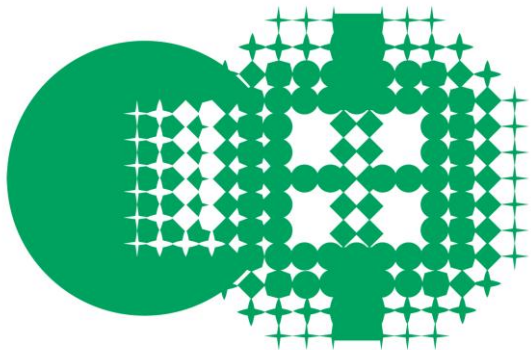


11th World Conference of IOI Bangkok, Thailand

Evolution of Ombudsmanship - the Case of Hong Kong



Ms Connie Lau, *JP*
The Ombudsman, Hong Kong
November 2016

The Genesis

1960s

suggestion for setting up “*a simple, inexpensive and effective machinery for safeguarding fundamental rights and freedoms and for enabling those who have suffered from violation of their rights to receive assistance in obtaining redress*”



The Genesis

1970s

- citizens had to air their grievance *via* the then Office of the Unofficial Members of the Executive and Legislative Councils
- small number of public complaints



The Genesis

1987

- public consultation on “redress of grievances”
- majority view support setting up an independent authority to deal with complaints about maladministration



The Genesis

1989

- office of “the Commissioner for Administrative Complaints” (“COMAC”) set up
- Government still not prepared to establish an autonomous ombudsman system
- purview confined to handling administrative complaints referred by Members of the Legislative Council



The Genesis

1989

- jurisdiction narrowly defined
- citizens had no direct access to Commissioner
- predominantly staffed by civil servants



Steady Development

1994

- direct access to Commissioner
- anonymised investigation reports could be published
- some public bodies came within jurisdiction
- “direct” (i.e. self-initiated) investigations could be conducted



Steady Development

1996

- re-named “the Office of The Ombudsman”
- empowered to investigate cases of non-compliance with the Code on Access to Information



Steady Development

2001

- empowered to deal with complaints by mediation



Full Independence and Further Growth

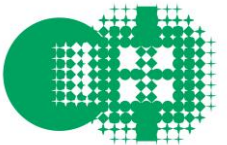
2001

- full autonomy as a corporation sole
- full power over financial arrangement
- own administrative and personnel systems
- all staff directly appointed by The Ombudsman



Protection of Independent Status

- The Ombudsman is not a servant / agent of Government
- appointed for a term of 5 years
- eligible for re-appointment
- removal must be sanctioned by resolution of Legislative Council



Protection of Independent Status

- The Ombudsman is the only person to decide how to exercise his/her statutory power
- The Ombudsman and his/her staff acting in good faith are not liable to civil actions



Power of The Ombudsman

- to obtain any information, documents or things and to make any inquiry from any person
- to summon any person to give information
- to examine a witness under oath
- to publish investigation reports which The Ombudsman thinks is in the public interest to do so



Work in 2015/16

- over 12,000 enquiries handled
- over 5,200 complaints completed
- 8 “direct” investigations announced



Work in 2015/16

- over 270 recommendations and numerous other suggestions made
- announcement of the Office's investigation reports attracts wide media coverage:

Hong Kong government departments 'fail to co-ordinate and are too slow when tackling problems'

Ombudsman's annual report highlights problems in public administration and identifies the worst offenders

PUBLISHED : Tuesday, 12 July, 2016, 7:58pm

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COMMENTS: 3



Phila Siu

The Ombudsman has taken Hong Kong government departments to task for "inadequate co-ordination" that has led to persistent problems in public administration, while criticising their "slow pace" in follow-up action to resolve problems.

It found that when faced with problems officials were too quick to pass the buck to other departments or blame staff

shortages for not taking action.

In releasing its annual report on Tuesday, the Ombudsman also revealed that 485 complaints were made against the Housing Department in the past year, followed by 420 complaints against the Food and Environmental Hygiene Department and 261 for the Lands Department.

Pick up pace on building public columbariums, Ombudsman tells Hong Kong officials

In total, the Ombudsman received 5,244 complaints in the past year, down slightly from 5,339 in the previous year. The Ombudsman has completed looking into 5,244 complaints, some of them brought forward from the previous year.

A total of 226 cases were more complex and thus required "full investigation". Among them, 12.8 per cent were substantiated, 13.3 per cent partially substantiated, 62.8 per cent unsubstantiated, 9.8 per cent unsubstantiated but with inadequacies found, and 1.3 per cent inconclusive.

"In the course of our investigation, we have noticed that where solving a problem requires the input of more than one department, inadequate coordination is found among departments," Ombudsman Connie Lau Yin-hing said.

"The problem is often left unattended and becomes nobody's problem as every department would say they do not have sufficient power to handle it. And where more than one department can actually solve the problem without help from others, the responsibility for solving the problem is seen as belonging to others who are in a better position to tackle it."

It was the second consecutive year that the Housing

**Ombudsman
points out
Government
inadequacies in
administration in
her Annual
Report 2015/16**



The number of lifeguards suspected of lying about their health to skip work increased from four in 2011 to 57 last year, according to the report by the Ombudsman. Photo: Edward Wong

WATCHDOG SLAMS LIFEGUARDS OVER WAVES OF 'SICK LEAVE'

Abuse blamed for rise in beach, pool closures although union says it's mainly down to strike tactics

Emily Tsang
emily.tsang@scmp.com

The city's beaches and public swimming pools have closed more often in recent years owing to a lack of lifeguards and an increasing trend for them to abuse sick leave, a government watchdog said.

But a lifeguards' union said going on sick leave was part of industrial action taken by members in an attempt to pressure the Leisure and Cultural Services Department into employing more staff to ease their workload.

The number of lifeguards suspected of lying about their health to skip work increased from four in 2011 to 57 last year,

comprising 80 per cent of all sick leave cases under the department, a report by the Ombudsman released yesterday said.

One lifeguard alone took 237 days of sick leave in the past year, adding up to a total of 537 days in six years of service between 2010



I believe ... some members took sick leave as part of their strike actions

ALEX KWOK SIU-KIT, UNION SPOKESMAN

and last year. On at least six occasions, this led to his pool being closed.

While the Office of the Ombudsman said it did not know whether the lifeguard in this extreme case had genuinely been sick, it added that monitoring of sick leave in the department was lax compared to others in the government.

"I believe part of the reason for the increasing trend of abuse was that some members took sick leave as part of their strike actions," Alex Kwok Siu-kit, spokesman for the Hong Kong and Kowloon Life Guards' Union, said.

The union staged two major strikes this year, calling on the government to employ more

lifeguards, raise the retirement age to 65, and improve pay grades.

Kwok said there had been a shortfall of about 200 lifeguards since the department cut their headcount by a third in 2004.

Under the Civil Service Regulations, the department may take disciplinary action if there is evidence of any misconduct. It may also require an employee to produce a medical certificate from a government clinic.

But the watchdog said the requirement for such members of staff to supply medical certificates when applying for sick leave was not as strict compared to other government departments.

It also pointed out that the strain on manpower was particularly bad in summer, between

June and August, when some lifeguards would go on holiday.

Some were found to have not yet completed or even participated in an induction training programme, including diving lessons, leading to concerns about their competence.

The report suggested the practices of other departments be followed in monitoring suspected abuse of sick leave, reviewing lifeguards' target times in completing training courses, and exploring more flexible ways of hiring seasonal staff.

Employing lifeguards according to seasonal needs has become more difficult recently, with more than 100 vacancies this year.

A spokesman for the department said it accepted the report and would carefully study the recommendations.

Resolutions sought out to avoid temporary closure of public swimming pools / beaches due to shortage of lifeguards



報明

要聞 | A1 | 港聞 體育 中國 國際 | 星期三 | 2016 | 6 | 15 |
丙申年五月十一日 港幣七元正 出紙4疊18張半 (JUMP) 隨報附送

申訴署批海事處差劣不作為

跟進拖8年 未吸水文一號教訓

港聞 | A3 |

星期三 | 2016 | 6 | 15 |

編輯/利永倫

明報

社評

官僚殺人？南丫海難遇難者，死得冤啊！

申訴專員公署根據報章報道，主動調查海事處對海上事故調查報告建議事項的跟進機制；申訴署報告以「自由放任模式」來形容2013年6月之前海事處的處理。不過，只要審視報告，則會發現如此形容不僅輕輕帶過，更有美化之嫌，因為海事處就涉及海上安全的報告建議，在處理上根本是一場糊塗、烏煙瘴氣、全無作為。以申訴署這份報告對照南丫海難原因，折射海事處官員在這宗慘劇有不可推卸的責任。按政府的處理，看不到會追究海事官員就慘劇的刑事責任；倘若這又是一樁「官僚殺人」無頭公案，海難中的39名死難者就死得冤啊！

申訴署根據《明報》報道 主動調查海事處跟進機制

申訴署在調查報告，交代了主動調查的緣起。報告說「2012年10月於南丫島附近發生嚴重海上事故（「南丫事故」），經調查後發現，其中一艘肇事船沒有設置水密門，令該船遭碰撞後入水並迅速沉沒。其後，有報章報道，於2000年曾有政府船在船塢維修期間入水，由於船上水密艙壁不密封，該船最終沉沒。相關的事故調查報告，已建議海事處

檢查同類船的水密艙壁；南丫事故的發生，令人質疑海事處一向以來有否落實海上事故調查報告的建議。為此，申訴專員決定就海上事故調查報告所作建議的跟進機制，向海事處展開主動調查。這裏提到的「有報章報道」，其實就是《明報》的報道。

南丫海難中，「南丫四號」與「海泰號」相撞後迅速下沉，經調查和法庭審理揭露的資料和情況，原因主要有兩項。一是發現「南丫四號」的水密艙沒有裝上水密門，撞船後有大量海水湧入船艙導致「南丫四號」迅速沉沒；另外是兩船相撞後，本來互相倚靠，而「海泰號」很快就離開，專家作供時認為「南丫四號」因此失去承托而迅速下沉。

「海泰號」船長已經為處理失誤付出代價，不過，水密艙的情況與慘劇有多大關連，仍未釐清。2013年5月，《明報》報道海事處測量船「水文一號」在2000年3月維修時入水沉沒，調查後發現這艘測量船的水密艙鑽穿了兩個洞，讓電線和燃料管穿過艙壁，結果導致水密艙漏水，海水湧入相鄰兩個水密艙，「水文一號」因而沉沒。當時海事處有關內部調查報告，建議檢查同類船舶的水密艙；「南丫四號」較「水文一號」建造更早，水密艙設

計類似，若海事處按報告建議，糾正建造時與圖則不符而埋下的隱患，則「南丫四號」與「海泰號」相撞後的結果或許就會不一樣。當時，海事處對傳媒查問有沒有按建議檢查同類船舶，並未回覆，因此不知道海事處如何對待有關建議。現在申訴署報告大概揭開了謎團，有理由相信海事處沒有落實建議，並未跟進檢查類如「水文一號」設計的船舶，包括未堵塞「南丫四號」水密艙的漏洞。

申訴署報告指海事處對跟進事故的報告建議，首先是紀錄混亂不全，主要是2013年6月引入電腦處理有關資料之前，以人手處理；報告透露了海事處為回應申訴署的調查，耗時半年整理舊紀錄，並再應申訴署其後的詢問，確認有關紀錄準確無誤。儘管如此，申訴署仍然發現有6宗遺漏個案，質疑會否還有漏網之魚。其次是跟進不力，報告指海事處只是如信差一般，把建議轉告相關人士，由他們自行處理。其三是海事處並無機制監察建議的落實情況。申訴署所得資料顯示，2005年1月至2013年5月的8年期間，海事處共完成了114宗海上事故調查，合共提出308項建議；申訴署發現很多「跟進」，都是他們在2014年7月開始調查時，海事處才「跟進補回」，其中很多建議歷時多年，甚至8

年來都沒有任何跟進。

海上事故調查建議 海事處基本無跟進

海上事故調查的目的，除了確定事發經過和肇事原因，主要為避免同類意外再發生而危害生命財產安全。所謂「前事不忘，後事之師」，海事處就事故的調查建議，在2013年之前的跟進全面崩解，以本港海上航運之繁忙，實際是置海上航行安全於不顧，歷來海事處官員所為何事？他們疏忽職守的程度，使人咋舌。其他情況並無恰當事例印證，有理由相信16年前因為水密艙設計有問題而沉沒的「水文一號」，相關建議並未落實執行，致使「南丫四號」未堵塞漏洞而遇事迅速沉沒，這是海事處官僚埋下的奪命禍根。若說要個別官員負責，或許在體制上難以成立和有爭議，然而誰能否定事涉「官僚殺人」的實質？申訴署報告揭示的情況，雖然不涉及海事官員在南丫海難的具體責任，但是揭示官員長期以來的顛覆無能，為海難原因畫下確切一筆。

【相關新聞A2】

Ombudsman
exposes Marine
Department's
litany of errors

Ombudsman probes into Lands Department's System of Regularisation of Illegal Occupation of Government Land and Breach of Lease Conditions

指多年採放任策略 申短租免地契條款

記者：胡康泰



本港不時被揭發有人非法霸佔官地，申訴專員公署主動調查，批評地政總署多年來採取放任的被動策略，容許違規者申請短期租約或豁免地契條款，把違規情況規範化。

公署批評制度易被濫用，變相鼓勵和縱容「先斬後奏」，甚至「先斬不奏」的情況，有個案更違規佔地經營露天茶座近二十年！申訴專員促請署方主動巡查及要求申請人繳付暫准費。

地政總署一向負責執管非法佔用政府土地及違反土地契約條款的情況，若發現有人佔地，可根據相關條例採取土地管制行動，在糾正期限屆滿後接管土地上的財產或構築物；對於違契業主，亦可採取如收回土地等契約條款行動。不過，署方一直容許佔地及違契者申請短期租約或短期豁免地契條款，把違規情況規範化，而在處理申請期間，一般会暫緩執管行動。

非法露天茶座佔地20年

申訴專員公署抽查了三十個個案，發現有新界村屋業主申請短期租約，希望把非法佔地經營的露天茶座規範化，當局要求業主先解決居民反對意見，期間地政處擱置個案長達九年，直至村屋業權易手問題仍未解決。公署批評地政處未有當機立斷批准或否決申請，令事件由九五年開始拖近二十年，土地一直被非法佔用圖利，政府卻未有分毫進帳。

村屋業主申豁免拖得就拖

另一村屋業主就申請短期豁免以及租約，將村屋地下改為辦事處，又佔用附近官地擺放貨品。地政處多番提醒業主先取得城規會批准，才會處理問題，但業主在城規會否決申請後，藉申請覆核及上訴拖延糾正違規情況。最後處方在業主撤回上訴後，再拖延五年才重新檢視個案。公署認為，取得城規會批准是規範化的先決條件，批評地政處一開始便應否決其申請。

根據工作指引，地政總署要在六個月內決定是否批出短期租約，但申訴專員發現署方一二至一四年處理短期租約申請的獲批個案，平均都要十三至十九個月完成，最長的需時四十六個月，更有不獲批准的個案歷時長達五十二個月。

不主動巡查令違規惡化

申訴專員劉燕卿表示，地政總署以資源有限為由，不作定期主動巡查，或只在收到投訴和傳媒報道才跟進，令違規問題不斷惡化，做法並不理想，變相鼓勵和縱容「先斬後奏」，甚至「先斬不奏」的情況。她認為即使資源有限，最低限度亦應作抽樣檢查；又建議處方要求申請人繳付暫准費，以防違規者拖延署方的執管行動等。



申訴專員抨地政總署 縱容違規佔用官地

■本港不時被揭發有人非法霸佔官地情況，申訴專員公署批評地政總署多年來採取放任的被動策略，把違規情況規範化。

資料圖片

地政總署處理规范化申請個案

個案一 縱容佔地20年

日期 1995年9月至2014年6月

事件 新界有村屋女業主申請短期租約，希望把非法佔地經營、約130平方米露天茶座規範化

爭議 因有村民反對，地政處只去函提醒業主，須先解決村民反對，令申請拖延。變相令業主免費佔用官地

個案二 縱容違規者拖延糾正違規情況11年

日期 2004年4月至2015年7月

事件 村屋業主申請短期豁免及短期租約，分別將其村屋地下改作辦事處用途，及佔用毗鄰約60平方米政府土地陳列貨品

爭議 業主多次就申請規劃許可提出覆核及上訴，地政處拖至2014年才拒絕申請

個案三 簡單申請亦拖延19個月

日期 2013年1月至2014年8月

事件 村屋業主申請短期租約，租用其被揭發闖作私人花園多年的政府土地

爭議 在接獲申請的十九個月後，地政處才去信通知業主拒絕申請

個案四 執管行動延誤逾18個月

日期 2013年1月至2014年7月

事件 地政處接獲一間公司申請短期豁免地契條款，在新界某地段搭建構築物作存放展覽用品

爭議 地政處2013年七月到場視察，發現已建設多個構築物，用作貨倉、辦公室及停車場；但再一年後，地政處進行土地登記查冊，才發現該公司並非該地段之業權人，根本無權申請，才去信該公司拒絕其申請



地政總署：不再暫緩執管行動

地政總署表示，大體上接納申訴專員公署的調查，會繼續跟進報告的建議，包括收緊處理申請的安排，期間不再暫緩執管行動，強調絕不鼓勵任何人違法佔用土地。

署方指基於資源所限難以定期主動巡查，但近兩年已就數個重點範圍作主動巡查並加強執管。

強調不鼓勵違法佔用土地

地政總署回應表示，近年已收緊規範化申請的安排，包括早前已表明，若私人農地上正搭建的違契構築物及工廈違契用途

或佔用人提出規範化申請，而在期間暫緩執管行動。署方又強調，絕不鼓勵任何人違法佔用土地；並希望市民諒解，執管工作可能會因為優次問題，而令部分輕微個案需時較長。

用航拍加強搜集資料

地政總署表示，基於資源所限難以定期主動巡查，但近兩年已有策略地就數個重點巡查並加強執管，例如私人農地上的違契構築物，及為工廠大廈違契問題訂定風險為本的執管安排。



Conclusion

- enhancing public administration and advancing the grievance redress system
- will continue its healthy development and go from strength to strength

Evolution of Ombudsmanship - the Case of Hong Kong

Thank you

