

LC Paper No. CB(2)1321/06-07(01)

Ref : CB2/PL/AJLS

Date : 8th February 2007

Mr. Chan Siu Lun

Mrs. Percy Ma,
Clerk to LegCo Panel on Administration of Justice & Legal Services,
LEGISLATIVE COUNCIL SECRETARIAT,
3/F, City Bank Tower,
3, Garden Road,
Hong Kong
(Fax : 2509 9055 / Tel. : 28699426)

Total pages : 29

Dear Mrs. Ma,

Request the LegCo to monitor the Scheme of Provision of Certificate by Counsel run by the Legal Aid Services Council ("the LASC") and controlled by the Administration

I request the Legislative Council to monitor the Scheme of Provision of Certificate by Counsel run by the LASC and controlled by the Administration. The reason is that the LASC has failed to provide reasonable grounds to reject my application for counsel certificate both in its recent reply dated 29th Jan. 2007 and previous replies dated 21st Nov., 26th Oct. & 30th Aug. 2006 notwithstanding the merits and special circumstances in the case that guarantee reasonable prospect of success in the appeal to the Court of Final Appeal. This makes the public doubt the quality of provision of legal aid services in Hong Kong Special Administrative Region.

Relevant documents for the Legislative Council to consider the captioned subject include :

(1) My second letter of 1st Feb. 2007 (titled "*Request the Administration to monitor the*

- Scheme of Provision of Certificate by Counsel run by the LASC*) together with its enclosures addressed to the Director of Administration ;
- (2) Interim reply of the Director of Administration dated 18th Jan. 2007 ; and
- (3) My first letter of 11th Jan. 2007 (titled "*Request the Administration to monitor the Scheme of Provision of Certificate by Counsel run by the LASC*") together with some of its enclosures addressed to the Director of Administration.

Thank you for your kind attention.

I am looking forward to kind reply of the LegCo at your latest convenience.

Yours faithfully,



Chan Siu Lun
(Member of the Public)

LC Paper No. CB(2)1321/06-07(02)

Ref : CB2/PL/AJLS

Date : 16th February 2007

Mr. Chan Siu Lun

Mrs. Percy Ma,
Clerk to LegCo Panel on Administration of Justice & Legal Services,
LEGISLATIVE COUNCIL SECRETARIAT,
3/F, City Bank Tower,
3, Garden Road,
Hong Kong
(Fax : 2509 9055 / Tel. : 28699426)

Total pages : 6

Dear Mrs. Ma,

Request the LegCo to monitor the Scheme of Provision of Certificate by Counsel run by the Legal Aid Services Council ("the LASC") and controlled by the Administration

Thank you for your letter of 13th Feb. 2007 telling me that :

"I refer to your letter of 8 February 2007.

The matter is receiving attention. I shall revert to you in due course."

I would like to submit a copy of the amended letter of 1st Feb. 2007 (titled "*Request the Administration to monitor the Scheme of Provision of Certificate by Counsel run by the LASC*") addressed to the Director of Administration for reference and attention of the LegCo.

I am looking forward to detailed reply of the LegCo on the captioned subject.

Yours faithfully,


CHAN SIU LUN

Ref: CSO/ADM/CR 11/4/3222/85

Date: 1st February 2007

Mr. Chan Siu Lun

Director of Administration,
Rm. 1240B,
Central Government Offices (West Wing),
11 Ice House St.,
Central, Hong Kong.
(Fax : 28428897 / Tel. : 28102783)

Total pages : 13

Dear Sir/Madam,

**Request the Administration to monitor the Scheme of
Provision of Certificate by Counsel run by the Legal Aid Services Council ("the LASC")**

Further to my letter dated 11.01.2007 on the captioned subject, I request the Administration to monitor the Scheme of Provision of Certificate by Counsel run by LASC for the reasons stated below :

I note 1st & 2nd paragraphs of the section named "OPERATIONAL POLICY AND PROCEDURES" of the LASC's Annual Report 2002-2003 have addressed the public that:
**"OPERATIONAL POLICY AND PROCEDURES
Financial Assistance to Appellants under Section 26A of the Legal Aid Ordinance**

Section 26A of the Legal Aid Ordinance (Cap. 91) provides that a legal aid applicant who has been refused legal aid to appeal to the Court of Final Appeal (CFA) may seek a review of the legal aid refusal (the review). The review shall be initiated by notice to the Registrar of the High Court accompanied by a certificate by counsel stating that the person aggrieved

has a reasonable prospect of success in the CFA appeal and the grounds for that opinion. -----

In March 1997, the Council considered that there was a need to provide assistance as the above certificate requirement might deny any impecunious person's access to the review committee. As mentioned in the previous annual report, the Administration agreed to establish a new assistance scheme to provide legal aid appellants who passed the means test conducted by LAD with funds to obtain counsel's certificates. As the need for the arrangement arose from an appeal against DLA's refusal to grant legal aid and given the supervisory role of the Council on the provision of legal aid services, both the Administration and the Council considered it appropriate to involve the Council in the arrangement."

I also note that 3rd ground of my application letter dated 8.01.2007 (titled "*Application for Provision of a Certificate by Counsel Pursuant to Section 26A of the Legal Aid Ordinance, Cap. 91*") has informed the LASC that :

[Third, I have perused the Annual Reports 2002-2005 of the LASC downloaded from the website of the LASC on the internet, I especially note that the LASC has addressed on P.2 of its Annual Report 2002-2003 as below :

"----- The Council decided that a review of the scheme be conducted after it had operated for several months. Issues to be reviewed included preliminary vetting of the merits of an application ; -----"

Accordingly, the Council is duty bound to take a look at the merits of the case. However, I note that the Council has only relied upon very little portion of the papers that I have submitted to the Council to refuse my application for counsel certificate.]

Therefore, even though item (d) of the framework of the arrangement set out in LASC's Annual Report 2001-2002 has not clarified the criteria to approve applications for counsel certificate, it is plain that the LASC is duty bound to monitor the provision of legal aid services offered by the Legal Aid Dept. and conduct preliminary vetting of the merits when dealing with my applications for counsel certificate lodged on 21.08.2006 & 8.01.2007.

However, the LASC's letter of refusal dated 29.01.2007, which is similar to its previous reply letters dated 30th August, 26th Oct. & 21st Nov. 2006 in respect of the disregard of the merits (& special circumstances) of the case that I have explained in lucid details in my letters dated 1st & 23rd July 2006, 1st Sept., 19th & 30th Oct. 2006 and 22nd Jan. 2005 addressed to the Legal Aid Dept., LASC and the CFA and the failure to monitor the provision of legal aid services in connection with my application for counsel certificate, namely the "doubtful legal merits" which is the main reason set out by the Legal Aid Dept. on 17.08.2006 to refuse my application for legal aid and would probably be inquired into by the review committee subject to subsection (4)(a) of section 26A of the Legal Aid Ordinance (Cap. 91). has only informed me that :

"Your letter of 8 January 2007 requesting a third review of your application for a certificate by counsel has been considered by the LASC.

We regret to advise that the fresh grounds advanced by you to support your application cannot take the matter further. Your application for a certificate by counsel remains refused."

Also, I believe that the LASC has not done its job properly to evaluate the merits of the applicants' cases before making its decision to approve/reject the applications for counsel certificate. The ground is that majority of the applications approved by the LASC to offer counsel certificate had no reasonable prospect of success (i.e. without merits). Please kindly note the LASC's Annual Reports 2002-2006 under the section headlined "OPERATIONAL POLICY AND PROCEDURES" has addressed the public that :

"OPERATIONAL POLICY AND PROCEDURES

Financial Assistance to Appellants under Section 26A of the Legal Aid Ordinance

----- From 2 April 2002 to March 2003, there were 131 (117 criminal and 14 civil) applications from legal aid applicants who had been refused legal aid in respect of their appeals to the CFA. Of these, 117 (108 criminal and 9 civil) were approved, 13 (8 criminal and 5 civil) rejected and 1 criminal case being considered.

As at 31 March 2003, 109 (101 criminal and 8 civil) certificates by counsel were prepared. Of these, 27 (24 criminal and 3 civil) stated that the applicant had reasonable prospect of success and 82 (77 criminal and 5 civil) stated that the applicant had no reasonable prospect of success. -----";

“OPERATIONAL POLICY AND PROCEDURES**Financial Assistance to Appellants under Section 26A of the Legal Aid Ordinance**

During the year, there were 95 (85 criminal and 10 civil) applications for certificates by counsel from legal aid applicants who had been refused legal aid in respect of their appeals to the CFA. Of these, 84 (77 criminal and 7 civil) were approved and 9 (7 criminal and 2 civil) rejected and 2 (1 criminal and 1 civil) cases being considered.

As at 31 March 2004, 78 (72 criminal and 6 civil) certificates by counsel were prepared. Of these, 9 (8 criminal and 1 civil) stated that the applicant had reasonable prospect of success and 69 (64 criminal and 5 civil) stated that the applicant had no reasonable prospect of success. -----” ;

“OPERATIONAL POLICY AND PROCEDURES**Scheme under Section 26A of the Legal Aid Ordinance**

----- During the year, there were 85 (80 criminal and 5 civil) applications for Certificates by Counsel from legal aid applications who had been refused legal aid in respect of their appeals to the CFA. Of these, 77 (72 criminal and 5 civil) were approved and 6 applications rejected, 1 application withdrawn after submission and 1 criminal case being considered.

As at 31 March 2005, 72 (67 criminal and 5 civil) certificates by counsel were prepared. Of these, 14 (12 criminal and 2 civil) stated that the applicant had reasonable prospect of success and 58 (55 criminal and 3 civil) stated that the applicant had no reasonable prospect of success. Certificates on 5 criminal cases were being considered by Counsel. -----” ; and

“OPERATIONAL POLICY AND PROCEDURES**Scheme under Section 26A of the Legal Aid Ordinance**

----- During the period, there were 103 (87 criminal and 16 civil) applications. Of these, 84 (75 criminal and 9 civil) applications were approved and 17 (10 criminal and 7 civil) applications were rejected. 2 criminal applications were being considered.

As at 31 March 2006, 10 criminal certificates by counsel stating that the applicant had

reasonable prospect of success and 73 (64 criminal and 9 civil) certificates by counsel stating that the applicant had no reasonable prospect of had been issued. 1 criminal case was being considered by counsel. -----”


Undeniably, the LASC's reply letter dated 29.01.2007 has failed to provide reasonable grounds to refuse my recent application for counsel certificate proposed by the Registrar of the High Court (& Chairman of the Review Committee) and tends to deny my constitutional right of access to the review committee protected by Article 35 of the Basic Law. This is because being an appellant against the legal aid refusal dated 17.08.2006, I cannot initiate a review of the legal aid refusal without a counsel certificate stating that the person aggrieved has a reasonable prospect of success in the CFA appeal and the grounds for that opinion. Please kindly note I have proved in my previous papers that there are merits and special circumstances in the case and I have submitted those papers to the LASC for preparation of the counsel certificate. Therefore, if the LASC has done its job properly to evaluate the merits of the case, it would not be difficult for the LASC to locate the merits and identify the special circumstances of the applicant's case that guarantee reasonable prospect of success in the CFA appeal.

By the way, apart from the merits of the case I have submitted to you in my previous letter dated 11.01.2007, I suggest you to open my file kept in LASC to read the full merits of the case that I have explained to the LASC in my recent application letter dated 8.01.2007.

A copy of the relevant sections of the said LASC's Annual Reports 2001-2002 & 2002-2003, the LASC's reply letter dated 29.01.2007 that I have just received today and the reasons set out by the Legal Aid Dept. on 17.08.2006 to refuse Mr. Chan Siu Lun's application for legal aid are attached for your reference and attention.

I am looking forward to your kind reply as soon as possible.

Yours faithfully,


CHAN SIU LUN

政府總部
香港下亞厘畢道



立法會 CB(2) 1321 /06-07(03)號文件

GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本的檔號 Our Ref.: CSO/ADM/CR 11/4/3222/85 (05) Pt. 5
來函檔號 Your Ref.: CB2/PL/AJLS

中區政府合署東座
522室

電話號碼：2810 2576
傳真號碼：2501 5779

香港中區
艮臣道 8 號立法會大樓
立法會司法及法律事務委員會秘書
馬朱雪履女士

馬朱雪履女士：

立法會司法及法律事務委員會

根據《法律援助條例》(第 91 章)第 26A 條 提供大律師證明書的機制

繼陳兆麟先生於二零零七年二月八日給你的信函，你於二零零七年二月十二日來信查詢關於法律援助服務局提供大律師證明書的機制及當局對陳先生個案的評論。

法律援助服務局

法律援助服務局是根據《法律援助服務局條例》(第 489 章)於一九九六年設立的一個獨立法定團體，以監管在香港由法律援助署(法援署)提供的法律援助服務，並就法律援助政策向行政長官提供意見。

提供大律師證明書的計劃(該計劃)

《法律援助條例》(第 91 章)第 26A 條規定，就向終審法院提出上訴而申請法律援助，但其申請被拒的法律援助申請

人，可要求對法援署長的決定作出覆核。受屈人士如提出覆核，須向高等法院司法常務官發出通知，並附有大律師證明書，證明其有合理機會向終審法院上訴得直，及提出該項意見的理由。上述法例的有關章節載於附件 A。

法律援助服務局執行一項援助計劃，提供款項予上述提及而通過經濟審查的法律援助上訴人，使其取得大律師證明書。為了確保公正，法律援助服務局獨立地施行該計劃並自行決定有關申請。

我們已將委員會的要求轉達法律援助服務局。附件 B 為法律援助服務局的回信，解釋該計劃及提供陳先生個案的扼要背景。

當局對陳兆麟先生個案的評論

對法律援助服務局就此個案的觀點，我們並無補充。

我們希望上文已闡明此事。在決定是否讓公眾知悉此回信時，相信你必然會考慮附件 B 法律援助服務局的回信中載有陳先生的個人資料。

行政署長
(張趙凱渝 代行)

二零零七年三月五日

雙語法例資料系統

附件 A

單條條文模式

前一條文

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轉換語言

返回法例名單

條文內容

▼
 章： 91 標題： 法律援助條例 憲報編號： 79 of 1995; 25 of 1998; 26 of 1999
 條： 26A 條文標題： 上訴反對署長就向終審法院上訴事宜所作的決定 版本日期： 01/07/1997

附註：

具追溯力的適應化修訂一見1998年第25號第2條；1999年第26號第3條

(1) 法律援助申請人或受助人如申請法律援助以便向終審法院提出上訴或申請向終審法院提出上訴的許可，而因署長就其申請作出的命令或決定而感到受屈，可將該項命令或決定呈交一個由以下人士組成的委員會覆核—(由1989年第40號第9條修訂；由1995年第79號第50條修訂)

- (a) 高等法院司法常務官，他須任主席；
- (b) 由香港大律師公會主席委任的一名有資格在香港執業的大律師(他須有資格獲委為高等法院法官)；及
- (c) 由香港律師會會長委任的一名有資格在香港執業的律師(他須在普通法適用地區執業為律師滿10年)。(由1998年第25號第2條修訂)

(2) 主席可委任一名公職人員為委員會秘書。

(2A) (由1998年第25號第2條廢除)

(3) 任何人如要求覆核，須以書面發出通知，並在有關上訴所反對的命令或決定作出後28天內，或主席准許的較長期間內，將通知送交署長及主席，該通知須附有由在香港執業的大律師發出的證明書，述明該受屈的人有合理機會上訴得直，及提出該項意見的理由。

(4) 委員會可—

- (a) 就申請人的經濟能力與狀況以及其案件的案情的是非曲直，作出委員會認為合適的查訊；
- (b) 要求申請人提供委員會認為合適的資料及文件；
- (c) 要求申請人親自出席委員會的聆訊；及

(d) 收取證據及為此目的而為證人監誓。

(5) 申請人及署長均有權親自出席，或由大律師或律師代其出席委員會的聆訊，並可提交書面申述。(由1984年第54號第23條修訂)

(6) 委員會如信納該受屈的人有合理機會上訴得直，並根據其案件的個別情況而信納給予該人法律援助是合理的，可推翻或更改署長就有關上訴拒絕或限制給予法律援助的命令或決定，並可指示署長根據第10條向該人發給法律援助證書；委員會如不信納上述情況，則須維持署長的命令或決定。(由1984年第54號第23條代替)

(7) 委員會根據第(6)款作出的決定為最終決定。

(8) 主席如認為合適，可命令由署長從受其支配並可為有關目的而動用的基金中，撥款支付主席按有關情況釐定為適當的以下費用—

(a) 大律師發出第(3)款所述證明書的費用；及

(b) 大律師或律師根據第(5)款出席委員會聆訊的費用及開支。

(9) 委員會的開支，包括主席就委員會成員中的大律師及律師所釐定的合理收費，須由署長從立法會的撥款中支付。(由1999年第26號第3條修訂)

(10) 主席須將對根據本條提出的上訴所作的決定，以書面通知署長及上訴人，並須於通知內充分述明決定理由。(由1991年第27號第17條增補)

(由1982年第14號第16條增補)

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[返回法例名單](#)

附件 B

本函檔號：() in LASC 5/5/5/3

電子郵件：ceolasc@netvigator.com

來函檔號：

網址：http://www.info.gov.hk/lasc/

電話：2838 5006

香港中區下亞厘畢道
中區政府合署東座 522 室
行政署長
[經辦人：張趙凱渝女士(助理行政署長 2)]

張趙凱渝女士：

**根據《法律援助條例》(法援條例)第 26A 條
提供大律師證明書的計劃**

你於本年二月十三日的來信附上立法會司法及法律事務委員會二月十二日的函件，就委員會對根據第 26A 條實施的計劃，及就陳兆麟先生的個案所提出的要求，請本局提供資料。

計劃簡介

《法律援助條例》(第 91 章)第 26A 條規定，法律援助申請人申請法律援助以期向終審法院提出上訴，但申請遭到拒絕，可就其申請被拒一事要求覆核。如提出覆核，須向高等法院司法常務官發出通知，並附有大律師證明書，證明受屈人有合理機會向終審法院上訴得直，以及提出該項意見的理由。

本局認為，上述提出證明書的要求可能令貧困人士無法獲得覆核委員會審理，因此有必要向這些人士提供援助。經與當局磋商後，本局與當局同意設立一個新的援助計劃，提供款項予通過法律援助署(法援署)經濟審查的法律援助上訴人，使其可取得大律師證明書。基於這項安排是為就法援署署長拒絕提供法律援助提出上訴而產生的，加上本局的職責是監管法律援助服務的提供，當局及本局均認為應由本局實施這項計劃。是項計劃已於二零零二年四月三日開始實行。

計劃的綱領及運作

有關安排的綱領綜述如下—

- (a) 由本局認可成立律師及大律師小組的準則；
- (b) 本局去信兩個專業法律團體，邀請其會員加入兩個小組，按定額費用提供服務。該兩個專業法律團體會員的申請應提交本局，而法援署將會協助辦理核實程序及訂立小組名冊。經核實後，該兩個專業法律團體中符合加入小組準則的會員將獲本局認可；
- (c) 法律援助上訴人根據法援條例第 26A 條向本局申請免費證明書，以及提名由本局認可的小組律師及大律師。申請表格須送交本局，而表格的副本則須送交法援署，法援署將會告知本局被提名的律師／大律師是否曾獲法援署委派擔任法律援助上訴人的代表。申請表格須連同法援署發出的拒絕提供法援通知書一併提交，並須載述提名律師及大律師的條款，以及述明該名律師及大律師是否曾經代表申請人提出上訴。提名表格將被視作法律援助上訴人向獲提名律師就提供大律師證明書事宜發出的指示；
- (d) 法援局批准申請，並把法律援助上訴人的提名轉交其提名的律師。本局同時知會法援署申請已獲批准，而法援署則準備上訴文件冊，並送交獲提名律師，以便擬備大律師證明書；
- (e) 獲提名律師指示大律師擬備大律師證明書，並把大律師證明書送交法援署及本局。假如大律師證明書說明上訴人有合理機會上訴得直，法援署將會在五天內覆核其拒絕提供法律援助的決定。同時，假如法律援助上訴人提出要求，法援局將會協助上訴人向司法常務官和法援署署長發出書面通知，提出覆核。假如在覆核後法援署決定提供法律援助，送交司法常務官的通知可以收回；及
- (f) 獲提名律師向法援署送交訟費單及獲提名大律師的收費單，以便安排付款。

大律師最少應有十年執業經驗，而律師則最少應有七年執業經驗，方可加入成為小組名冊成員。擬加入小組名冊的大律師及律師，均應於過往三年內曾處理最少三宗在上訴法院或終審法院審理的刑事或民事上訴個案(視情況而定)。

發出證明書的情況

提供大律師證明書計劃是一項由法援局執行的行政計劃。這項計劃的經費由公帑支付，由於涉及撥用公帑，所以法援局必須審慎行事，以及確保沒有濫用計劃的情況出現。

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法律援助服務局秘書李潤材

二零零七年三月二日

政府總部
香港下亞厘畢道



LC Paper No. CB(2) 1321 /06-07(03)

GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

本函檔號 Our Ref.: CSO/ADM CR 11/4/3222/85 (05) Pt.5

來函檔號 Your Ref.:
CB2/PL/AJLS

Room 522
Central Government Offices
(East Wing)
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Fax: (852) 2501 5779

5 March 2007

Mrs. Percy Ma
Clerk to the Panel on Administration
of Justice and Legal Services
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mrs. Ma,

Panel on Administration of Justice and Legal Services

**System of provision of certificate by counsel
Pursuant to section 26A of the Legal Aid Ordinance (Cap. 91)**

Pursuant to Mr Chan Siu-lun's letter of 8 February 2007 to you, you wrote to us on 12 February 2007, requesting information on the system of provision of certificate by counsel by the Legal Aid Services Council (LASC) and the Administration's comments on Mr Chan's case.

LASC

LASC is an independent statutory body established in 1996 under the Legal Aid Services Council Ordinance (Cap. 489) to supervise the provision of legal aid services in Hong Kong provided by the Legal Aid Department (LAD) and to advise the Chief Executive on legal aid policy.

Scheme of Provision of Certificate by Counsel (the Scheme)

Section 26A of the Legal Aid Ordinance (Cap. 91) provides that a legal aid applicant who has been refused legal aid to appeal to the Court of Final Appeal (CFA) may seek a review of the Director of Legal Aid (DLA)'s decision. The review shall be initiated by notice to the Registrar of the High Court accompanied by a certificate by counsel stating that the person aggrieved has a reasonable prospect of success in the CFA appeal and the grounds for that opinion. Relevant extracts of the Ordinance are at **Annex A**.

LASC operates an assistance scheme to provide funding for the above-mentioned legal aid appellants who have passed the means test, to obtain the counsel certificates. To ensure impartiality, LASC operates the Scheme independently and makes its own decisions on the applications.

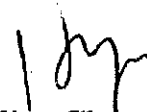
We have referred the Panel's request to LASC. Attached at **Annex B** is a self-explanatory letter from LASC explaining the Scheme as well as providing a succinct background of Mr Chan's case.

The Administration's Comments on Mr Chan's Case

We have nothing to add to the LASC note on this individual case.

We hope the above clarifies the matter. In considering whether to make this written response available to the public, you will no doubt take into account the fact that LASC's letter at Annex B contains personal information of Mr Chan.

Yours sincerely,



(Mrs Alice Cheung)
for Director of Administration


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Chapter:	91	Title:	LEGAL AID ORDINANCE	Gazette Number:	79 of 1995 s. 50; 25 of 1998 s. 2
Section:	26A	Heading:	Appeal from decision of Director in Court of Final Appeal matters	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) An applicant for legal aid or an aided person who is aggrieved by any order or decision of the Director made in relation to an application for legal aid to appeal to, or to apply for leave to appeal to, the Court of Final Appeal may bring the order or decision on review before a committee composed of- (Amended 40 of 1989 s. 9; 79 of 1995 s. 50)

- (a) the Registrar of the High Court, who shall be chairman;
- (b) a barrister qualified to practise in Hong Kong who is eligible to be appointed as a judge of the High Court and who is appointed by the Chairman of the Hong Kong Bar Association; and
- (c) a solicitor qualified to practise in Hong Kong who has practised as a solicitor for not less than 10 years in a common law jurisdiction and who is appointed by the President of The Law Society of Hong Kong. (Amended 25 of 1998 s. 2)

(2) The chairman may appoint a public officer to be secretary of the committee.

(2A) (Repealed 25 of 1998 s. 2)

(3) A review shall be initiated by notice in writing delivered to the Director and the chairman within 28 days of the order or decision complained of or within such longer period as the chairman may allow and the notice shall be accompanied by a certificate by counsel practising in Hong Kong stating that the person aggrieved has a reasonable prospect of success in the appeal and the grounds for that opinion.

(4) The committee may-

- (a) make such inquiries as it thinks fit as to the means and condition of the applicant and as to the merits of his case;
- (b) require the applicant to furnish such information and such documents as the committee thinks fit;
- (c) require the applicant to appear personally before the committee; and
- (d) receive evidence and, for that purpose, administer an oath.

5) The applicant and the Director shall be entitled to appear personally before the committee or by counsel or solicitor and may submit representations in writing. (Amended 54 of 1984 s.23)

(6) The committee may, if it is satisfied that the person aggrieved has a reasonable prospect of success on appeal, and that it is reasonable in the particular circumstances of the case that he should be granted legal aid, reverse or vary the order or decision of the Director refusing or limiting legal aid in respect of the appeal and may direct the Director to grant a legal aid certificate to him under section 10; and if not so satisfied it shall affirm the order or decision of the Director. (Replaced 54 of 1984 s.23)

(7) A decision of the committee under subsection (6) shall be final.

(8) The chairman may, if he thinks fit, order that-

- (a) such fee of counsel for the certificate mentioned in subsection (3); and
- (b) such fees and expenses of counsel or solicitor appearing before the committee under subsection (5),

as determined by the chairman as being proper in the circumstances, shall be paid by the Director out of funds under his control which are available for that purpose.

(9) The expenses of the committee, including such reasonable fees of the barrister and solicitor members as may be determined by the chairman, shall be paid by the Director from moneys provided by the Legislative Council.

(10) The chairman shall give written notice of the decision on an appeal under this section to the Director and to the person who made the appeal and shall adequately state in the notice the reasons for the decision. (Added 27 of 1991 s. 17)

(Added 14 of 1982 s. 16)

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法律援助服務局
LEGAL AID SERVICES COUNCIL

Our Ref: () in LASC 5/5/5/2

E-mail : ceolasc@netvigator.com

Yr Ref :

web-site : <http://www.info.gov.hk/lasc/>

Tel : 2838 5006

2 March 2007

Director of Administration
[Attn: Mrs Alice CHEUNG, ADA(2)]
Rm 522, East Wing, Central Government Offices
Lower Albert Road, Central, H K

(Fax : 2501-5779 : 5 pages)

Dear Mrs Cheung ,

Scheme of provision of certificate by counsel
Pursuant to section 26A of the Legal Aid Ordinance (LAO)

I refer to your letter of 13 February 2007 enclosing a copy of letter of 12 February from the Panel on Administration of Justice and Legal Services (AJLS) of the Legislative Council. You invited Council to provide input to the Panel's request concerning the section 26A scheme and the case of Mr Chan Siu Lun.

Brief description of the scheme

Section 26A of LAO (Cap. 91) provides that a legal aid applicant who has been refused legal aid in his intended appeal to the Court of Final Appeal (CFA) may seek a review of the legal aid refusal. The review shall be initiated by notice to the Registrar of the High Court accompanied by a certificate by counsel stating that the person aggrieved has a reasonable prospect of success in the CFA appeal and the grounds for that opinion.

The Council considered that there was a need to provide assistance as the above certificate requirement might deny an impecunious person's access to the review committee. Following discussions with the Administration, the Council and the Administration agreed to establish a new assistance scheme to provide legal aid appellants who passed the means test conducted by the Legal Aid Department (LAD) with funds to obtain the counsel certificates. As the need for the arrangement arose from an appeal

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against the Director of Legal Aid's refusal to grant legal aid and given the supervisory role of the Council on the provision of legal aid services, it was agreed that the Council should implement the scheme. The Scheme commenced operation on 3 April 2002.

Framework of the scheme and its operation

The framework of the arrangement is summarised below -

- (a) the Council to endorse the criteria for drawing up the panels of solicitors and counsel;
- (b) the Council to issue letters to the two legal professional bodies inviting their members to join the two panels and to provide service at fixed rates. Applications from members of the two legal professional bodies should be forwarded to the Council and LAD will assist in the verification process and the drawing up of panels. After the verification process, those members of the two professional bodies who meet the criteria for joining the panels shall be endorsed by LASC;
- (c) legal aid appellant to apply to the Council for free certificate under section 26A of LAO and to nominate solicitor and counsel from the panels endorsed by the Council. The application form should be sent to the Council with a copy to LAD, which will inform the Council whether the counsel/solicitor nominated had previously been assigned by LAD to act for the legal aid appellant. When submitted, the application form shall be accompanied by a copy of Notice of Refusal issued by LAD. The application form shall contain a clause for the nomination of counsel and solicitor, and a statement on whether the counsel and solicitor nominated has represented him in the appeal before. The nomination form will be couched in such a way to serve as the legal aid appellant's instructions to the nominated solicitor for the purpose of preparing the counsel certificate;

- (d) LASC to endorse applications and to forward the appellant's nomination to the nominated solicitor. At the same time, the Council informs LAD of the endorsement whereupon LAD will prepare and forward an appeal bundle to the nominated solicitor for preparation of the counsel certificate;
- (e) nominated solicitor to instruct counsel for preparation of counsel certificate and to send counsel certificate to LAD and the Council. If the counsel certificate states that the appellant has a reasonable chance of success, LAD will review its decision not to grant legal aid within five days. At the same time, LASC will, if requested by the legal aid appellant, assist him to initiate a review by giving written notice to the Registrar and DLA. If upon review of its decision LAD decides to grant legal aid, the notice to the Registrar can be withdrawn; and
- (f) nominated solicitor to send his bill of costs and nominated counsel's fee note to LAD for payment.

To join the panel, a counsel should have at least 10 years practising experience; and at least seven years for a solicitor. Both should have handled at least three criminal or civil appeal cases (as the case may be) in the Court of Appeal or CFA in the past three years.

Circumstances under which a certificate is granted

The scheme of provision of a certificate by counsel is an administrative scheme implemented by the LASC. Funding of the scheme comes from the public purse. As the scheme draws on public funds, the LASC must act prudently and satisfy itself that the scheme is not abused.

There is no as of right provision of funding to obtain a certificate by counsel. The LASC conducts a preliminary vetting of an application. The LASC may refuse an application for certificate where, for example, the intended appeal to CFA is outside the scope of CFA or is clearly an abuse of the legal process.

Panel.

I hope the above can be of use to facilitate a reply to the AJLS

Yours sincerely,



(Victor Li)
Secretary

VI/rc

LC Paper No. CB(2)1321/06-07(04)

Ref : CB2/PL/AJLS

Date : 11th March 2007

Mr. Chan Siu Lun

Mrs. Percy Ma,
Clerk to LegCo Panel on Administration of Justice & Legal Services,
LEGISLATIVE COUNCIL SECRETARIAT,
3/F, City Bank Tower,
3, Garden Road,
Hong Kong
(Fax : 2509 9055 / Tel. : 28699426)

Total pages : 165

Dear Mrs. Ma,

Disclosure of Administration's paper containing my personal information

Thank you for your letter dated 8th March 2007 headlined '*Scheme of Provision of Certificate by Counsel under Section 26A of the Legal Aid Ordinance*' with postage stamp dated 9.03.2007, which tells me that :

" Thank you for your letters dated 8 and 16 February 2007 to the Panel on Administration of Justice & Legal Services (the Panel) concerning the Scheme of Provision of Certificate by Counsel under Section 26A of the Legal Aid Ordinance (the Scheme).

At the request of Hon Margaret NG, Panel Chairman, the Administration has provided a reply on the framework of the Scheme and the background of your case.

The Chairman has agreed to invite the Panel to consider whether the operation of the Scheme should be discussed at a future meeting. To facilitate the Panel's consideration, your two letters and the Administration's reply will be circulated to the Panel for reference.

In accordance with our usual practice, any papers provided by the Administration to the Panel will be made available to the media and the public unless it advises otherwise. On this occasion, the Administration has advised that it is for the Panel to decide as its reply contains your personal information. In this connection, the relevant part of the reply is attached for your reference.

Unless you have advised otherwise, the attached part of the Administration's reply will be made available to the media and the public in line with the usual practice. I should be grateful for your reply by 14 March 2007."

My response is as follows :

- (1) I respect the usual practice of the LegCo relating to the disclosure of the Administration's papers to the media and the public.
- (2) I do not object to the disclosure of Administration's papers containing personal information to the media and the public if only if the said information is consistent with the matters of fact.
- (3) I object to the disclosure of the part of the Administration's reply headlined 'The case of Mr. Chan Siu Lun' annexed to your letter on the grounds that it is untrue to the fact and tends to mislead the media and the public to believe that the Legal Aid Services Council (the LASC) has done its job properly to evaluate the merits (& special circumstances) of my case and has performed its statutory duty to monitor the provision of legal aid services offered by the Legal Aid Dept. before making its decision to refuse my application for counsel certificate. The details of the grounds of my objection include :
 - i. It lacks convincing evidence that "the LASC duly reconsidered the submissions made by Mr. Chan but could not find discernible merits to support his case' as referred to the last paragraph of the said part of Administration's reply annexed to your letter. The reason is that, if the LASC has duly considered my papers submitted to the Council to apply for the counsel certificate, it should be able to provide reasonable grounds to disregard the merits (& special circumstances) of my case that I have explained in lucid details in my letters of 22nd Jan. 2005, 1st & 23rd July 2006, 1st Sept., 19th & 30th Oct. 2006 and 8th Jan. 2007 together with their

enclosures addressed to the Court of Final Appeal (the CFA), Legal Aid dept. and LASC. It is regretful that the LASC's reply letters dated 29th Jan. 2007 and 21st Nov., 26th Oct. and 30th Aug. 2006 strongly suggest that the Council has neither conducted any vetting of merits (special circumstances) in my case nor has performed its statutory duty to monitor the provision of legal aid services offered by the Legal Aid Dept.

ii. I recall that in my letters of 11th Jan. & 1st Feb. 2007 addressed to the Director of Administration, I have suggested the Administration to open my file kept in LASC to read the full merits of my case. However, at the end of Feb. 2007, the secretary of LASC has asked me to authorize the Council to disclose my papers to the Administration on the grounds that the Administration has asked the Council to submit a report regarding my application for counsel certificate. I note my recent letter of 8th March 2007 has informed the Panel that the Administration is now renewing its response towards the issues raised in my letters of 11th Jan., 1st Feb., 6th & 8th March 2007. I am therefore of the view that in light of my comments in this letter and my letter of 8th March 2007, the Administration is capable to right the wrongs stated in the said part of its reply containing my personal information.

iii. According to the Amended Notice of an Application for legal aid in FAM V 30/1999 issued by the Dept. of Legal Aid on 17.08.2006, it says that :

“TAKE NOTICE THAT Mr. Chan Siu Lun, a party to the above proceedings, has made application for legal aid to apply to re-hear and re-open the leave application.”

Accordingly, the first paragraph of the said part of the Administration's reply annexed to your letter is wrong in respect of “----- He applied for legal aid for re-opening his application for leave to appeal to the CFA”.

iv. I have reviewed all the relevant judgments that I have submitted to the LASC to assist the preparation of the counsel certificate. I regret to say that only on P.3 of the judgment of Court of Appeal in CACV 171/1999 given on 13th Oct. 1999, I note that :
 “----- On 11th June 1999, Registrar Chu ordered that the appellant's new action be dismissed on the ground of 'res judicata'. -----”

I am therefore of the view that the Administration has made another mistake in second

paragraph of the said part of Administration's reply annexed to your letter claiming that "----- His claim was struck out by the Registrar on the ground of 'res judicata', i.e. the matter has been decided. -----"

v. I note on P.11 of my application letter dated 1.07.2006, I have informed the Dept. of Legal Aid that :

"I. Background

7. I have filed a Notice of Appeal (Legal Aid Appeal No. 21/2006) to appeal against the said decision of the Director of Legal Aid given on 9.01.2006. The appeal against the decision of the Director of Legal Aid was heard before Master S. Kwong fixed on 16.02.2006.

Master Kwong has expressed the views at the hearing as below :

- i. Master Kwong said that "the arguments in my applications for leave to appeal are still not good enough to guarantee the award of a leave to appeal certificate and I should apply for legal aid again to get professional help from lawyers. He has also advised me to ask the Chairman of Hong Kong Bar Association to give opinion on the merits of my case to apply for rehearing before the Appeal Committee of CFA and then apply for legal aid.
- ii. Master Kwong is of the view that "decision of Appeal Committee is final" means only the decision of Appeal Committee of CFA cannot be appealed. He is also of the view that fraud or cheating exists in my case and rehearing is allowed if either party win the case by fraud or cheating. I told him at the hearing that the other party win the case by filing cases over 100 years ago.

Also, I note on P.10 of my letter dated 30.10.2006, I have informed the LASC that :

["----- After the Appeal Committee of the CFA has heard the Applicant's and the Respondents' Submissions at the hearing fixed on 28.07.2000, it has ruled at the end of its Determination dated 28.07.2000 as below :

"There is no basis for re-opening the application. It stands dismissed. No order as to costs. That concludes these proceedings."

However, at the end of its Determination dated 19.01.2000, the Appeal Committee has ruled that : "----- This application is dismissed with costs on an indemnity basis."

It is unusual practice of the court to grant no costs to a party that has won the

case. This strongly suggests that, even though special circumstances exist in the case, the applicant, as a layman, has failed to submit appropriate materials to build up an exceptional case so as to assist the CFA to exercise its discretion to re-open the application for leave to appeal in FAM V 30/1999.]

Moreover, I note I have proved in my previous papers that there are merits (& special circumstances) in my case and I have submitted the papers to the LASC to apply for the counsel certificate.

As a result, it lacks reasonable basis the Administration in the said part of reply annexed to your letter has only relied upon some part of the reasons for judgment in the Determinations of the Appeal Committee dated 19th Jan. & 28th July 2000 to make the LASC's refusal to grant me counsel certificate justified and overlooked the most important part of the reasons for judgment in the Determination of the Appeal Committee dated 19.01.2000 (*----- The applicant, who appears in person, has put before us a mass of material and arguments which demonstrate clearly that he is mistaken in his understanding of the law and that he can have no complaint as to the judgments in the Courts below. His action was struck out on the grounds that the matters he seeks to raise are *res judicata*, having regard to the judgment in his first action and that this action is therefore an abuse of the process of the court. There is no room for any argument based on questions of abuse of process short of *res judicata*, the parties and the cause of action being precisely the same in each action. -----), which strongly suggests that the court has been misled by the Defendants'/Respondents' legal representatives and was mistaken in the understanding of the current position of the law on *res judicata*. Please kindly refer to my previous papers proving that there are merits (& special circumstances) in my case attached.

A copy of the said Amended Notice of an application for legal aid in FAM V 30/1999 issued by the Legal Aid Dept. on 17th Aug. 2006, judgment of the Court of Appeal in CACV 171/1999 given on 13th Oct. 1999, Determinations of the Appeal Committee in FAM V 30/1999 given on 19th Jan. & 28th July 2000 and my previous papers of 22nd Jan. 2005, 1st & 23rd July 2006 and 1st Sept., 19th & 30th Oct. 2006 proving that there are merits (& special circumstances) in my case are attached for reference and attention of the LegCo.

Yours faithfully,


CHAN SIU LUN