

**For meeting on
25 February 2002**

**Paper for LegCo Panel on
Administration of Justice and Legal Services**

**Implications of the Court of Final Appeal judgment in the cases of
Ng Siu Tung, Sin Hoi Chu & Li Shuk Fan on litigation
Involving a large number of parties**

Applications involving common issues of public importance

The Director of Legal Aid is under a duty to see that the legal aid scheme is competently managed so that public funds are not wasted (*Ngao To-ki v Attorney General* [1981] HKLR259).

In dealing with applications involving common issues of public importance in cases of *Ng Siu Tung, Sin Hoi Chu and Li Shuk Fan* (the “Ng, Sin & Li cases”), the Legal Aid Department generally followed the “representative cases” approach in *Ng Ka Ling and Chan Kam Nga* (the “Ng & Chan” cases). Under the representative cases approach, representative applicants were selected as lead applicants in legal proceedings funded by legal aid so that issues of law and facts common to all applicants were submitted to the Court for decision. This approach has the benefit of keeping the volume of litigation within reasonable bounds and keeping costs at a minimum while ensuring that all relevant legal issues are decided. (Paragraphs 67 and 79 of the CFA judgment in the Ng, Sin & Li cases refer).

In future, the viability of adopting representative cases approach in handling a large number of applications for legal aid involving common issues of public importance would be closely examined on a case by case basis and upon a consideration of such

matters as court directions and whether the opposite parties would undertake to give effect to the court decision in the representative cases in other cases. In any event, counsel's advice will be sought before deciding the most cost-effective way of funding the intended litigation while ensuring that the applicant's interests are conserved.

Implications on non-representative applicants

In general, where a representative case involving contentious issues of public law affecting a large number of people is litigated, it could be assumed that the principles declared, being answers to the questions of law, in the representative case would be applied to persons in a similar position including applicants not chosen as representative parties in the case (Paragraph 80 of the CFA judgment in the Ng, Sin & Li cases refers). If this was not so applied, legal aid could be granted to such persons for fresh proceedings to be brought on their behalf.

In future, in the light of the CFA judgment in the Ng, Sin & Li cases, counsel's advice will be specifically sought on the need and reasonableness of commencing proceedings for and on behalf of each eligible applicant who has reasonable grounds for being a party thereto, having regard to the viability of the representative cases approach referred to above. As to how these cases should actually be litigated, it would be a matter for the assigned counsel and solicitor and a matter of case management for the Court.

Legal Aid Department

Date : 18 February 2002

Ref. : LA/ADM/115/54 (Pt.5)