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30 June 2017

Ms Connie SZETO
Clerk to the Establishment Sub-committee
Legislative Council

Dear Ms SZETO,

**Submission in relation to
Establishment Sub-committee Paper EC(2016-17)26**

I refer to the written enquiries dated 14 June 2017 regarding Establishment Sub-committee Paper EC(2016-17)26 proposing to make permanent one time-limited Deputy Principal Government Counsel (DPGC) (DL2) post in the Legal Policy Division (LPD) of the Department of Justice (DoJ) responsible for undertaking essential duties in respect of constitutional and electoral matters.

The reply to the enquiries is attached at Annex for your perusal please.

Yours sincerely,

(Alan Siu)

Director of Administration and Development
Department of Justice

(I) Constitutional Development and Elections Unit (CD&EU) and judicial reviews

Enquiries

- (1) Were any members of the Constitutional Affairs Sub-Division or its CD&EU responsible for handling the judicial reviews concerning the six Legislative Councillors in the past year?
- (2) If yes, please provide the number of officers, manhours and expenses involved in the assignment.
- (3) Following from the above, what are the expenses and estimated expenditure for engaging outside counsel to represent the Government in the litigation for the issues concerned? Had there been no such judicial reviews, what would have been the annual expenses and estimated expenditure for engaging outside counsel to represent the Government in litigation?
- (4) If not, which unit(s) and division(s) are responsible for the matter?
- (5) Has the Constitutional Affairs Sub-Division or its CD&EU reviewed the mechanism of requiring candidates to sign a confirmation form for running in an election? If yes, what are the findings?
- (6) Has the CD&EU given any legal advice or views to the Postmaster General on the compliance of requirements for election communication? Has it reviewed the issue? If yes, what are the findings? If not, what are the reasons?

Replies

- (1) & (4): The Civil Division of the Department of Justice (DoJ) deals with all civil litigation (including judicial review proceedings) involving the Government. The Civil Division may, on a need basis, seek input or advice from other divisions in the Department (including the “Constitutional Development and Elections Unit” under the Constitutional Affairs Sub-division of the Legal Policy Division (LPD) in respect of election matters) or barristers or solicitors in private practice.
- (2): DoJ does not keep a running record of the total number of staff, man-hours and expenditure involved for individual litigation cases. Moreover, as the concerned legal proceedings are still in progress, the ultimate manpower and expenditure

involved will be subject to the final development of the proceedings concerned.

- (3): In working out the 2017-18 estimates, DoJ has taken into account the resources requirement for handling various cases, including the abovementioned legal proceedings. It is not appropriate for us to disclose information on anticipated expenditure in individual cases (including the expenditure for instructing outside counsel), as this may prejudice the legal rights of the Government (e.g. by reflecting directly or indirectly our assessment concerning those cases). Any counsel fee to be incurred for the handling of such legal proceedings and any court costs that may be incurred in such proceedings in 2017-18 will be met under the approved estimates of DoJ for 2017-18 in respect of the provision for the hire of legal services and related professional fees (including counsel fees) and court costs payable under Programme (2) Civil respectively.
- (5): The confirmation form that candidates for the 2016 Legislative Council Election were required to sign was prepared by the Electoral Affairs Commission for the Returning Officers. Such work is the responsibility of the Electoral Affairs Commission.
- (6): The professional legal advices given by DoJ to bureaux/departments of the HKSAR Government on individual issues as well as communications made during the course of the provision of legal advice are covered by legal professional privilege. Moreover, the concerned legal proceedings are still in progress. Hence, it is inappropriate for us to provide any further comment.

(II) Basic Law Unit (BLU)

Enquiries

- (1) What is the stance of the BLU on Beijing's frequent brutal interpretations of the Basic Law? Has the BLU raised objections?

- (2) Regarding the research materials on the BL, over the years, are any research results (if yes, please provide a brief explanation or information) and systematic database available, and any such research results published or issued?

Replies

- (1): Article 158(1) of the Basic Law (BL) provides that “the power of interpretation of this Law shall be vested in the Standing Committee of the National People’s Congress”. The Basic Law Unit under the Constitutional Affairs Sub-Division of the LPD is tasked to provide the HKSAR Government with legal advice relating to the BL and promote understanding of the BL. The DoJ has all along taken the view that under the “one country, two systems” principle, “one country” should be respected, at the same time “two systems” should also be respected, and the BL should always be safeguarded. The views of DoJ in respect of the interpretation of the BL constitute legal advice to the Government and it is inappropriate for them to be disclosed.
- (2): Research by the DoJ on legal issues relating to the Basic Law is mainly conducted when DoJ is required to provide legal advice on related issues. Such legal work is handled by the Basic Law Unit of LPD for relevant policy bureaux and departments to ensure that the policies and measures they adopt or consider adopting are consistent with the Basic Law. As regards the publication of information on the Basic Law for public consumption, we handle it through appropriate means. For example, LPD compiles the Basic Law Bulletin, which is published jointly by DoJ, the Civil Service Bureau and the Constitutional and Mainland Affairs Bureau, for use as reference within the civil service, and is also uploaded to the DoJ’s website (at www.doj.gov.hk/eng/public/pub20030002.html) for public information. Moreover, the Government also provides information regarding the Basic Law to the public through other channels, including the websites of DoJ and CMAB.