



立法會
LEGISLATIVE COUNCIL

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(By fax and by post)
Total : 3 pages

5 May 2008

Mr WONG Yan-lung, SC, JP
Secretary for Justice
4th floor, High Block
Queensway Government Offices
Hong Kong

Dear Secretary,

Panel on Administration of Justice and Legal Services

Follow up to the meeting on 28 April 2008

**Applicability of HKSAR laws to offices set up by
the Central People's Government (CPG) in the HKSAR**

I write to convey to you the strong views of members of the Panel expressed in the above captioned matter, and to seek your clarification and assistance towards an early solution.

Equality before the law and the clarity of the law are fundamental requirements of the rule of law. In this regard, members were deeply disturbed by the fact that the Administration was unable to tell the public unequivocally whether the Personal Data (Privacy) Ordinance applies to the offices set up by CPG in Hong Kong, and could not say how much longer the public has to wait before a definite answer can be given. The Ordinance touches upon the right to privacy of the public and regulates the collection, maintenance and use of personal data. Surely the public has every right to know whether offices of the CPG in Hong Kong are bound by it or not?

It would be disconcerting enough for any community which professes to respect the rule of law to be left in doubt about such a matter for a day. In this case, the HKSAR Government has kept the public and the Legislature in suspense since 1998. We call upon you, in discharge of your duty as Secretary for Justice, to explain how uncertainty can be compatible with the rule of law, and how soon the Government will be able to rectify this intolerable situation.

The uncertainty of the application of the Personal Data (Privacy) Ordinance is only one example of the larger issue of applicability of Hong Kong legislation to offices of the CPG stationed in Hong Kong. By the Government's own admission as early as 1998, at least 15 other Ordinances should apply to these offices as a matter of policy, and amendments to these Ordinances should be introduced to reflect this. Nearly ten years have now passed, during which the Panel and the House Committee had made repeated but fruitless requests to see progress. As the head of the Department of Justice which includes the legal policy and drafting divisions, you are in the best position to explain to us the difficulty which may account for the extraordinary delay, and I respectfully ask you to do so.

Further and of fundamental importance, it would appear that a source of confusion and complication is the "adaptation" of the term "the Crown" to "the State" in section 66(1) of Cap.1, so that the relevant part of the subsection reads:

"No Ordinance (whether enacted before, on or after 1 July 1997) shall in any manner whatsoever affect the right of or be binding on the State unless it is herein expressly provided or unless it appears by necessary implication that the State is bound thereby."

We are unable to understand how the HKSAR can pass an Ordinance to bind the "State" which as defined in Cap.1 itself includes "the President of the People's Republic of China" and "the Central People's Government". In this regard, we agree with paragraph 3 of the Bar's submission dated 11 April 2008 to the Panel. Nor is binding the "State" our concern. Our concern is to uphold the rule of law which requires equality before the law, and that means the law should apply equally to everyone who lives within the jurisdiction. This fundamental and general principle is given the constitution backing of Article 22(3) of the Basic Law which stipulates:

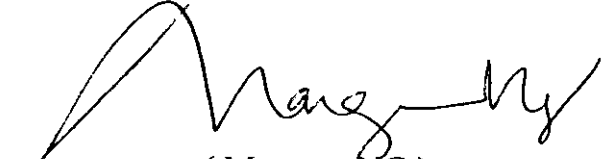
"All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region."

We fail to understand the tardiness and reticence of the HKSAR Government in acting under the Basic Law to give protection to the rights of residents. We request your earliest attention to reconsider the unfortunate and misleading provision of section 66(1) of Cap.1, and unravel the conundrum so that the HKSAR can move forward with the remaining part of its programme of adaptation, now long overdue.

We await your earliest response and advice as to what steps you intend to take and the time frame for taking them.

With best regards,

Yours sincerely,



(Margaret NG)
Chairman of Panel

c.c. Chief Secretary for Administration
Secretary for Constitutional and Mainland Affairs