

Public Views Sought on Consultation Papers on Media Intrusion and Civil Liability for Invasion of Privacy

The Law Reform Commission's Sub-Committee on Privacy, which is chaired by Mr Justice Mortimer, today (Friday) published two consultation papers on *Civil Liability for Invasion of Privacy* and *The Regulation of Media Intrusion*. The sub-committee will finalise its views for the consideration of the Law Reform Commission after the public has been consulted.

Civil Liability for Invasion of Privacy

The consultation paper on *Civil Liability for Invasion of Privacy* recommends that two new torts be created to protect the private life of individuals from unwarranted interference, namely, "invasion of privacy by intrusion upon the solitude or seclusion of another", and "invasion of privacy based on public disclosure of private facts". For an invasion of privacy to be actionable, the intrusion or public disclosure must be seriously offensive and objectionable to a reasonable person.

Under the proposals, a person who intentionally or recklessly intrudes upon the solitude or seclusion of another or into his private affairs would be liable for the intrusion tort.

Anyone who gives publicity to a matter concerning the private life of another would be liable for the disclosure tort. Matters concerning the private life of another would include information about an individual's private communications, home life, personal or family relationships, private behaviour, health or personal financial affairs.

The sub-committee acknowledges that invasion of privacy may be warranted in certain circumstances. It therefore recommends that the defendant should not be liable if:

- the act in question is authorised by law;
- the plaintiff consented to the act; or
- the act was reasonably necessary for the protection of the person or property of the defendant or another.

To safeguard the interests of free speech and press freedom, the paper further recommends that it should be a defence to an action for "invasion of privacy based on public disclosure of private facts" if:

- the disclosure would have been privileged in accordance with the rules of law relating to defamation;
- the matter publicised could be found in a public record or had come into the public domain through no fault of the defendant; or
- the matter publicised was "a matter of legitimate concern to the public".

Matters of legitimate concern to the public would include:

- the prevention or investigation of crime;
- the prevention of unlawful or seriously improper conduct, public

- dishonesty or serious malpractice;
- the ability of a person to discharge his public duties;
- the fitness of a person for any public office held by him or which he seeks to hold;
- the protection of public health or safety; and
- the protection of national security and security in respect of Hong Kong.

The consultation paper recommends that a court in an action for invasion of privacy should be able to award damages, grant an injunction, order the defendant to account for any profits he has made by reason of the invasion, or order the defendant to publish an apology.

The Regulation of Media Intrusion

The sub-committee consultation paper on media intrusion notes that there have been instances where the news media have intruded upon individual privacy. It expresses the view that press intrusion which cannot be justified in the public interest is an arbitrary interference with privacy under the International Covenant on Civil and Political Rights. It states that such arbitrary interference is not a legitimate exercise of press freedom.

The paper recommends that the Privacy Commissioner issue a Code of Practice on the collection and use of personal data for journalistic purposes. The code would give practical guidance to the news media and the general public.

After examining the scope of the Data Protection Principles under the Personal Data (Privacy) Ordinance, the consultation paper concludes that further measures are required to give more effective protection to victims of media intrusion.

Accordingly, it recommends that the Broadcasting Authority adopt in its Codes of Practice on Programme Standards, provisions relating to (a) unwarranted invasion of privacy in programmes broadcast in Hong Kong, and (b) unwarranted invasion of privacy in connection with the obtaining of material for inclusion in these programmes.

The paper further recommends that an independent body to be known as “The Press Council for the Protection of Privacy” be created by law to deal with complaints about intrusion by newspapers and magazines.

To guarantee the independence of the Council and to keep Government at arm’s length in the appointment of its members, all members of the Council would be appointed by an independent Appointments Commission. Mr Justice Mortimer stressed that members of the Appointments Commission would need to be appointed by an independent person who has credibility and is acceptable to the press industry.

To ensure that complainants have a fair hearing which has due regard to both press freedom and privacy interests, the paper recommends that half

of the Council members should be drawn from members of the press and the other half from members of the public. The Chairman of the Council should be a retired judge or a senior lawyer. The Privacy Commissioner should also be designated as an ex officio member of the Council.

Under the proposals, the Council would have power:

- to issue and keep under review a press code on privacy-related matters;
- to receive complaints about breaches of the code;
- to initiate its own investigations;
- to attempt conciliation; and
- to rule on the complaints.

The paper recommends that where the Council has decided on a complaint, it may:

- declare that the newspaper has acted in breach of the code;
- reprimand the newspaper;
- require it to publish a correction or apology; or
- impose a fine on the newspaper.

The Council would not have power to award compensation to complainants. Any person aggrieved by a decision of the Council may appeal to the Court of Appeal.

Copies of the consultation papers are available on request from the Law Reform Commission Secretariat, 20th floor, Harcourt House, 39 Harcourt Road, Wanchai, Hong Kong, or can be downloaded from the Internet at <http://www.info.gov.hk/info/lrc.htm>. The sub-committee welcomes any comments on the two consultation papers. The consultation period will last till 30 November 1999.

Since Mr Justice Mortimer will leave Hong Kong at the end of this month, the Chairman of the Law Reform Commission, Ms Elsie Leung, has appointed Professor Raymond Wacks to take over as Chairman of the sub-committee from 1 September. Professor Wacks has been a member of the sub-committee since its inception in 1990. Mr Justice Mortimer will remain a member of the sub-committee and will continue to contribute to the discussion of various privacy projects undertaken by the sub-committee.

End / Friday, August 20, 1999