

LETTERHEAD OF THE LAW REFORM COMMISSION OF HONG KONG

LC Paper No. CB(2)456/01-02(04)

19 July 2001

Mr Chan Siu Lun

Dear Mr Chan,

**Request to amend section 18(3) of the
Hong Kong Court of Final Appeal Ordinance (Cap 484)**

Thank you for your letter of 15 July 2001, together with the associated materials, in which you request the Law Reform Commission (LRC) to consider amendment of section 18(3) of the Hong Kong Court of Final Appeal Ordinance (Cap 484).

As you may know, the LRC considers those areas of law which are referred to it by the Secretary for Justice (who chairs the LRC) or the Chief Justice. While the range of subjects which the LRC has considered over the years is extensive, certain areas of law would not normally be referred to the Commission. Such areas include those where the issues raised are essentially ones of policy, rather than law. Examples might include, for instance, taxation or immigration. In common with law reform agencies in other jurisdictions, the LRC would not generally be considered the appropriate forum in such cases.

Other areas of law which would not normally be referred to the LRC are those where there is an alternative forum available which is better equipped to consider the specialist issues involved. The LRC would not, for instance, consider company law issues, leaving that instead to the expertise of the Standing Committee on Company Law Reform. Another such area is court practice and procedure, where the expertise of the judiciary and court practitioners is of particular importance. One of the court users' committees (which include representatives from the legal profession and the judiciary) or similar groups established by the Judiciary would be likely to be better placed than the LRC to consider the technical and practical issues involved in a review of procedural matters.

/P.2 ...

It seems to me that the particular issue you raise (an amendment to section 18(3) of Cap 484 to provide an avenue of appeal against a decision by the Appeal Committee) falls within both of the categories I have described above. The issue is essentially one of policy, and it is within an area where any review would more appropriately be carried out in a forum other than the LRC. As such, I do not think that this is a subject which is suitable for referral to the LRC for consideration. I note further that the Judiciary Administrator has previously advised in his letter to you of 6 June 2001 that the Chief Justice and the Permanent Judges of the Court of Final Appeal do not consider that section 18(3) of the Ordinance requires amendment.

I should add that, even if an amendment was made to section 18(3) of Cap 484 along the lines you propose, this would not affect the particular proceedings with which you are concerned. As a general rule of legal policy, amendments to the law are not made retrospectively, and any change would not therefore apply to decisions which had already been made by the Appeal Committee.

Thank you for raising your concerns with the Commission and I am sorry I am not able to be more helpful. I am returning to you with this letter the bundle of materials which you provided.

Yours faithfully,

(Stuart Stoker)
Secretary
Law Reform Commission