



**The University of Hong Kong**  
**1999-2000 (1<sup>st</sup> semester)**

**POLI1003: Making senses of politics**

**Field Trip Report**

**Title of Report:**  
**The Ombudsman of Hong Kong SAR:**  
**An Overview and Assessment**

**Name: Yung Yin Chun**

**Student Number: 1999043435**

*Date of visit: 21<sup>st</sup> October 1999*

*Place of visit: The HKSAR Ombudsman Resource Centre  
(31/F., Gateway Tower I, 25 Canton Road, Tsimshatsui, Kowloon, Hong Kong)*

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## **Introduction**

On Wednesday 21 October 1999, I paid a visit to Resource Centre of Office of The Ombudsman Hong Kong, China. During the visit, I was introduced with the basic knowledge of the Ombudsman in Hong Kong China, its power, stages of lodging a complaints, its limitation etc. And a question session was held afterward to familiarize me to have a better understanding about the Ombudsman. The report is divided into four parts: “Introduction” gives a basic account about the development of Ombudsman in Hong Kong. “An Overview” provides some basic information about Ombudsman: its power and limitations etc. “Assessment” will go into a deeper analysis on Ombudsman – whether can they perform their functions well? “Conclusion” is a short conclusion and a short personal feeling about what have been mentioned in the report.

## **Historical Background**

Hong Kong has relatively short history of Ombudsman - the Ombudsman of Hong Kong SAR was firstly established in March 1988. By the mid-sixties Hong Kong began to see the need and advantage of some form of ombudsman, an independent authority with status and power to deal with complaints related to the operation of public service and to recommend remedies<sup>1</sup>. In late 1980s and early 1990s, social changes had resulted in a need for more political rights, redress of grievances and better governmental transparency<sup>2</sup>. The Ombudsman, formerly known

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<sup>1</sup> *Act Justly And There Will Be Justice Act With Integrity And There Will Be Respect*, 1996. Government Printer, p. 2-4

<sup>2</sup> Leung M.K., 1998. *The Office of The Ombudsman of Hong Kong: an Evaluation from the perspective of street-level Bureaucrats, the Public and Members of the Legislative Council*, The University of Hong Kong, p. 47-49. The brief description on those social changes is also accounted.

as “The office of Commissioner for Administrative Complaints” was therefore formed following the enactment of COMAC Bill in July 1988<sup>3</sup>.

Though the short history of Hong Kong’s ombudsman, changes had already been made for the decade. One of the biggest reforms carried out in 1994 is the change of the referral system. Before 1994, The Ombudsman is not allowed to initiate investigation of complaints on its own motion even though injustice and maladministration are obvious<sup>4</sup>. Most importantly, the referral system makes the Ombudsman (“The office of Commissioner for Administrative Complaints” at that time) has no direct access to the public. Complaints were referred by the Legislative Council to carry out investigation<sup>5</sup>. Nowadays, the referral system is cancelled, and the complainants can directly go to the Ombudsman for complaining maladministration.

Another big reform is about investigation report publishing. Before 1994, the Commissioner (nowadays “ombudsman”) is not allowed to publish its investigation report due to the secrecy provisions of the Ordinance<sup>6</sup>. This discourages public awareness of the office of COMAC. After 1994, the Ombudsman is allowed to publish its investigation report, with cases anonymised.

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<sup>3</sup> *Act Justly And There Will Be Justice Act With Integrity And There Will Be Respect*, 1996. Government Printer, p. 4

<sup>4</sup> Leung M.K., *op. cit.*, p. 65.

<sup>5</sup> *Review of the Office of the Commissioner for Administrative Complaints*, 1992, Government Secretariat, p. 4

<sup>6</sup> *Ibid.*, p. 5

## An Overview

Hong Kong SAR Ombudsman, like other Ombudsman in the world, plays an important role on redress of grievance. In Hong Kong, however, there have been various channels of redress, including appeals to the Chief Executive-in-Council, the Administrative Appeals Board, the Municipal Services Appeals Boards and the Ombudsman and to the visiting Justices of the Peace under the Justices of the Peace System<sup>7</sup>. What actually Ombudsman differs from those other channels? What functions and limitations do they have?

### Nature

Indeed, the Ombudsman of Hong Kong is not to “punish” any government departments which have been proven of maladministration. It is argued that the investigation of ombudsman is not intended to denting a career or damaging a reputation<sup>8</sup>. It does not have the power to make legally binding decisions<sup>9</sup> so it is not to look for culprit<sup>10</sup> to make judicial punishment. This will only affect the credibility of the Government and demoralise its staff. Instead, its aim is to make constructive criticisms to enable civil servants to do their work better, therefore increase the standard of community service<sup>11</sup>. Due to this, the Ombudsman generally is to perform the work of mediation between the complainants and the department concerned.

There are two ways which the Ombudsman of Hong Kong adopts to redress grievance: by mediation or by setting up working groups to probe a case. Since April

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<sup>7</sup> *Administration Redress and Legal Aid: Policy objective for administration wing of the Chief Secretary for Administration's*, 1998, Hong Kong Printing Department, p. 3

<sup>8</sup> *Act Justly And There Will Be Justice Act With Integrity And There Will Be Respect*, 1996. Government Printer, p. 24

<sup>9</sup> *Ibid.*, p. 6

<sup>10</sup> *Ibid.*, p. 8

<sup>11</sup> *International Ombudsman Symposium (1995: Hong Kong)*, 1996. Government Printer, p. 5

1997, the Ombudsman has adopted mediation as a mean to handle most of the complaints<sup>12</sup> for resource saving<sup>13</sup>. A mediation method is usually used for those complaints which are capable of speedy resolution and do not involve major administrative faults<sup>14</sup>. Usually a negotiation meeting is held between the complainants and the department concerned to clarify and settle their disputes.

If the complaints concerned deal with matter of a major maladministration, or it cannot be resolved by mediation, an in-depth investigation is usually established to find out the reasons for maladministration. Besides this, if they discover major maladministration in the government departments concerned, they can initiate an investigation without complainants. Examples of these are the New Airport Chaos in 1997, and the recent overcrowding kindergarten investigation. A written report on the investigation is also attached and open to general public.

### **Jurisdiction and Power**

The Ombudsman has various power and rights in carrying out their duties. Its jurisdiction includes 18 government departments: namely the Hospital Authority, the Housing Authority, the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, the Securities and Future Commission, the Provisional Urban Council, the Provisional Regional Council, the Hong Kong Arts Development Council, the Legislative Council Secretariat, the Hong Kong Monetary Authority, the Airport Authority, the Hong Kong Housing Society, the Land Development Corporation, the Vocational Training Council, Employees Retraining Board, Hong Kong Examinations Authority, Hong Kong Sports Development Board and

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<sup>12</sup> *Ming Pao*, 18<sup>th</sup> October 1999.

<sup>13</sup> *Operational Manual on Mediation Service*, Office of The Ombudsman Hong Kong, China, p. 23

<sup>14</sup> *Ibid.*, p. 23

Mandatory Provident Fund Schemes Authority<sup>15</sup>. The number of departments concerned is increasing and it covers almostly all government department except ICAC and police<sup>16</sup>.

During investigation, the Ombudsman also enjoys the power of hearing or obtaining information<sup>17</sup>, summoning witnesses, entering premises of department or statutory body under complaint<sup>18</sup>.

After investigation, the Ombudsman can publish anonymized investigation reports, which will be sent to departments concerned for improvement. A copy of the report is also directed to the Chief Executive, who the Ombudsman is responsible to. And the Chief Executive will direct it to the Legislative Council to check its implementation.

### Limitations

The Ombudsman's power is subject to some limitations. For example, the Ombudsman cannot investigate out of its jurisdiction. They cannot investigate maladministration other than 18 departments concerned. They have no saying in maladministration involving the issue of national defence and international affairs. They also cannot accept anonymized complaints; they can only deal with complaints directed by the complainants. They cannot investigate in complaints if it can be resolved by court.

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<sup>15</sup> From the phampet *What can our watchdog do?* Printing Department.

<sup>16</sup> *Review of the Office of the Commissioner for Administrative Complaints*, 1992, Government Secretariat, p. 4

<sup>17</sup> Leung M.K., *op. cit.*, p. 95

<sup>18</sup> *Act Justly And There Will Be Justice Act With Integrity And There Will Be Respect*, 1996. Government Printer, p. 6

### Contributions

The Ombudsman has been successful in finding out maladministration among different government departments and constructive recommendations have been sent to departments concerned. It has been pointed out that many departmental practices, procedures and policies have been changed as a result of the recommendation of the Ombudsman<sup>19</sup>. For example, recently a woman called *Li Hop* was accused by the Provisional Urban Council of illegal egg-hawking. The complaint was finally lodged to the Ombudsman. The investigation substantiated that the Provisional Urban Council has maladministration in accusing *Li* and criticized the Provisional Urban Council for it. The Provisional Urban Council announced that “they respect their [ombudsman’s] investigation report and will implement its suggestions”<sup>20</sup>. Afterwards, the number of maladministration reported by the mass media decreases. It prevents the problem from happening again.

It also helps to improve the cooperation between different departments in the government. For example, the investigation on *Arrangement for the Closure of School due to Heavy Persistent Rain* (1997) has encouraged the cooperation between the Hong Kong Observatory and Education Department. It was found that the Hong Kong Observatory did not inform the Education Department to consider the closure of school due to heavy rainfall. The cooperation is improved afterwards. When Typhoon signal No.8 or above or the Black Rainstorm Alert is hoisted, the Educational Department soon announces closure of all schools<sup>21</sup>.

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<sup>19</sup> Leung M.K., 1998. *op. cit.*, p. 112.

<sup>20</sup> *Ming Pao*, 28 September 1999.

<sup>21</sup> *Report of the Investigation: 1997: Arrangement for the Closure of School due to Heavy persistent Rain*, 1998, Office of the Ombudsman, Hong Kong, China. p. 17-27

**Setbacks**

Though the Ombudsman has improved many departmental practices, there are still some disadvantages facing the Ombudsman. It is pointed out that there are cases where the Government has not acted on its recommendations; whilst the departmental practices, procedures and policies remain relatively unchanged. Its recommendations have added unnecessary burden on front-line civil servants; in such cases, the front-line civil servants have reacted with frustration<sup>22</sup>.

More demerits of the Ombudsman system in Hong Kong, such as lack of independence, inadequacy of resources etc will be discussed in the “assessment” part of the report.

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<sup>22</sup> Leung M.K., 1998. *op. cit.*, p. 1

## Assessment

On a superficial understanding, it has been pointed out the jurisdiction and power of the Ombudsman during investigation; its limitations encountered; its nature as well as its contributions and setbacks of Ombudsman in recent years in the above paragraphs.

However, the work of the Ombudsman is still affected by several factors. It is affected by the completeness of the information provided by the complainants and complainee organizations and their degree of cooperation<sup>23</sup>. E.g. the Ombudsman contended that the information provided by the complainants is either irrelevant or incomplete in many cases<sup>24</sup>

Therefore assessment is needed for evaluating the work of Ombudsman: whether are they performing well in improving the service of various government departments? Are they capable of carrying out their duties? Or can they exercise their power well?

It has been many methods for accessing Ombudsman. Generally, there are mainly several common criteria in evaluating Ombudsman's work:

- (1) The Ombudsman must be independent of executive and any partisan influence. Independent will increase public confidence in public administration.
- (2) The ombudsman must have adequate powers of investigation.
- (3) Effective remedy must be ensured where administrative shortcomings are found.
- (4) The Ombudsman must be easily accessible.

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<sup>23</sup> *Office of the Ombudsman Hong Kong China Performance Pledges*, 1998

<sup>24</sup> Leung M.K., 1998. *op. cit.*, p. 109

(5) The Ombudsman must be widely known<sup>25</sup>.

There is also other criteria that the Ombudsman should have in order to carry out its functions well, such as broad jurisdiction and power in investigation, independent, accessible to general public, transparency in investigation process, good public awareness and confidence, good quality of Ombudsman, adequate resource, finality of its recommendations etc. The first two criteria have been discussed in the above paragraphs. A discussion of others criteria will be assessed below.

### Accessibility

The concept of “accessibility” here means whether the complaints can directly lodge their complaints to the Ombudsman for investigation or not.

As mentioned before, before 1994, there is no direct accessibility between Ombudsman and the complaints (see details on P. 4). The referred system was adopted. The complaints are indirectly referred by the legislative council to Ombudsman (“The office of Commissioner for Administrative Complaints” at that time). General public has no access to Ombudsman at that time.

After 1994, the referral system is cancelled and general public can lodge their complaints directly to Ombudsman for maladministration. The number of complaints increases substantially. The office received 2,729 complaints in 1997<sup>26</sup>, compared to a total of 167 complaints in 1989-90 Legco Session<sup>27</sup>. The role of Ombudsman becomes more active in investigating maladministration. Public can now simply lodge their complaints by telephone enquiries, letters or in person. Though

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<sup>25</sup> The five points are derived from Seneviratne, M., 1994, *Ombudsman in the Public Sector*, Buckingham: Open University Press, pp. 13-14.

<sup>26</sup> *Annual Report 1997*, p. 1

<sup>27</sup> *Annual Report 1990*, p. 1

Ombudsman cannot accept anonymized complaints, accessibility has been enhanced by the legislative reform in 1994<sup>28</sup>.

### **Independence**

The idea of “independence” means whether Ombudsman in Hong Kong can exercise their power well, without interference from the executive branches of Hong Kong government.

There are several aspects to evaluate whether Ombudsman in HKSAR is “independent” or not. The Ombudsman gain great power in investigating maladministration, such as they can hear or obtain information, summon witnesses, enter premises of department or statutory body under complaint as mentioned before on page 7. It seems that Ombudsman can carry out their duties independently.

However, in fact, the Ombudsman is appointed by the Chief Executive. He holds office for 5 years, and may be re-appointed with the approval of the Legco. The Chief Executive determines his emoluments and terms of conditions of his employment<sup>29</sup>. There is no secure of tenure for Ombudsman. Whether the Ombudsman is acting independently without the threats from executive branches is in doubt. For example, there has been a rumour that the tenure of the past Ombudsman, Andrew So, was not extended because of the pro-active stance in looking into the airport chaos and that the Chief Secretary for Administration, Mrs Anson Chan was displeased with the airport probe<sup>30</sup>. In the threat of losing jobs, will Ombudsman still investigate independently is a big questions. So there is always a criticism that the Ombudsman of Hong Kong is a “teethless watchdog”.

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<sup>28</sup> Leung M.K., 1998. *op. cit.*, p. 112

<sup>29</sup> *The Ombudsman Ordinance*, Hong Kong Government Printer, s.3 (2); s.3 (3); ss.3 (5) and (6)

<sup>30</sup> *Hong Kong Standard*, 19 July 1998

The Ombudsman currently is not financially and institutionally independent. The money is granted from the Financial Committee of Legislative Council. Institutionally, it is found that 2 in 3 of the Ombudsman investigators are came from civil servants. The other one is recruited under the conditions laid by the government. The advantage of this arrangement is that the Ombudsman can understand how the government departments work, as they are civil servants themselves and it can facilitate their investigation to find out problems easily<sup>31</sup>. However, under this system, since they are also civil servants, whether are they protecting the rights of the general public, or the interest of the government is in doubt. In addition to that no secure of tenure is guaranteed, whether can they perform well as “public watchdog” is challenged.

Recently, there has been some improvement to depart from the impression of “teethless watchdog”. As pointed out by the current Ombudsman, starting from April 1999, the office enjoys higher degree of financial autonomy as the Legislative Council change the way of financing Ombudsman<sup>32</sup>. There is also an attempt from the current Ombudsman, Mrs Tai, to depart Ombudsman office from the government institution. Such institutional reform can increase the flexibility of investigation; simplify institutional structure, and no need to be bounded by governmental tradition in carrying out their duties. The office can also recruit staff on its own terms of conditions, reducing the number of civil servants in the office to increase credibility of their investigation<sup>33</sup>. However, it seems still a long way to go before Hong Kong Ombudsman to become fully independently.

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<sup>31</sup> *Ming Pao*, 18 October 1999

<sup>32</sup> *Ibid.*, 18 October 1999. Previously Legislative Council checks on every spending of Ombudsman before granting money. With effect from April 1999, Legco no longer checks on its spending but grants a sum of money to the Ombudsman over a period of time. Ombudsman has the autonomy on deciding how to spend the money.

<sup>33</sup> *Ibid.*, 18 October 1999.

As the independence of the Ombudsman in Hong Kong is challenged, there is a need for the Ombudsman to increase the transparency in its investigation process: a system of monitoring progress of complaints handling<sup>34</sup>; whether are they acting in accordance of public's interest; or only protecting the department concerned, is important. However, Hong Kong Ombudsman seems lack of this kind of transparency.

### **Initiativeness**

Hong Kong Ombudsman, compared to other Ombudsman in the world, has the power to initiate investigation towards when a major maladministration is found. As discussed before on page 4, it was not until 1994 the legislative reform, the Ombudsman is allowed to launch investigation on major maladministration. This makes Hong Kong Ombudsman play more active role in the past. Before Hong Kong Ombudsman can only handle complaints addressed by the complainants. In the other words, if there are no complaints addressed, the Ombudsman cannot do anything to check on maladministration. Together with the fact that before 1994 the referral system further made the role of Ombudsman passive, its power was highly limited.

After 1994, the referral system was cancelled and Ombudsman was empowered to take the initiative to investigate major maladministration on his own volition. The increase in initativeness gives Ombudsman more power in checking on administrative malpractice. For example, the Ombudsman probed its investigation into the new airport chaos and suggested recommendation to the Airport Authority even no complaints were lodged to the Ombudsman. This greatly increases its role as “public watchdog”.

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<sup>34</sup> Leung M.K., 1998. *op. cit.*, p. 108

**Public Awareness/Confidence**

“Public awareness” refers to whether the people have an understanding about the Ombudsman in Hong Kong, or in a deeper analysis, whether Hong Kong people are willing to lodge complaints if they encounter maladministration.

It has been pointed out that the COMAC’s (ombudsman’s) success and future depends on how you (general public) look at ombudsman or COMAC<sup>35</sup>. The “public awareness” can be increased in two ways. One is by widespread propaganda and one is by its performance. It has been pointed out that “public awareness is closely related with its jurisdiction and power. The jurisdiction to investigate a case, the ability to make mandatory awards of compensation, and the right to insist upon changes in administrative practices would greatly increase its credibility in the eyes of the public<sup>36</sup>”. There have been widespread propagandas such as ads on TV, and it has resource centre to welcome all walks of life in the society, introducing the work of Ombudsman. Lectures are held to individuals and organizations to facilitate familiarization of Ombudsman work. On major maladministration, Ombudsman usually launches its own investigation on his volition. The report is always open to the public, and is reported in major channels of mass media. All these increase public awareness towards the work of Hong Kong Ombudsman.

The number of inquiries and complaints received by Ombudsman has substantially increased through the decades. It is reported that the office received 6,887 enquiries and 2,729 complaints in 1997<sup>37</sup>, compared with 6,129 enquiries and 2,870 complaints in 1996<sup>38</sup>. The substantial figures show that in recent years, the

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<sup>35</sup> *Act Justly And There Will Be Justice Act With Integrity And There Will Be Respect*, 1996. Government Printer, p. 24

<sup>36</sup> Leung M.K., 1998. *op. cit.*, p. 113

<sup>37</sup> *Annual Report*, 1997. p. 1

<sup>38</sup> *Annual Report*, 1996. p. 1

public are more aware of using Ombudsman as a channel of complain, and are willing to choose Ombudsman to redress their grievance.

“Public confidence” refers to whether the people are confident of the work of the Ombudsman. This relates to whether the Ombudsman can handle their complaints well, and whether the Ombudsman can redress their grievance. A discussion on this topic has been put forward throughout the report, and what “public confidence” means here is whether there are measures by the Ombudsman to protect the rights of the complainants.

A well-known measure to protect the interest of complainants is the use of anonymous in publishing its investigation report. This protects the complainants from being published their names, which might probably damage their reputation and interests. For example, “Mr. X” is used in Case No. OMB 870/96 instead of complainant’s own name. This encourages the lodging of complaints, promotes public confidence and awareness about Ombudsman<sup>39</sup>.

Another way to protect complainants’ interest is the confidentiality of the mediation process is agreed to by all parties prior to the mediation session and again at the beginning of the session. It is a private process and the parties should feel encouraged to communicate in a more open manner<sup>40</sup>. This confidentiality practise protects the interests of complainants. They face no pressure in the mediation process and thus increase the public confidence about the mediation operation.

### **Quality of Ombudsman**

The quality of the Ombudsman is an important factor determines whether the office can pinpoint administration malpractice – it has been argued that “an

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<sup>39</sup> *Review of the Office of the Commissioner for Administrative Complaints*, 1992, Government Secretariat. p. 5

<sup>40</sup> *Operational Manual on Mediation Service*, The office of Ombudsman Hong Kong, China. p. 24

ombudsman has a difficult job. He has to maintain his independence and impartiality, not an easy task as many issues become more and more politicised; a good ombudsman should always try to strengthen the relationship between public and government... [therefore] an ombudsman needs courage, intelligence, determination and sensitivity to do his work successfully<sup>41</sup>”.

From the above we can see that a successful ombudsman requires certain essential feature in order to do his job well. Bernacchi further pointed out that the ombudsman should have the following characteristics<sup>42</sup>:

- (1) [He] should be a respected figure, a person of known integrity and a man of action who captures the imagination of the people;
- (2) He should be familiar with local conditions, with (at least) a good working knowledge of spoken Cantonese and not a past or present member of the Hong Kong Government Service;
- (3) [He should be a] fulltime Ombudsman.

Besides, Bernacchi also mentions that the ombudsman should serve for fixed period, have good salary<sup>43</sup>, with adequate staff, being financed independently, with power to investigate a department or an official.

It is a fact that in Hong Kong whether the departments would change the departmental practices or procedures in views of such recommendations depends on a number of factors<sup>44</sup>. However, the most important factor seems to be “persuasion”. The former Ombudsman, Andrew So, has argued that the COMAC has real teeth to compel compliance because he can make use of his persuasive power to bring about

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<sup>41</sup> *International Ombudsman Symposium (1995: Hong Kong)*, 1996. Government Printer, p. 5

<sup>42</sup> Bernacchi, B. A., 1986. *The Case for an Ombudsman*. p. 8-10

<sup>43</sup> *Ibid.*, p. 8. Bernacchi points out that salary is important because (i) it free ombudsman from corruption; (ii) high salary sufficient to attract first class people.

<sup>44</sup> Leung M.K., 1998. *op. cit.*, p. 105

improvements into the departments<sup>45</sup>. Therefore a good ombudsman should have good persuasive power in order to carry out his duties well. The Ombudsman in Hong Kong certainly has this criteria.

It is also criticized by various government departments that the recommendations of the Ombudsman would also become an unnecessary burden on the street-level bureaucrats, and at the same time, cannot relieve the grievances of the complainants<sup>46</sup>. This is mainly due to the fact that the ombudsman is not professional enough to perform their duties. Also, it may be difficult for the Ombudsman to substantiate “maladministration” on the alleged administrative agency. The meaning of “administrative matter” is difficult to be defined. This requires professional judgement<sup>47</sup>. Hence, developing more expertise in Ombudsman<sup>48</sup> who has better understanding about the work of government institution is needed in order to reduce problems when conducting the investigation. In Hong Kong, as mentioned before on page 13, 2/3 of the ombudsmen are civil servants, who know well about the work of the government department. Though its independence is challenged, professionalism is guaranteed.

### **Availability of Resource**

The availability of resource is critical in implementing its recommendation<sup>49</sup> thus it is an important factor to evaluate the work of Ombudsman. “Resource” can be divided into two parts – human resources or finance.

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<sup>45</sup> *Act Justly And There Will Be Justice Act With Integrity And There Will Be Respect*, 1996.

Government Printer, p. 6

<sup>46</sup> Leung M.K., 1998. *op. cit.*, p. 108

<sup>47</sup> *Ibid.*, p. 112.

<sup>48</sup> *Ibid.*, p. 109.

<sup>49</sup> *Ibid.*, p. 108

As we have discussed on page 12, the financial autonomy has greatly increase as a result of change in April 1999. The spending of the Ombudsman is determined by the office itself. It enjoys relatively better financial resource in carrying out their duties.

Concerning human resources of the Ombudsman, it has been pointed out that it has been inadequate provided. A sharp increase in the number of complaints following the amendment to the Commissioner for Administrative Complaints Ordinance in 1994<sup>50</sup> was resulted. With inadequate human resource, this led to longer investigation period. The long period of time that Ombudsman takes to investigate is notorious. In May 1995, a demonstration outside the Ombudsman was held to protest the office took about 7 months to complete their complaints<sup>51</sup>. The time taken to investigate a case is far from satisfactory due to its limited resources<sup>52</sup>. Currently, there are 90 members in the Ombudsman office<sup>53</sup>, whether it can carry out its function well is in doubt. This may lowers the efficiency of the investigation, as well as lower the confidence of public towards the work of Ombudsman.

### **Finality of Ombudsman's finding and Recommendations**

In term of finality, it is important that the Ombudsman's finding and recommendations is final and no proceedings or decisions of him shall be challenged, reviewed, quashed or called into question in any court. It has been suggested that the inclusion of this provision would help discourage frivolous challenge to the Commissioner's findings and recommendations and further enhance the independent

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<sup>50</sup> *Ibid.*, p. 109

<sup>51</sup> *South China Morning Post*, 14 May 1995

<sup>52</sup> Leung M.K., 1998. *op. cit.*, p. 113

<sup>53</sup> *Ming Pao*, 18 October 1999.

status of the Commissioner<sup>54</sup>. It is to guarantee that Ombudsman's report gains widespread respect from the public and the departments concerned and try to gain the agreement of the departments concerned to accept the recommendations suggested.

It is a good news that Hong Kong Ombudsman is final. Reports with recommendations are sent to related departments and the Chief Executive for implementation. The Chief Executive further directs the report to the Legislative Council to supervise its enforcement. Hong Kong Ombudsman seems enjoy the privilege of finality in its findings and recommendations.

There are indeed many others factors needed to consider in order to assess the work of the Ombudsman, such as the social circumstances of Hong Kong – whether the political atmosphere allows such investigation (e.g. the openness of political atmosphere); the freedom of mass media in reporting Ombudsman's findings; whether Hong Kong people is aware of political affairs (which will put pressure to related department for improvement); the development of democracy etc are also factors to evaluate the work of Ombudsman. Together with these social factors, we can have a clearer image on whether Ombudsman can perform well in Hong Kong.

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<sup>54</sup> *Review of the Office of the Commissioner for Administrative Complaints*, 1992. Government Secretariat. p. 5

## **Conclusion**

Perhaps the first impression that the Hong Kong Ombudsman gives you is a “teethless watchdog”. In fact, after an in-depth evaluation, it is unfair to say so. In some aspect it seems to be correct. Institutionally, after the investigation report is finalized, the departments concerned seems can ignore it, for example, by deferring its implementation to neglect its recommendations.

However, in Hong Kong society, it is undeniable that the political structure is increasingly open. The accountability of the bureaucracy has become a major topic for the public as a result of serious maladministration, such as the airport chaos has ruined Hong Kong’s reputation as an international city. People are paying more attention to maladministration. This put great pressure onto the work of bureaucracy, even though the “iron bowl” is guaranteed in the current civil servant system. The Ombudsman, as a “public watchdog”, strengthens its pressure on various government departments as a result of immense pressure. Indeed, the government departments have already responded to Ombudsman and improve its services even the investigation report is not released.

The biggest problem of current Ombudsman system in Hong Kong is lack of independence, in term of financial resource and institutional structure. This raises question on whether the Ombudsman is doing their jobs independently. And it is clear that Hong Kong Ombudsman lacks transparency. Reform should be carried out to make the Ombudsman more credible to the general public.

However, compared with other countries, Hong Kong Ombudsman can still perform its functions well. They have jurisdiction over 18 governmental departments. They have enough power during investigation. Most importantly, they can initiate

investigation by their own volition - this is what other countries lack of. Together with good accessibility to general public, good quality of Ombudsman in Hong Kong and finality of investigation report, it can be concluded that, if complainants fulfil the following conditions, the theoretical chance of complaints being substantiated could be very high:

- (1) The complainants have adequate information and evidence provided concerning their complaints.
- (2) Complainants' targeted departments are within the jurisdiction of the Hong Kong Ombudsman.
- (3) The complaints are not within the limitation of the Ombudsman.

Yet in fact the chance is lowered by many reasons. It is found that the percentage of investigation substantiated is just around 20% in 1998. This is, ironically, due to the above three reasons.

In conclusion, theoretically Ombudsman seems to be a powerful "public watchdog". In fact, however, it is limited by many restrictions. After 1994, a reform was carried out and many of the restriction was removed to make the "public watchdog" more powerful. However, no matter how powerful it becomes, Ombudsman still face with some limitations, such as its jurisdiction. It seems that a further reform should be carried out in improving its independence to strengthen its role as "public watchdog" – to effectively find out administrative malpractice and suggest recommendations.

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