

Law Reform Commission releases privacy reports

The Law Reform Commission (LRC) today (December 9) released its reports on “Privacy and Media Intrusion” and “Civil Liability for Invasion of Privacy”.

The reports were published after a public consultation exercise was conducted by the LRC’s Privacy Sub-committee in 1999.

In its report on “Privacy and Media Intrusion”, the LRC considers that the current self-regulatory measures adopted by the press industry and the journalistic profession have not been effective in protecting individuals from unwarranted invasion of privacy by the print media.

Therefore, it proposes the creation of a statutory but independent and self-regulating body (referred to as “the Commission”) to deal with complaints of unjustifiable infringements of privacy by newspapers and magazines.

This body would be self-regulatory in nature and modelled on the existing Hong Kong Press Council, but would have jurisdiction over all newspapers and magazines.

The Chairman of the LRC’s Privacy Sub-committee, Dr John Bacon-Shone, stressed that the proposed Commission’s remit was specifically restricted to issues of privacy.

“The LRC and its Privacy Sub-committee were acutely aware of the importance of freedom of speech and of the press and recommended the creation of the new body only after they were satisfied that it would not compromise those freedoms,” Dr Bacon-Shone said.

He said that the statutory Commission would be an independent and self-regulating body, and its activities would not be influenced or controlled by the Government or other third parties.

“The Government would have no role to play in the nomination of members, the formulation of standards, or the adjudication of complaints,” he said.

The LRC proposes that the Commission would consist of “Press Members” representing the press industry and the journalistic profession and “Public Members” representing the public and victims of press intrusion. A retired judge would be included as a Public Member.

While the Press Members would be nominated by representatives of the newspaper industry, the magazine industry, the journalistic profession and the journalism teaching profession, the Public Members (other than the retired judge who should be nominated by the judiciary) would be nominated by professional bodies and non-governmental organisations specified in the legislation.

The Commission must draw up a Press Privacy Code, which must make allowances for investigative journalism and publications that can be justified in the public interest. The Code may be drafted by the Press Members or by a Code Committee appointed by the Commission.

The Commission would have powers to deal with complaints about breaches of the Press Privacy Code by newspapers and magazines. It would be able to initiate an investigation without complaint (or investigate a complaint made by a third party) only if the investigation can be justified on the grounds of public interest.

All complaints alleging breaches of the Press Privacy Code should be treated as directed against the publishers in question, not the journalists or editors concerned.

The Commission should not have a power to compel a journalist to give evidence and to disclose his source of information. Neither should the Commission

have the power to award compensation to a victim, impose a fine on an offending publisher or order an offending publisher to make an apology.

The Commission may, however, advise, warn or reprimand an offending publisher, and require it to publish a correction or the Commission's findings and decision.

Where an offending publisher fails to publish a correction or the findings and decision, the Commission may apply to the Court for an order requiring the publisher to take any specified action.

On the other hand, a publisher (but not the complainant) aggrieved by an adverse decision of the Commission should have the right to appeal to the Court of Appeal.

In its report on "Civil Liability for Invasion of Privacy", the LRC concludes that every individual should be entitled to seek civil remedies for invasion of privacy that is unwarranted in the circumstances.

The report recommends that any person who, without justification, intrudes upon the solitude or seclusion of another in circumstances where the latter has a reasonable expectation of privacy should be liable under the law of tort if the intrusion is seriously offensive or objectionable to a reasonable person.

However, it should be a defence to an action for the intrusion tort to show that the act in question was necessary for:

- (a) the protection of the person or property of the defendant or another;
- (b) the prevention, detection or investigation of crime;
- (c) the prevention, preclusion or redress of unlawful or seriously improper conduct; or
- (d) the protection of national security or security in respect of Hong Kong;

The report also recommends that any person who, without justification, gives publicity to a matter concerning the private life of another should be liable under the law of tort if (a) the publicity is of a kind that would be seriously offensive or objectionable to a reasonable person and (b) he knows that the publicity would be seriously offensive or objectionable to such a person.

However, it should be a defence to an action for unwarranted publicity to show that the publicity was in the public interest.

The two reports are accessible on the LRC website at <http://www.hkreform.gov.hk>.

The two reports follow earlier privacy-related reports by the LRC on *Protection of Personal Data* (1994), *Interception of Communications* (1996), and *Stalking* (2000).

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