

來函檔號 YOUR REF. : CB2/PL/HA

本署檔號 OUR REF. : HAB/1/10/12/10 XIII

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23 October 1999

Clerk to the Panel
(Attn: Miss Flora Tai)
LegCo Panel on Home Affairs
Legislative Council
(By fax: 2509 9055)

Dear Flora,

**LegCo Panel on Home Affairs
Follow-up to special meeting on 12 October 1999**

Thank you for your letter of 16 October. As I advised you over the phone that day, the 20 October deadline was impractical. We have done our best to minimise the delay and, to that end, are responding in English first. The Chinese version will follow shortly. The following paragraphs address the Panel's questions seriatim.

(a) Legal aid applications

2. The Legal Aid Ordinance (Cap.91) contains no residence requirement for legal aid applications. Therefore, it is possible for a person who is physically outside Hong Kong to apply for legal aid through a representative. All legal aid applications must be made in the prescribed form. The form must be signed by the applicants themselves, or by their

duly authorised representatives. Additionally, the Immigration Ordinance allows applications for the right of abode to be made on behalf of the applicants by persons in Hong Kong. That person may be the parent or guardian of the applicant or any other person acceptable to the Director of Immigration. Applicants themselves may be children of tender years who - even if they were in Hong Kong - could not answer questions relating to means or merits. Therefore, applications for legal aid made on their behalf would not necessarily be affected by whether or not they are in Hong Kong.

3. Moreover, the Court of Final Appeal - in its judgement in January - stated that public law remedies (judicial review) would be available to right of abode applicants, notwithstanding the fact that they were outside the jurisdiction. Since, under the certificate of entitlement scheme, a person is required to remain outside the jurisdiction while their application is processed, restricting the right of such a person to apply for legal aid to challenge an adverse decision might be seen as an administrative means of restricting the exercise by them of their right of abode.

4. The Legal Aid Department does not have information on the number of right of abode claimants whose application forms were submitted through their representatives while they (the applicants) were outside Hong Kong. Messrs Lui Kwan-chung and Chan Fung made fresh applications for legal aid at the Victoria Immigration Centre where they were detained;

(b) Police entry and search of Macau Jockey Club premises

5. There were two hearings before the magistrate. At the first, on 16 December 1998, the magistrate gave two reasons for refusing a warrant. In essence they were as follows –

- (a) given that the Gambling Ordinance empowers police officers of the rank of superintendent and above to authorise the entry and search of gambling establishments, and certain presumptions arise in respect of activities conducted in those premises, a general authorisation under section 50(7) of the Police Force Ordinance was inappropriate in dealing with gambling activities; and

- (b) the magistrate was uncertain whether the alleged gambling activities, which had an extra-territorial element, fell within the offence provisions.

With regard to the second element, the Department of Justice took the view that this gave rise to an issue of law which realistically would need to be pursued after the raids had occurred and in light of such evidence as was obtained

6. At the second hearing, on 22 December 1998, the magistrate asked why the Police did not consider using the Gambling Ordinance.

7. The fact that the magistrate was not prepared to issue a warrant under the Police Force Ordinance was no legal impediment to the issue by a police superintendent of an authorisation under the Gambling Ordinance. Moreover, in view of the comment made by the magistrate, there can be no basis for suggesting that, once the police formed the required reasonable suspicion as to the use of the premises in question, they were acting in a manner that was in any sense arbitrary;

(c) pace of democracy

8. The Secretary for Constitutional Affairs has sent you the information requested under separate cover (his letter of 19 October); and

(d) Pope's visit

9. Article 13 of the Basic Law provides that "the Central People's Government (CPG) shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region" (HKSAR). The Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR had made the following statement –

“The Pope is both the head of the Roman Catholic Church and a head of state. The Vatican is at present maintaining so-called ‘diplomatic relations’ with Taiwan. Hong Kong is a Special Administrative Region of China, and the Pope’s visit to Hong Kong involves rather complicated issues. The Vatican is also well aware of this.”

10. The HKSARG understands that the Pope's visit to Hong Kong involves foreign affairs and it would only be appropriate to discuss the proposed visit after the CPG and Vatican have resolved the relevant issues.

Yours sincerely,

(John Dean)
for Secretary for Home Affairs

c.c. S for S (Miss Eliza Yau)
SCA (Mr Bassanio So)
D of J (Mr R C Allcock, Mr Stephen Wong)
D of Adm (Mrs Rosanna Law)
DLA (Ms Lolly Chiu)
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Internal

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