



中華人民共和國香港特別行政區政府總部食物及衛生局  
Food and Health Bureau, Government Secretariat  
The Government of the Hong Kong Special Administrative Region  
The People's Republic of China

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24 February 2009

Mr Stephen Lam  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Hong Kong  
(Fax : 2877 5029)

Dear Mr Lam,

**Public Health and Municipal Services (Amendment) Bill 2008**

Thank you for your letter of 16 February 2009. Please find below our response to the questions raised.

(a) The appellant may be aggrieved by the varied section 78B order but not, in the light of variation, the original section 78B order. In that case, he may choose to appeal to the Municipal Services Appeals Board (MSAB) under section 78G(1A) against the varied order only. If two appeals have been lodged (i.e. one against the original order and the other against the varied order), the MSAB cannot rely on section 12(1)(a) of the MSAB Ordinance (Cap 220) to "require" the appellant to withdraw the appeal against the original section 78B order. It is the appellant's own call. If he is content with the original section 78B order in light of the variation, he may decide whether to withdraw the appeal against the original order ("the original appeal"). So long as he does not

withdraw the original appeal, the MSAB is obliged to hear the original appeal, as well as the new appeal against the varied order.

(b) As explained in our reply on 13 February 2009, section 78G and section 78H would operate independently. As advised by the Department of Justice, it is not inconceivable that different outcomes may result from findings made by an independent tribunal and by a court in different sets of proceedings even if the subject matter which gave rise to them may be the same. In so far as the issue of compensation is concerned, as provided under section 78H, it is the decision of the court that is determinative.

Having said that, it should be noted that since different time limits apply, it is not unreasonable to expect that in practice, an aggrieved person may not wish to lodge a claim for compensation first because practically viewed, he may wish to lodge an appeal with the MSAB first in consideration of the costs implications of the court proceedings and the speedy mechanism provided in the MSAB Ordinance for the resolution of the appeal. These are the practical considerations an aggrieved person might take into account in deciding his way forward.

(c) Under section 78H, the person claiming compensation before the Small Claims Tribunal or the District Court, as the case may be, will need to prove to the satisfaction of the court that the Authority was unreasonable in making the relevant section 78B order, regardless of the decision of the MSAB (if an appeal to MSAB has been pursued). The court will not be legally bound by the result or findings of the MSAB. As to your question on whether it would be appropriate to adapt a wider scope of admissibility of the contents of documents reviewed in the MSAB proceedings in another court proceedings, please note that section 15(1) of the MSAB Ordinance (Cap 220) has provided that the MSAB shall give reasons in writing for its decisions, and those reasons shall include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based. As such, a decision or order of the MSAB under section 15(4) of the MSAB Ordinance, which would be admissible in any proceedings as evidence of the decision or order of MSAB, should have already covered the relevant information.

Please let us know if you have further questions.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A. Cheung', written over the printed name.

(Mrs Angelina Cheung)  
for Secretary for Food and Health