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Panel on Administration of Justice and Legal Services

Background brief prepared by the Legislative Council Secretariat for the meeting on 30 January 2012

Issues relating to the provision of legal aid for judicial review cases

Purpose

This paper provides background information and summarizes the major issues raised by the Panel on Administration of Justice and Legal Services ("the Panel") relating to the provision of legal aid for judicial review ("JR") cases.

Background

Application for JR

2. Application for JR includes an application for a review of the lawfulness or an enactment, or of a decision, action or failure to act in relation to the exercise of a public function. Procedures for JR proceedings are prescribed by Order 53 of the Rules of the High Court (Cap. 4 sub. leg. A). Rule 3(1) stipulates that application for JR may only be made with the leave of the court. Rule 3(7) stipulates that the court must not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates. Rule 4(1) prescribes that an application must be made within three months of the date when the grounds for the application first arose. Since *Chan Po Fun Peter v Cheung CW Winnie & Anor* [2005] 5 HKC 145, the appropriate test for granting of leave to apply for JR has been stated by the Court of Final Appeal to be that of the arguability test. Under this test, arguability means reasonable arguability. A reasonably arguable case is one which enjoys realistic prospects of success. This represents a higher threshold than the potential arguability test which has been applied until the CFA decision¹.

Application for legal aid

3. According to Article 35 of the Basic Law, Hong Kong residents shall have

¹ paragraph 23 of the paper entitled "Judicial Review and the Legislative Council" prepared by the Legal Service Division of the Legislative Council Secretariat for the Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation.

the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies. Article 14(1) of the International Covenant on Civil and Political Rights ("ICCPR") guarantees all individuals the right to a fair hearing in both criminal and civil proceedings (which involves the determination of an individual's civil rights and obligations). Article 14(3) further provides that a person charged with criminal offence shall be entitled to "have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him if he does not have sufficient means to pay for it." The Hong Kong Bill of Rights Ordinance (Cap. 383) ("HKBORO") incorporates into Hong Kong law the provisions of ICCPR as applied to Hong Kong.

4. The Legal Aid Department ("LAD") provides legal representation to eligible applicants by a solicitor and, if necessary, a barrister in civil and criminal proceedings. Legal aid is available, inter alia, to cases in District Court, the Court of First Instance, the Court of Appeal and the Court of Final Appeal. It is also available for committal proceedings in the Magistrates' Courts. Any person, whether or not resident in Hong Kong, who is involved in these court proceedings may apply for legal aid. Legal aid will be granted if the applicant is able to satisfy the statutory criteria as to the financial eligibility and the merits for taking or defending the legal proceedings. Under the Ordinary Legal Aid Scheme, an applicant will pass the means test if his financial resources do not exceed the financial eligibility limit of HK\$260,000. Pursuant to section 5AA of LAO, the Director of Legal Aid ("DLA") may waive the upper financial eligibility limit in meritorious cases in which a breach of HKBORO or an inconsistency with ICCPR is an issue. To satisfy the merits test, an applicant needs to show that he has reasonable grounds for taking or defending proceedings. Section 9(d) of LAO empowers DLA to refer an application for legal aid to a counsel or a solicitor to give opinion on the case to assess its eligibility for legal aid. Section 13(1) of LAO stipulates that LAD might assign counsel or solicitors to be selected by the aided person to act for them.

Relevant issues raised by the Panel

Criteria for granting legal aid for JR

5. Arising from a case concerning the refusal of DLA to grant legal aid to an Indian mother seeking JR of the Director of Immigration's decision on a right of abode case, the Panel was briefed by the Administration on the criteria for granting legal aid.

6. According to the Administration, merits test involved a consideration of the legal merits of the case and the reasonableness of the application. Legal aid

could only be granted if DLA was satisfied that the relevant action, cause or matter had a reasonable chance of success. Members sought clarification as to whether "reasonable grounds for commencing or defending in the proceedings" and "reasonable prospects for success" were two separate and sufficient factors for fulfilling the merits test. The Administration advised that the two factors were inseparable in the process of DLA coming to a decision on a legal aid application. Both were essentially related to a consideration of the legal merits of the case. The burden was on the legal aid applicant to show that there were reasonable grounds for bringing or defending in the proceedings. It was a matter for DLA to assess the prospect of success in the particular circumstances of the case and having regard to the availability and strength of evidence.

7. Members discussed in detail whether legal aid could be granted for a case which raised a substantial point of law of great public importance, such as a matter of constitutional right, irrespective of whether in the opinion of DLA the case had a reasonable prospect of success. Some members held the view that refusing legal aid in such cases might cast doubt on the public's mind as to whether legal aid was administered in a fair manner.

8. The Administration advised that merits test involved a consideration of the legal merits of the case and the reasonableness of the application. Legal aid could only be granted if DLA was satisfied that the case had a reasonable chance of success. DLA would seek independent legal advice in difficult cases.

Mechanism for appeal against the DLA's decision to refuse legal aid

9. According to the Administration, decisions on legal aid applications are made by LAD's professional officers in the exercise of their powers vested in them by LAO. For JR cases, immigration cases, common law claims, Bill of Right cases and cases under the Supplementary Legal Aid Scheme, the approval of a directorate officer is required for refusal. An aggrieved applicant can appeal against the DLA's decision to the Registrar of the High Court. Members expressed concern whether there was a well-established mechanism for appeal against the DLA's decision to refuse legal aid. They pointed out that as legal aid would not be available to persons who wished to appeal to the Registrar of the High Court against the DLA's decision to refuse legal aid, it would be extremely difficult for those persons to pursue further with their claims. It would be particularly unfair to the persons whose applications were turned down on the ground of merits as they could not afford to hire a lawyer to challenge the decision.

10. The Administration explained that an appeal against the DLA's decision to refuse legal aid was not court proceedings per se, albeit the appeal was made to the Registrar of the High Court. It was not necessary for the applicant or

aggrieved person to seek legal representation for the appeal. Members, however, were of the view that while legal representation was not required as a matter of procedure for an appeal against refusal of legal aid, the applicant might need legal assistance if his application was refused on merits. Members also noted with concern that applicants who were refused legal aid would not be advised of the reasons of refusal in writing. The Administration was requested to review and streamline, in consultation with the legal profession, the existing appeal mechanism.

11. When the Panel discussed the issue of an independent statutory legal aid authority, members also expressed the view that the existing appeal mechanism was not sufficient in safeguarding the independence of legal aid. They considered that so long as there was a small handful of cases where the legal aid applicants were refused legal aid to initiate action against the Government, inevitably they would have the perception that such refusal was due to LAD being a Government department. To avoid any conflict of interest, LAD should consider seeking independent legal advice outside the Government in respect of all cases against the Government.

12. The Administration explained that under the existing system, LAD would in most cases seek independent counsel's opinion on merits of legal aid applications seeking to challenge Government decisions. There were safeguards in the current system to protect the operational independence of legal aid. As a matter of fact, many legal aid applications against the Government had been granted by LAD. Legal aid applicants who were aggrieved by the decision of LAD had the right to appeal to the Registrar of the High Court. There were cases where the Registrar had overturned LAD's decision to refuse legal aid.

13. Some members considered that in face of the increasing number of JR brought against the Government in recent years, it was important for legal aid services to be provided by a body independent of the Government to ensure fair administration of justice. While noting that LAD would seek independent legal advice in respect of legal aid applications which sought to challenge Government decisions, they were concerned about the independence of such a mechanism, pointing out that the choice of counsel by LAD could have a significant bearing on the outcome of the legal aid applications concerned.

14. The Administration pointed out that the number of JR cases with legal aid granted had been on the rise in recent years (from 17 cases in 2002 to 200 cases in 2009) and the funding of numerous applications for legal aid in JR cases against the Government bore evidence to the fact that legal aid was administered independently in Hong Kong.

Assignment of cases to and nomination of solicitors/counsel

15. When the Panel discussed the Ombudsman's Investigation Report on "Monitoring of Assigned-out Cases by Legal Aid Department" in 2006, the Administration informed members that except for cases in which the aided persons had nominated their solicitors/counsel, LAD assigned a solicitor/counsel from its Legal Aid Panels who should possess the experience in processing at least 15 similar cases in the past three years. Not more than 50 cases would be assigned to the same solicitor/counsel in one year. Even if the aided person had nominated a solicitor/counsel, LAD would ensure that the solicitor/counsel concerned possessed the necessary experience in handling the case.

16. During the policy briefing by the Secretary for Home Affairs ("SHA") on the Chief Executive's 2011-2012 Policy Address on 20 October 2011, members enquired about the criteria adopted for assigning solicitors/counsel by LAD. The Administration advised that section 13(1) of LAO stipulated that LAD might assign solicitors or counsel to be selected by the aided person to act for them. In the assignment of legal aid cases, LAD adhered to the fundamental principle that the aided person's interest was of paramount importance. Other factors, such as the nature and complexity of cases, experience and performance of the lawyers would also be taken into account. The Administration stressed that confidence in one's own legal representative was essential in the conduct of legal proceedings, hence, as long as the solicitor/counsel nominated by the aided person was legally qualified and did not have poor performance record, LAD would normally accede to and did not reject an aided person's choice of solicitor/counsel unless there were compelling reasons to do so.

Recent development

17. At the Council meeting of 19 October 2011, Hon Starry LEE raised a written question on "Legal Aid Cases". The question raised by Ms LEE and the reply of SHA are in **Appendix I**. Hon Jeffrey LAM also raised an oral question on "Judicial Review on Environmental Impact Assessment Reports for Hong Kong-Zhuhai-Macao Bridge". The question raised by Mr LAM and the reply of SHA are in **Appendix II**.

18. At the Panel meeting on 20 October 2011, members agreed that DLA should brief members at a future meeting on issues relating to the provision of legal aid for JR cases including assessment criteria in processing relevant legal aid applications, procedure/criteria for assigning solicitors/counsel and the policy to brief out legal aid cases to private counsel.

19. To facilitate the discussion, the Administration has been requested to provide statistics on the number of cases where the counsel are assigned based on the aided persons' nominations; the distribution of the assigned legal aid cases among private counsel; and the initiatives taken by LAD to facilitate an equitable distribution of legal aid work among private counsel. The Administration is scheduled to brief the Panel on the related issues at the meeting scheduled for 30 January 2012.

Relevant papers

20. A list of the relevant papers which are available on the Legislative Council website is in **Appendix III**.

Council Business Division 2
Legislative Council Secretariat
20 January 2012

Legal Aid Cases

19. **MS STARRY LEE** (in Chinese): *President, regarding the legal aid services provided by the Legal Aid Department (LAD), will the Government inform this Council:*

- (a) *of the respective numbers of applications for legal aid in respect of judicial review (JR) cases received by the LAD each year since 2001; among such applications, of the number of cases approved; the total amount of legal aid involved in such cases; the case which involved the highest amount of legal aid and the amount;*
- (b) *of the respective amounts of legal aid involved in the four JR cases in respect of: the Chong Fung Yuen case, the residential development project in the vicinity of Stage 8 of Mei Foo Sun Chuen, the Environmental Impact Assessment reports for the Hong Kong-Zhuhai-Macao Bridge, and the right of abode of foreign domestic helpers;*
- (c) *among the JR cases where legal aid was granted since 2001, of the respective numbers of cases where the solicitors or counsel were specified by the aided persons and those cases where the LAD assigned the solicitors or counsel; whether the LAD had rejected the solicitor or counsel specified by the aided person and assigned another solicitor or counsel to provide the service; if it had, of the number of such cases and the reasons why the LAD rejected the solicitor or counsel specified by the aided person; and*
- (d) *among the JR cases where legal aid was granted since 2001, whether there were cases where the solicitors or counsel offered free legal services to the aided persons; if there were, of the number of such cases?*

SECRETARY FOR HOME AFFAIRS (in Chinese): *President,*

- (a) *The number of legal aid applications received by the LAD in respect of JR cases and the number of cases with legal aid granted in the past*

10 years are set out in the following table. The LAD has not maintained a separate record on the legal aid costs spent on all JR cases.

<i>Year</i>	<i>Number of applications in respect of JR</i>	<i>Number of cases with legal aid granted</i>
2001	147	20
2002	144	17
2003	146	20
2004	125	18
2005	180	24
2006	174	42
2007	234	99
2008	364	190
2009	552	200
2010	268	93

Note:

Apart from legal aid applications for JR, the LAD also receives applications for legal aid in relation to immigration related matters which may involve JR proceedings. However, the LAD does not keep separate record on the number of such cases.

(b) Legal aid costs incurred in the four JR cases are as follows:

<i>Case</i>	<i>Legal aid costs incurred (\$ million)</i>
Chong Fung Yuen	2.33
Residential development project in the vicinity of Stage 8 of Mei Foo Sun Chuen	0.26 (up to end September 2011)
Environmental Impact Assessment reports for the Hong Kong-Zhuhai-Macao Bridge	1.49 (up to end September 2011)
Right of abode of foreign domestic helpers	Judgment just been given. Cost figures are not yet available

- (c) Amongst the JR cases mentioned in part (a), the number of cases where the assigned solicitors are assigned by the LAD based on the aided person's nomination or as directly assigned by the LAD are as follows:

<i>Year</i>	<i>Number of cases</i>	<i>Number of cases where the solicitors are assigned by the LAD based on the aided person's nomination</i>	<i>Number of cases where the solicitors are assigned by the LAD</i>
2001	20	7	13
2002	17	11	6
2003	20	19	1
2004	18	17	1
2005	24	20	4
2006	42	39	3
2007	99	96	3
2008	190	184	6
2009	200	175	25
2010	93	88	5

The LAD does not keep separate record on the number of cases where the assigned counsel are solely nominated by the aided persons. It only keeps record on the number of cases where the assigned counsel are nominated by the assigned solicitors or the aided persons. The relevant figures are as follows:

<i>Year</i>	<i>Number of cases where the assigned counsel are nominated by the assigned solicitors or the aided persons</i>	<i>Number of cases where the assigned counsel are assigned by the LAD</i>
2001	5	14
2002	6	11
2003	17	3
2004	15	1

<i>Year</i>	<i>Number of cases where the assigned counsel are nominated by the assigned solicitors or the aided persons</i>	<i>Number of cases where the assigned counsel are assigned by the LAD</i>
2005	21	1
2006	39	1
2007	35	0
2008	43	2
2009	140	2
2010	55	1

The LAD does not keep separate record on the number of cases in respect of which the aided persons made nominations but the nominations were declined.

- (d) As far as the LAD is aware, there are no such cases.

~~Consultation on Introduction of a Mandatory Producer Responsibility Scheme for Waste Electrical and Electronic Equipment~~

20. **MR FREDERICK FUNG** (in Chinese): *President, the Chief Executive proposed in his 2009-2010 Policy Address that following the launch of the plastic bags levy scheme, the Government would consult the public on the introduction of a producer responsibility scheme (PRS) for electrical and electronic equipment at the end of 2009. Subsequently, the authorities formally conducted a three-month public consultation on the introduction of a mandatory PRS on waste electrical and electronic equipment (WEEE) (the Scheme) in January 2010, which mainly covers the proposal that all regulated WEEE (including television sets, washing machines, refrigerators, air conditioners and some computer products) should be banned from disposal as ordinary trash, and it sets out the responsibilities borne by various stakeholders such as consumers, producers and importers, and so on, for the collection, treatment and disposal of regulated WEEE. In this connection, will the Government inform this Council:*

- ~~(a) of the reasons why the Government has neither drawn conclusions from the public views collected, nor confirmed the details of and~~

~~MR LEE CHEUK-YAN (in Cantonese): no, he has not answered me whether the existing governing approach of the Government has all~~

PRESIDENT (in Cantonese): Secretary, on the issue of consensus and government policies, do you have anything to add?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Regarding consensus, it has been the established policy of the Government that consensus of society should be secured as far as possible before the implementation of policies with far-reaching effect. The issues now under discussion, including the universal retirement protection or the improvement plans, involve policies which will be sustained for several decades or over a century; they are not transient or one-off handout policies. Hence, we must have a solid basis well supported by justifications and we have to take into consideration various statistics. If we hastily implement any policy at a time pending the data from the C&SD and the completion of the analysis by the CPU, I believe Members of the Legislative Council will not render their support.

~~**PRESIDENT** (in Cantonese): This Council has spent more than 22 minutes on this question. Fifth question.~~

Judicial Review on Environmental Impact Assessment Reports for Hong Kong-Zhuhai-Macao Bridge

5. **MR JEFFREY LAM** (in Cantonese): *President, it has been reported that after the Court of Appeal had allowed the Director of Environmental Protection's appeal in respect of the judicial review (JR) on the Environmental Impact Assessment reports for the Hong Kong-Zhuhai-Macao Bridge, the plaintiff told the media that someone had asked her to file the lawsuit; it has also been reported that the plaintiff was granted legal aid for this JR case and specify which lawyer to represent her. In this connection, will the Government inform this Council:*

- (a) *whether the police will investigate if the aforesaid case involved champerty; of the number of prosecutions instituted by the police against cases involving champerty in the past five years and the number of convicted persons;*
- (b) *how the Legal Aid Department (LAD), when vetting and approving legal aid applications, ensures that the applicants have sufficient understanding of their litigation cases; and ensures that legal aid services will not be abused; and*
- (c) *among the legal aid applications approved by the LAD in the past five years, of the number of cases where the aided persons were represented by the solicitors or counsel specified by them in court proceedings; the details of such cases (including the names of the solicitors or counsel, particulars of the cases and the amounts of the legal aid involved)?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I thank Mr Jeffrey LAM for his question. My reply to the three-part question is as follows:

- (a) Generally speaking, the police will assess if there are reasonable doubts to believe that criminal elements are involved in the case having regard to whether reports from informants are received, whether reliable intelligence is available, and so on, so as to decide whether investigation should be conducted. As regards the incident raised in the question (that is, the proceeding concerning the Hong Kong-Zhuhai-Macao Bridge), to the best of my knowledge, neither reports from informants have been received nor any investigation has been commenced. Anyone who wishes to provide information or report a case may contact the police direct, and the police would take follow-up actions as appropriate. In the past five years, the police instituted prosecution against one case involving champerty and two persons were convicted.
- (b) Anyone who wishes to apply for legal aid is required to complete the application form and questionnaire relating to the type of

proceedings and provide the relevant information and documents to support his/her application. In accordance with normal procedure, the LAD will interview the applicant to get an in-depth knowledge of his application and the applicant has to undergo means and merits tests. In assessing the merits of the application, the LAD will consider the background of the case, evidence provided and the legal principles applicable to the case to determine whether there are reasonable grounds to grant legal aid.

Legal aid is the support which the Legal Aid Ordinance (LOA) renders to all citizens. According to the professional guide of The Law Society of Hong Kong (Law Society), a solicitor is under a duty, both at the commencement of a retainer and during the retainer, where circumstances so warrant, to explain to a client about the legal aid service and the ways to obtain the service.

Under the LAO, it is the duty of the Director of Legal Aid (Director) to grant legal aid to cases with reasonable grounds.

To ensure that only those with reasonable grounds for taking the proceedings are granted legal aid, all applications are processed by in-house lawyers who are legally qualified. If the application is refused, the applicant may appeal against the Director's decision to the Registrar of the High Court. The decision of the Registrar is final.

A mechanism is in place in the Legal Aid Regulations to safeguard against abuse of legal aid services. If anyone has repeatedly applied for legal aid after being refused, the Director may order that no consideration shall be given to any future application by that person for three years if it appears to the Director that his conduct has amounted to an abuse of the facilities provided by the LAO. To my understanding, however, this may not necessarily be the abuse which Mr LAM has mentioned in his question.

- (c) The number of civil cases where legal aid was granted and the number of cases where the assigned solicitors were nominated by the

aided persons in the past five years are set out as follows. In order to save time, I will not read out the details:

<i>Year</i>	<i>Number of civil cases where legal aid was granted</i>	<i>Number of cases where the assigned solicitors were nominated by the aided persons</i>
2006	9 356	4 047
2007	7 937	3 423
2008	7 513	3 401
2009	9 031	4 287
2010	8 263	4 320

With respect to counsel, the LAD does not keep record on the number of cases where the assigned counsel are solely nominated by the aided persons. It only keeps record on the number of cases where the assigned counsel are nominated by the assigned solicitors or the aided persons. Such cases are set out below for Members' reference.

<i>Year</i>	<i>Number of cases where the assigned counsel are nominated by the assigned solicitors or the aided persons</i>
2006	1 041
2007	924
2008	902
2009	1 012
2010	651

Pursuant to the Personal Data (Privacy) Ordinance and section 24 of the LAO, the LAD is not at liberty to disclose the names of the assigned solicitors/counsel nominated and details of the cases involved. The LAD does not keep record on the amounts of legal costs incurred in cases handled by the solicitors and counsel nominated by the aided persons.

MR JEFFREY LAM (in Cantonese): *President, on that day, everyone in Hong Kong saw on television or read in newspapers that the plaintiff, an old lady surnamed CHU, explicitly said that someone had asked her to file the lawsuit,*

and that she was befuddled. Later, her solicitor came out and disclaimed knowledge of her remark.

Obviously, Madam CHU was being manipulated. The Secretary said just now that if the police did not receive any reports on a case, they would not handle the case. If a child was hit by a car outside the building and a policeman saw the accident, would he not handle the case even though no report has been received? Would the policeman not call an ambulance to the scene to save the child? The argument is not justifiable. I hope the Secretary will later retrieve the news reports or television footage on that day and examine what should be done.

President, I wish to raise a question in relation to part (c) of the main reply. The Secretary said that the LAD does not keep record on the amounts of legal aid incurred in cases handled by solicitors nominated by the aided persons. May I ask why the LAD does not keep such record? I believe taxpayers are very interested to learn in what areas the public coffer has been spent. Moreover, why not disclose the names of the nominated solicitors? It is unnecessary to keep them in the dark; anyway, we all know who these nominated solicitors are when they show up at court.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, regarding the police investigation mentioned in the supplementary question, we should place our trust in the professional judgment of the police. It is up to the police to decide whether they will initiate investigation on a certain case and whether they will announce the investigation results to the public.

With respect to the legal costs incurred in cases involving legal aid, the LAD has not compiled statistics on the total legal costs incurred by cases in which the aided person nominated his solicitor or counsel. However, we can provide the legal cost incurred in a certain case. For instance, in our reply to a relevant written question raised by Ms Starry LEE today which specifically asked the amount of legal aid involved in the judicial review litigation over the Environmental Impact Assessment reports of the Hong Kong-Zhuhai-Macao Bridge, we can specifically point out that the amount involved was \$1.49 million.

MR LAU KONG- WAH (in Cantonese): *President, at least \$6.5 billion of taxpayer money has been wasted on this JR case. We also note that during the JR, the leader of the Civic Party has provided advice, a volunteer of the Civic Party has been manipulated to apply for legal aid and a lawyer, an executive committee member of the Party, is involved in the litigation and has pocketed almost \$1.5 million of legal aid. The incident not only involves a waste of public money, but also involves the operation of the political party and a major public interest. Thus, may I ask*

(Mr Alan LEONG raised his hand)

PRESIDENT (in Cantonese): Mr Alan LEONG, what is your point?

MR ALAN LEONG (in Cantonese): *President, a point of order.*

PRESIDENT (in Cantonese): Mr LAU Kong-wah, please sit down first. Mr Alan LEONG, please raise your point of order.

MR ALAN LEONG (in Cantonese): *Mr LAU Kong-wah just said that the leader of the Civic Party had provided legal advice. I want to know on what ground does he say so. Is this his personal opinion? I am the incumbent party leader, does he mean that I have provided legal advice? I think Mr LAU*

PRESIDENT (in Cantonese): Mr LEONG, are you asking the Member who has asked the question to clarify what he just said?

MR ALAN LEONG (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): Mr LAU Kong-wah, do you wish to clarify?

MR LAU KONG-WAH (in Cantonese): *President, according to some news reports, Mr Alan LEONG told the media that he had provided some advice regarding this case. However, the news reports did not specify whether it was legal advice. President, I wish to continue with my question.*

Obviously, I wish to ask the Secretary

MR ALAN LEONG (in Cantonese): *President*

PRESIDENT (in Cantonese): Mr Alan LEONG, what is your point?

MR ALAN LEONG (in Cantonese): *President, can I ask Mr LAU Kong-wah to point out directly the specific news reports and advice? I have never provided any advice. I do not think he has sufficiently clarified his remark.*

PRESIDENT (in Cantonese): Mr LAU, do you wish to clarify?

MR LAU KONG-WAH (in Cantonese): *No problem. I have done a thorough search. I will provide him with the information afterwards.*

President, in this case, is there an obvious conflict of interests? Is this an act of misconduct? Has this not jeopardized the interests of the public? Worse still, as pointed out by Mr Jeffrey LAM just now, the applicant said afterwards that she did not want to do so and thought that she was befuddled. This obviously is against the applicant's

MS AUDREY EU (in Cantonese): *President, a point of order.*

PRESIDENT (in Cantonese): Ms Audrey EU, what is your point of order?

MS AUDREY EU (in Cantonese): *President, I have a point of order. Under Rule 41 of the Rules of Procedure, Members shall not offend another Member or impute improper motives to another Member. In raising his question just now, Mr LAU Kong-wah mentioned our party leader, claiming that he has provided advice and has acts of misconduct, and even accusing him of having conflicts of interests.*

President, I wish to seek your ruling on whether he has offended Mr Alan LEONG because Mr Alan LEONG has already clarified that he has not provided any advice or legal opinion and that he has asked Mr LAU Kong-wah to provide the source and details of information based on which this remark is made. Thus, President, Mr LAU Kong-wah's subsequent accusations of misconduct or conflicts of interests have obviously offended Mr Alan LEONG and imputed improper motives to him.

PRESIDENT (in Cantonese): Ms EU, please sit down first. Mr LAU Kong-wah, are you saying that a Member of this Council has acts of misconduct and improper motives?

MR LAU KONG-WAH (in Cantonese): *President, I certainly understand why members of the Civic Party are so agitated. Nevertheless, I am only asking the Secretary a question and seek his reply. President, I am displeased that I have been repeatedly interrupted when I try to ask a supplementary question. May I have the opportunity to finish my question for the Secretary to*

PRESIDENT (in Cantonese): Mr LAU, if a Member has raised a point of order, I am obliged to stop you and handle the point of order first. A Member has now raised a point of order, saying that the content of your question just now is offensive to another Member. Thus, I want you to clarify whether you are saying that a Member of this Council has acts of misconduct or improper motives.

MR LAU KONG-WAH (in Cantonese): *President, I have not named the Member. I was not referring to that Member either. I said*

PRESIDENT (in Cantonese): Were you referring to any one of our Members?

MR LAU KONG-WAH (in Cantonese): *No. My question is about whether the operation as a whole involves any conflicts of interests and acts of misconduct. I would like the Secretary to answer my question.*

(Mr Paul TSE raised his hand)

PRESIDENT (in Cantonese): Mr Paul TSE, what is your point?

MR PAUL TSE (in Cantonese): *I also wish to raise a point of order.*

PRESIDENT (in Cantonese): Mr LAU Kong-wah, please sit down first.

MR PAUL TSE (in Cantonese): *For the sake of order in this Council, may I ask the President to clarify, regarding the present problem pointed out by Members, whether the applicable Rule under the Rules of Procedure should be Rule 25, rather than Rule 42 or Rule 41 as quoted by Ms Audrey EU? The accusation made by Member or the problem which they consider out of order should thus be handled in accordance with Rule 25. If Ms EU would study Rule 25, she may find that some of the provisions which she has quoted are also applicable here, and she can better support her point that the accusation is out of order by quoting the right rule.*

PRESIDENT (in Cantonese): What Mr TSE has said is correct. However, as Mr TSE is aware, the requirement laid down in Rule 25(1) of the Rules of Procedure is even more stringent than the requirement laid down in the rule quoted by Ms Audrey EU. Hence, would Mr LAU Kong-wah please take note that Members should not include any imputations in their questions, nor should they use any ironical expressions or raise any arguments.

DR MARGARET NG (in Cantonese): *President, I can hardly review the Rules of Procedure in a short time, I do not have enough time to do so, but I hope that the President would make a ruling. If a Member makes an imputation against another Member, particularly if he severely accuses the other Member of acts of misconduct, he should not raise the accusation directly, let alone asking a public officer to answer such a question. If he is of the opinion that a Member of this Council has acts of misconduct, he should raise this issue in a formal way.*

President, I hope that you would make a ruling on whether Mr LAU Kong-wah's remark just now is appropriate.

MR LAU KONG-WAH (in Cantonese): *President, let me make myself clear. I am certainly delighted to hear that several Members just now said that Members should not use offensive expressions against each other, nor should they make imputations against other Members. I agree with them in this point, and I think that the colleagues who said so should live up to their words in the future. However, just now I only put forth a supplementary question and I was referring to the operation as a whole. I did not specify which Member was involved.*

PRESIDENT (in Cantonese): *When you raised your supplementary question, did you say that certain Member of this Council has acts of misconduct or improper motives?*

MR LAU KONG-WAH (in Cantonese): *No. All along I have been asking whether the involvement and operation of the Civic Party as a whole involve any conflict of interests, misconduct and infringement on public interests. I have made it very clear.*

PRESIDENT (in Cantonese): *If Member's question is about whether the participation of a certain political party in a certain matter involves any misconduct or infringement on public interests, the question has not violated the Rules of Procedure.*

MR LAU KONG-WAH (in Cantonese): *Thank you, President. I wish to finish with my supplementary question.*

PRESIDENT (in Cantonese): Please raise your supplementary question quickly.

MR LAU KONG-WAH (in Cantonese): *President, I am not the one stalling on the subject.*

President, what I wish to say is, the applicant said that she did not wish to file the lawsuit and that she was befuddled. Obviously it was against her will to be the applicant. May I ask the Secretary whether he will urge the Director, who is the approving authority of legal aid applications, to re-examine whether the applicant filed and signed the application on a voluntary basis?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, the Director discharges his authority and duties in accordance with the LAO. In discharging his duties, he would only consider the merits of the case and the relevant legal provisions. The litigation is now over and I do not think he needs to conduct other investigation on the case.

MR IP KWOK-HIM (in Cantonese): *President, I have studied part (b) of the main reply in detail. The Secretary has repeatedly emphasized that under normal practice, the LAD will interview the applicant to get an understanding of the application, and that all legal aid applications are processed by legally-qualified lawyers of the LAD, so as to ensure that only those with reasonable grounds for taking the proceedings are granted legal aid.*

However, I note that, as also mentioned by Mr Jeffrey LAM or Mr LAU Kong-wah just now, Madam CHU said that (allow me to quote her words) she was "befuddled", adding that she personally would not take legal action, but someone had asked her to "file the lawsuit". However, she would not disclose who had asked her to "file the lawsuit".

May I ask the Secretary, has he considered whether the existing vetting and approving procedure for legal aid applications can prevent people with legal

knowledge to reap lawyer fees by making use of judicial review to initiate proceedings? I heard just now that the lawyer fee amounted to \$1.49 million. As such, will consideration be given by the Government to reviewing the practice concerned, so as to plug this loophole?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, at the interview with an applicant for the vetting and approving of his legal aid application, the LAD will not ask questions other than those related to the application and those concerning the merits of the case. In particular, if the application involves, among others, a judicial review, the LAD will definitely not ask questions not related to the merits of the case.

Mr IP Kowk-him asked just now whether the existing procedure will give rise to "champerty". "Maintenance" and "champerty" are both criminal offence under common law. Maintenance may be defined as the giving of encouragement to one of the parties to litigation by a person who has neither an interest in the litigation nor any other motive recognized by the law as justifying his interference. Champerty is the maintenance of an action in consideration of a promise to give the maintainer a share in the proceeds. The above conducts are forbidden in the Code of Practice of The Law Society of Hong Kong and the Hong Kong Bar Association.

PRESIDENT (in Cantonese): We have spent over 21 minutes 30 seconds on this question. Although some other Members have occupied some of Mr LAU Kong-wah's question time to express their opinions, I have to end this question here. This also explains why more stringent requirements are laid down in the part on questions in the Rules of Procedure.

I wish to remind Members once again that in putting your questions, you should seek to avoid verbosity, imputations and using ironical or offensive expressions. These usually will become points of contention. I hope Members can be clear and concise in putting your questions and allow time for other Members to put their supplementary questions.

Last question seeking an oral reply.

Appendix III

Relevant papers on issues relating to the provision of legal aid for judicial review cases

Meeting	Date of meeting	Paper
Panel on Administration of Justice and Legal Services ("AJLS Panel")	7.10.1999 (Item III)	Agenda Minutes
	19.10.1999 (Item V)	Agenda Minutes
	16.11.1999 (Item VII)	Agenda Minutes
	18.1.2000 (Item V)	Agenda Minutes
	25.2.2002 (Item VI)	Agenda Minutes
	22.7.2002 (Item IV)	Agenda Minutes
	28.2.2005 (Item IV)	Agenda Minutes
	27.2.2006 (Item VI)	Agenda Minutes
	13.1.2009 (Item III)	Agenda Minutes
	22.10.2009 (Item I)	Agenda Minutes
	25.1.2010 (Item V)	Agenda Minutes
	29.3.2010 (Item IV)	Agenda Minutes

Meeting	Date of meeting	Paper
	21.7.2010 (Item I)	Agenda Minutes
	30.9.2010 (Item I)	Agenda Minutes
Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation	10.6.2011 (Item I)	Agenda Minutes
AJLS Panel	20.10.2011 (Item I)	Agenda

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