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By Fax (2868 1552) & By Post

8 February 2001

Mr Timothy TONG, JP
Deputy Secretary for Security
6/F, Central Government Offices
Ming Wing, Lower Albert Road
Central, Hong Kong

Dear Mr TONG,

Immigration (Amendment) Bill 2000

At the meeting of the Bills Committee on 6 February 2001, you agreed that the Bill does not have the effect of preventing an applicant (or for that matter the claimed parent), if required by the Director of Immigration to undergo the genetic test as specified, from refusing to undergo such test and preferring a similar test by another laboratory (or set of laboratories). In the latter event, the Director also could not refuse to consider the result of a self-arranged test for what it is worth. You also indicated at the meeting that as the Director may be entitled to draw an appropriate inference from the failure of an applicant (or the claimed parent) to undergo the specified test, the Director would, as a matter of practice rather than as obliged by any express statutory requirement, ask the applicant or the claimed parent (as the case may be) to explain his failure to do so.

In view of the concern and discussion that these matters have engendered, it may be helpful if you could further clarify -

- (a) what inference, adverse or otherwise, if any, could be drawn if the applicant, whilst refusing to undergo the specified test, undergo a self-arranged test by a properly accredited laboratory?
- (b) is there any need to draw any inference at all if the applicant simply

refuses to undergo the specified test without submitting himself to any other test of his own? Would that failure itself not be sufficient to enable the Director to refuse his application for lack of additional evidence to support the application, without the need to draw any inference therefrom, bearing in mind the Director has not been satisfied with the available evidence in the first place?

- (c) what if the applicant and the claimed parent each prefers testing by a different laboratory or set of laboratories? How would this impact on the inference, if any, to be drawn and on the technical aspects of the separate testing and the results?
- (d) If an adverse inference is to be drawn from the failure to undergo the specified test, would the applicant be informed and given an opportunity to make representation?

I would be grateful if you would let me have your response in time for the next meeting of the Bills Committee.

Yours sincerely,

(Arthur CHEUNG)
Assistant Legal Adviser

c.c. Clerk to Bills Committee