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BY FAX 2877 3978 AND BY HAND

26th June 2004

Miss Elsie Leung Oi See
Secretary for Justice
Department of Justice
4th floor, High Block
Queensway Government Offices
HONG KONG

Dear Secretary

Security-vetted lawyers

I am deeply concerned to read a report in the South China Morning Post of 25th June 2004 with the headline "Lawyers in the dark over client's security risk" (enclosed).

While I have no way of ascertaining its accuracy, the report seems to suggest that a detained illegal immigrant applying for judicial review and for bail pending the review is being denied material vital to his case on grounds of security, and that the Judge has raised concern which he sought to address by asking for a list of lawyers "with security clearance" from the Secretary for Justice from which someone may be chosen to read the material not to be disclosed to the applicant himself/herself.

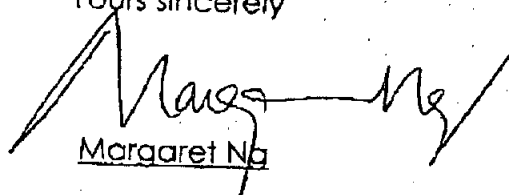
The matter raises major constitutional questions fundamental to the rule of law:

- (1) A person is entitled to know the case against him and the evidence supporting that case. How can it be right that the Judge is shown the evidence against him while he and his lawyer are kept in the dark? How can he be said to have a fair chance of answering the case against him?
- (2) How can the above difficulty be overcome by allowing a lawyer "with security clearance" who is not his counsel and who is prohibited from disclosing the material to him?

- (3) Is there in existing such a list of "lawyers with security clearance"? If so, how was it compiled, and if not, is one being compiled? By whom and on what basis?
- (4) The arrangement suggested is, as far as I can remember, identical with the "special advocate" proposed under the National Security (Legislative Amendments) Bill 2003, and was the subject of heated debate in the Bills Committee. The proposal was strongly resisted by the Bar in its submission on the Bill. Since then, the Bill has been withdrawn. Is the "special advocate" being now introduced "through the backdoor"? Would that pre-empt LegCo's deliberations in the anticipated Article 23 legislation?
- (5) I recollect that during the debate in the Bills Committee, the idea of a "special advocate" was purportedly borrowed from Canadian or U.K. legislation. There is no equivalent legislation in the HKSAR. In the absence of legislation, what is the legal basis for such an institution? And can it be proper for the Court to accept it?

As the LegCo member for the Legal Functional Constituency, I am most anxious that these serious matters should be brought to your personal attention for clarification if appropriate in Legco in your constitutional role as the guardian of the public interest and the administration of justice. I look forward to your response at your earliest convenience.

Yours sincerely



Margaret Ng

c.c. Mr. Edward Chan S.C.
Chairman, Hong Kong Bar Association

Mr. Michael Lintern-Smith
President, The Law Society of Hong Kong

The Hon. Miss Audrey Eu S.C.

*South China Morning Post***A2 | HONG KONG & DELTA****FRIDAY, JUNE 25, 2004**

Lawyers in the dark over client's security risk

Sara Bradford

An illegal immigrant seeking bail in the High Court has been deemed such a security risk that not even his lawyers can be fully informed of the case against him.

The secrecy surrounding the man's case is so great that a judge yesterday asked the secretary for justice for a list of lawyers with security clearance so the defendant - identified only as PV - could be represented.

The unusual request, believed to be a first for Hong Kong, came as Justice Michael Hartmann expressed concern that he was allowed access to some documents that the defendant and his counsel could not see.

PV, whose age and nationality were not released, has been in custody for the past 14 months for immigration offences.

He is in the process of launching a judicial review of a removal order but has asked the Court of First Instance for bail.

But the government has opposed bail citing PV as a "security risk to Hong Kong".

It was in relation to this stance that the documents were filed to the court - but not passed on to PV and his counsel.

Yesterday, Mr Justice Hartmann said that, with the consent of PV, he would ask for a list of lawyers from the secretary for justice so they could look at the documents and then act on PV's behalf, but not tell him what was contained in the papers.

A legal framework for such a move is in place in Canada and Britain but it is understood that no such procedure exists in Hong Kong.

That means the Department of Justice must create its own security clearance list of special advisers from scratch.

Mr Justice Hartmann gave the department until next Friday to produce such a list.

He also recommended that more than one name be included.