the Prevention of Corruption Ordinance repealed by section 36.

Amendment of Schedule.

35. The Governor in Council may by order published in the Gazette amend the Schedule.

Repeal and consequential amendment.

36. (1) The Prevention of Corruption Ordinance is repealed.

(2) The Urban Council Ordinance is amended—

(*a*) in section 6, by deleting from paragraph (*d*) "relating to corrupt and illegal practices"; and

(*b*) in section 17, by—

(i) deleting the full stop at the end of paragraph (*b*) of subsection (1) and substituting a semicolon; and

(ii) adding thereafter the following new paragraph—

"(*c*) any person convicted of any offence under Part II of the Prevention of Bribery Ordinance.".

SCHEDULE

PUBLIC BODIES

1. Hong Kong Electric Company Limited.
2. China Light and Power Company Limited.
3. Hong Kong and China Gas Company Limited.
4. Hong Kong Telephone Company Limited.
5. Cable and Wireless Limited.
6. China Motor Bus Company Limited.
7. Kowloon Motor Bus Company (1933) Limited.
8. Hong Kong Tramways Limited.
9. Peak Tramways Company Limited.
10. "Star" Ferry Company Limited.
11. Hong Kong and Yaumati Ferry Company Limited.
12. Cross-Harbour Tunnel Company Limited.
13. Hong Kong Commercial Broadcasting Company Limited.
14. Rediffusion (Hong Kong) Limited.
15. Television Broadcasts Limited.
16. Hong Kong Housing Authority.
17. Hong Kong Housing Society.
18. Hong Kong Settlers Housing Corporation Limited.

Chapter 201

PREVENTION OF BRIBERY ORDINANCE

(Subsidiary Legislation)

ACCEPTANCE OF ADVANTAGES REGULATIONS

(Cap. 201, section 3)

[14th May, 1971.]

Citation.

1. These regulations may be cited as the Acceptance of Advantages Regulations.

Application.

2. These regulations apply to all Crown servants.

Interpretation.

3. In these regulations, unless the context otherwise requires—

"Crown servant" means any person holding any office of emolument, whether permanent or temporary, under the Crown in right of the Government of Hong Kong;

"relation" means spouse, parent, parent-in-law, God-parent, grandparent, great-grandparent, child, God-child, grandchild, great-grandchild, sons-in-law, daughters-in-law, sister, half-sister, step-sister, brother, half-brother, step-brother, first cousin, uncle, great-uncle, aunt, great-aunt, nephew, great-nephew, niece, and great-niece;

"Head of Department" means—

(*a*) in relation to a Crown servant who is himself the Head of a Department or is an ex officio member of the Executive Council, the Establishment Secretary;

(*b*) in relation to any other Crown servant—

(i) the Head of the Department in which that Crown servant is employed at the time when the advantage is offered to or solicited or accepted by the Crown servant; or

(ii) another officer of that department authorized by the Head of the Department, with the approval of the Establishment Secretary, to act on his behalf for the purposes of these regulations.

Prevention of Bribery Ordinance.

4. (1) It is a criminal offence under section 3 of the Prevention of Bribery Ordinance for a Crown servant to solicit or to accept any advantage without the general or special permission of the Governor. The maximum penalty is a fine of $20,000 and imprisonment for one year. General permission is dealt with in regulations 5, 6 and 7 of these regulations. Special permission is dealt with in regulations 8, 9 and 10.

(2) For the purposes of that Ordinance—

(*a*) a person "solicits" an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and

(*b*) a person "accepts" an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

(3) The term "advantage" is defined in section 2 of that Ordinance, as including—

(*a*) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;

(*b*) any office, employment or contract;

(*c*) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(*d*) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

(*e*) the exercise or forbearance from the exercise of any right or any power or duty; and

(*f*) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (*a*), (*b*), (*c*), (*d*) and (*e*).

General permission of Governor.

5. For the purposes of section 3 of the Prevention of Bribery Ordinance, the general permission of the Governor is hereby granted to all Crown servants in respect of any advantage whatsoever except—

(*a*) gifts prohibited by regulation 6;

(*b*) gifts or loans of money prohibited by regulation 7;

(*c*) any air, sea or overland passage in respect of which the permission of the Establishment Secretary is required under regulation 10.

Permissible gifts.

6. (1) This regulation deals only with gifts (other than gifts of money within the meaning of regulation 7) and not with any other kind of advantage.

(2) A Crown servant may not solicit or accept any gift, of any kind or from any source, except the following, which are permitted—

(*a*) a gift from a relation;

(*b*) a gift from a close personal friend, given on an occasion such as the Crown servant's birthday, wedding, wedding anniversary or baptism or at Christmas or Lunar New Year, so long as the total value of the gifts from any one person on any one occasion does not exceed $500;

(*c*) a gift (such as flowers or sweets) presented in connexion with a social or ceremonial occasion and not exceeding a value of $100 on any single occasion;

(*d*) a gift on retirement which the Crown servant has been permitted to accept under E.R.496;

(*e*) a gift presented in connexion with a ceremonial occasion to a Crown servant who has attended the occasion in his official capacity, or by virtue of his official position and not exceeding a value of $100 on any single occasion;

(*f*) an annual discount, or gift of articles representing an annual discount, supplied by a company, firm or business to a Crown servant, in his private capacity as a regular customer, and not dissimilar in nature and value to the annual discount or gifts given by the company, firm or business to its other regular customers;

(*g*) any discount (including vouchers or coupons expressed to have a monetary value in exchange for which goods to that value may be obtained and including goods so obtained) given to a Crown servant by reason of his membership of any association or by reason of his regular custom or by reason of his paying cash, so long as the discount is equally available to any other person for the same reason;

(*h*) a gift of advertising matter, so long as the value of the gift does not exceed $30.

Permissible gifts and loans of money.

7. (1) This regulation deals only with gifts of money and loans of money and not with any other kind of advantage.

(2) A Crown servant may not solicit or accept any gift or loan of money, whether in the form of cash, cheque or banker's draft, except the following, which are permitted—

(*a*) a gift or loan of money by a relation;

(*b*) a loan of money in the way of business by a bank, firm or person, the normal business of which or whom includes the lending of money;

(*c*) a loan of money not exceeding, or loans of money which in total do not exceed, $500 or ten per cent of the current monthly salary of the Crown servant, whichever is the greater;

(*d*) a gift of money given on an occasion such as the Crown servant's birthday, wedding, wedding anniversary or baptism or at Christmas or Lunar New Year, so long as the total amount of the gifts from any one person on any one occasion does not exceed $500, if the donor is a close personal friend of the Crown servant, or $100 in any other case;

(*e*) a gift allowance, advance, or loan of money made or given out of any Government staff welfare fund or by the Government under any Establishment Regulation;

(*f*) a gift of money on retirement which the Crown servant has been permitted to accept under E.R. 496.

Special permission of Governor.

8. For the purposes of section 3 of the Prevention of Bribery Ordinance, the special permission of the Governor shall be deemed to have been given to a Crown servant in respect of any advantage, for the acceptance of which the permission of the Establishment Secretary or, as the case may be, Crown servant's Head of Department has been obtained under regulation 9 or 10 of these regulations.

Gifts and loans retainable with special permission.

9. (1) This regulation deals with gifts, including gifts of money, and loans of money in respect of which no general permission is granted under regulation 5.

(2) If a Crown servant wishes to accept any gift or loan of money which he is not permitted to accept by virtue of regulation 5, he must, as soon as is reasonably possible after being offered or presented with the gift or loan of money, seek the permission of the Establishment Secretary, in the case of a gift offered or presented in connexion with the launching of a ship, or his Head of Department, in any other case, to accept the gift or loan of money, and, may in the meantime retain the gift or loan of money in his possession.

(3) The Establishment Secretary or, as the case may be, the Head of Department may, if his permission to accept a gift or loan of money is sought under paragraph (2),—

(*a*) permit the Crown servant to accept the gift or loan of money, either unconditionally or subject to such conditions as the Establishment Secretary or, as the case may be, the Head of Department may specify;

(*b*) require him to return it to the donor or lender;

(*c*) require the gift to be handed to a charitable organization nominated by the Crown servant and approved by the Establishment Secretary or the Head of Department, as the case may be;

(*d*) require him to dispose of the gift in such other manner as the Establishment Secretary or the Head of Department, as the case may be, may direct.

(4) A Crown servant may, if he has complied with paragraph (2), retain the gift or loan of money in his possession until the decision under paragraph (3) has been notified to him.

Special permission for passages.

10. (1) This regulation deals with the provision of air, sea and overland passages for Crown servants and not with any other kind of advantage.

(2) A Crown servant may not, without the permission of the Establishment Secretary, solicit or accept any free air, sea or overland passage (other than a passage provided in accordance with Establishment Regulations) or any air, sea or overland passage for which the Crown servant pays a fare which is more than fifteen per cent less than the standard fare payable by other passengers.

Entertainment.

11. (1) These regulations do not deal with entertainment, the acceptance of which by a Crown servant is dealt with in Establishment Regulations.

(2) The acceptance by a Crown servant of entertainment does not constitute the acceptance of an "advantage" as defined in section 2 of the Prevention of Bribery Ordinance, but may be the subject of disciplinary proceedings.

(3) "Entertainment" is defined in section 2 of the Prevention of Bribery Ordinance as meaning "the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provision".

WARNINGS

The Acceptance of Advantages Regulations specify those advantages which a Crown servant may accept without committing an offence against section 3 of the Prevention of Bribery Ordinance, which reads—

"3. Any Crown servant who, without the general or special permission of the Governor, solicits or accepts any advantage shall be guilty of an offence."

However, Crown servants should be warned that they may be guilty of offences against other sections of the same Ordinance if they accept any advantage (even gifts or passages which are permitted by the above regulations) with a corrupt motive—that is to say, as an improper inducement or reward for or otherwise improperly on account of the doing, or not doing, of some part of their official duties. This includes the acceptance of an advantage which the Crown servant believes or suspects or has reasonable grounds to believe or suspect is given with a corrupt motive.

PREVENTION OF BRIBERY ORDINANCE 1970

COMPARATIVE TABLE

In this Table—

(*a*) Ceylon: Bribery Act 1954 (1965 Reprint, incorporating amendments made by Acts Nos. 40 of 1958 and 2 of 1965);
(*b*) Singapore: Prevention of Corruption Ordinance 1960 (1966 Reprint, incorporating amendments up to 6th May, 1966);
(*c*) Malaysia: Prevention of Corruption Act 1961;
(*d*) Cap. 215: Prevention of Corruption Ordinance, Hong Kong (Cap. 215).

Section		*Source*	*Comment*
1.		—	—
2(1).	"advantage"	Singapore, s. 2.	See def. of "gratification", slightly modified.
		Ceylon, s. 90.	See def. of "gratification", slightly modified.
	"agent"	Cap. 215, s. 2.	—
	"banker's books"	Singapore, s. 19(2).	Slightly modified; and including a reference to computer records (not in Singapore def.)
	"child"	—	—
	"company books"	—	—
	"court"	—	—
	"Crown servant"	Interpretation etc. Ordinance of Hong Kong (Cap. 1), s. 3.	See def. of "public officer" and "public servant".
	"Director"	—	—
	"entertainment"	—	—
	"parents"	—	—
	"principal"	Malaysia, s. 2.	Slightly modified.
		Singapore, s. 2.	Modified.
	"public body"	Cap. 215, s. 2.	Modified.
	"public servant"	Cap. 215, s. 2.	Slightly modified.
	"spouse"	—	—
(2)(*a*).		Ceylon, s. 88.	Slightly modified.
(2)(*b*) and (*c*).		Ceylon, s. 89.	Slightly modified.
3.		—	*cf.* Ceylon, s. 19(*c*).
4.		Ceylon, s. 19(*a*) & (*b*).	Slightly modified.
		Singapore, s. 12(*a*)(ii) & (iii), and (*b*).	Modified.
		Malaysia, s. 9(ii)–(iv).	Modified.
5.		Ceylon, s. 17.	Modified. *cf.* Singapore, s. 12(*a*)(iii) & (*b*); *cf.* Cap. 215, s. 6.
6.		Ceylon, s. 18.	Modified.
		Singapore, s. 10.	Modified.
		Malaysia, s. 7.	Modified.
7.		—	—
8(1).		Ceylon, s. 21(*a*).	Slightly modified.
(2).		Ceylon, s. 21(*a*).	Extended.
9.		Cap. 215, s. 4.	Slightly modified.
10(1).		Establishment Regs. (E.R. 444).	Modified.
(2)—(5).		—	—
11(1).		Ceylon, s. 24 (see also Singapore, s. 9, and Malaysia, s. 6).	Slightly modified.
(2).		Singapore, s. 9(2).	Modified.
		Malaysia, s. 6(2).	Modified.
12.		Cap. 215, ss. 2, 5 & 6.	Penalties increased, except in re. s. 3.
13(1) and (3).		Singapore, s. 17.	Modified.
		Malaysia, s. 23.	Modified.
(2) and (4).		—	—

"E"—*Contd.*

Section	*Source*	*Comment*
14(1).	Ceylon, s. 4. (also see s. 3(2)).	Modified.
	Singapore, s. 20(1).	Modified.
	Malaysia, s. 25(1).	Modified.
(2).	Inland Revenue Ordinance of Hong Kong (Cap. 112) s. 51(4A).	Slightly modified.
(3).	—	—
(4).	Singapore, s. 20(2).	Modified.
	Malaysia, s. 25(2).	Modified.
15.	New.	*cf.* Cap. 112, s. 51(4A).
16(1)(*a*).	Ceylon, s. 4(4).	Slightly modified.
(*b*).	Ceylon, s. 4(3).	Modified.
(2).	Ceylon, s. 72.	Modified.
17(1).	Singapore, s. 21(1).	Modified.
	Malaysia, s. 21(1).	Modified.
(2).	New.	—
18.	New.	*cf.* Ceylon, s. 80.
19.	Singapore, s. 22.	Slightly modified.
	Malaysia, s. 16.	Slightly modified.
20.	—	—
21.	Singapore, s. 23.	Slightly modified. *cf.* Cap. 215, s. 12.
22.	Singapore, s. 24.	Slightly modified and extended. *cf.* Ceylon, s. 79(1). *cf.* Cap. 215, s. 9.
23.	Ceylon, s. 81(1).	Modified.
24.	Criminal Procedure Ordinance (Cap. 221), s. 65.	Slightly modified.
25.	Malaysia, s. 14.	Modified. *cf.* Singapore, s. 8. *cf.* Cap. 215, s. 11.
26.	—	—
27.	Ceylon, s. 27(1).	Slightly modified.
28.	—	—
29.	Police Force Ordinance (Cap. 232), s. 64.	Slightly modified.
30.	—	*cf.* Ceylon, s. 4(2).
31.	Malaysia, s. 26.	Slightly modified (*cf.* Cap. 215, s. 8).
32(1).	Criminal Procedure Ordinance (Cap. 221), ss. 60, 61, 62.	Modified.
(2) and (3).	Criminal Procedure Code Zambia, s. 168.	Modified.
	Magistrates Ordinance (Cap. 227), s. 27.	Modified.
33.	Cap. 215, s. 5.	Modified.
	Ceylon, s. 29.	Modified.
34.	—	—
35.	—	—
36.	—	—
Sched.	—	—

ACO ESTABLISHMENT AND STRENGTH 1968-1973

	1968		*1969*		*1970*		*1971*		*1972*		*1973*	
	Estab.	*Strength*	*Estab.*	*Strength*	*Estab.*	*Strength*	*Estab.*	*Strength*	*Estab.*	*Strength*	*Estab.*	*Strength*
ACP	—	—	—	—	—	—	1	1	1	1	1	1
CSP	1	1	1	1	1	1	—	—	—	—	—	—
SSP	—	—	—	—	—	—	2	2	2	2	2	2
SP	3	3	3	3	3	3	3	3	3	3	3	5
INSPECTORATE	20	16	20	18	20	27	48	34	50	47	54	39
NCO	9	6	9	7	9	15	19	17	31	28	37	29
DC/WDC	45	33	44	31	44	48	60	31	72	76	84	67
DRIVERS	2	2	2	2	3	3	3	3	3	3	4	3
CIVILIANS	15	15	15	15	15	15	27	21	32	33	32	32
TOTAL	95	76	94	77	95	112	163	112	194	193	217	178

Note: The total Establishment is divided between the Support Group and the Investigation Group. The following table indicates the yearly comparison between the Establishment of Inspectorate officers for the Investigation Group and the actual strength.

	1968	*1969*	*1970*	*1971*	*1972*	*1973*
Establishment	12	12	20	36	35	46
Strength	11	17	25	26	33	34
Comparison	− 1	+ 5	+ 5	−10	− 2	−12

"G"

COLONIAL REGULATIONS

Part I. Public Officers

(Regulations 54–66)

"**54.** (1) Regulations 54 to 66 shall apply only to officers confirmed to the pensionable establishment.

(2) Disciplinary procedure in relation to other officers shall be carried out in accordance with regulations made by the Governor.

(3) For the purposes of regulations 56 to 66, punishment includes dismissal, fine, reduction in rank, severe reprimand, reprimand, stoppage or deferment of increments and reduction in salary, but not retirement in the public interest under regulation 59.

(4) Regulations 55 to 66 are without prejudice to any law providing for the punishment of officers by the Governor or any other officer or authority.

(5) The Governor may delegate to any public officer any of the powers or duties conferred or imposed upon him by regulations 56 to 66, save that he shall not delegate the power to make regulations, to dismiss an officer or to require him to retire under regulation 59.

55. An officer holds office subject to the pleasure of the Crown, and the pleasure of the Crown that he should no longer hold it may be signified through the Secretary of State, in which case no special formalities are required.

56. (1) If it is represented to the Governor that an officer has been guilty of misconduct, and the Governor is of opinion that the misconduct alleged is not serious enough to warrant proceedings under regulation 57, he may cause an investigation to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Governor and approved by the Secretary of State.

(2) If after such investigation the Governor is of opinion that the officer has been guilty of misconduct, he may inflict such punishment, other than dismissal, upon the officer as may seem to him to be just.

57. (1) If it is represented to the Governor that an officer has been guilty of misconduct, and the Governor is of opinion that the misconduct alleged may be serious enough to warrant the dismissal of the officer, he may cause an investigation to be made into the officer's conduct in such manner as may be prescribed by regulations made by the Governor and approved by the Secretary of State.

(2) If after such investigation the Governor is of opinion that the officer has been guilty of misconduct, he may inflict such punishment upon the officer as may seem to him to be just.

58. If an officer has been convicted on a criminal charge the Governor may, upon a consideration of the proceedings of the Court on such charge, inflict such punishment upon the officer as may seem to him to be just, without any further proceedings.

59. (1) The Governor may at any time, if it is represented to him that the retirement of an officer is desirable in the public interest, call for a report from the heads of the departments in which the officer has served and shall afford the officer an opportunity of submitting a reply to the grounds on which his retirement is contemplated.

(2) The Governor may, upon a consideration of the report and of any reply submitted under paragraph (1) of this regulation, require the officer to retire from the service, if he is of opinion that, having regard to conditions of the public service, the usefulness of the officer thereto and all other circumstances of the case, the termination of the officer's service is desirable in the public interest and his service shall accordingly terminate on such date as the Governor may specify.

(3) If upon consideration of

(*a*) an investigation into the conduct of an officer under regulation 56 or 57; or

(*b*) the proceedings of a court by which an officer has been convicted of a criminal charge,

the Governor is of opinion that the officer does not deserve to be punished but that the investigation or proceedings disclose grounds for requiring him to retire in the public interest, the Governor may require the officer to retire from the service under this regulation, and in such a case it shall not be necessary for the Governor to comply with the procedure prescribed in paragraphs (1) and (2) of this regulation.

(4) Where an officer is required to retire under this regulation, he may be granted a pension, gratuity or other allowance in accordance with any pensions law for the time being in force in the Territory.

60. (1) The Governor may interdict an officer from the exercise of powers and functions of his office if

(*a*) proceedings have been, or are to be, taken against him under regulation 57; or

(*b*) criminal proceedings have been, or are likely to be, instituted against him.

(2) An officer who has been interdicted shall be allowed to receive such portion of the emoluments of his office, not being less than one-half, as the Governor shall think fit.

(3) If the proceedings against any such officer do not result in any punishment of the officer, he shall be entitled to the full amount of the emoluments which he would have received if he had not been interdicted.

(4) If a punishment other than dismissal is inflicted, he may be paid such proportion of the emoluments withheld as a result of his interdiction as the Governor shall think fit.

61. If criminal proceedings are instituted against an officer, disciplinary proceedings based upon any grounds involved in the criminal charge shall not be taken pending the determination of the criminal proceedings.

62. An officer acquitted of a criminal charge shall not be punished in respect of any charges upon which he has been acquitted, but he may nevertheless be punished on any other charges arising out of his conduct in the matter which do not raise substantially the same issues as those on which he has been acquitted and the appropriate proceedings may be taken for the purpose.

63. An officer who is dismissed forfeits all claim to any pension, gratuity or other like benefits and to any other benefits or advantages of an officer.

64. An officer who is under interdiction may not, without the permission of the Governor, leave the Territory during the interval before he is reinstated or dismissed.

65. Except as may be provided by regulations made by the Governor and approved by the Secretary of State, the Governor shall not inflict any punishment upon an officer under regulation 56, 57 or 58 or require an officer to retire under regulation 59 without first consulting the Public Services Commission.

66. (1) This regulation shall apply to any officer

(*a*) holding an office appointment to which is subject to the approval of the Secretary of State;

(*b*) who was selected for appointment by the Secretary of State; or

(*c*) whose pensionable emoluments exceed 3,500 dollars per month for men (or equivalent for women).

(2) In the case of an officer to whom this regulation applies

(*a*) no punishment shall be inflicted on the officer under regulation 56, 57 or 58; and

(*b*) the officer shall not be required to retire under regulation 59,

save with the prior approval of the Secretary of State."

"H"

COLONIAL REGULATIONS

Regulations under Colonial Regulations 56, 57 and 65

In exercise of the powers conferred by Colonial Regulations 56, 57 and 65, the Governor, with the approval of the Secretary of State, has made the following regulations—

Citation.

1. These regulations may be cited as the Disciplinary Proceedings (Colonial) Regulations.

General application.

2. These regulations shall apply only to officers confirmed to the permanent establishment.

Application to Judiciary.

3. (1) Nothing in these regulations shall apply to a judge of the Supreme Court.

(2) In their application to a District Court judge or a magistrate, these regulations shall be read as if

(*a*) the references in Regulations 7(2) and 8(3) to the Governor were references to the Chief Justice;

(*b*) an Investigating Officer or an Investigating Committee shall be appointed under regulation 5 by the Chief Justice;

(*c*) an Investigating Officer shall be a judge of the Supreme Court; and

(*d*) an Investigating Committee shall normally include one or more Supreme Court judges or persons who have held high judicial office in some Commonwealth country.

Officer to be given chance to exculpate himself.

4. (1) The Governor shall, before he orders an investigation for the purposes of C.R. 56 or C.R. 57—

(*a*) notify the officer of the grounds on which it is proposed to order an investigation;

(*b*) call upon the officer to state in writing, within such reasonable period as the Governor may specify, any grounds upon which he relies to exculpate himself.

(2) If the officer—

(*a*) does not furnish any such statement within the time specified by the Governor; or

(*b*) fails to exculpate himself to the satisfaction of the Governor,

the Governor may order an investigation under C.R. 56 or C.R. 57.

Investigations under C.RR.56 and 57.

5. (1) An investigation ordered by the Governor for the purposes of C.R. 56 shall be conducted by an Investigating Officer appointed by the Governor.

(2) An investigation ordered by the Governor for the purposes of C.R. 57 shall be conducted by an Investigating Committee appointed by the Governor.

Appointments for C.R.56 and C.R.57.

6. (1) An Investigating Officer shall be a public officer who is senior to the officer alleged to have been guilty of misconduct.

(2) An Investigating Committee shall consist of two or more public officers, who shall be senior to the officer alleged to have been guilty of misconduct.

Procedure under C.RR.56 and 57.

7. (1) An investigation ordered by the Governor for the purposes of C.R. 56 or 57 shall be conducted by an Investigating Officer or Committee in accordance with—

(*a*) these regulations;

(*b*) such directions, whether general or special, as the Governor may give; and

(*c*) subject to (*a*) and (*b*), such procedure as the Committee may determine.

(2) The Investigating Officer or Committee shall, on the completion of an investigation, make a report to the Governor, which shall contain—

(*a*) a record of the proceedings;

(*b*) such findings of fact as the Investigating Officer or Committee may consider relevant; and

(*c*) the opinion of the Investigating Officer or Committee as to whether or not the facts amount to misconduct.

Hearings under C.R. 56 and C.R. 57.

8. (1) An Investigating Officer or Chairman of an Investigating Committee, carrying out an investigation for the purposes of C.R. 56 or C.R. 57, shall, by written notice to the officer,—

(*a*) require the officer to appear before the Investigating Officer or Committee at such time and place as may be specified;

(*b*) require the officer to produce at such time and place any witnesses and other evidence whom or which he wishes to present in his defence; and

(*c*) inform the officer of the misconduct alleged against him.

(2) The officer shall, during an investigation for the purposes of C.R. 56 or C.R. 57,—

(*a*) be entitled to know the whole case against him;

(*b*) be afforded an adequate opportunity of making his defence, either orally or in writing as he may prefer;

(*c*) be given an adequate opportunity to question any witnesses.

(3) The officer may be assisted in his defence by—

(*a*) another public officer who may be a representative member of a staff association represented on the Senior Civil Service Council; or

(*b*) such other person as the Governor may authorize.

(4) An Investigating Officer or Committee may enquire into any matter and admit and take into account any evidence or information which the Officer or Committee considers relevant, and shall not be bound by any rules of evidence.

(5) The enquiries should not be conducted with undue formality and while there is no standard practice which would be applicable to every case, it is emphasised that the Investigating Officer or Committee is not exercising a legal function, but rather ascertaining the facts.

(6) If an officer fails to attend as required by a notice issued under paragraph (1), and at such other subsequent times and places as the Investigating Officer or Committee may require, orally or in writing, the investigation may continue in his absence and the provisions of paragraph (2) shall be deemed to have been complied with.

Reference back to Investigating Officer.

9. The Governor may, after considering a report submitted by an Investigating Officer or Committee, without prejudice to his power to inflict punishment under C.R. 56—

(*a*) require the Investigating Officer or Committee to make such further investigation as the Governor may order; or

(*b*) require the Investigating Officer or Committee to answer such questions or ascertain such facts as the Governor may require.

Proceedings changed from C.R. 56 to C.R. 57.

10. If, during or after an investigation for the purposes of C.R. 56, the Governor considers that proceedings should be taken under C.R. 57, he may direct that the investigation under C.R. 56 should be discontinued and that proceedings under C.R. 57 should be instituted.

"P"

DIRECTIONS BY THE GOVERNOR UNDER REGULATION 7 OF THE DISCIPLINARY PROCEEDINGS (COLONIAL) REGULATIONS

In exercise of the powers conferred by Regulation 7 of the Disciplinary Proceedings (Colonial) Regulations the Governor has given the following general directions to be observed by an Investigating Committee carrying out an investigation under Colonial Regulation 57.

I

PRELIMINARY

1. The officer alleged to have been guilty of misconduct (hereinafter referred to as the officer) shall be given—
   (*a*) a copy of these directions; and
   (*b*) a copy of any document which it is proposed to put in evidence to support the charge.
2. No document shall be put in evidence against the officer unless a copy thereof has been given to him or he has had access thereto.

II

PROCEDURE

The following procedure shall be followed:

3. The Committee assembles and records—
   (*a*) the attendance of any officer appointed by the Establishment Secretary to assist the Committee (hereinafter referred to as the assisting officer);
   (*b*) the attendance of—
      (i) a public officer, or
      (ii) other person authorized by the Governor, to assist the officer in his defence.
   (*Note:* In these directions a public officer or other person assisting an officer in his defence shall be referred to as the friend of the officer).
4. The Chairman reads the charge.
5. The officer is informed—
   (*a*) that he may admit or deny part of any charge;
   (*b*) that he or his friend will have an opportunity of questioning any witness;
   (*c*) that he may make an oral or written statement and call witnesses;
   (*d*) that he or his friend will have an opportunity to address the Committee orally or in writing at the end of the proceedings.
6. Without prejudice to the power of the Committee to ask questions at any time during the investigation, the Chairman may, after the officer has been informed of the matters referred to in paragraph 5, ask the officer whether he admits particular facts e.g. that he was a public officer at the material time, that photographs or other documents are accurate. Any such admission shall be recorded by the Chairman.
7. The witnesses against the officer are called and questioned by the assisting officer, the officer, or his friend, and further questioned by the assisting officer.
8. The evidence of any witness may, at the discretion of the Chairman, be taken by showing the witness a statement made by him, asking him whether it is correct and whether he wishes to alter any part of it or add to it. The statement shall then be admitted in evidence and any corrections noted on it by the Chairman. The witness may then be questioned by the officer, or his friend, and thereafter further questioned by the assisting officer.
9. At the conclusion of the evidence in support of the charge, the officer is asked by the Chairman if he wishes to make an oral or written statement in his defence. Any oral statement so made shall be recorded by the Chairman. The officer may then be questioned by the assisting officer.
10. The witnesses for the officer are called, questioned by the officer, or his friend, questioned by the assisting officer and further questioned by the officer or his friend.

11. At the conclusion of the evidence—

(*a*) the assisting officer may address the Committee if the Committee so requests; and

(*b*) the officer or his friend shall have the right to address the Committee orally or in writing.

12. Thereafter the Committee prepares the report to be submitted to the Governor. This is signed by the Chairman and the member of the Committee. If there is a difference of opinion the Chairman and the member shall furnish separate reports. The Committee may add to its report recommendations regarding departmental procedures if it considers such recommendations to be warranted.

III

MISCELLANEOUS

13. The evidence of witnesses shall not be taken on oath.

14. It is the function of the Committee to examine the charge and all the circumstances surrounding it thoroughly. For this purpose the Chairman and the member of the Committee shall put such questions as they may think fit to the officer, any witness or the assisting officer.

14A. The Committee may—

(*a*) call such witnesses; and

(*b*) require the production of such documents, as it thinks fit.

15. The Committee shall make a record of the proceedings and include it as part of the report which it is required to submit to the Governor in accordance with paragraph (2) of Regulation 7 of the Disciplinary Proceedings (Colonial) Regulations.

16. The Committee shall ensure that any evidence given in a language which the officer does not understand is interpreted to him.

17. If during the investigation, further grounds of misconduct are disclosed, the Committee shall adjourn the proceedings and refer them to the Governor. If the Governor decides that an investigation into these grounds shall be carried out by the Committee, the officer shall be furnished with a written statement thereof and the procedure outlined in the foregoing paragraphs shall apply with such modifications as are necessary.

18. The Committee may—

(*a*) on its own motion; or

(*b*) at the request of the officer if the Committee considers it reasonable, adjourn the investigation for such period as it thinks fit.

19. The report of the Committee shall be sent to the Colonial Secretary by the Chairman.

20. The Committee shall not inform the officer of the contents of its report; this is a confidential document and is not to be disclosed to anyone without the permission of the Governor.

"J"

ESTABLISHMENT REGULATIONS

In exercise of the powers conferred by Colonial Regulations and otherwise, the Governor has made the following regulations—

Citation.

1. These regulations may be cited as the Establishment (Disciplinary) Regulations.

Delivery of documents.

2. Any notice or document required to be served or given to an officer in connection with any investigation into allegations of misconduct may be—

(*a*) given to him personally;

(*b*) sent by registered post to his last known address; or

(*c*) left at his last known address.

Officers charged with criminal offences.

3. (1). An officer against whom any criminal proceedings are instituted shall forthwith report the fact to the Head of his Department.

(2) The Head of Department shall forthwith inform the Establishment Secretary of the institution of criminal proceedings, unless the offence, in his opinion, is of a minor nature and—

(*a*) does not reflect adversely on the character of the officer;

(*b*) is not likely to bring the public service into disrepute; and

(*c*) the officer has not been convicted of similar offences more than twice in the previous twelve months.

Salary on conviction.

4. (1) The salary of an officer who is convicted of a criminal offence shall be withheld from the date of conviction—

(*a*) if the officer has been sentenced to imprisonment, whether or not he lodges an appeal; or

(*b*) if, in the opinion of the Establishment Secretary, the conviction may lead to the dismissal of the officer.

(2) An officer's head of Department shall notify the Establishment Secretary of the result of any criminal proceedings taken against the officer.

(3) The Accountant General shall withhold the salary of an officer, pending further consideration of the officer's case, if the Establishment Secretary informs him—

(*a*) that the officer has been sentenced to imprisonment; or

(*b*) that the officer has been convicted of a criminal offence and that the conviction, in the opinion of the Establishment Secretary, may lead to dismissal of the officer.

(4) An officer whose salary has been withheld under this regulation shall cease to perform any duties of his office.

(5) An officer whose salary has been withheld under this regulation may be allowed to receive such portion of the emoluments of his office as the Establishment Secretary shall think fit.

Disciplinary proceedings—senior non-pensionable officers.

5. (1) This regulation shall apply to any officer serving on contract whose substantive salary is $3,500 or above per month (Male) or $2,700 or above per month (Female).

(2) An officer to whom this regulation applies shall, with regard to disciplinary proceedings and matters connected therewith be dealt with—

(*a*) in accordance with the terms of any contract between the officer and the Government; and

(*b*) insofar as such contract does not provide, in accordance with Colonial Regulations 54 to 66 and any regulations applicable thereto made by the Governor. as if he were an officer confirmed to the pensionable establishment, so far as such Colonial Regulations and regulations made by the Governor are appropriate to his circumstances, but subject to such modifications as the Establishment Secretary may direct, generally, or in any particular case.

Disciplinary proceedings—junior non-pensionable officers.

6. (1) This regulation shall apply to any officer serving on contract whose substantive salary is less than 3,500 per month (Male) or less than $2,700 per month (Female).

(2) An officer to whom this regulation applies shall, with regard to disciplinary proceedings and matters connected therewith, be dealt with—

(*a*) in accordance with the terms of any contract between the officer and the Government; and

(*b*) insofar as such contract does not provide, in accordance with Colonial Regulations 54 to 66 and any regulations applicable thereto made by the Governor, as if he were an officer confirmed to the pensionable establishment, so far as such Colonial Regulations and regulations made by the Governor are appropriate to his circumstances, but subject to such modifications thereof as the Establishment Secretary may direct, generally or in any particular case.

(3) The Establishment Secretary may impose any punishment (as defined in Colonial Regulation 54(3)) on any officer to whom this regulation applies and whose substantive salary is $1,300 or above per month (Male) or is $1,000 or above per month (Female).

(4) The Head of Department of an officer to whom this regulation applies may impose any punishment (as defined in Colonial Regulation 54(3)) on any officer whose substantive salary is less than $1,300 per month (Male) or is less than $1,000 per month (Female).

7. (1) In addition to the powers conferred by regulation 6, a Head of Department may summarily impose fines, for the following minor offences, on officers on Scale I—

Offence	*Maximum Fine*
Unpunctuality	Half-a-day's salary
Absence without reasonable excuse	Debit the salary due for the time of absence, not exceeding a total of two days' salary at any one time
Other minor offences	Ten dollars or half-a-day's pay whichever is less.

(2) A Head of Department may delegate the powers conferred by paragraph (1) to such officers as may be approved by the Establishment Secretary.

Officer leaving service.

8. (1) If an officer who has not been confirmed to the pensionable establishment—

(*a*) is absent from duty without reasonable cause;

(*b*) wilfully refuses to perform his duty; or

(*c*) wilfully omits to perform his duty,

in such circumstances as to satisfy the Establishment Secretary that the officer has vacated his post without permission, whether permanently or temporarily, the officer shall be liable to summary dismissal by the Establishment Secretary from the date of his absence or wilful refusal or omission.

(2) The powers conferred on the Establishment Secretary by paragraph (1) may be exercised, in the case of such an officer whose substantive salary is less than $1,300 per month (Male) or less than $1,000 per month (Female) by the officer's Head of Department.

(3) The powers conferred by this regulation shall be in addition to those conferred by regulations 5, 6 and 7.

Members of disciplined force.

9. Disciplinary procedure in relation to officers belonging to any Government Department, whose conduct is governed by any Ordinance or subsidiary legislation, shall be carried out in accordance with that Ordinance or subsidiary legislation.

"K"

PENSIONS ORDINANCE CAP. 89

Section 5(2):—

"5(2) . . . if the Governor, after considering the advice of the Public Services Commission, is satisfied that an officer has been guilty of negligence, irregularity or misconduct, he may reduce or altogether withhold the pension, gratuity or other allowance payable to that officer under this Ordinance.

Section 7:—

"7. Where an officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Ordinance, the Governor may, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper . . ."

Section 8:—

"(1) The normal age of retirement of an officer, other than a judge, holding a pensionable office shall be on attaining the age of 55 years . . .

(2) . . . the Governor may—

(*a*) after considering the advice of the Public Services Commission; and

(*b*) in the case of an officer whose appointment was with the approval of the Secretary of State, subject to the approval of the Secretary of State,

require an officer, other than a judge, holding a pensionable office to retire from the service of the Colony at any time after he attains the age of 45 years."

PENSION REGULATIONS

Regulation 4:—

"4. . . . every officer holding a pensionable office in the Colony, who has been in the service of the Colony in a civil capacity for ten years or more, may be granted on retirement a pension . . ."

Regulation 5:—

"5. Every officer, otherwise qualified for a pension, who has not been in the service of the Colony in a civil capacity for ten years, may be granted on retirement a gratuity . . ."