

律政司
律政司司長辦公室

香港金鐘道 66 號
金鐘道政府合署高座 4 樓

網址：www.doj.gov.hk

本司檔案 Our Ref : SJO 5012/3/3C
來函檔案 Your Ref : CB2/PL/AJLS
電話號碼 Tel. No.: 2867 2165
傳真號碼 Fax No.: 3579 2431



DEPARTMENT OF JUSTICE
Secretary for Justice's Office

4/F, High Block
Queensway Government Offices
66 Queensway, Hong Kong

Web site: www.doj.gov.hk

31 May 2010

Miss Flora Tai
Clerk to Panel on Administration of
Justice and Legal Services
Legislative Council Secretariat
3/F Citibank Tower
3 Garden Road
Hong Kong

By Fax & By Post
Fax : 2509 9055

Dear Flora,

**Panel on Administration of Justice and Legal Services
A submission from the Hong Kong Human Rights Monitor**

Thank you for your letter dated 11 May 2010 requesting the Department of Justice to respond to the issues raised in paragraph 9 of the submission from the Hong Kong Human Rights Monitor in respect of the judgment of the Court of Appeal (“CA”) in the case of *Chu Woan-chyi & Others v Director of Immigration*, CACV 119/2007 (“the CA judgment”).

The Hong Kong Human Rights Monitor has specifically asked for the Department’s explanation in response to the criticisms made of the respondent’s legal advisers by the court and to indicate what measures have been or will be taken to ensure that the Government fulfils its duty of candour in future proceedings.

We would emphasize at the outset that the Government has all along accepted without reservation that there is a duty of candour to the court in the conduct of legal proceedings. Although discovery in judicial review proceedings is generally more limited than in private law litigation, we agree that, as pointed out in the CA judgment, the approach must be considered in context and must not be over legalistic.

We note in particular, as the CA pointed out, the importance of making candid disclosure of the relevant facts and the reasoning behind the decision under challenge in judicial review, subject to any claim of privilege or immunity, such as public interest immunity. However, as remarked by the CA, the obligation of the duty of candour is not an open-ended one and the manner in which it is to be observed very much depends on the issue before the court. The Government will always bear in mind its duty to give a full and accurate explanation of the facts underlying the decision challenged, whilst at the same time it must act cautiously to guard against any attempts at fishing expeditions, in particular when the information may involve security matters with a bearing on Hong Kong's public interest and order.

It was unfortunate that the above proceedings were characterized by the case-specific developments including the absence of any cross-examination of the deponents on behalf of the respondents, coupled with the applicant's case being substantially amended at a very late stage. We had worked closely with the clients and consulted outside counsel representing the Government on the manner in which the Government should discharge its duty of candour throughout the course of the proceedings. In the light of the CA judgment which sets out the applicable legal principles, we accept that there is room for improvement for the better discharge of the Government's duty of candour in future cases.

We have from time to time reminded our litigation counsel of the importance of observing the duty of candour. Following the CA judgment, we have issued a further internal circular to stress the important legal principles enunciated in the CA judgment in the conduct of judicial review proceedings and to remind our counsel to ensure that client departments are properly advised of the duty of candour.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Elizabeth Tai', with a long horizontal flourish extending to the right.

(Elizabeth Tai)
Administrative Assistant
to Secretary for Justice