

**121<sup>st</sup> MEETING OF  
THE INDEPENDENT POLICE COMPLAINTS COUNCIL (IPCC) MEETING WITH  
THE COMPLAINTS & INTERNAL INVESTIGATIONS BRANCH (C&IIB) HELD  
AT THE IPCC SECRETARIAT OFFICE  
AT 1530 HOURS ON THURSDAY 18 MAY 2006**

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Present: Mr Ronny WONG Fook-hum, SC, JP (Chairman)  
Mr YEUNG Yiu-chung, BBS, JP  
Dr LO Wing-lok, JP  
Ir Edgar KWAN  
Dr SHUM Ping-shiu, BBS, JP  
Mr Daniel CHAM Ka-hung, MH  
Dr Charles KOO Ming-yan, MH  
Mr Edward PONG Chong, BBS, JP  
Mr HUI Yung-chung, JP  
Dr Michael TSUI Fuk-sun  
Ms Priscilla WONG Pui-sze, JP  
Mrs Helena YUEN CHAN Suk-yee  
Mr Frederick TONG Kin-sang, Assistant Ombudsman  
Mrs Brenda FUNG YUE Mui-fun, Secy IPCC  
Ms Angela HO, SGC IPCC  
Mr Brandon CHAU, Deputy Secy IPCC (Joint Secretary)  
Mr Michael B.DOWIE, DMS  
Mr WONG Doon-yee, ACP SQ  
Mr Alan FAN Sik-ming, CSP C&IIB  
Mr S. H. VERRALLS, SSP CAPO  
Ms Catherine KWAN, SP CAPO HQ (Ag) (Joint Secretary)

In Attendance: Mr Eddie WONG, SAS (PS)  
Mr Michael TONG, SAS (1)  
Ms Fiona LI, SAS(2)  
Mr Bernard KAN, SAS (3)  
Miss Mary KWOK, AS (PS) 1  
Ms Marie YUEN, SP CAPO HKI (Ag)  
Mr CHEUNG Kin-kwong, SP CAPO NT  
Mr CHEUNG Shun-ho, CIP Team 2 CAPO K  
Mr TONG Chi-chung, CIP Team 8 CAPO NT  
Ms Mandy CHIANG Lai-shan, SIP IPCC C&IIB  
Mr AU Wing-leung, SIP SUP CAPO  
Ms WONG Ching-han, SIP Team 2b CAPO K

Absent with Apologies: Hon Alan LEONG Kah-kit, SC (Vice-chairman)  
Hon Daniel LAM Wai-keung, BBS, JP (Vice-chairman)  
Dr Hon LUI Ming-wah, SBS, JP (Vice-chairman)  
Prof Daniel SHEK Tan-lei, BBS, JP  
Prof Benjamin TSOU Ka-yin, BBS  
Dr TSE Tak-fu, BBS  
Mr Oscar KWOK Yam-shu, SP CAPO HQ

## **PART A: CLOSED MEETING**

This was the Closed Part of the meeting for the IPCC and representatives of C&IIB to discuss matters of mutual concern. The minutes of the meeting will not be uploaded onto the IPCC Homepage.

## **PART B: OPEN MEETING**

### **OPENING ADDRESS**

The Chairman welcomed all to the meeting.

### **(I) CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 2 MARCH 2006**

2. The minutes of the last meeting (Open Part) were confirmed without amendment.

### **(II) CAPO's CRIMINAL AND DISCIPLINARY CHECKLIST**

3. CSP C & IIB tabled the Disciplinary Checklist and highlighted a common issue in four of the cases, namely A3, A72, A94 and A100 concerning regular and auxiliary officers who either unnecessarily revealed or failed to reveal their police identity in accordance with the Police General Orders (PGO) or Hong Kong Auxiliary Police Force (HKAPF) Standing Orders.

4. CSP C & IIB provided the gist of these four cases. For the first case, an off-duty regular officer had a row with a female at a food court and was subsequently required to attend a police station for enquiry. The officer concerned failed to identify himself as a police officer during this enquiry and thus contravened the PGO. The second case concerned an off-duty auxiliary officer who attended a police station because of an "Assault" case. He did not reveal his auxiliary police identity at the police station and thus contravened HKAPF Standing Orders. The third case concerned an off-duty regular police officer. He had a dispute with a taxi driver over driving manner. The officer stopped the taxi and declared his police identity. CAPO considered that the disclosure of his police identity was unwarranted and his conduct had brought the public service into disrepute. The fourth case concerned an off-duty regular officer who stopped his car in a restricted zone. When a traffic officer approached, the officer revealed his police identity and requested for discretion. The incident turned into a dispute. CAPO investigation concluded that the

off-duty officer should be more circumspect in revealing his police identity. Officers would be reminded in this respect in the CAPO Monthly Report “Matters of Interest” and “Tips for Smart Cops”.

5. Dr Charles KOO Ming-yan enquired about the guidelines on the production of police warrant card by uniformed police officer when such requests were made by members of the public. It was very often the case that the situation would escalate into a complaint against Police.

6. ACP SQ stressed that both plainclothes and uniformed officers were briefed to accede to such request as far as possible unless the circumstances did not allow them to do so, i.e. emergency situation or the request was unreasonable and this had to be determined by the given circumstances.

### **(III) CAPO's MONTHLY STATISTICS**

7. CSP C & IIB reported that a total of 192, 182 and 159 complaints were received in February, March and April 2006 respectively. They represented a decrease of 3.0% (-6 cases), 5.2% (-10 cases) and 12.6% (-23 cases) when compared with the statistics of the respective previous months. The figure for January 2006 was 198 cases.

8. The number of “Neglect of Duty” complaints received in February, March and April 2006 were 67 cases, 61 cases and 58 cases respectively. They represented an increase of 19.6% (+11 cases), but a decrease of 9.0% (-6 cases) and 4.9% (-3 cases) when compared with the statistics of the respective previous months. The figure for January 2006 was 56 cases. The number of “Misconduct/Improper Manner & Offensive Language” complaints received in February, March and April 2006 were 58 cases, 52 cases and 47 cases respectively. They represented a decrease of 6.5% (-4 cases), 10.3% (-6 cases) and 9.6% (-5 cases) when compared with the statistics of the respective previous months. The figure for January 2006 was 62 cases. The number of “Assault” complaints received in February, March and April 2006 were 37 cases, 45 cases and 35 cases respectively. They represented a decrease of 26.0% (-13 cases), an increase of 21.6% (+8 cases) and a decrease of 22.2% (-10 cases) when compared with the statistics of the respective previous months. The figure for January 2006 was 50 cases.

9. In the first 4 months of 2006, a total of 731 complaints were received. It represented a decrease of 21.7% (-203 cases) when compared with 934 cases of the same period in 2005. The total number of “Neglect of Duty” complaints received in the first 4 months of 2006 was 242 cases.

It represented a decrease of 26.9% (-89 cases) when compared with 331 cases of the same period in 2005. The total number of “Misconduct/Improper Manner & Offensive Language” complaints received in the first 4 months of 2006 was 219 cases. It represented a decrease of 29.1% (-90 cases) when compared with 309 cases of the same period in 2005. The total number of “Assault” complaints received in the first 4 months of 2006 was 167 cases. It represented a decrease of 12.1% (-23 cases) when compared with 190 cases of the same period in 2005. Overall, the number of complaints in the first quarter of 2006 was on a steady decreasing trend.

10. Mr Daniel CHAM Ka-hung noted the decreasing trend in the number of complaints, in particular over the past few months. He asked if it was a normal trend or was related to the Data Leakage Incident, according to police analysis.

11. CSP C&IIB responded by saying that no particular trend was noted in respect of the changes in the number of complaint, which had remained stable as the statistics showed. There was no evidence to suggest that the Data Leakage Incident had impacted upon this, and perhaps a longer period of time was required in order to draw a conclusion.

**(IV) A COMPLAINT CASE FOR DISCUSSION WITH CAPO**

12. The Secy/IPCC briefed the meeting on a case concerning police procedures involving an arrest in a hospital. On the material day, a female attended a hospital for medical treatment. After receiving the treatment, the female made a report of ‘Indecent Assault’ to the Police that the doctor, who treated her in the consultation room, kept staring at her breasts during the medical examination. The Police subsequently arrived at the scene for enquiry. It was found that besides the female and the doctor concerned, the female’s boyfriend and a nurse were inside the consultation room when the alleged indecent assault took place. The Police obtained the female’s and her boyfriend’s accounts of the incident, but was unable to enquire with the nurse concerned because she had gone off duty, left the hospital and could not be located there and then.

13. Based on the accounts of the female and her boyfriend, the Police considered that there were sufficient grounds for believing that the doctor had committed an offence of ‘Indecent Assault’. The Police then arrested the doctor who remained silent under caution. In the absence of any information as to when the nurse would return to the hospital, the doctor was brought to a police station for further enquiry after another doctor was deployed to relieve his duty at the hospital. The Police also

requested the hospital staff to advise the nurse to go to a police station to offer assistance in the Police investigation of the case.

14. The nurse subsequently turned up at the police station and provided an account of the events to the Police. She confirmed that the doctor had conducted a medical examination on the female in a normal manner, and did not stare at the female's breasts. After investigation, the Police concluded that no criminal element could be established in the case. The female's report was subsequently classified as 'Misunderstanding' and the doctor was released unconditionally.

15. About six months later, the medical superintendent of the hospital (COM), who was dissatisfied with the police procedure relating to the arrest of the doctor, wrote a letter to lodge a complaint against the Hong Kong Police Force. CAPO subsequently took a statement from COM who alleged that the arrest of the doctor on the material day was not appropriate, and the Police should conduct an enquiry with the doctor and listen to his explanation before arresting him (allegation - 'Police Procedure').

16. After investigation, CAPO classified the allegation of 'Police Procedure' as 'No Fault' for the following reasons:

- (a) on the material day, after arriving at the scene, the Police made an enquiry with the female and her boyfriend whose accounts corroborated with each other. Having established a reasonable suspicion about the doctor concerned, the Police cautioned him. The caution informed the doctor that he might be in peril of prosecution, and reminded him of his 'right of silence'. The Police action was taken in accordance with the 'Rules and Directions for the Questioning of Suspects and the Taking of Statements'. Given the criminal nature of the allegation, any further investigation would, as a matter of course, be the responsibility of a crime investigation team rather than the police officers at the scene;
- (b) in response to the Police's query as to the lawfulness and reasonableness of the arrest of the doctor concerned, the Government's Senior Government Counsel advised that, with the evidence from the police officers, the victim and her boyfriend, there was a reasonable suspicion against the doctor that an offence of indecent assault could have been committed. This was so in particular when the doctor

did not say anything when the Police made enquiries with him at the scene. His remaining silent meant that the Police could only rely on the version provided by the female, which was supported by her boyfriend. The Advising Counsel therefore did not challenge the decision of the police officers to arrest the doctor there and then.

Considering that (i) effort had been made to locate the nurse who was present during the consultation, but the Police was told that she had gone off duty and could not be located then, and (ii) necessary arrangement was made to allow a relieving doctor to substitute the doctor concerned before he was brought to the police station, the Advising Counsel (i) commented that the decision of the police officers to arrest the doctor was within the parameters of their power stipulated under relevant sections of the Police Force Ordinance and hence it was lawful, and (ii) did not consider any civil claim against the Police in the action taken during the course of the arrest in this case could be substantiated.

17. Having examined the complaint case, the IPCC considered the alleged offence in the hospital, i.e. 'Indecent Assault' by a doctor on a female patient, a serious one. It noted also that the alleged offence happened in the presence of third parties. On the material day, the police officers at the scene had endeavoured to locate the nurse who was inside the consultation room when the alleged incident took place, but details of their efforts were not documented. There is no denying that the nurse was a crucial witness and her account would have a significant impact on the Police arrest action. In the IPCC's estimation, it might not have been necessary for the Police to arrest the doctor at the scene had the nurse managed to return to the hospital in time and given her version to the Police. Hence, the IPCC requested CAPO to approach the relevant parties, in particular the Nursing Officer who was responsible for contacting the nurse on the material day, to obtain more information concerning how the Police located the nurse at the material time.

18. CAPO contacted the relevant parties, including the Nursing Officer who stated that she was informed by someone (either the Police or the hospital staff) to call the nurse by telephone on the material day. She could not recall details of the events, and told CAPO that there was no need to take a statement from her.

19. Taking account of the versions of the relevant parties and the

legal advice pertaining to the case, the IPCC agreed with the ‘No Fault’ classification of the allegation of ‘Police Procedure’ of this complaint.

20. The Chairman noted that at the material time the arrested doctor was the only doctor on duty at the emergency unit of the hospital. He queried whether the immediate arrest of the doctor was necessary in the circumstances and he wished CAPO to explain this.

21. CSP C&IIB made addition to the case details provided by the Secy/IPCC. He highlighted that the victim of the crime case complained that the doctor had unnecessarily lifted up her clothing and bra for examining her chest, rather than just staring at her breast. As regards the Chairman’s concern, CAPO had examined the action taken by the officers in the incident. At the material time, the officers received a serious crime complaint and there was sufficient evidence to support an arrest. According to Section 51 of the Police Force Ordinance, the arrested person had to be taken before the Duty Officer of the nearest police station. The officer’s action was to comply with the law. From his understanding, the hospital had arranged for a doctor to relieve his duty in the emergency unit. The operation of the hospital therefore had not been affected. CAPO’s investigation concluded that there was no impropriety on the part of the Police in this incident.

22. Dr Charles KOO Ming-yan commented that the officer had approached the case in a subjective manner by considering only the version of the victim. The doctor was not enquired on the necessity of conducting the examination in such a manner before a caution was administered to him. It was normal that the suspect would remain silent under caution. In the circumstances, instead of arresting the doctor immediately, it might be prudent to invite the doctor to a police station to assist in the enquiry at the later stage. Such an option was considered viable given the fact that the allegation turned out to be a misunderstanding shortly after the version of the nurse was obtained. He suggested in future cases, the Force should strike a balance between professional practice and the benefit of the doubt in arriving at an arrest decision.

23. CSP C & IIB said CAPO had examined the course of action taken by the officers at the scene. The information available to the Sergeant at the scene was very limited. Considering that the female’s complaint that she was indecently assaulted was corroborated by the circumstances, the officer was entitled to believe that a crime had occurred. He proceeded to enquire with the doctor who elected to remain silent under caution. In the circumstances, CAPO agreed that the Sergeant had no other option but to arrest the doctor and bring him back to the police station

for further enquiry. The case was then investigated by a crime team, which after having considered the witness's version, decided that there was insufficient evidence to support a charge of "Indecent Assault" against the doctor. Nevertheless, there was no evidence to suggest that the victim's evidence was false or the Police did not believe her version of the events. To ascribe opinions retrospectively might come up with a different judgement, as more information was available by then. The meeting would agree that the Sergeant had very limited information on hand at the time to make a decision but his arrest action had satisfied the requirement of the law and Force orders. On this basis, CAPO considered that the officer committed no fault in the incident.

24. The Chairman queried whether it was necessary to ask the complainant to give a statement on 2005.03.14, considering that he had already provided written correspondence to CAPO about the incident. Another question was about the completeness of the chronology of the incident; whether it should include the time that the nurse was interviewed which resulted in the eventual release of the doctor. Finally, he wished to know if it was necessary for the officer to administer a caution to the doctor.

25. CSP C&IIB responded by saying that the written correspondence might not have included all the necessary details required by CAPO to conduct the investigation. A full statement from the complainant was necessary. In this case, CAPO officer obtained a statement from the Medical Superintendent at the hospital. As regards the chronology of the incident, CAPO would include all the details of the events in it but information which it was inappropriate to disclose would be excluded, e.g., detained person's movement record. As regards the necessity of cautioning the doctor, according to the Force guidelines, it was necessary for the Police to administer a caution on a suspect before questions were put to him, otherwise the suspect's statement would not be admissible in Court.

26. Dr LO Wing-lok commented that it was common for doctors to be accused for "Indecent Assault" by patients during the course of practice. But it was very rare that these allegations would be substantiated. It was difficult for a member of the public or those not present at the scene to judge the professional practice of a doctor. From a prevention perspective, it was important that medical professionals and Medical Discipline Board educate members of the public about the standard of professional practice so as to enhance their understanding. At the same time, medical practitioners should also be reminded of the potential misunderstanding which could arise during the examination. The case



examples provided by the Police would be useful material for reference by medical professionals.

27. CSP C&IIB thanked Dr LO for his view. He said the Force would be most willing to assist the professional bodies in promoting such education.

28. Mr Frederick TONG Kin-sang agreed that the Police were in a difficult position as a decision had to be made after a report was received. Their action was usually based on Force orders and procedures. The key point was whether the judgement was appropriate in the circumstances. This particular case concerned two professional judgements, i.e. the medical and the enforcement. Very often, the medical judgement involved an assault or physical restraint of patients but some of these actions were allowed with the consent of patients. Should these cases come to the attention of the Police, it might be desirable for the officers to enquire into the justifications before resorting to arrest action. The same applied to the handling of domestic violence cases and the handicapped. If police officers were trained in dealing with different scenarios related to medical judgement, they would be in a better position to make a decision.

29. CSP C&IIB responded by saying that it would be helpful to foster a better understanding between different professions which would enhance the police's investigative capability as well as prevent the recurrence of similar incidents. In this respect, the Force would seek assistance from professionals as necessary. In fact, the Force had close liaison with the Forensic Pathology Unit of the Health Department which had provided input to police training.

(V) **ANY OTHER BUSINESS & CONCLUSION OF THE MEETING**

30. There being no other business, the Open Part of the meeting concluded at 1700 hrs. The next meeting would be held on 20 July 2006.

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(Ms Catherine KWAN)  
Joint Secretary  
Complaints and Internal  
Investigation Branch

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(Mr Brandon CHAU)  
Joint Secretary  
Independent Police  
Complaints Council