

總幹事  
王 姬 麗



LC Paper No. CB(2)1673/10-11(01)

**Grace S. Wong**  
Administrator

Ref: CAT1/Corr 20/11 IV

3<sup>rd</sup> May 2011

The Hon. Dr. Margaret Ng,  
Member of the Legislative Council,  
Panel on Security, Legislative Council,  
10/F New Henry House,  
10 Ice House Street,  
Central, Hong Kong.

Dear Hon. Dr. Margaret Ng,

**Panel on Security, Legislative Council  
Item IV for Meeting on 12th April 2011**

I refer to my letter of 21<sup>st</sup> April 2011.

The Duty Lawyer Service Council has considered your letter and after thorough discussion in the meeting of 28<sup>th</sup> April 2011 directed me to reply to you as follows:

**1 Interview Protocol**

(i) The DLS takes a "neutral" stance in that we are of the view that whilst agreeing that the Interviewing Protocol is an administrative protocol; however unless it is amended there is no particular reason for not complying with paragraph 12. As a matter of fact, since the inception of the Interviewing Protocol in December 2009, over 200 duty lawyers have been assigned to handle over 1,000 CAT cases. So far, none of the duty lawyers assigned has raised any issue with paragraph 12 of the Protocol except the one mentioned in our exchange of correspondence. We have by our first reply letter dated 13<sup>th</sup> December 2010 already informed the duty lawyer that he may consider writing to the Security Bureau directly on this matter.

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(ii) The role of a duty lawyer participating in CAT case screening interview is a passive and not a proactive one. His presence is to ensure that the screening process is being conducted in all fairness. We do not hold the same view as the Joint Legal Profession and indeed we hold a different view that a request for the presence of an assistant / paralegal who is not legally qualified in Hong Kong is neither necessary nor essential in that there is nothing prejudicial to the interest of the claimant arising from such absence. The policy and practice of DLS's assignment is a personal assignment to the duty lawyer and he is expected to discharge his duty individually and personally without further delegation. Legal representation must mean representation by a legally qualified lawyer in Hong Kong and not by an unqualified assistant. As such, we see no reason why a screening interview cannot be conducted in the absence of an unqualified assistant so long as a legally qualified lawyer in Hong Kong is in attendance throughout the interview to properly represent the Claimant's interests.

(iii) It seems to us that this is an isolated incident and not a systemic problem relating to the Interviewing Protocol.

## 2. Role of DLS

(iii) Whilst the Joint Legal Profession takes the interest of their members as priority, the DLS as a fully subvented NGO funded by public money must ensure that the interest of a duty lawyer is always secondary to the interest of our client/claimant whose interest is paramount. DLS is not duty bound to support its duty lawyers if his/her interest is in direct conflict with the interest of the claimant and/or in the due administration of justice. The proposed reassignment was suggested as a result of the delay in the screening interview which is not in the best interest of the claimant whose interest as repeatedly stated is paramount. The different views on the right of a duty lawyer to bring in his unqualified assistant should not be tested at the expenses of a claimant.

(iv) As stated by the Administrator, the DLS is not convinced that the action taken by the duty lawyer is in the best interests of the claimant for the following reasons:



- (1) The screening interview originally scheduled for 8<sup>th</sup> December 2010 was adjourned to 27<sup>th</sup> January 2011 which was further adjourned to 28<sup>th</sup> March 2011 by the Immigration Department. It is now pending the negotiation between the duty lawyer and the Immigration Department over the issue of his right to bring in his unqualified assistant.
- (2) A total of 9 conferences were held by the duty lawyer with the claimant in the case involving a total of 20 hours 41 minutes.
  - (a) 4 conferences (from 14<sup>th</sup> July to 21<sup>st</sup> October 2010) were held for the completion and submission of the questionnaire in stage one of the screening process (13 hours 10 minutes).
  - (b) The 5<sup>th</sup> conference (6<sup>th</sup> December 2010) involved the duty lawyer preparing the claimant for the screening interview originally scheduled on 8<sup>th</sup> December 2010 (3 hours 58 minutes).
  - (c) 4 conferences (from 8<sup>th</sup> January to 10<sup>th</sup> March 2011) were arranged under the advice of the duty lawyer for updating the claimant of the adjournment of the screening interviews. (3 hours 55 minutes).
- (v) DLS has never made and or tried to make any “second guess” on the duty lawyer’s intention but simply reiterated the DLS’s position that any further delay would not be in the interest of the claimant which may lead to the DLS having to recall the papers for reassignment.
- (vi) We take issue on whether a publicly funded organisation under the aegis of the Legal Profession would have to uphold unreservedly the interest of a duty lawyer. The public interest requires DLS to exercise a proper duty to safeguard and prevent any unnecessary wastage of public money. We with respect, do not accept that our refusal to support the assigned duty lawyer in bringing his assistant to attend a screening interview of a claimant under his charge would violate the principle of high standard of fairness or amount to



interference or hindrance on a duty lawyer in discharging his best professional duty to his client. Monitoring the progress of each claim being handled efficiently without unnecessary delay or wastage of public money must be within the normal scope of diligent and quality performance control by DLS as the operator of the CAT Scheme.

Yours truly,

Grace S. Wong  
Administrator

c.c. Hon. Mr. James To, Chairman, Security Panel, LegCo  
Mr. Ambrose Lee, Secretary for Security  
Mr. Huen Wong, President, The Law Society of HK  
Mr. K. Ramanathan, S.C., Chairman, HK Bar Association