

**129th MEETING OF
THE INDEPENDENT POLICE COMPLAINTS COUNCIL (IPCC) MEETING WITH
THE COMPLAINTS & INTERNAL INVESTIGATIONS BRANCH (C&IIB)
HELD AT THE IPCC SECRETARIAT OFFICE
AT 1540 HOURS ON THURSDAY 20 SEPTEMBER 2007**

Present: Mr Ronny WONG Fook-hum, SC, JP (Chairman)
Dr LO Wing-lok, JP
Mr Daniel CHAM Ka-hung, MH, JP
Dr Charles KOO Ming-yan, MH
Mr Edward PONG Chong, BBS, JP
Mr HUI Yung-chung, BBS, JP
Dr Michael TSUI Fuk-sun
Dr TSE Tak-fu, BBS
Ms Priscilla WONG Pui-sze, JP
Mrs Helena YUEN CHAN Suk-yee
Dr Lawrence LAM Chi-kit, MH
Mr WONG Kwok-yan
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 Alfred MA Wai-luk, ACP SQ
Mr Alan FAN Sik-ming, CSP C&IIB
Mr J.P. RIBEIRO, SSP CAPO
Mr CHEUNG Kin-kwong, SP CAPO HQ (Joint Secretary)

In Attendance: Mr Eddie WONG, SAS (PS)
Mr Henry CHAN, SAS (1)
Ms Fiona LI, SAS (2)
Mr Bernard KAN, SAS (3)
Miss Mary KWOK, AS (PS) 1
Miss Rainbow FU, AS (3)
Mr David LEE Woon-luen, SP CAPO HKI
Mr Eddy TONG Chi-chung, CIP CAPO HQ
Miss Eve CHUNG Wing-man, CIP T6 CAPO HKI (Ag)
Ms CHAN Shuk-ming, SIP IPCC C&IIB
Mr Damon AU Wing-leung, SIP SUP CAPO
Mr Roger WONG Chi-sing, SIP T6b CAPO HKI
Miss Amy YEUNG Chi-kwan, SIP T1b CAPO K
Ms Christina WONG Mui, SIP T4a CAPO K
Mr LAM Chi-ping, SIP T4b CAPO K
Mr Sunny SAN Tze-kin, SIP T9a CAPO NT

Absent with Apologies: Hon Daniel LAM Wai-keung, SBS, JP (Vice-chairman)
Dr Hon LUI Ming-wah, SBS, JP (Vice-chairman)
Dr Hon Joseph LEE Kok-long, JP (Vice-chairman)
Mr YEUNG Yiu-chung, BBS, JP
Prof Benjamin TSOU Ka-yin, BBS
Mr Barry CHEUNG Chun-yuen, JP

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 20 SEPTEMBER 2007 (Open Part)

2. The minutes of the last meeting (open part) were confirmed without amendment.

3. The Chairman noted that the Police had promised in the last meeting to remind officers of the issue in relation to the disclosure of an officer's unique identification number in the Matters of Interest of the CAPO Monthly Report and the Tips for Smart Cops. He enquired if that had been done.

4. CSP C&IIB replied that the issue had already been included in the Tips for Smart Cops and he undertook to provide a copy of that to the Secretariat later.

II CAPO'S CRIMINAL AND DISCIPLINARY CHECKLIST

5. CSP C&IIB informed the meeting that he had nothing special to highlight.

6. The Chairman noted that there were several cases on the checklist in which the officers concerned were advised for failing to comply with the CAPO Manual in handling 'Withdrawal' and 'Not Pursuable' complaints, such as cases A77, A90, A91 and A101. He enquired if CAPO had noticed such cases and if any actions had been taken to remind officers responsible for complaint investigation of the related procedures.

7. CSP C&IIB replied that the related procedures were stipulated in the CAPO Manual. The concerned officers had failed to follow the proper

procedures in the CAPO Manual when handling the withdrawal of complaints made over phone and the Not Pursuable complaints. This matter would be published in the Matters of Interest of the CAPO Monthly Report and the Tips for Smart Cops to remind officers of the need to follow the procedures. This matter would also be highlighted by CAPO officers during their liaison visits to police formation and complaints prevention talks.

III CAPO'S MONTHLY STATISTICS

8. CSP C&IIB briefed the meeting on the CAPO's Monthly Statistics for the months of June and July 2007. 220 complaints were received in June 2007, a decrease of 4.8% (-11 cases) when compared with the statistics of the previous month. The figure for May 2007 was 231 cases. For the month of July 2007, 252 complaints were received, which was an increase of 14.5% (+32 cases) when compared with the statistics of the previous month.

9. The number of 'Neglect of Duty' complaints received in June 2007 was 95 cases, a decrease of 6.9% (-7 cases) when compared with the statistics of the previous month. The figure for May 2007 was 102 cases. For the month of July 2007, the number of 'Neglect of Duty' complaints received was 108 cases, which was an increase of 13.7% (+13 cases) when compared with the statistics of the previous month.

10. The number of 'Misconduct/Improper Manner & Offensive Language' complaints received in June 2007 was 68 cases, an increase of 28.3% (+15 cases) when compared with the statistics of the previous month. The figure for May 2007 was 53 cases. For the month of July 2007, the number of 'Misconduct/Improper Manner & Offensive Language' complaints received was 92 cases, which was an increase of 35.3% (+24 cases) when compared with the statistics of the previous month.

11. The number of 'Assault' complaints received in June 2007 was 42 cases, a decrease of 16.0% (-8 cases) when compared with the statistics of the previous month. The figure for May 2007 was 50 cases. For the month of July 2007, the number of 'Assault' complaints received was 33 cases, which was a decrease of 21.4% (-9 cases) when compared with the statistics of the previous month.

12. In the first seven months of 2007, a total of 1,521 complaints were received. It represents an increase of 12.6% (+170 cases) when compared with 1,351 cases of the same period last year.

13. The total number of 'Neglect of Duty' complaints received in the first seven months of 2007 was 645 cases. It represented an increase of 161 cases (+33.3%) when compared with 484 cases of the same period last year.

14. The total number of 'Misconduct/Improper Manner & Offensive Language' complaints received in the first seven months of 2007 was 436 cases. It represented an increase of 54 cases (+14.1%) when compared with 382 cases of the same period last year.

15. The total number of 'Assault' complaints received in the first seven months of 2007 was 286 cases. It represented a decrease of 17 cases (-5.6%) when compared with 303 cases of the same period last year.

16. From the complaint figures for the first seven months of 2007, no particular trend could be discerned that required special attention.

17. The Chairman expressed his concern on the table in relation to the 'Number of Complaint Cases Received and Outstanding in CAPO in Each Month' which he had already raised in the last meeting. CAPO had undertaken to put a footnote on the table in the last meeting but this was not done and the Secretariat had already requested CAPO to do so. He noted that the figures of 2007 had remained high when compared with the figures of 2006 of which none was over 100 and he wondered why the figures of 2007 remained more than 100 despite seven months had elapsed.

18. CSP C&IIB responded by saying that the figures of outstanding cases represented those cases that had been received but the investigation was not yet finished. From the figures of the first seven months of 2007, some still had more than 100 outstanding cases which were comparatively higher than the figures of 2006. The main reason for those cases to remain outstanding was because the investigation was not yet completed and he undertook to complete the investigation as quickly as possible.

19. The Chairman went on to comment that when looking at the figures of the current year and last year, the number of the outstanding cases had increased substantially. He wished to know why there was such a phenomenon. The worst month last year was December with only 71 outstanding cases but there were 252 outstanding cases in July 2007 and he wondered why there were suddenly so many outstanding cases.

20. CSP C&IIB explained that the phenomenon did not occur suddenly but the figures reflected the updated figures on a monthly basis. Taking the figures of December 2006 as an example, the number of outstanding cases of that month was recorded as 71 but this might drop to 60 in the next month. The figures would be continuously updated and invariably would drop gradually because the longer the time lapses, the lesser outstanding cases cumulate. Therefore, the more recent were the cases, the more likely they remained outstanding. Just like the 252 outstanding cases in July 2007, due to the proximity of time, the investigation of all these cases

was not yet completed but as time went by the figures would drop gradually and be updated.

21. The Chairman further commented that it still could not explain why that did not happen in previous years and only happened in the current year with over 100 outstanding cases. He wondered if that was because the cases had become more complicated or because CAPO investigation had become slower.

22. CSP C&IIB replied that he believed what was reflected in the present figures should be more or less similar to the situation in the past. Although CAPO had not made a direct comparison, according to the records, most cases could meet the performance pledge to complete the investigation within four months.

23. Secy/IPCC supplemented the answer by saying that according to her understanding the figures of 2007 represented the number of new cases received in that particular month and therefore, by taking the example of the figure of January 2007 with 238 cases received, the updated figure showed that around 100 odds had been completed by now, leaving 106 cases outstanding. As such, the figures of 2007 should, for example January, February, and March, represent the number of new cases received. Similarly, by taking the figure of January 2005 as an example, 276 cases were received and by now only two cases were not completed. As such, the more recent were those cases, such as the figures of July, August and September 2007, theoretically the more number of cases should remain outstanding.

24. CSP C&IIB confirmed that was the correct interpretation of the figures. Each month had two set of figures of which the one on the right represented the number of cases received in that month while the one inside the bracket represented the number of cases that remained outstanding as at 31 July 2007. Taking the figure of January 2005 as an example, 276 cases were received in that month and up to 31 July 2007, two cases still remained outstanding. Similarly, by taking the figure of January 2007 as an example, 238 cases were received that month and up to 31 July 2007, 106 cases still remained outstanding. The reasons for those cases to remain outstanding might be due to impending judicial process or further actions in response to the Council's queries. As such, all 252 cases received in July 2007 remained outstanding as at 31 July 2007.

25. The Chairman further commented that while he understood the explanation, he was worried that if the same explanation were applicable to the figures of the past several years, the figures of 2007 would become a cause for concern as the progress was far slower when compared with previous years.

26. CSP C&IIB responded by saying that both the Council and CAPO were concerned about the investigation progress and CAPO was committed to meet the performance pledge in completing the investigation. CAPO had been reviewing regularly to see if the performance pledge could be maintained and records showed that the investigations of a majority of the cases could be completed within the pledged period of four months. He undertook to review how to better present the figures to let people know if the performance pledge could be achieved and perhaps some other figures in relation to the performance pledge could be provided to the Secretariat.

27. The Chairman requested CAPO to look into the reasons why the 106 cases in January 2007 still remained outstanding.

28. CSP C&IIB undertook to look into it but asserted that this would take time to finish that. He undertook to liaise with the Secretariat to see how the answers could be furnished to the Council.

29. ACP SQ supplemented that CAPO was committed to meet the performance pledge in completing the investigations. He also assured the Chairman that there should not be any unjustified delay in the investigation because whenever there was delay in the investigation of a particular case, CAPO would submit a report to the Secretariat which could query on the progress of the investigation. He would say the Secretariat had been following that matter up quite closely and CAPO would continue to complete investigation within a reasonable time.

30. Dr LO Wing-lok commented that the figures that CAPO were to provide should be as simple as providing the figures of the first six months of 2006 and the first six months of 2007 for comparison, and this would clearly show the situation.

IV

A COMPLAINT CASE FOR DISCUSSION

31. Secy/IPCC briefed the meeting on the background of the case. The instant complaint stemmed from the incident of police handling of protestors who attempted to approach Mr Donald TSANG, the Chief Executive (CE) of the Hong Kong Special Administrative Region during his visit to the trade association of a sub-sector of the CE Election Committee in his capacity as a candidate in the CE election campaign, which occurred in February 2007. Three political groups intended to stage protests in the vicinity of the venue of the visit. A crowd management operation was mounted by Police District A where a Chief Inspector of Police [Complainee (COMEE) 2] was the Field Commander. A Designated Public Activity Area (DPAA), cordoned off by mills barriers, was initially set up near the venue of the visit to facilitate protestors in expressing their views. In addition, two Designated Press Areas (DPA) were set up in close proximity

to the venue of the visit. Prior to the arrival of the CE, three political groups turned up to stage protests. The Complainant (COM) is a member of one of the three political groups thereat, and was one of those protestors who were arranged to stay inside the DPAA. The protestors refused to enter the designated DPAA as the situation developed. After negotiation, one of the two DPAs was converted into an ad-hoc DPAA. Both the ad-hoc DPAA and the remaining DPA were cordoned off by mills barriers, and were guarded by officers of Police Tactical Unit (PTU) of Police Region B [comprising among others a uniformed Police Sergeant (COMEE 3)] and Police District A respectively.

32. When the CE's convoy arrived at the scene, the protestors became rowdy inside the ad-hoc DPAA. Two female protestors pushed apart the mills barriers at one end of the ad-hoc DPAA and broke through the police cordon. They were followed by other protestors inside the ad-hoc DPAA who were running towards the CE who just alighted from his car. At this juncture, one of the plainclothes police officers of the Police VIP Protection Unit (VIP PU) (COMEE 1) immediately went forward to intercept the protestors, and other police officers rendered reinforcement. As a result, a scuffle ensued between the protestors and the Police during which COMEE 1's pistol, which was placed in the holster secured on his right waist, dropped onto the ground. The magazine ejected and several rounds of ammunition came out of the magazine. Shortly afterwards, another officer of the VIP PU picked up the pistol and temporarily kept it in his safe custody. The magazine and all ammunitions were quickly retrieved by other police officers at the scene. Knowing that his pistol and ammunitions were in safe custody of another officer of the VIP PU, COMEE 1 continued with his protection escort of the CE for the remaining part of the visit.

33. Shortly after the incident, COM called the Complaint Against Police Office (CAPO) to lodge a complaint alleging police officers who were on duty at the scene on the material day for 'Unnecessary Use of Authority', 'Neglect of Duty' and 'Misconduct'. His complaint details are as follows:

- Allegation (a) - 'Unnecessary Use of Authority'
COMEE 1 had unnecessarily abused his authority by dashing out through squat-run-jump actions to intercept the protestors at the scene because PTU officers of Police Region B were already there to guard against the protestors.
- Allegation (b) - 'Neglect of Duty'
After COM watched the TV news programme on the incident, he then realized that the pistol-like object he observed at the scene was a genuine pistol. COM was scared and threatened, because he alleged that the muzzle had pointed at him and the public at that time. COM therefore complained against COMEE 1 for failing to

secure his personal pistol and as a result, it dropped onto the ground. COM also opined that the squat-run-jump actions made by COMEE 1 to intercept the protestors might be a reason attributing to the incident.

- Allegation (c) - 'Neglect of Duty'

COM alleged that he and another protestor who belonged to the same political group as COM's (Mr C) had told COMEE 2 that they wanted to submit petition letters to the CE at the scene on the material day, and requested him to make the necessary arrangement. COMEE 2 had allegedly agreed to that. However, he eventually failed to make arrangement for COM and his group as promised.

- Allegation (d) - 'Misconduct'

COM saw COMEE 3 use his right elbow to bump against the left breast of a female protestor at the ad-hoc DPAA on the material day.

34. CAPO completed the investigation on the instant case in mid June 2007, submitted an Investigation Report and the related CAPO file to the IPCC for scrutiny.

35. In relation to allegation (a) - 'Unnecessary Use of Authority', COM confirmed in his statement that although he was one of the protestors at the scene, he remained in the ad-hoc DPAA throughout and observed the incident from there. COM did not join those protestors who had dashed out of the mills barriers and later intercepted by COMEE 1 and other police officers at the scene. It was on this basis that CAPO considered COM not an aggrieved party, and categorized this allegation as an 'Non-Reportable Complaint (NRC)'.

36. In relation to allegation (d) - 'Misconduct', COM stated in his statement that although he had discussed with the alleged female victim about COMEE 3's misconduct, she had neither responded to COM nor made any complaints. COM had no knowledge of the alleged female victim, nor could he provide any contact details of her. COM also had no witness to support his claim. It was on this basis that CAPO considered COM not an aggrieved party and categorized this allegation as an 'NRC'. CAPO would inform COM of the investigation result of these two 'NRCs' directly.

37. As regards the two 'Reportable Complaints', i.e. two counts of 'Neglect of Duty' allegations [allegations (b) and (c)], CAPO's investigation results were summarized as follows:

- Allegation (b) 'Neglect of Duty':

COM complained against COMEE 1 for failing to secure his personal pistol and as a result, it dropped onto the ground. COM also opined that the squat-run-jump actions taken by COMEE 1 to intercept the protestors might be a reason attributing to the incident.

COMEE 1 denied the allegation, and stated that he wore his personal 'Glock' semi-automatic pistol (the pistol) strictly in accordance with the VIP PU's internal guidelines. COMEE 1 stated that he has been a qualified Firearm Instructor since 1988, and was conversant with procedures and guidelines on the handling of firearms and weapons. COMEE 1 added that he was trained on the proper use of the pistol and holster. COMEE 1 further stated that when he dashed forward to intercept the protestors, a scuffle ensued between the Police and the protestors, and COMEE 1 felt being pushed by the people around. After 10 odd seconds, he noticed that his pistol which was placed in the holster secured on his right waist, dropped onto the ground, and was kicked around by the people in the scuffle. Shortly afterwards, he saw the pistol lying on the pavement, with the muzzle of the pistol pointing in the direction of the CE's vehicle. At the same time, COMEE 1 saw police officers quickly picked up his pistol, ammunition and accessories and kept in their custody. He said he did not know how his pistol dropped onto the ground, but considered that it was just an accident.

CAPO's investigation revealed that the holster and belt worn by COMEE 1 were checked shortly after the incident by officers of the VIP PU, and was confirmed to be in good serviceable condition. Besides, CAPO could neither locate any eyewitness (police or civilian alike including COM himself), nor gather any corroborative evidence to prove when and how COMEE 1's pistol dislodged from the holster and dropped onto the ground on the material day.

CAPO also consulted the Superintendent of the VIP PU (SP VIP PU) who was COMEE 1's supervisory officer and was at the scene on the material day. SP VIP PU commented that in order to draw the pistol from the holster under normal circumstances, a police officer has to hold the butt of the pistol and apply a straight upward lifting force. Special training was required before an officer could learn and master the skill. He added that if an officer was exposed to an unusual scenario, the possibility of the pistol dislodging from the holster could not be ruled out as long as a strong enough straight upward lifting force was applied on the pistol. CAPO further examined the relevant TV news footage, newspaper clippings and photographs which all failed to capture

the very moment COMEE 1's pistol fell out from the holster. Instead, they only revealed that the pistol was seen lying on the ground, and was being kicked around by people during the scuffle. There was also no sign to show that COMEE 1's pistol fell out from his holster as soon as he intercepted the protestors. Besides, the built-in safety mechanism of COMEE 1's pistol had prevented any unintentional discharge that might jeopardize the safety of the public in case it fell onto the ground.

Taking all the above into consideration, CAPO commented that:

- the situation at the material time was chaotic, and believed that COMEE 1 was pushed by other people on his waist during the scuffle;
 - there was no concrete and compelling evidence to suggest that COMEE 1 or any person had deliberately drawn the pistol from the holster during the scuffle;
 - the possibility of the pistol dislodging from the holster could not be ruled out as long as there was a strong enough external straight upward lifting force applied on COMEE 1's pistol during the chaos, rendering it to fall out from the holster and onto the ground accidentally;
 - after COMEE 1's pistol dropped onto the ground and being kicked around by people, the possibility of the muzzle pointing at COM at any one stage could not be ruled out. That said, the pistol was finally seen lying on the pavement with its muzzle pointing in the direction of the CE's vehicle with no accidental discharge of firearm throughout; and
 - all in all, this incident was a pure accident, and there was insufficient evidence to prove that COMEE 1 was negligent in wearing his pistol. In the absence of independent witness or corroborative evidence to support or disprove COM's claim, this allegation was classified as 'Unsubstantiated'.
- Allegation (c) 'Neglect of Duty':

COM alleged COMEE 2 for failing to eventually make arrangement for COM and his political group to submit petition letters to the CE at the scene on the material day as promised.

COMEE 2 denied the allegation, and stated that he did not receive any request from COM or his group members about their wish to present petition letters to the CE on the material day. He only

received such a request from representatives of the two other political groups. All other police officers at the scene also stated that they did not receive such a request from any persons or political groups. COM clarified in his statement that he only overheard Mr C making a verbal request to COMEE 2 about the wish to present petition letters to the CE, and that he himself had not made such a request. Although COM's version was supported by COM's witness cum political group member (Mr C), CAPO did not consider Mr C as a totally independent witness, because they belonged to the same political group, and Mr C might have a vested interest (as a member of COM's political group and a protestor at the scene) in the case. In the absence of independent evidence to support or disprove either side's version, this allegation was classified as 'Unsubstantiated'.

38. After careful consideration of CAPO's rationale to classify allegations (a) and (d) as 'NRCs', the IPCC had no comment on CAPO's categorization of these two allegations as 'NRC'.

39. After deliberation, the IPCC had a number of observations over the two 'Reportable Complaints' with details as follows:

Allegation (b) 'Neglect of Duty' against COMEE 1

- The IPCC requested CAPO to advise if the Headquarters or the VIP PU of the Police Force had issued any specific guidelines/procedures guiding and governing the safekeeping of firearms by officers, the actions to be taken by officers in case of gun-dropping whilst on duty, and in particular any specific instructions in dealing with sudden situations similar to the one occurred on the material day.
- The IPCC considered that even if COMEE 1 was truly pushed by people on the waist during the scuffle, it would not be unreasonable to assume that the force exerted on COMEE 1's waist would come from all directions as opposed to a straight upward lifting force which seemed to be the required direction and force for dislodging the pistol. That being the case, the IPCC asked CAPO to elaborate further on its rationale in reaching the aforesaid conclusion, having regard to the detailed account by SP VIP PU concerning the nature, functions and specifics of the firearm equipment in the Report, in particular his comment about the need for a strong enough straight upward lifting force being applied on the pistol making it dislodged from the holster.
- Arising from this incident, the IPCC requested CAPO to advise if the Formation(s) concerned have conducted a review on the

subject matter, and devised further precautionary measures to avoid recurrence of similar incidents in future.

Allegation (c) 'Neglect of Duty' against COMEE 2

- COMEE 2 asserted in his statement that COMEE 1 had informed him that the CE's Election Office had arranged the CE to receive petition letters from various protest groups at the ad-hoc DPAA on the material day, and hence COMEE 2 did not intervene further in dealing with requests to present petition letters to the CE. However, it was not clear to the Council as to whether this information was passed on to the protest groups by any police officers to avoid complaints of requests not being attended to. CAPO was requested to clarify the position.
- The IPCC noted that according to COMEE 2, he had an encounter with a protestor who was a member of COM's political group and a serving District Councilor (Mr D) on the material day during which apparently Mr D did not mention or raise any request to COMEE 2 for presenting petition letters to the CE at the ad-hoc DPAA. The Council requested CAPO to make enquiry with Mr D to obtain his version of the encounter.

40. Details of CAPO's replies were as follows:

Allegation (b) 'Neglect of Duty' against COMEE 1

- CAPO confirmed that there were VIP PU Standing Orders governing the proficiency qualification for officers issued with the pistol, the wearing of the pistol and the holster, the safekeeping and proper maintenance of the pistol and its accessories/equipment. CAPO further informed that there were no specific Force or VIP PU guidelines or procedures governing the actions to be taken by officers in gun dropping situations.
- As regards how COMEE 1's pistol was accidentally dislodged from the holster, CAPO stated that the TV news footage showed that COMEE 1 was seen tangled up with a group of people and was pushed from different directions during the scuffle. CAPO considered it reasonable to surmise that an external straight upward lifting force could have been accidentally applied or repeatedly applied on the pistol by other people during the scuffle, causing the pistol to have been accidentally dislodged from the holster.
- Shortly after the incident, COMEE 1's holster was personally inspected by an experienced qualified firearms and pistol

instructor of the VIP PU in the same afternoon. The pistol instructor stated that he had repeatedly conducted the draw-and-return test on the pistol, and confirmed that the holster was in good serviceable condition and capable of retaining the pistol firmly. In addition, VIP PU had conducted some tests to re-assess the holster's performance, and it was found to be safe and secure in all tests conducted under normal circumstances. That said, it was possible for the pistol to be accidentally dislodged from the holster by an external force under very extraordinary and unusual situations like the instant case. In light of the foregoing, CAPO maintained the view that the gun-dropping incident was purely an accident.

- CAPO stated that the Senior Force Armourer had conducted an inspection of COMEE 1's pistol and the full set of magazine, and confirmed that COMEE 1's pistol had been well maintained at a satisfactory level, and was in good serviceable condition without any damage. The Senior Force Armourer stated that COMEE 1's pistol was proven to be in compliance with recognized performance requirements and test methods for pistols used by law enforcement officers established by related international organization, one of which being the 'Drop Safety' test. In sum, the Senior Force Armourer said that the pistol was incapable of being discharged when it was accidentally dropped onto the ground unless there was a manual deliberate trigger pull fully to the rear.
- Arising from the incident, CAPO stated that the VIP PU has conducted a review to identify areas for improvement. Procurement process is underway to replace the existing holster with a latest model. The model under acquisition provides a locking mechanism to engage the pistol trigger guard when the pistol is holstered, and will not let go until the lock has been released. In addition, protective security training to officers performing personal security duties to the CE will continue to be held on a regular basis. The pistol will continue to be checked by the Senior Force Armourer on a yearly basis, while supervisory officers will enhance inspection on the holster and equipment issued to officers under their command.

Allegation (c) 'Neglect of Duty' against COMEE 2

- In response to the Council's query, CAPO took a second statement from COMEE 1 who clarified that he was informed by the CE's Election Office of the CE's intention to receive petition letters from protestors in front of the ad-hoc DPAA at the scene about 5 or 6 minutes prior to the arrival of the CE at the scene on the

material day. COMEE 1 then verbally informed COMEE 2 of the arrangement to facilitate the latter's appropriate deployment of duties about 2 to 3 minutes before the arrival of the CE. COMEE 1 stated that he knew little about the arrangement for receiving petition letters because the CE's Election Office only gave him a very brief notice. He also did not know if COMEE 2 had passed the information to the protestors, and did not engage himself further in other duties such as communicating with the protestors because his primary responsibility was to ensure the personal safety of the CE on the material day.

- CAPO also took a second statement from COMEE 2 who stated that he was informed by COMEE 1 that the CE's Election Office had made arrangement for the CE to receive petition letters from protestors shortly before the arrival of the CE at the scene on the material day. However, COMEE 1 did not go into the details of the arrangement. COMEE 2 decided not to intervene with the decision of the CE's Election Office because it had already made the necessary arrangement. At this juncture, COMEE 2 observed that some protestors of one protest group at the lay-by area of the ad-hoc DPAA suddenly became rowdy. He perceived the protestors might cause confusion at the scene and hinder the petition arrangement. COMEE 2 thus immediately deployed 3 – 4 PTU officers in the vicinity to the area close to those rowdy protestors as a precautionary measure with a view to containing the situation.
- After the CE had alighted from his vehicle at the lay-by area, some protestors, including a female protestor at the other end of the ad-hoc DPAA, suddenly broke through the police cordon and attempted to run towards the direction of the CE. A scuffle between the Police and the protestors then ensued. At this juncture, COMEE 2 was staying at the other end of the ad-hoc DPAA to oversee the operation. The scuffle lasted for about 1 minute before order was restored. As a result, the CE did not receive any petition letters from the protest groups, and proceeded directly to the meeting venue. COMEE 2 later learned that COMEE 1 had dropped his pistol onto the ground during the scuffle, but he did not witness the incident. COMEE 2 remarked that given the series of event above took place in a nick of time (about 2 – 3 minutes), and coupled with the chaotic situation caused by the rowdy protestors at the ad-hoc DPAA, his priority at that time was to contain the situation and restore order the soonest. COMEE 2 added that the circumstances did not practically allow him to communicate with the protest groups on the petition arrangement. Nevertheless, he did make an effort to facilitate the

petition arrangement by deploying officers to monitor and control those rowdy protestors. COMEE 2 stated that he had not received any requests for presenting petition letters from the protestors of COM's political group, or promised COM or his group to make such an arrangement on the material day. COMEE 2 remarked that he would certainly relate any such request to the responsible persons or officers for necessary arrangements if he was in receipt of them. Besides, he had not received any complaints from any persons on the material day.

- CAPO took a statement from Mr D (a protestor at the scene who is a member of COM's political group and a serving District Councilor). Mr D stated that COM, Mr C (COM's witness and a member of COM's political group), himself and several other senior citizens had arrived at the scene in the morning of the material day to stage a protest at the ad-hoc DPAA. At that time, a Chief Inspector of Police (later identified by CAPO as COMEE 2) came up to Mr D and requested him and other protestors to stage their protest at the established DPAA set up on the pavement at the scene. Mr D rejected COMEE 2's request, insisted to remain at the ah-hoc DPAA and succeeded eventually. Mr D stated that he was the only person who had negotiated with COMEE 2 at the material time, while Mr C and COM did not partake in the process.
- Mr D stated that he had already written to the CE's Election Office earlier on notifying the latter of his intention to present petition letters to the CE during his visit on the material day. Mr D recalled that he was approached by a male staff of the CE's Election Office at the scene who told him that arrangement would be made for the CE to receive petition letters from protestors but he did not go into the details. Mr D stated that he had briefly mentioned his intention to present petition letters to the CE to COMEE 2 during their negotiation at the scene, and COMEE 2 only acknowledged his request without telling him further details. Since Mr D knew that the CE's Election Office had made the arrangement, he did not pursue the matter further with COMEE 2. Mr D confirmed that a staff of the CE's Election Office had finally received his petition letter at the scene after the incident. Mr D stated that he did not know COM had lodged a complaint against the Police until CAPO contacted him for taking a witness statement. He did not have any complaint against the Police.
- On the basis of available information gathered so far, CAPO observed the conflicting versions of the incident between COM, COMEE 2, Mr C and Mr D. While Mr D claimed that he alone had negotiated with COMEE 2 at the scene, COM and Mr C stated

the otherwise. COMEE 2 flatly denied the allegation, stating that he had only met with Mr D (but not COM and Mr C) at the scene who disagreed on the location of the established DPAA. COMEE 2 added that he had received requests for presenting petition letters to the CE from the two other political groups but not COM's political group at the scene. All other police officers at the scene also stated that they did not receive any requests from any persons concerning presentation of petition letters to the CE on the material day. CAPO highlighted that although the versions of Mr C and Mr D tended to support COM's to a certain extent, Mr C and Mr D could not be regarded as totally independent witness due to their same-party membership with COM, and the fact that they might have a vested interest in the instant case. Judging from the available evidence, and in the absence of independent witness or corroborative evidence to support or disprove either side's version, CAPO considered that the classification for allegation (c) should remain as 'Unsubstantiated'. Notwithstanding this, CAPO held the view that to minimize possible inconvenience to and misunderstanding by protestors, COMEE 2 could have made alternative arrangement to inform the protest groups of the CE's intention to receive petition letters when he was otherwise fully engaged in the crowd management operation. In this connection, COMEE 2 would be given verbal advice to this effect.

- As for Police District A responsible for policing the crowd management operation concerned, an after-action review was conducted and areas of improvement identified included the deployment of the District's Police Community Relations Officer to facilitate better communication with protestors, the strategic set up of DPAA and the effective deployment of officers to manage different protest groups in future operations.

41. The IPCC had further observations on CAPO's replies the details of which were as follows:

Allegation (b) 'Neglect of Duty' against COMEE 1

- Although CAPO advised that there were no specific Force or VIP PU guidelines or procedures governing the actions to be taken by officers in contingency situations such as the gun-dropping incident, given the occurrence of the instant incident, the IPCC saw it opportune and appropriate for the Force to consider drawing up guidelines to cater for such type of contingency which caused public concern, and requested CAPO to look into the issue and reply in due course.

- The TV news footage provided by CAPO revealed that police officers were seen rendering reinforcement to COMEE 1 during the scuffle. In a few consecutive shots, bodily contacts were observed between them. In this regard, the IPCC requested CAPO to identify the officers concerned who had bodily contacts with COMEE 1 at the material time, and conduct further enquiry with them with a view to recount how they had rendered reinforcement to COMEE 1, and whether they had observed/felt anything unusual during their contact.
- The IPCC considered that there did not exist a logical cause-and-effect relationship vis-à-vis CAPO's investigation result of allegation (b), in particular the absence of any concrete evidence to prove that someone had intentionally attempted to draw the pistol from COMEE 1's holster during the scuffle, and CAPO's deduction of the possible cause of the incident, i.e. a strong enough external upward lifting force had applied or repeatedly applied on COMEE 1's pistol, causing it to have been accidentally dislodged from the holster. Although the IPCC saw no evidence to dispute the conclusion that the incident was an accident, CAPO needed to further examine and account for the parties involved and the factors contributing to the accident.
- The IPCC observed that, apart from alleging COMEE 1 for his failure to secure his pistol in the holster properly thereby resulting in the dislodge, COM was also attributing the incident to a series of squat-and-jump actions allegedly made by COMEE 1 at the scene in order to intercept the protestors. CAPO was requested to comment on COM's view above.

42. CAPO's replies to the IPCC's queries were as follows:

- In relation to the IPCC's suggestion of drawing up guidelines to cater for contingency situations such as the gun-dropping incident, CAPO replied that the subject matter would be referred to the relevant policy holder of the Police Force for further examination, and CAPO would keep the IPCC posted of development.
- On the basis of the visual evidence unveiled from the TV news footage, CAPO had successfully identified two male plainclothes police officers [Police Constables (PC) E and F, both were attached to the VIP PU at the material time], interviewed and took a statement from them at the initial stage of the complaint investigation. It was observed from the TV news footage that at the scuffle, PC E was standing at the right rear side of COMEE 1, whereas PC F was at the left side of PC E, and both of them had

rendered reinforcement to COMEE 1 during the scuffle. After reviewing their statements given to CAPO in the complaint investigation, CAPO pointed out that PC E denied having any contact with COMEE 1's pistol throughout the incident, whereas PC F was unsure if he had got in touch with COMEE 1's pistol due to the chaotic situation.

- In order to confirm the veracity of the PCs E and Fs' versions, CAPO had carefully reexamined the TV news footage. Nonetheless, given the relevant footage only lasted for a few seconds, CAPO was unable to gather concrete evidence showing that PCs E and F had personally come into contact with COMEE 1's pistol during the scuffle, or the gun-dropping incident might have been attributable to their bodily contact with COMEE 1 whom they rendered reinforcement at the material time.
- In addition, CAPO stated that as revealed from the TV news footage, protestors did not gather in great number when the scuffle ensued, and they mostly stood face-to-face with COMEE 1 who was reinforced by other police officers from behind. However, as the relevant news footage only lasted for a couple of seconds, coupled with the chaotic situation and the ever-changing bodily position and movements of the Police (including COMEE 1) and the protestors, it was difficult, if not impossible for CAPO to ascertain how many people (and who) had actual bodily contacts with COMEE 1 (the area around his waist) at the material time.
- CAPO clarified that the 'straight upward lifting force' was only meant to describe how the pistol dislodged from the holster, rather than the source or direction of the force. CAPO stated that by the design of the holster, provided that the holster was worn properly, and was in a serviceable condition, a pistol could only leave the holster by the application of a 'straight upward lifting force'. In other words, one could not draw the pistol out by pushing it from any directions except in an upward manner. However, as there was no concrete evidence to prove that during the scuffle, someone had intentionally pulled the pistol from COMEE 1's holster, and that COMEE 1 (including his waist) was being pushed from around with external forces coming from almost all directions during the chaos, CAPO, however, could not establish whether this external force leading to the accidental dislodge of COMEE 1's pistol was a 'push' or 'pull' force. CAPO was of the view that a strong upward push from below the butt of the pistol, or a combination of external forces and COMEE 1's continuous bodily movements at the time, could have led to an upward lifting or pushing force, resulting in the accidental dislodge of the pistol from the holster.

- CAPO unveiled no concrete and sufficient evidence from its investigation to prove:
 - ➔ that COMEE 1 had failed to wear his pistol and accessories/equipment according to VIP PU internal guidelines;
 - ➔ that COMEE 1 and other persons had intentionally drawn COMEE 1's pistol from his holster; and
 - ➔ the direction and formation of the upward force,
- On the basis of the relevant TV news footage, CAPO observed that COMEE 1 only dashed forward to intercept the protestors who had pushed apart the mills barriers at one end of the DPAA at the material time. A scuffle then ensued between them and the Police, and COMEE 1 was reinforced by police officers from behind. It was observed from the TV news footage that COMEE 1 did not perform the squat-run-jump actions as alleged by COM.
- Taking all of the above into account, CAPO concluded that the incident was an accident. Besides, in the absence of independent evidence to support COM's version, CAPO considered it appropriate to classify allegation (b) 'Neglect of Duty' as 'Unsubstantiated'.

43. After further discussions, the IPCC agreed to endorse the investigation finding with two recommendations for the Police's consideration.

44. Dr LO Wing-lok commented that the case could be perceived in a way that there were several persons dashing forward with a view to approaching a VIP and officers providing protection to that VIP dashed forward to intercept those persons. During the interception, one of the police officers could not control his pistol resulting in the dropping of the pistol onto the ground. The officer concerned was only aware that his pistol had dropped onto the ground ten seconds later. He trusted that the Police would not disagree with such comment. He opined that the situation would become dangerous when a police officer was unable to control his pistol and only became aware of that ten seconds later. If the two persons who had dashed forward were not real protestors but persons pretending to be protestors with other motive, they could seize the pistol to do something lethal. He wished to know from the information gathered if the officer who dropped the pistol had noticed that the persons dashing forward would cause any threat to his pistol and if he had reported after the incident that he felt the force that caused the pistol to drop did come from the front.

45. CSP C&IIB responded by saying that the Police did not agree with the comment that the officer concerned could not control his pistol and the possibility that the pistol would be picked up by other people. The actual fact was that soon after the pistol had dropped onto the ground another officer of VIP Protection Unit had already quickly retrieved it from the ground. The Police would not respond to the hypothetical situation put forth by Dr LO. From the facts elicited from the investigation, the officer concerned had not been unable to control his pistol and indeed the pistol was retrieved by another officer in the first instance.

46. Dr LO Wing-lok went on to comment that if the officer was able to control his pistol, how could the pistol drop onto the ground. He queried if that meant the officer threw the pistol on the ground deliberately.

47. CSP C&IIB replied that it was not in dispute that the pistol had dropped onto the ground but the Police only disagreed with the comment that the officer concerned could not control his pistol.

48. Dr LO Wing-lok further queried that it was a police point of view to say the pistol was in control as there was a group of officers to take care of a pistol when one officer dropped his pistol, another officer could retrieve it for him. The situation he just mentioned was that in providing protection to a VIP while some persons with uncertain motive dashed forward from the front, it was fortunate that the pistol was retrieved on that occasion. However, if the same happened again in the future, other persons might seize the chance to pick up the pistol and the lapse of 10 seconds could allow something vicious to happen. Therefore, he was of the view that the Police should critically review the incident as there were still ambiguities in the report with nothing concrete to show the direction of the force that caused the dropping. If that was the whole truth, it caused grave concern to people as the direction of the force causing the dropping was not known. There was a possibility as what he had said that someone pulled the pistol from the front to do vicious things. Despite the fact that there was no evidence to show any negligence or non-compliance with guidelines on the part of the concerned officer, he found the incident very serious and it was worthwhile for the Police to seriously examine the issue.

49. CSP C&IIB clarified that CAPO had already interviewed all witnesses believed to be able to provide useful information with a view to establishing the forces that caused the dropping of the pistol but that could not be ascertained after investigation. Therefore, he was in disagreement with Dr LO's comment that the investigation report was ambiguous. Indeed, the investigation report was unambiguous but just that the evidence elicited after the investigation failed to show what forces had actually caused the dropping of the pistol. The established facts and the evidence elicited from the investigation should be respected.

50. The Chairman noted that the incident happened on 9 February 2007 and CAPO first submitted the investigation report on 18 June 2007. Following that, the Council indicated on 19 July 2007 its intention to discuss the case in the Joint Meeting. However, only several statements were taken when the report was first submitted. After it was indicated that the case would be discussed in the Joint Meeting, a series of action were taken, such as the statement of the armourer, which in any event should have been taken before the report was first submitted. He wished to know why that was not done until the Council had indicated its intention to discuss the case.

51. CSP C&IIB responded by saying that a total of 17 statements had already been taken before 19 July 2007 and some more statements were taken after that day in response to the Council's requests. Regarding the armourer's statement, he in fact had conducted examination on the pistol in question and had compiled an examination report before that day. The reason for his statement being taken after 19 July 2007 was because it was only a conversion from his report to a statement format. He reiterated that the investigation had been completed when the report was first submitted and the further investigation after 19 July 2007 was taken in response to the Council's queries.

52. Mrs Helena YUEN CHAN Suk-yee raised her concern about the retention tension of the holster which, according to the armourer's report, could be adjusted to the convenience of the officer with no objective standard as to its optimal level. She wondered how an objective standard could be met and how similar incident could be prevented. She noted that the Police would replace the holster in question and she wished to know if any improvement could be made before the holster was replaced.

53. CSP C&IIB replied that just as what was mentioned in the report, the holster was designed to allow users to adjust the retention tension to suit individual user's personal need and only the user himself could know if the retention tension was adjusted to suit him best. This issue had been taken into consideration during the review. Before the existing holster was replaced, officers would be reminded to adjust their holsters to securely hold their pistols in position. Like the general public and the Council, the Police was very concerned about the incident which had never happened before and the Police would take all possible measures to make sure that similar incident would not happen again.

54. The Chairman informed the meeting that the Council had two recommendations in respect of that case. The first recommendation was that officers should be reminded that when adjusting the retention tension of their holsters, they should not only consider their own convenience in the use of firearms but also had to consider the public safety as evidenced by the case. The adjustment of the retention tension should strike a balance between these two factors. The second recommendation related to the

cause of the incident which arose from the improper arrangement to allow protestors to present their petitions, resulting in their being unable to properly present their petitions to the CE. It was recommended that proper and reasonable pre-arrangement should be made between the Police and the public in future to allow the public to present their petitions to the persons in authority.

55. CSP C&IIB replied that the Police accepted the two recommendations and would bring the matters to the attention of the related policy wings for appropriate action.

V

ANY OTHER BUSINESS AND CONCLUSION OF THE MEETING

56. There being no other business, the open part of the meeting concluded at 1800 hours. The next meeting will be held on 22 November 2007.

(CHEUNG Kin-kwong)
Joint Secretary
Complaints and Internal
Investigations Branch

(Brandon CHAU)
Joint Secretary
Independent Police
Complaints Council