

Margaret Ng
Member of Legislative Council

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BY HAND

Your Ref: CAT1Corr 16/11 IV

20 April 2011

Ms. Grace S. Wong
Administrator
Duty Lawyer Service
2707 - 8 Gloucester Tower
HONG KONG

Dear Ms. Wong

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

Thank you for your letter of 13 April 2011. However, it does not quite address the issue.

As I have explained at the Panel's meeting, I was concerned that the set-up and operation of the CAT scheme met the required standard of fairness and independence as demonstrated by experience during the implementation of the pilot scheme, and the assigned lawyer is able to fully represent his client without undue interference and hindrance.

1. Interview Protocol

I noted, from the bundle of documents that you were kind enough to provide prior to the meeting, that dispute had arisen concerning the implementation of paragraph 12 of the Interview Protocol which appear to place undue restriction against an assigned lawyer attending the interview with his assistant. In the case in question, the interview was held up on account of the Immigration Department not allowing the assigned lawyer to attend with his assistant, in the lawyer's opinion, contrary to the client's interest and instruction. In the opinion of the Law society, such restriction was unreasonable and interfered with a solicitor's discharging his professional duty.

In its letter of 4 April 2011 copied to the Panel, the Law Society has put forward its view on paragraph 12 of the Interview Protocol that non-qualified persons assisting assigned lawyers “should be permitted to attend interviews particularly when the client so requests, and on the basis their presence will not be a distraction to the proceedings.” Having considered the documents in the case and the discussion arising from it, I believe this is a reasonable and workable solution and should be accepted by the Administration. I hope Duty Lawyer Scheme (DLS) will give this its support.

2. Role of DLS

At the Panel’s meeting, members asked what the role of DLS was in the matter. Your answer was that DLS took a “neutral stance” and left it to the assigned lawyer to negotiate with the Immigration Department. This was at variance with the contents of the letters in the bundle you provided. The clear instruction of DLS to the assigned lawyer in your letter of 16 December 2010 was that he should either comply with the Protocol and proceed with the interview without his assistant, or return his papers. This was repeated in your letters of 5 January, 18 February and 25 March 2011. While in your letter of 28 March 2011 copied to me under cover of your letter of 13 April 2011 you did not repeat the demand but asked the assigned lawyer to negotiate directly with the Immigration Department, you did not clarify the stance of DLS on the Interview Protocol as a matter of principle.

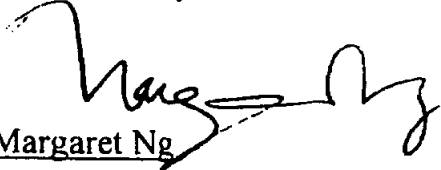
Both in your letters and in your representation to the Panel, you stated that the basis of your intervention was the “residual role” of DLS as the operator of the CAT scheme. It is important to clarify whether this role goes beyond normal monitoring for diligent and quality performance.

I believe that it is of paramount importance that as an organization under the aegis of the legal profession, DLS should uphold the assigned lawyer in the discharge of his professional duty to his client. This is what the public interest requires. The decision of the Board of DLS that the Interview Protocol does not need any amendment is acceptable only on the understanding that, the Interview Protocol being of no binding force, any dispute on its application or any part of it in a particular case must be a matter for discussion between the assigned lawyer and the Case Officer in the case, and there is no question of threat of discharging the lawyer from the case for mere refusal to comply with the Protocol.

Consistent with a “residual role”, an assigned lawyer should not be discharged except for cause and with notice to his client.

Finally, while a certain degree of teething problem is only to be expected, I hope that improved communication between the Immigration Department, the Joint Professional Committee and DLS will result in greater agreement and a more smooth operation of the CAT scheme in the next period.

Yours sincerely



Margaret Ng

- cc Mr. James To, Chairman, Security Panel, LegCo
- cc Mr. Ambrose Lee, Secretary for Security
- cc Mr. Huen Wong, President, The Law Society of Hong Kong
- cc Mr. Kumar Ramanathan S.C., Chairman, Hong Kong Bar Association