COVER STORY
主題文章

都市固體廢物收費

環境保護署

減廢回收的「火車頭」

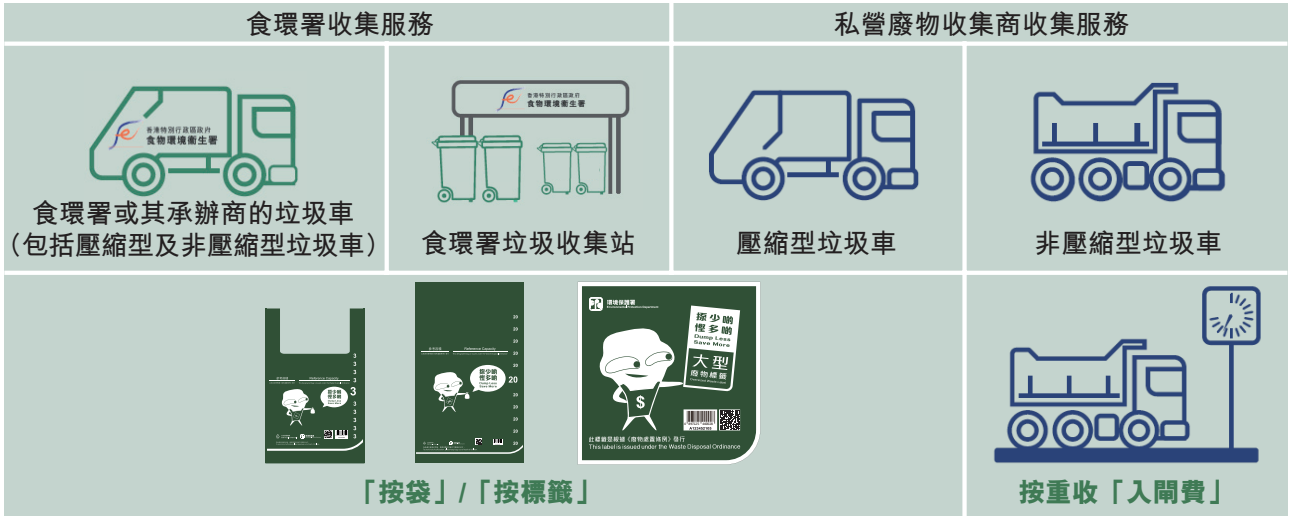
香港作為一個國際都會，工商業活動頻繁，居民的物質生活亦較豐足。然而，經濟發展和過度消耗也製造了大量都市固體廢物。在過去30年間，本港的都市固體廢物總量累計增長52%，遠超同期人口增長的31%。此外，過去部分市民可能誤以為丟棄垃圾沒有成本，未能意識到過度消費、濫丟亂棄的壞習慣會損耗地球資源，為環境帶來沉重負擔。因此，推動市民大眾共同積極進行減廢和回收的工作十分重要。

都市固體廢物收費（下稱「垃圾收費」）是推動減廢的「火車頭」，亦是《香港資源循環藍圖2035》中，香港應對至2035年廢物管理挑戰的重要策略之一。這項措施旨在推動各界改變產生廢物的行為習慣，達致源頭減廢。垃圾收費建基於「污染者自付」原則，就所有住宅和非住宅場所（包括工商業界）所棄置的垃圾按量收費。換句話說，透過減少產生垃圾，市民便可減省開支，同時節省地球資源，亦有助減少碳排放，為香港達致碳中和出一分力，一舉多得。

政府於2012年進行了有關垃圾收費的公眾諮詢，獲得廣泛支持，並確立引入都市固體廢物按量收費的方向。政府其後按照可持續發展委員會在2014年完成公眾參與過程後提出的建議，制訂了垃圾收費的擬議落實安排。落實垃圾收費的修訂條例草案已於2021年8月26日獲立法會通過。

收費框架

基於「污染者自付」的原則，垃圾收費會按兩種模式徵收，分別為透過購買和使用預繳式指定垃圾袋（指定袋）／指定標籤收費；或按廢物重量徵收「入閘費」。適用的收費模式視乎廢物產生者使用何種廢物收集服務而定。兩種收費模式的圖示可參考圖一。

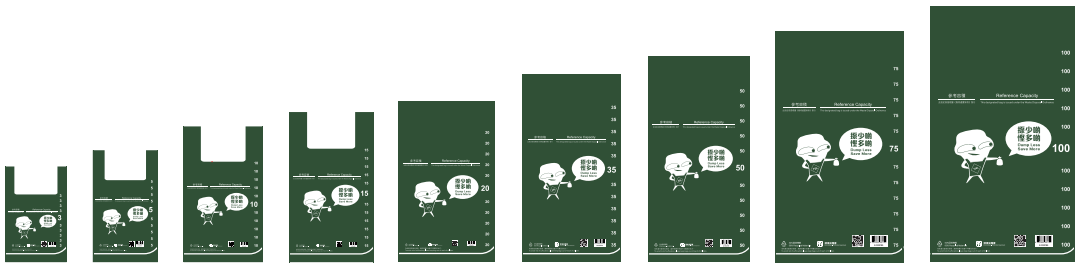


圖一：都市固體廢物收費的收費模式

按指定袋／指定標籤收費

指定袋／指定標籤收費模式適用於大部份住宅樓宇及工商業樓宇、村屋、地舖及機構處所，佔每日棄置於堆填區的都市固體廢物約80%。如該處所正使用下列任何一種廢物收集服務，亦須使用指定袋／指定標籤收費：（一）由食物環境衛生署（食環署）或其承辦商的垃圾車收集；（二）由私營廢物收集商的壓縮型垃圾車收集；及（三）由廢物產生者自行或透過收集廢物的員工送往食環署的垃圾收集站棄置。

指定袋的收費為每公升0.11元，有九種不同大小[1]，容量介乎3公升至100公升，並有背心袋及平口袋兩款不同設計，以配合不同使用者的需要。至於指定標籤，則適用於上文第（一）至（三）項所述的廢物收集服務下無法以指定袋包妥的大型廢物，市民必須在每件大型廢物貼上一個指定標籤後方可棄置。指定標籤每個劃一收費11元。指定袋及指定標籤的式樣可參考圖二及圖三。



3公升	5公升	10公升	15公升	20公升	35公升	50公升	75公升	100公升
$0.3	$0.6	$1.1	$1.7	$2.2	$3.9	$5.5	$8.5	$11

圖二：指定垃圾袋

每個$11

圖三：指定標籤

我們了解到市民現時可能會以日常購物使用的塑膠購物袋或其他塑料袋作為垃圾袋。政府正邀請零售業界積極考慮在垃圾收費實施後，於收銀處售賣指定袋，以取代現時在塑膠購物袋收費計劃下提供的塑膠購物袋，從而達致「一袋兩用」之效，進一步推廣重用減廢。按現時收集的整體意向所得，連鎖零售商普遍支持推行「一袋兩用」。

[1] 包括3公升、5公升、10公升、15公升、20公升、35公升、50公升、75公升及100公升。另有240公升和660公升的指定袋，只會售賣予設有垃圾槽的大廈。

入閘費

由私營廢物收集商使用非壓縮型垃圾車收集和棄置的都市固體廢物，將按廢物重量徵收「入閘費」。按廢物重量徵收「入閘費」的都市固體廢物主要來自工商業處所棄置的大型或形狀不規則的廢物，例如大型金屬物品及木板等，佔每日棄置於堆填區的都市固體廢物約20%。此類廢物將會按棄置於堆填區或廢物轉運站的重量徵收「入閘費」。

為平衡各廢物處置設施的廢物與交通流量，日後私營廢物收集商使用非壓縮型垃圾車運載都市固體廢物至四個市區廢物轉運站和新界西北廢物轉運站棄置的「入閘費」為每公噸395元；而在其他廢物轉運站及堆填區棄置的都市固體廢物的收費為每公噸365元。

政府的準備工作

政府正積極開展相關準備工作，讓政府、不同持份者和市民大眾為落實垃圾收費做好準備，當中包括設立減廢與資源循環辦公室以統籌垃圾收費的籌備、落實、執法和檢討工作等。於配套設備方面，我們正就未來指定袋和指定標籤的供應建立一套完善的生產、存貨及分配系統及一個包含約數千個銷售點的銷售網絡。為協助監察指定袋和指定標籤在零售商的倉存及銷售情況，我們亦正準備一套「智能庫存管理系統」。就收取入閘費方面，我們會開發帳戶登記及收費系統及進一步提升現有廢物處理設施的配套系統。此外，為方便市民舉報與垃圾收費相關的違規情況，將來亦會推出相關的流動應用程式。

與不同持份者和市民大眾的充分溝通及廣泛宣傳是有效實施垃圾收費的重要關鍵。我們正加強與不同持份者聯繫，向他們介紹垃圾收費的最新發展及了解不同業界的關注。我們亦會與業界就不同處所制定實行垃圾收費的良好作業指引，以提供更詳盡的實施建議和指示，並會於垃圾收費正式實施前為相關前線員工舉辦簡介會及培訓，以協助他們為落實垃圾收費作好準備。與此同時，我們將推出廣泛的公眾教育及宣傳活動，讓社會各界加深了解垃圾收費的目標及具體安排。

物業管理業界的支持

物業管理業界於協助順利落實垃圾收費的過程中擔當不可或缺的角色。社會各界應了解垃圾收費是基於按量為本和奉行「污染者自付」原則，處所內個別住戶／業戶有責任承擔指定袋及指定標籤／「入閘費」的費用，不應轉嫁予物管公司和清潔／垃圾收集服務承辦商中的任何一方。而為了更有效於處所內推行垃圾收費及促進處所內的減廢回收工作，物管公司作為當中協調和管理的角色十分重要。

物管公司可於準備期內開展不同的準備工作，包括確定處所正使用何種廢物收集模式，從而了解該處所適用的垃圾收費機制，及早為住戶／業戶提供相關的垃圾收費資訊。於按指定袋／指定標籤的收費模式下，物管公司亦應清楚界定處所內供棄置廢物的公用垃圾收集點（例如後樓梯、垃圾房）的位置，讓住戶／業戶及早了解在這些收集點棄置垃圾時，須使用指定袋包妥或貼上指定標籤。

與清潔服務承辦商的溝通和協作上，雙方應共同就處所的日常垃圾量和垃圾袋用量等進行初步統計，以便日後提供較準確的垃圾量數據供清潔／垃圾收集服務承辦商報價時作參考。雙方亦應事先商討處理違規垃圾和公用地方垃圾的安排，並制定合適方案，向住戶／業戶收回相關垃圾收費開支，以有效落實「污染者自付」原則。

隨著垃圾收費的實施，住戶／業戶將有更大誘因實踐源頭分類廢物和乾淨回收，從而減低垃圾收費的開支。物管公司應及早檢視處所現有的回收設施、回收物料暫存位置及回收商收集回收物料的時間表等，適時與住戶／業戶商討是否有空間優化現行的回收安排，更妥善實踐乾淨回收。

落實垃圾收費

如前文所述，我們正積極為實施垃圾收費作多方面的準備工作。我們會因應各項宣傳教育及持份者參與活動、其他配套計劃的進度以及社會各方面的情況，就具體實施日期徵詢立法會環境事務委員會的意見。我們亦已為垃圾收費設立專題網站https://www.mswcharging.gov.hk/，歡迎讀者到此瀏覽了解更多有關垃圾收費的資訊。

邁向可持續發展　實現碳中和

要為香港達致可持續發展及長遠擺脫對堆填區的過度依賴，有賴政府與全體市民攜手合作。政府除了推行所需計劃和提供各方面支援外，必須得到廣大市民的積極支持和參與，身體力行改變生活行為習慣，實踐源頭減廢及資源循環。只要政府、市民和各界人士齊心合力，我們定必可讓香港循着可持續發展的模式邁進，同時配合力爭2050年前實現碳中和。

Defamation in Property Management

By K. Y. Kwok and Karman Lui of Li, Kwok & Law, Solicitors & Notaries

The law of defamation aims at shielding a person from remarks or expressions made by others that could damage his reputation. In Hong Kong, where people are often living in relatively congested spaces, and when oppressive and aggressive criticisms are spread swiftly and widely through online social media, conflicts may easily arise. For example, one owner may be insulting another owner, members of the owners' committee, management committee, the manager or its staff out of spite or a burst of emotion without realising the legal consequences he may face. Indeed, the number of defamation cases escalating into battles in court has been soaring in recent years. This article aims at discussing the laws of defamation in the context of building management in Hong Kong with a view to assisting property managers in understanding the legal issues involved for better protection of their interests.

A. Overview on Defamation

(i) What is Defamation?

Defamation is the publication of a statement that tends to lower the Plaintiff in the estimation of right-thinking members of society generally[1]. The statement might also be defamatory if it tends to make the Plaintiff to be shunned or avoided[2], or exposes the Plaintiff to public hatred, contempt or ridicule[3].

In court actions for defamation, the Plaintiff has to prove that:

(i) there is a defamatory statement made;

(ii) the defamatory statement refers to the Plaintiff; and

(iii) the defamatory statement is published or conveyed by the Defendant to a third party other than the Plaintiff.

Regardless of whether the Plaintiff intended to defame another person or not, as long as a reasonable man would understand the ordinary and natural meaning of the statement to have such defamatory effect as illustrated above, the statement can be a defamatory statement in law.

(ii) Who can sue and be sued?

Living persons, corporations (including the Incorporated Owners under the Building Management Ordinance), charities, trade unions, etc., can sue for defamation.

The Plaintiff may have a claim against anyone participating in the chain of publication of the defamatory statement, including the author or speaker of the statement and anyone involved in its distribution, even if he is just a mere repeater. Taking newspaper as an example, if one of the articles in the newspaper contains defamation, generally speaking, the author, editor, newsagent, publisher and even distributor may have to bear legal responsibility.

1 *Sim v Stretch* (1936) 52 T.L.R. 669 JL at 671 per Lord Atkin.
2 *Youssoupoff v Metro-Godwyn-Mayer* (1934) 50 T.L.R. 581 CA at 587.
3 *Parmiter v Coupland* (1840) 6 M.&W. 105 at 108 per Parke B.

(iii) Libel and Slander

Libel refers to a defamatory statement published in writing or in permanent forms, such as audio recordings, books, pictures and internet postings, whereas slander means an oral or transient defamatory statement made in a temporary form, such as spoken words, speech, and gestures. Although defamation by word of mouth is generally considered as slander, i.e. in non-permanent form, by virtue of section 22 of the Defamation Ordinance (Cap.21), broadcasting defamatory words, such as in TV or radio programmes, is treated as publication in permanent form and would constitute libel.

A key distinction between libel and slander is that libel is actionable *per se* (i.e. the victim can sue simply because of publication of the libelous remark even if he has failed to prove any actual damage suffered), while slander generally requires proof of actual loss sustained by the Plaintiff subject to certain exceptions, for example, the defamatory statement indicates that the Plaintiff has committed a criminal offence liable to imprisonment or contracted a serious present infectious disease, or the statement suggests unfitness for business calling or women's lack of chastity or adultery.

In all actionable cases where no actual loss is proved to have been suffered, the damages to be awarded in a successful claim will be assessed by the court.

A typical case of actual loss is where the Plaintiff is a commercial entity and can prove actual pecuniary loss like loss of business profits due to damage to its goodwill or reputation. However, such loss may take different forms. In *唐光明 v. the Incorporated Owners of Yue King Building* (2015), the Defendant dismissed the Plaintiff, its management staff. Following the dismissal, a notice was posted in the Ground Floor lift lobby purporting to explain to the owners why the Plaintiff was dismissed. The Plaintiff alleged that the notice contained various remarks which were libelous of him and had caused him "extremely big mental damage" and ultimately resulted in his suffering from depression, a recognized psychiatric illness. This adversely affected his work capacity resulting in his loss of earnings. Indeed, we have seen numerous personal injury cases where a Plaintiff alleged having suffered from psychiatric diseases like depression, post-traumatic stress disorder etc. consequent upon some trauma or physical injuries.

B. Common Defences in Building Management context

(i) Justification

The defence of justification applies if the Defendant can prove that the defamatory statement in question is true or substantially true, provided that where there are words containing two or more distinct charges, the words not proved to be true do not materially injure the Plaintiff's reputation having regard to the truth of the remaining charges[4].

For example, in the case of *Chan Kwing Chiu v.* 陳志球 (2013), the Defendant was the chief estate manager of the management company of the suit estate. He issued two letters in respect of an incident occurring at the management office to the committee members and all owners of the estate. It was mentioned in the first letter that a site manager had been "violently assaulted" ("暴力毆打") by two owners. In the second letter, it was said that the site manager had been "attacked and injured" ("遇襲受傷") in the management office. Also, the chief estate manager spoke to the committee members in a committee meeting that the site manager had been "attacked and injured". The Plaintiffs were the owners involved in the incident. They alleged that those remarks were libelous and sued the Defendant accordingly. The court held that the defence of justification failed in respect

[4] Section 26 of the Defamation Ordinance (Cap.21)

of the words "violently assaulted", as it has not been shown that the site manager had been violently assaulted or beaten up[5]. Yet, the court found that the words "attacked and injured" were justified as the site manager was indeed attacked and injured in the incident.

It should be noted that in that case, the Defendant made a counterclaim for libel on the basis that the Plaintiff had written to the Manager (i.e. the Defendant's employer) alleging that the Defendant had defamed him. Following the dismissal of the Plaintiff's claim, the court held that the Defendant's counterclaim succeeded. If someone wrongly accused another person of committing libel against him when there was none, the accusation itself, if made to a third party, might be libelous.

(ii) Qualified Privilege

When fulfilling a duty or protecting an interest, a person may need to make derogatory statements about another person which is in fact untrue or he cannot prove to be true. In such event, so long as the person making the statement honestly believes what he has said is true, and only makes such statement to persons with a corresponding duty or interest to receive it, he may be privileged from liability for defamation. However, such "privilege" is "qualified" and can only be enjoyed if the statement is made in good faith without any malice and the scope of his statement does not exceed his duty. The "duty" mentioned above to publish and receive the statement is not limited to a legal duty but also includes moral and social duty as viewed by an ordinary and reasonable person.

In the case of *Pac Fung Feather Co Ltd v. the Incorporated Owners of Hoi Luen Industrial Centre and Another* (2021), the Defendant Incorporated Owners posted notices in the common parts of the suit building, which included remarks regarding the Plaintiff's encroachment on common areas, such as "…霸佔公眾地方估計約二千呎侵害公眾利益…" and "…霸佔了兩段面積估計近二千呎的消防通道…". The court held that the Incorporated Owners and its chairperson were under a duty to take all reasonable steps concerning the management of the common parts, including communicating with the owners and occupiers about information and warnings in respect of any safety risks in the building, while the owners and occupiers had a reciprocal interest to receive this information. As such, the Incorporated Owners was entitled to communicate such information by posting notices in the common parts of the building. Accordingly, the defence of qualified privilege was established by the Incorporated Owners and its chairperson when the notices did not exceed the reasonable limit of the privilege. Despite the fact that the statements about the encroachment covering 2,000 square feet were factually wrong, the court was of the view that they were just objectively wrong and careless, which would not be sufficient to constitute malice and defeat the defence.

In the said *Chan Kwing Chiu's* case, although the Defendant could not "justify" the statement that the site manager was "violently assaulted", the court held that the defence of qualified privilege succeeded because the Defendant, as the chief estate manager of the management company, was under a duty to raise the incident with the owners' committee who was the representative of the owners and residents of the estate. In the meantime, the owners' committee also had a duty and interest to be informed of the incident as it was tasked with the management of the estate in liaison with the manager and had the power to deal with matters relating to the management of the common areas of the estate. Further, the management company had decided to resign as manager of the estate as a result of the incident as stated in the second letter, and it had the duty or interest to explain to the residents the reason for its resignation. Accordingly, the court held that the management company had a duty

[5] However, the defence of "qualified privilege" for such remark succeeded and the claim for defamation against the Defendant was dismissed as discussed below.

and interest to issue the two letters and to publish the offending words, while the owners' committee and the residents of the estate had the duty and interest to receive the letters and the offending words. There was no evidence of any malice on the part of the Defendant in publishing the statements in question, depriving him of the defence.

It should be noted that the burden is on the Plaintiff to show malice if so alleged, usually by proving that the maker of the statement knew the statement was untrue or acted with reckless disregard for whether it was true or false. In the case of *Jonathan Lu & Others v. Paul Chan Mo Po & Anor* (2018), the Court of Final Appeal said that knowledge of falsity or recklessness as to the truth or falsity on the part of the person making the defamatory statement at the time when he communicated it would generally be conclusive evidence that he did not make the communication for a proper purpose. In *Tam Heung Man v. the Incorporated Owners of Lung Poon Court (Blocks A-F)* (2019), the Defendant Incorporated Owners published notices relating to the affairs of the estate to all the owners, which contained defamatory words, for example, "Councillor[6] stirring up trouble again" and "disrupting the peace of the estate again". Even though the notices were published on occasions of qualified privilege, as the Incorporated Owners had the duty to give and the owners had the corresponding interest to receive notification of the relevant matters, the court held that in publishing the notices, the Incorporated Owners knew that the statements in the notices were false or they were reckless as to the truth and falsity of the statements. Furthermore, as certain allegations directed against the Plaintiff in the notices, like "laying attack on the Incorporated Owners, causing chaos and destroying the harmony of the estate", were grossly exaggerated and were false and defamatory of the Plaintiff, the Court held that the Defendant's sole or dominant motive was to harm the Plaintiff. As such, the Defendant could not rely on the defence of qualified privilege and was ordered to pay damages to the Plaintiff in the sum of HK$800,000 and legal costs of the court action.

Reckless conduct constituting "malice" in this context may include cases where the Defendant has no reasonable ground to believe in the truth of the statement, but he has taken no step to inquire or verify its truthfulness while seeing fit to publish it. Under such circumstances, he may still be deprived of the benefit of the defence of qualified privilege even if he may not have published the defamatory statement knowing positively that it is false. In the said Jonathan Lu's case, the Court of Final Appeal pointed out that "recklessness" is to be understood in a sense described in an English decision *Horrocks v. Lowe* (1975), which is "without considering or caring whether it be true or not". In a recent Hong Kong case *Yu Sau Ning Homer v. Wong Wan Keung* (2020), the Defendant sent two letters containing defamatory words of the Plaintiff, who was the chairman of the Incorporated Owners of the suit housing estate, to the owners of the building, alleging that the Plaintiff had been engaged in illegal, unscrupulous and unethical conduct during the election and had connived at the power and dominance of the management office, etc.. The court held that the lack of honest belief in the defamatory words or recklessness as to their truth on the part of the Defendants was conclusive evidence that they did not make the communication for a proper purpose and that the Defendants' dominant motive was to harm and injure the Plaintiff. Hence, the defence of qualified privilege was defeated by malice.

6 "Councillor" was understood to refer to the Plaintiff who was a District Councillor at the material time.

(iii) Fair Comment

In addition to defamatory statements of fact, statements of opinion or comments may also attract potential liability. It is in respect of opinion or comment that the defence of fair comment may apply. For the defence to succeed, the statement must be an honest comment or opinion on a matter of public interest and based on facts that are true (or substantially true) or protected by privilege. The comment must indicate the facts on which it is based and be set in such a context so as to put the reader or listener in a position to reach their own view about whether the comment is well-founded.

There may be room for argument as to whether matters relating to the management of a building are matters of public interest, which is one of the requirements for the defence to apply. However, the defence has been raised and considered by the court in various defamation cases concerning building management.

In a recent case *the Incorporated Owners of Allway Gardens v. Lam Yuen Pun* (2022), the Defendant, a District Council member, helped to publish and distribute defamatory statements which raised a suspicion that the Plaintiff Incorporated Owners had internally decided to appoint a management company for the suit housing estate. The court held that most of the "facts" the comments were based on were "groundless rumours, selective evidence, or matters without supportive evidence as to its truth". As a result, any "comments" based on those facts could not be objectively fair or constitute "fair comment".

Again, this defence may also be defeated by proof of the Defendant's malice. In *the Incorporated Owners of Allway Gardens'* case, it was also held that, since the Defendant demonstrated malice by not seeking any communication or explanation from the Plaintiff and depriving the Plaintiff of any opportunities to explain and reply to those concerns, the defence of fair comment would also fail on this ground.

(iv) Statutory Defences

a. Apologies

Section 8(1) of the Apology Ordinance (Cap. 631) provides that evidence of an apology is generally inadmissible in proceedings for determining fault, liability or any other issue in connection with the matter to the prejudice of the person apologizing. However, it should be noted that some apologies will be taken into account by the court in defamation proceedings under certain circumstances despite the Apology Ordinance. For example, under section 3 of the Defamation Ordinance, apologies made to the plaintiff may be admissible for the purpose of mitigating damages. Further, sections 4 and 25 of the Defamation Ordinance provide for the following statutory defences in relation to apologies and offers to amend.

i. Unintentional Defamation

Under section 25, a person who claims that he has innocently published words allegedly defamatory of another person may promptly make an "offer of amends" by filing an affidavit specifying the facts he relied upon to show innocent publication and offer a suitable correction of the complained words with a sufficient apology to the defamed party, and if copies of the publication have been distributed with the maker's knowledge, by taking reasonably practicable steps to notify persons who have received the distributed copies that the words are alleged to be defamatory of the Plaintiff. If such offer is rejected, it will be considered as a defence in any subsequent defamation cases involving the aforementioned publication.

ii. *Libel in Newspaper*

For a libel contained in any newspaper, section 4 of the Defamation Ordinance allows a Defendant to plead a defence that such libel was made without actual malice or gross negligence and he had published an apology in the newspaper before the court action was commenced or as soon afterward as possible, and that he has paid a sufficient amount of money into the court by way of amends.

b. *Building Management Ordinance*

According to section 29A of Building Management Ordinance (Cap 344) ("**BMO**"), members of the Management Committee shall not be personally liable for any acts or default of the corporation or any person acting on its behalf when they perform or exercise such duties or powers in good faith and in a reasonable manner. Thus, members of the management committee who meet the above conditions can enjoy legal protection conferred by section 29A of BMO.

It must be noted that section 29A of BMO is only applicable where a member acts subjectively in good faith and objectively in a reasonable manner in discharge of his duties as a member of the management committee. In the case of *Leung Chi Ching Candy v. Yeung Hon Sing* (2019), where the former chairperson of the management committee of the Incorporated Owners of the suit estate brought an action against the sitting chairperson for defamation based on the publication of six articles containing defamatory statements, the court held that section 29A of BMO is not applicable when the Defendant had not been acting in good faith and in a reasonable manner by attacking the Plaintiff's personality, integrity and character without factual basis. On the other hand, in another case *Woo Tak Yan v. Lam Sik Chuen* (2011), the Plaintiff was a treasurer and member of the management committee of the Incorporated Owners of a housing estate. A document issued in the Incorporated Owners' name and signed by some members of the management committee was displayed in the common area of the estate and distributed to the residents. It contained various allegations against the Plaintiff, like he had failed to pay management fees and placed articles onto the common parts of the estate. The Plaintiff brought an action for libel against the Defendant who was a member of the management committee. The court held that certain words in the document were defamatory of the Plaintiff, as they could convey a defamatory imputation which tends to lower the Plaintiff in the estimation of right-thinking members of the society generally. However, the court also upheld various defences, including the defence under section 29A of BMO, as it took the view that the Defendant was acting in good faith and in a reasonable manner in discharge of his duties as a member of the management committee at the material times. He should thus be absolved from any personal liability arising out of publication of the document.

C. Assessment of Damages

The assessment of damages in a libel case will usually be limited to general damages, which will compensate the Plaintiff for the effects of the defamatory statement. The amount awarded will depend on the Plaintiff's position and standing, the subjective impact of the libel he suffered, the nature of the libel, the gravity of the libel, the prominence of publication, the extent of dissemination, the absence or refusal of any retraction or apology, the Defendant's conduct and any other relevant factors. For instance, in the *Leung Chi Ching Candy's* case

cited above, the court took into account that there are six defamatory articles and their publication spun over a period of nearly 2.5 years. The court also noted that a personal Plaintiff should have a higher award as opposed to a corporate Plaintiff because there can be no injury to a company's feelings. As such, HK$400,000 was awarded to the Plaintiff as general damages.

Aggravated damages can additionally be granted if there is any additional injury caused to the Plaintiff's feelings by malice in the publication or by the Defendant's unreasonable conduct after the publication of the defamatory statements, such as his persistence in an unfounded assertion that the publication was true, his refusal to apologize, or cross-examination during a trial in a way that is wounding or insulting to the Plaintiff.

D. Some Points to Note for Building Managers

First of all, as mentioned above, anyone who participates in publishing or distributing defamatory statements may be liable. Thus, if an owner, occupier or the Incorporated Owners requests the property management office to issue or publish notices on their behalf which contain some libelous contents, the property management office may also be held responsible. In case of doubt, legal advice should be sought rather than acceding to any such request blindly. The manager should also invite the requesting Incorporated Owners, the owner or the occupier concerned to consult legal opinion before publishing any statement which may contain any libelous content. Officers playing a managerial or supervisory role in a property management company should educate and alert their frontline colleagues and reduce the risk concerned. They should also establish a system for seeking prior approval for making any questionable publications.

Secondly, the use of defamatory language should be avoided in both internal and external communications. For publications circulated externally, such as notices to the owners, a manager should make a conscious effort to avoid exaggerating matters or making adverse comments on other persons' conduct or integrity. A property manager should only state objective facts which are capable of being proved if required instead of making any subjective comments or criticism. After all, the manager is primarily responsible for reporting certain facts and incidents concerning management of the housing estate to the owners and occupiers but not commenting on the events or circumstances. It should also be noted that publications circulated internally within the management company, management committees or owners' committees may also constitute libel and may form the basis of a defamation action, in so far as it is communicated to a third party other than the person against whom the libel is committed. The messages may also be leaked out to people other than the target recipients. Communications, in this context, include those conducted through the internet like WhatsApp, Facebook and emails, which can be conveyed easily and swiftly from the targeted recipients to a much larger group of people.

Further, the scope of any sensitive communications should be strictly limited on a need-to-know basis. As discussed above, a defamation claim can only be founded if the remarks which injure the Plaintiff's reputation are communicated to a third party. If it is only restricted to communication between the Plaintiff and the Defendant, there may not be any issue concerning damage to the Plaintiff's reputation. In such event, no claim based on libel will likely succeed however harsh or unfair the comment or statement may be. Therefore, when it is intended to copy any message which may contain some sensitive remarks to a third party, the sender should think twice, and consider seeking legal advice before doing so. If the manager is writing a letter to someone and its contents may be defamatory of the recipient, the letter should be put into a sealed envelope with the name of the recipient and words like "*Private and Confidential; To be opened by the addressee only*" written on such envelope, instead of simply sending it over by fax as other people may well read it. Encrypted emails may also be sent with the code supplied to the recipient separately in appropriate cases.

Litigation is the last resort

Taking a defamation case to court, like other litigation, not only requires substantial money, time and effort, but may also put much pressure on the parties. Even if the Plaintiff wins the lawsuit, in the absence of actual financial loss caused by the defamatory statement, the amount of damages awarded may not even be sufficient to pay the taxed-off legal costs (i.e. the net amount of legal costs the successful Plaintiff has to bear after deducting the cost recovered from the Defendant), resulting in a lose-lose situation for both parties.

While there are certainly considerations of esteems and reputations involved, for example, protecting the goodwill of a reputable property management company against serious and groundless accusations, it is generally speaking not advisable to pursue defamation litigation without good reasons.

This article is purely for readers' reference. If an actual case arises, please seek legal advice.

業主立案法團的職能豈限於屋苑管理

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前言

現時香港法例第344章《建築物管理條例》下，業主立案法團的職能和責任主要是維持大廈屋苑的公用部分和設施良好狀況，保持清潔以供業戶享用；對公用部分進行翻新、改善或裝飾工程；執行公契載明有關大廈的控制、管理、行政事宜的責任；處理就業戶有共同權益的任何其他事務；代業戶行事等等。

過去三年，新冠肺炎肆虐全球，世界各國及地區的居民皆受不同程度的困擾，香港尤甚。所住的大廈、屋苑居民或社區如發現確診個案，大多都被圍封強檢甚至禁足，因而生活起居上班上學均受着不同程度的影響。這正好是一個契機重新檢視業主立案法團或業主委員會在屋苑擔當的角色，藉著疫症所帶來前所未有的種種問題，能否啟發法團在原有管理屋苑公用部分及設施以外發揮更多功能，以配合社會急劇的發展及應對不同的挑戰。

本文擬探討，能否加強法團固有的職能，同時又釋放法團強大潛在的服務效能，服務對象不再只是建築物硬件，而是屋苑內的「左鄰右里」，以人為本，為日常的屋苑管理服務添加一點點人情味。

內地社區居委會抗疫行動

據知，新冠肺炎爆發後，內地一些社區居委會聯繫不同社會組織協助社區抗疫，包括安排社工每天一個電話問候獨居老人，並定期上門留下聯繫卡，密切掌握他們的狀況；為免居家隔離的兒童太無聊，安排人員帶著玩具和零食送上門，與他們一起玩耍；為有需要的業戶企業員工開具證明等等，凡此種種都大大地緩解了社區抗疫人手不足的難題。另外，也有社區居委會主任擔任聯繫人，隨時回應居民在微信群中提出生活起居上的各種需求，設身處地為居民着想，把服務做得更精更細，團結大家一致抗疫。

擴大法團職能的可能性

如本文開首所言，現時香港法例下法團的職能主要是管理屋苑的公用部分和公用設施，涉及的都只是建築物硬件。法團可考慮仿效居委會，在法團管理委員會轄下設立專責委員會，處理在屋苑內有關對業主、居民的民生服務需要，諸如公共衞生、保護獨居老弱殘障、幼兒學童託管、家居服務、法團與業主及業主與業主之間的調解、各種社會服務等；亦負責聯繫政府（包括民政事務及青年局轄下的關愛大隊）、企業或志願團體，參與屋苑社區的治理與服務，打通治理社區的脈絡。香港政府已從2022年第四季開始，逐步放寬疫情帶來的管控，百業陸續重開，但居民在各方面的服務是有增無減的。故此，法團確有需要擴大其職能來應付。

譬如在公共衞生方面，該專責委員會可以聯絡食物環境衞生署和環境保護署學習吸取有效的清潔和環保方法措施，保持公用部分、污水管、溝渠及垃圾房和屋苑四周環境衞生及處理廚餘，以防鼠患防蟲蟻。

人口老化已是全球大趨勢，香港亦同樣面對這個問題，現時屋苑屋邨住上不少長者，最需要支援莫如那些老弱無依的獨居甚至殘障的長者。該專責委員會可聯絡社會福利署、醫管局轄下的社康護理部、慈善志願團體轄下的護老服務或民青局各區辦事處及關愛大隊，招募屋苑內熱心居民，提供基本支援獨居長者需要的講座或訓練課程，一旦遇上突發需要，這類義工隊伍就能及時協助獨居或殘障長者所需，例如臨時護理及送院等。

幼兒學童都是需要關注關懷的一群，尤其是當有業主確診需要隔離，或疫情過後因事短暫離家三兩小時無法看管其年幼子女，法團的義工隊伍可提供適時幫助看管，以免幼兒獨留家中發生意外。近年虐兒個案亦為社會上一關注議題，若該專責委員會的義工隊伍聯同社署或志願團體，留意左鄰右里有否疑似虐兒個案，冀能及早發現提供協助從而減少悲劇發生。

至於家居服務方面，法團可聯絡志願機構義工或大企業轄下由員工自發成立的義工隊，協助獨居長者或有需要的家庭處理一般簡單的家居問題，諸如修葺家具電器，搬移大型家具重物或歲晚大掃除等。

說回法團原來的職責，處理屋苑公用部分和設施及業戶共同權益的事務，當涉及到重要議題，一般都需要在業主大會上通過決議，法團與業主之間的紛爭往往源於彼此間缺乏溝通而產生誤會。法團若設立該專責委員會，亦可作為管理委員會與業主居民的橋樑，與業主多加溝通聽取不同意見；解說法團會議的決議如何重要，帶來居民甚麼好處，甚或調解與業主居民的紛爭，統統都有助雙方了解並提升社區和諧，復興「左鄰右里」和睦相處的精神，也可減少法團與業主之間的磨擦，增強對法團的信心。

以上各種各樣業戶生活上的需要，固然是由法團管理委員會牽頭集結多方力量，但單憑法團是難以成事的，不可或缺的一環自必然是物業管理從業員的支援。由對外協助法團聯絡不同政府部門、公共機構或慈善志願團體籌辦講座課程和活動及維繫與各方的關係，到對內則協助法團按不同需要成立不同專責小組及一隊義工團幫助有需要的家庭，無一不需要物管從業員的專業支援。事實上物管從業員日常處理的工作，很多已超越聘用合約的範疇，工作範圍並不只是維修保養大廈結構及設施事宜，而是涉及大廈內所有持份者的安全、衞生、清潔、健康及抗疫等相關層面，物管服務亦日趨專業化，令大家有安居樂業之所。

結語

從上觀之，業主立案法團的確潛藏著無限的服務效能，在屋苑內能集結持份者發揮「左鄰右里」互助的精神，並廣泛聯繫相關政府部門、公共機構及社區慈善志願團體等組織，共同為居民提供某些家居服務、適當的支援及日常生活上的方便。今時今日，「各家自掃門前雪」的觀念已經過時，業主居民要放下「事不關己己不留心」的心態，才能一起共建融洽和諧互助美好的社區。為了配合實踐上述屋苑內的服務，《建築物管理條例》（第344章）有關法團的職能及權力或許需要作出若干修訂，但相信這方面是不難克服的。