

April 2, 2009.

**Consultation on Review of Post-Service
Outside work for Directorate Civil Servants.**

We should bear in mind right at the outset that Civil Servants are no different from any citizens or permanent residents of Hong Kong Special Administration region as far as human rights are concerned. On this issue, the Issue 3 (a) of the Consultation paper of Ronald Arculi's Committee is a definite contravention of Article 33 and Article 38 of the Basic Law of the Hong Kong SAR.

It is also a contravention of Article 23, Subsection (1) and (3) of Article 29 of the United Nations Universal Declaration of Human Rights. This is a fundamental issue that Mr. Arculi should bear in mind.

To take this point further, one must bear in mind that Civil Servants' pension is not something extra or other fringe benefits. Our pension payments are but deferred payment of our remuneration earned for our labour during our employment. For the Government to consider about "pension suspension" in Issue 7 of the paper, it is treading on dangerous grounds. If a civil servant decides to go ahead to seek employment after his retirement even with out Government's approval and is being victimised by having his pension suspended or curtailed, he has a good case to institute legal proceedings against the Government.

The Government is entitled to impose certain conditions in giving approval for retired civil servants to seek employment. But in doing so, the Government must be seen to act "fairly" and reasonably". The cases of Council of Civil Service Unions v Minister of Civil Service (1985); Attorney General for Hong Kong v Ng Yuen Shiu (1983) and re Hong Kong (An Infant) (1967) are relevant. In the first case, Lord Roskill of the House of Lords gave a long and clear opinion.

In cases of disapproval or approval with conditions such as the case of Fanny Law Fan Chiu Fun, the Government has a duty to give reasons. The cases of R v Secretary of State for the Home Department ex parte Doody (1993) and Selvanathan v General Medical Council (2001) are relevant. If one looks into the foregoing precedents objectively, it is obvious and evident that the Government did not act fairly and reasonably in dealing with Fanny Law.

If one looks at past decisions taken by the Colonial Government and the SAR Government, it can be challenged by a judicial review by citing the cases of a Secretary for Economic Services, whose portfolio includes energy was being approved to work for the China Light and Power after his retirement. A retired Commissioner of Police is allowed to work as the head of security of the New World Empire and a retired Chief Secretary is allowed to work in the PCCW even today.

Let the Secretary for Civil Service be warned that should one civil servant or a labour union applies for a judicial review, the SAR Government is very likely to lose as it stands on very shaky legal grounds. One hears the words of "the public's perception" on this issue be bandied about too often. Let the SAR Government know that the Civil Servants' perception is that the Government is behaving like a big bully as it knows that civil servants, or for that matter, retired pensions in general do not have the resources to institute legal proceedings.

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