

(Translation)

Clarification on Department of Justice's letter to Ms LUI Yuk-lin

- Ms Elsie LEUNG
Secretary for Justice

As some of the recent media coverage on the Department of Justice's letter to Ms LUI Yuk-lin may cause misunderstanding on the part of the public, there is a need for clarification.

The key to understanding the LUI Yuk-lin incident lies in the rights and wrongs of the case itself, not the proposal put forward by the Department of Justice to settle the matter in an amicable manner.

On 22 April 2002, Ms LUI Yuk-lin, together with some 200 protesters, gathered at the Immigration Tower and impeded the operation of the Immigration Department and other government departments in the building. Given the previous arson incident at the Immigration Department in which some protesters lost control of themselves and caused heavy casualties, the Department of Justice obtained from the Court of First Instance of the High Court on 23 April 2002 an interim injunction order. On 3 May 2003, having listened to the submissions of both parties, the Judge ordered that the interim injunction should continue to have effect. The terms of the injunction are as follows:

"The Defendants whether by themselves, their servants, agents or otherwise howsoever be restrained until Judgment in this action or further order from:

- (a) *gathering in, assembling in or conducting a protest in the building known as "Immigration Tower" situated at 7 Gloucester Road, Wanchai, Hong Kong (hereinafter referred to as "the Building");*
- (b) *obstructing the entrances to the Building;*
- (c) *impeding, restricting, obstructing or in any way interfering with the use and occupation of the Building;"*

The order as to the costs is: “*Costs of and occasioned by the injunction orders be in the cause of the action.*” (i.e. the costs to be dealt with along with the order for costs at the conclusion of the case.)

The court had taken into consideration the right of peaceful assembly of the public when it granted the injunction. That right is guaranteed under Article 27 of the *Basic Law* and Article 17 of the *Hong Kong Bill of Rights*. The right of peaceful assembly, however, is not without any restrictions. It is stated in the *Hong Kong Bill of Rights* that it is legitimate to impose restrictions which are necessary in the interests of public safety, public order (*ordre public*) or the protection of the rights and freedoms of others. As mentioned above, the purpose of the action is to maintain public safety and public order and to protect the rights of other people to have access to government departments inside the building, free from any interference. This should therefore be the starting point for any comment to be made on the incident.

The above injunction does not completely restrain Ms LUI and the other two defendants from visiting the Immigration Tower. They are only restrained from gathering in, assembling in or conducting a protest in the building, obstructing the entrances to the building and interfering with the use and occupation of the building by other people. This is all that the Department of Justice is asking for at the end of the day. The injunction meets the purpose of the court action and was never meant to suppress the right of assembly. In exercising their right to hold peaceful demonstrations, members of the public must observe the law and refrain from interfering with other people and impeding the operation of the Government. Bringing civil proceedings to safeguard the rights of the public and to ensure the normal operation of a government department is not only a duty but also a fair and reasonable action on the part of the Department of Justice. If the Department of Justice refrains from taking action in fear of criticism from some politicians or the public, it would be ignoring the rule of law. If this happens, frequent protesters would rise above the law. What sort of logic is it to accuse the Department of Justice of undermining the rule of law but not to reprimand those who breach the law?

In our letter dated 25 July 2003 to Ms LUI Yuk-lin, it is clearly stated that it is “private and confidential” and “without prejudice save as to costs”. This is a usual step in a civil action. Anyone in the legal profession would appreciate that the expression “without prejudice save as to costs” means that this is a proposal for settlement. If the proposal is not accepted, the legal right of the originator of the letter would not be prejudiced. It is only at the conclusion of the case when the judge considers whether costs should be awarded to the winning party that the judge would take into account whether the parties have endeavoured to

settle the case out of court so as to save public money and legal costs. Such a practice is totally in line with one of the civil justice reform proposals made in recent years, that is, both parties to the proceedings should endeavour to settle their dispute in a way that could save time and money.

Moreover, we have not, as reported by one newspaper, asked Ms LUI and the other two persons to pay \$150,000 as compensation.

I have set out the reasons why it is justified for the Government to apply for an injunction order. As a government department, the Department of Justice should as a matter of course ask the other parties to the proceedings to bear part of the costs so as to minimise the loss of public money. If the defendants have financial difficulties, they could make representations to the Department of Justice. We would certainly consider whether all or part of the costs can be waived as a condition of the settlement. If the Department of Justice does not ask the other parties to the proceedings to pay part of the costs, it would be criticised by the public for failing to protect the public purse. The case has yet to reach a conclusion. We cannot brush the matter aside after obtaining the interim injunction. It is only fair and reasonable for us to write to request the other parties to the proceedings to settle the case once and for all without allowing it to drag on. As some recent criticisms have turned the facts upside down, it is incumbent on the Department of Justice to make clarification. More importantly, the rule of law is one of the strengths of Hong Kong. Allegations that there is a regression in Hong Kong's rule of law may mislead investors into believing that this is true and hamper their willingness to invest in Hong Kong. In the end, it would not only be the Government but also the people of the Hong Kong Special Administrative Region who would stand to lose.