

LCQ1: Judicial review case regarding the Environmental Impact Assessment reports of the Hong Kong-Zhuhai-Macao Bridge

Following is a question by the Hon Lam Tai-fai and a written reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (October 26):

Question:

It has been reported that the plaintiff in the judicial review (JR) case regarding the Environmental Impact Assessment reports of the Hong Kong-Zhuhai-Macao Bridge (HKZMB) told the media that she originally did not intend to take any legal proceedings against the Government, but "someone had asked her to file the lawsuit". It has also been reported that the plaintiff's solicitor had admitted that the plaintiff was a volunteer of the Civic Party and was initially assisted by a Civic Party member in applying for legal aid, and that the plaintiff had then nominated him as her solicitor to represent her in the case. The solicitor and counsel representing the plaintiff were both members of the Executive Committee (ExCo) of the Civic Party. In this connection, will the Government inform this Council:

(1) given that in reply to my question on June 8 this year, the Government indicated that it was not appropriate for it to comment on issues relating to the case at that time as the Environmental Protection Department had lodged an appeal against the High Court's judgment, whether the Government will provide the public with a detailed account after the case is closed; if it will, of the details; if not, the reasons for that;

(2) whether the law enforcement agencies will initiate investigation into the aforesaid case to ascertain if anyone is suspected of "maintenance", manipulating the litigation behind the scene, perverting the course of justice or other acts of abusing judicial proceedings in this case; if they will, what actions will be taken; if not, of the reasons for that;

(3) whether the authorities will request the Law Society of Hong Kong and the Hong Kong Bar Association to investigate the aforesaid case to ascertain if any of their members has contravened the professional codes of conduct; if they will, of the details; if not, the reasons for that;

(4) of the respective amounts of legal and litigation costs incurred by the Government and the plaintiff in respect of the aforesaid case, and the percentage of the costs the Legal Aid Department (LAD) needs to bear in the total legal and litigation costs incurred by the plaintiff;

(5) whether LAD had vetted and approved beforehand the plaintiff's request of specifying the solicitor of her own choice to represent her; if it had, of the reasons for approving her request; if not, the reasons for that;

(6) of the channels through which the aforesaid ExCo member of the Civic Party had become the counsel representing the plaintiff, and whether LAD had considered and approved the appointment of that counsel beforehand; if it had, of the reasons for granting the approval; if not, the reasons for that;

(7) given that under the existing legal aid system, the aided persons are allowed to specify solicitors and counsel to represent them, whether it is obligatory for the solicitors and counsels concerned to accept such appointments;

(8) whether the authorities will initiate a comprehensive investigation to ascertain if, in the aforesaid incident, any person or political party has exploited the loopholes in the legal aid system to achieve certain political aims; if they will, of the details; if not, the reasons for that;

(9) whether the authorities will study how to prevent people from abusing the legal aid system and initiating JR proceedings against the Government for the purpose of obstructing the Government from launching major infrastructure projects; if they will, of the details; if not, the reasons for that; and

(10) whether it has assessed the losses caused by the aforesaid case, including the losses suffered by the overall economy of Hong Kong, the delay in time and the additional costs involved in respect of the HKZMB project and the other 70-odd projects affected by the case, as well as the impact on construction workers and the relevant professionals (including the number of workers who became unemployed and the number of jobs lost as a result of the case); if it has, of the details and a breakdown of such losses by project; if not, the reasons for that?

Reply:

President,

The question straddles across a number of bureaux and departments, and the Administration's consolidated response is as follows:

(1) On September 27, 2011, the Court of Appeal (CA) of the High Court handed down its judgment to allow the appeal by the Environmental Protection Department. The CA's judgment sets out the grounds submitted by both parties to the proceedings, as well as the consideration and ruling of the Court. In summary, the CA's judgment clearly states that the current technical memorandum (TM) under the Environmental Impact Assessment Ordinance (EIAO) and the environmental impact assessment (EIA) study brief (SB) on the Hong Kong-Zhuhai-Macao Bridge (HKZM Bridge) have requirements for the project proponent "to minimise pollution". The three CA judges unanimously ruled that the EIAO did not have requirements for a stand-alone assessment of the project in EIA reports and the HKZM Bridge could achieve the objective of minimising pollution in accordance with the requirements laid down in the current TM and EIASB. Therefore, the CA reversed the ruling of the Court of First Instance. Details of the judgment are available at the Court's website (legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=78373&currpage=T).

(2) Generally speaking, the Police will assess if there are reasonable doubts to believe that criminal elements are involved in the case having regard to whether reports from informants are received, whether reliable intelligence is available, etc., and decide whether investigation should be conducted. As regards the incident raised in the question, neither reports from informants have been received nor any investigation has been commenced. Anyone who wishes to provide information or report a case may contact the Police direct. The Police will take follow-up actions as appropriate.

(3) In relation to the case, the Administration has not made any referral to the Law Society of Hong Kong or the Hong Kong Bar Association for investigation of any alleged breach of code of professional conduct. The Administration is not aware of any breach of professional conduct in relation to the case. There are also no indications in the court judgment that any code of professional conduct has been breached.

(4) The preliminary estimate is that Government's costs will not be less than HK\$7.5 million, subject to further and more detailed assessment and to taxation by the Court. As regards the legal aid costs incurred, the amount was HK\$1.49 million up to end

September 2011.

(5) and (6) In accordance with the data protection principles under the Personal Data (Privacy) Ordinance and the restriction on disclosure of information concerning aided persons under the Legal Aid Ordinance (LAO), the Legal Aid Department (LAD) is not at liberty to disclose information on any case, including the assignment of solicitor or counsel, to a third party without the consent of the plaintiff.

(7) According to our understanding, solicitors and counsel generally accept assignment from the Director of Legal Aid (Director) irrespective of whether they are nominated by the aided persons.

(8) and (9) Under the LAO, it is the duty of the Director to grant legal aid in cases where the applicant has reasonable grounds and passes the means test. In order to ensure that only eligible cases receive public funding for litigation in court, all applications are processed by LAD's in-house lawyers who are legally qualified. If an application for legal aid is refused, the applicant may appeal against the Director's decision to the Registrar of the High Court. The decision of the Registrar is final.

A mechanism is in place in the Legal Aid Regulations to safeguard against abuse of legal aid services. If anyone has repeatedly applied for legal aid after being refused, the Director may order that no consideration shall be given to any future application by that person for three years if it appears to the Director that his/her conduct has amounted to an abuse of the facilities provided by the LAO.

(10) Since the Court of First Instance handed down its judgment on the judicial review (JR) case regarding the EIA reports of the HKZM Bridge projects on April 18, 2011, there was a need for numerous public works projects under design and planning stages to review the contents of the submitted EIA reports and the EIA in progress in order to meet the new EIA requirements laid down by the court's judgment.

In the past (2010-11) Legislative Council (LegCo) session, five projects had to withhold the Public Works Subcommittee (PWSC) submissions for funding approval due to the court's ruling on the JR case of the HKZM Bridge projects. These projects include "Hong Kong-Zhuhai-Macao Bridge - Hong Kong Boundary Crossing Facilities - reclamation and superstructures", "Hong Kong-Zhuhai-Macao Bridge - Hong Kong Link Road", "Tuen Mun-Chek Lap Kok Link - detailed design, site investigations and advance works", "Dredging, management and capping of

contaminated sediment disposal facility to the south of the Brothers", and "Liantang/Heung Yuen Wai Boundary Control Point and associated works". Following the judgment of the Court of Appeal which allowed the Director of Environmental Protection's appeal on the EIA reports of the HKZM Bridge projects, the concerned bureaux are now proceeding full steam ahead with the implementation of the above projects with an aim to submit the funding applications to the LegCo Finance Committee for approval as soon as possible.

For the HKZM Bridge related projects which were subjected to the JR, these projects were originally scheduled to commence construction before end 2010. If the construction of these projects can now commence by end of this year, the schedule of the construction commencement will be deferred by about one year from the original timetable. The Transport and Housing Bureau (THB) estimates that the overall cost increase for the HKZM Bridge related projects is about HK\$6.5 billion in money-of-the-day prices, including costs for increase in construction prices and adjustment of construction method to compress the construction timetable. THB will endeavour to meet the original target of commissioning the Bridge in 2016 through arrangement of works.

The EIA for a number of projects has been delayed due to the JR case. Though it is difficult to quantify the full impact of the delay on the Hong Kong economy in the coming few years, any slippage in commissioning of the HKZM Bridge and other cross-boundary infrastructure projects would inevitably impede the process of economic integration between Hong Kong and the Pearl River Delta region. This would in turn undermine the development opportunities of the trading and logistics sectors, thereby affecting Hong Kong's economic growth potential over the longer term.

Ends/Wednesday, October 26, 2011

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