Hong Kong Bar Association: Establishing a Commission of Inquiry into the Social Unrest in Hong Kong (Lazy Pack)

14 January 2020
The HKBA’s stance

The HKBA has proposed and remains of the view that the Government should establish an independent Commission of Inquiry ("Col") to address various issues of social concerns arising from the Unrest.

The purposes which may be served by a Col far outweigh any perceived drawbacks.
Purposes of establishing a Col

1. Provides a full and fair account of what truly happened
2. Identifies causes of events
3. Identifies wrongdoing of individuals + organisations
4. Sets out recommendations to prevent future recurrence
5. Restores public confidence in the Government + our institutions
6. Provides an opportunity for reconciliation and resolution
Common grounds for opposing a Col

1. The mechanisms under CAPO + IPCC are sufficient
2. There will be established a Review Committee to examine the underlying reasons for the Unrest
3. The scope of investigation would be too wide and complex
4. It is not the right time to establish a Col when the Unrest is still continuing
5. Bias against the Police + negative impact on the Government + the Police
Common objection 1: The mechanisms under CAPO + IPCC are sufficient — HKBA’s response

The IPCC has institutional inadequacies

- It has no standalone investigative power
- The Study it has launched may be *ultra vires*
- It cannot compel a person to give evidence or produce a document
- It cannot protect a witness giving evidence from having that used against him in criminal proceedings
- It does not traditionally hold open hearings
- It does not investigate non-Police matters

Common objection 2: There will be established a Review Committee to examine the underlying reasons for the Unrest — HKBA’s response

- It does not have any of the legal powers of a Col
- The CE says it will not address the issue of culpability; thus it cannot realistically bring closure between the public and the Government (including the Police)
Common objection 3:
The scope of investigation would be too wide and complex + take too long - HKBA’s response

- If a Col had been set up earlier this problem would not have arisen
- Given the importance of justice + the unprecedented nature of what has happened, this is not a legitimate ground
- Many possible measures to alleviate e.g. set up sub-committees to deal with specific issues; active case management by Chairman; issue periodic reports
- A Col is usually headed by an experienced individual who can manage a wide scope of inquiry

Common objection 4:
Not the right time for a Col when the Unrest is still continuing - HKBA’s response

1. But the IPCC has launched a study + the Government is also setting up a Review Committee
2. The Col can begin its investigation into specific events first + issue interim reports
3. CE can expand the terms of reference if necessary e.g. as happened with the Col into the Shatin-Central Link
4. Overseas experience shows establishing a Col at an early stage can help end a conflict
Common objection 5: Bias against the Police - HKBA’s response

Many protesters have been or are being dealt with under the existing criminal justice system, yet NO Police officer has been seen to have been dealt with by any Police investigation or public prosecution. There is nothing more corrosive to the rule of law than for state agents not be held to account for misconduct.

Common objection 6: Negative impact on Government + Police - HKBA’s response

Accountability is no less important than public order

The absence of a Col does not preclude criminal liability of members of the Government + the Police

A Col could exonerate the Police + boost morale

If Police is concerned that their tactics will be exposed, they can apply for exemption from disclosure which would be ruled upon by the Col
Proposed Terms of Reference

“To inquire into the Government’s handling of the proposal to pass the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 since March 2019 and the circumstances leading to the ensuing social unrest in Hong Kong from June to December 2019, having regard to the events set out in the Schedule I and the issues set out in Schedule II and to give recommendations to diffuse social tension involved in the Unrest.”
Schedule 1: Events for Inquiry

12 Jun 2019
- e.g. outside Legco Complex + CITIC Tower

1 Jul 2019
- e.g. in Legco Complex

14 Jul 2019
- e.g. in New Town Plaza

21 Jul 2019
- e.g. Yuen Long gang attack + Sai Wan Ho

5 Aug 2019
- e.g. clashes all over Hong Kong

11 Aug 2019
- e.g. in Tai Koo MTR Station

13 Aug 2019
- e.g. at the Airport

31 Aug 2019
- e.g. in Prince Edward MTR Station

29 Sept 2019
- e.g. clashes all over Hong Kong

1 Oct 2019
- e.g. shooting in Tsuen Wan

4–6 Oct 2019
- e.g. clashes all over Hong Kong

20 Oct 2019
- e.g. at Kowloon Mosque.

2–8 Nov 2019
- e.g. death of Chow Tsz-lok

11–15 Nov 2019
- e.g. siege of Chinese University + shooting in Sai Wan Ho

17–29 Nov 2019
- e.g. siege of Polytechnic University + stampede in Yau Ma Tei
Schedule 2: Events for Inquiry

- Use of force by the Police + by protestors
- Problems with identification e.g. over identification cards + undercover officers
- Problems with arrests e.g. arresting bystanders + not arresting Police officers
- Treatment of arrested persons
- Relationship between Police + secondary actors e.g. journalists + medical staff
- Response of the Government, Executive Council + Police to events
- Problems with statutes e.g. Public Order Ordinance + Emergency Regulations Ordinance
- Health issues from use of weapons
- Political neutrality of civil servants
- Sources of funding for protestors
**Proposed composition of the Col**

3, 5 or 7 members

Chaired by a retired Judge, or sitting/retired Non-Permanent Judge, of the Court of Final Appeal

The remaining members may consist of:

- A medical doctor;
- A sociologist;
- Either an active or retired Police officer or an individual with experience on policing practices and procedures;
- Either an active protestor or an individual with experience in civil activism; or
- A lay member chosen from the pool of potential Jurors

**Proposed criteria for the selection of commissioners**

**The needs of the Col**

- Character of the candidate, including his integrity, independence, commitment to the rule of law, intelligence, capacity for hard work + ability to work with others

- Merit of the candidate, including his qualifications, skills, work + life experience, contributions to the community and knowledge of the Unrest

- Diversification in terms of gender, age, education, work, social stratum + residential area

**Public confidence in the membership is paramount**
Multiple surveys over the past 6 months indicate over \( \frac{2}{3} \) of the Hong Kong public support a Col.

In fact, in one survey, 87.6% of interviewees did so.*

*有關「逃犯條例修訂草案」意見調查調查結果（第五輪）