

**Submission of the Duty Lawyer Service
to the Legco Panel on Security
on Torture Claim Screening System:
Current practice and legislative proposal**

1. I refer to the Joint Submission of the Law Society of Hong Kong and the Hong Kong Bar Association to the Legco Panel on Security on Torture Claim Screening System: Current practice and legislative proposal dated 8th April 2011.
2. The Duty Lawyer Service was provided with a copy of the same by the Security Bureau on the afternoon of 11th April 2011 as the said submission had not been uploaded onto the Legco's website until late afternoon of 11th April 2011.
3. The Duty Lawyer Service in addition to the background information supplied to the Hon. Chairman of this Panel and Hon. Dr. Ng on 28 March 2011, would like to make the following further comments concerning :

Item II. The Pilot Scheme on CAT

4. Attendance at CAT Interviews in paragraph 5 "... The professional duties of Panel Lawyers have been raised with the DLS which indicated the Protocol is an administrative protocol and it was only one of the matters discussed with the Security Bureau. The Joint Profession considers the problem which has arisen over access to interviews is a systematic flaw in the system which needs to be addressed."
5. The Joint Legal Profession has been most helpful by forwarding to the Duty Lawyer Service their Joint Submission and proposed amendments to the Interviewing Protocol on 25th August 2009.
6. Please note that the first clause of the Interviewing Protocol which is now the subject matter of the Joint Legal Profession's present complaint/counter proposal had not been a subject of their amendments and remained intact in their proposed amendments to the Administration.
7. Please also note that the Interviewing Protocol applies across the board to both duty lawyers and lawyers acting on private instructions and not to duty

lawyers only. Barristers acting for claimants on private basis would have to appear with the instructing solicitor or their representative as required by their professional code of conduct. It however will not apply to duty lawyers where barristers would have exemption under the Bar Code of Conduct and are not required to be instructed by a solicitor and/or accompanied by a solicitors' clerk or legal executive. As such barristers assigned by the Duty Lawyer Service do not need to have someone from instructing solicitor while those representing clients on private instruction will be required to do so.

8. The Duty Lawyer Service has also taken note that in the cases of the United Kingdom and Switzerland, lawyers presence is optional and the claimants "must respond in person to questions but he may bring a legal representative to the interview if he wishes" (please refer to page 7 of the Information note prepared by the Research Division of the Legislative Council Secretariat LC Paper No. IN 09/10-11).
9. The Duty Lawyer Service has also taken note that screening interview room was fully equipped with laptop, audio recording devices and the claimant could make a request in the questionnaire for the screening interview to be audio recorded.
10. The role of a duty lawyer participating in CAT case screening interview is to ensure fairness in the screening process. The Duty Lawyer Service does not hold the same view as the Joint Legal Profession and is of a different view that a request for the presence of an assistant/paralegal who is not legally qualified in Hong Kong is neither necessary nor essential.
11. It remains the policy of the Duty Lawyer Service to assign cases under all its various schemes they operated: including the Duty Lawyer Scheme for criminal cases in the Magistrates' Courts; the Free Legal Advice Scheme in the District Offices; and also this newly implemented CAT Scheme - the assignment is a personal one to the individual lawyer on the panel only. It is not an assignment to his law firm or chambers and should not have any further delegation of that assignment.
12. The Duty Lawyer Service is of the view that whilst agreeing that the interviewing protocol is an administrative protocol; however unless it is amended there is no particular reason (in particularly based on the assignment policy as stated above) for not complying with this particular clause.

13. During the negotiation process for the setting up of the new CAT Scheme, the Duty Lawyer Service Council has fully discussed all matters arising and the Interviewing Protocol is only one of the many issues which we had put forward our views to the Security Bureau.

**The Duty Lawyer Service
12th April 2011**