

THE APPEALS

AAB No. 32/1999

The Appellant filed a notice of appeal to the Administrative Appeals Board ("AAB") on 26 October 1999 pursuant to section 39(4) of the Personal Data (Privacy) Ordinance, Cap. 486 ("the Ordinance") against the decision of the Privacy Commissioner for Personal Data ("the Commissioner") in refusing to carry out an investigation of his complaint against the Secretary for Security and other named/unknown individuals. The said notice of appeal did not contain any grounds of appeal and did not enclose a copy of the Commissioner's decision letter. The Appellant subsequently provided his grounds of appeal and a copy of the decision letter on 8 November 1999.

2. This appeal was set down for hearing on 8 June 2000 and the AAB issued the notice of hearing to parties to the appeal on 25 April 2000.

AAB No. 36/1999

3. The Appellant filed a notice of appeal to the AAB on 21 December 1999 pursuant to section 47(4) of the Ordinance against the decision of the Commissioner in refusing to serve an enforcement notice on the Director of Immigration in consequence of the investigation of his complaint. The said notice of appeal did not contain any grounds of appeal and did not enclose a copy of the Commissioner's decision letter. The Appellant subsequently provided a copy of the decision letter on 27 December 1999 and his grounds of appeal on 10 January 2000 respectively.

AAB No. 5/2000

4. The Appellant filed a notice of appeal to the AAB on 14 January 2000 pursuant to section 47(4) of the Ordinance against the decision of the Commissioner in refusing to serve an enforcement notice on The Law Society of Hong Kong ("The Law Society") and other named/unnamed individuals of the Society in consequence of the investigation of his complaint. The said notice of appeal did not contain any grounds of appeal and did not enclose a copy of the Commissioner's decision letter.

5. On 14 March 2000, the Commissioner filed an application to the AAB for setting aside the Appellant's notice of appeal. The application was based on the grounds that the said notice of appeal failed to comply with the form and manner as determined by the Chairman of the AAB pursuant to section 9 of the Administrative Appeals Board Ordinance ("AAB

Ordinance”), in that it was not in the prescribed form and did not contain any grounds of appeal.

6. In The Law Society’s written representations dated 15 March 2000, the Society invited the Board to strike out the Appellant’s notice of appeal on ground that the Appellant failed to provide the grounds of appeal despite being requested by the AAB to do so.

7. The Commissioner’s application for setting aside the Appellant’s notice of appeal was set down for hearing on 15 June 2000 and the AAB issued the notice of hearing to parties to the appeal on 2 May 2000.

ABANDONMENT OF APPEALS

8. In a letter dated 6 May 2000, the Appellant notified the AAB that pursuant to section 19 of the AAB Ordinance, he gave notice to abandon all his appeals currently pending before the Board, which are AAB Nos. 32/1999, 36/1999 and 5/2000. The Appellant did not provide any reasons for abandoning his appeals.

APPLICATIONS FOR COSTS AGAINST THE APPELLANT

9. On notification of the Appellant’s abandonment of the appeals, the Director of Immigration notified the AAB on 16 May 2000 that he would not pursue an application for costs against the Appellant in respect of the appeal case AAB No. 36/1999.

10. The Commissioner notified the AAB on 16 May 2000 that he would seek costs against the Appellant in respect of the three appeal cases AAB Nos. 32/1999, 36/1999 and 5/2000 pursuant to section 21(1)(k) and on the grounds provided by section 22(1)(a) of the AAB Ordinance. The Board directed that the Commissioner’s costs application should be heard on 15 June 2000, which was the date originally fixed for the hearing of the Commissioner’s application for setting aside the Appellant’s notice of appeal for the case AAB No. 5/2000. The Board notified the Appellant in writing on 17 May 2000 accordingly.

11. The Law Society notified the AAB on 24 May 2000 of its intention to claim costs against the Appellant in respect of the case AAB No. 5/2000. The Board directed that the costs application of The Law Society should also be heard on 15 June 2000 together with the Commissioner’s

application. The Board notified the Appellant in writing on 25 May 2000 accordingly.

12. The Commissioner and The Law Society served their skeleton submissions on costs on the AAB and the Appellant on 23 May and 1 June 2000 respectively.

THE APPELLANT'S RESPONSE

13. In a letter dated 18 May 2000 to the Board, the Appellant gave his reasons for abandonment of the appeals and his views on the costs applications.

14. The AAB wrote to the Appellant again on 5 June 2000 notifying him that the costs applications would be heard on 15 June 2000 as scheduled. Moreover, if the Appellant did not appear at the hearing in person or did not authorise a representative to attend the hearing on his behalf, the Board would proceed to hear and determine the applications in his absence. The Appellant was also advised to send his response or representations to the Board on or before 9 June 2000.

VOLUNTARY PETITION

15. On 15 June 2000, before commencement of the hearing of the costs applications, the Appellant faxed a letter to the Board. He stated in his letter that he had entered a voluntary petition in bankruptcy before the United States Bankruptcy Court for the District of Connecticut on 14 June 2000 (United States time). He further stated that following such a petition, all proceedings before the AAB and any further action by the AAB should be immediately discontinued. Otherwise, those further participated in the appeal proceedings would be subject to criminal contempt proceedings.

DECISION SOUGHT

16. The Appeals Board was invited to decide whether the applications of the Commissioner and The Law Society for costs against the Appellant should be allowed.

DECISION

The Chairman stated that the Board had considered the three appeal cases in question and the submissions made by Mr PUN for the Commissioner and Mr BOWERS for The Law Society and had arrived at a unanimous conclusion.

The background of these three cases was already detailed in the documents sent to the parties to the appeal. In brief, the Appellant initially lodged the complaints with the Commissioner against three parties, namely, The Law Society, the Director of Immigration and the Secretary for Security. The complaints were found by the Commissioner to be unjustified.

The Board had gone through the matters and was of the opinion that these complaints, even if reinvestigated by the Board, would have resulted in the same conclusion that they were not justified. That being the case, the appeals lodged by the Appellant would in any event be dismissed even if a full hearing were conducted. In other words, the appeals were unmeritorious.

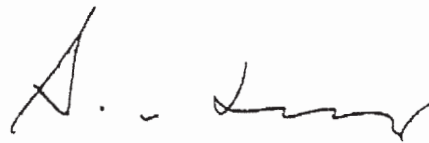
The unfortunate situation was that the Commissioner was bound by the Ordinance to investigate complaints made to him. Even if investigations showed that a complaint was unjustified, the Commissioner could not levy a penalty on the complainant.

When the Appellant lodged the three appeals in question with the Board, the Appellant had conducted them in an unjustified way. The Appellant had failed to comply with the provisions of the Administrative Appeals Board Ordinance and the orders made by the Chairman of the Board. In all the circumstances, it would appear to the Board that the Appellant had pursued his appeals in a manner which indicated that he intended to involve the parties to the appeal to a great extent. In the end, the Appellant abandoned all the three appeals without giving any valid reasons.

One of the reasons the Appellant subsequently put forward was that it was impossible for him to obtain a fair and impartial hearing. Whether the Board had acted in a fair and impartial manner in a hearing would only be relevant after the hearing. Where the Appellant had lodged the appeals, he ought to pursue them if he had grounds to do so. However, the way that the Appellant abandoned the appeals indicated further that the Appellant had not been serious in the conduct of his appeals. Added to this was the Appellant's letter faxed to the Board at the last minute. In this letter, the Appellant tried to inhibit the Board from proceeding with the hearing of the costs applications. He cited various United States statutes seeking to warn the Board that

participants in the appeal proceedings would be subject to criminal contempt proceedings. This again demonstrated that the Appellant had clearly no intention to pursue his appeals according to the law but had tried to threaten the Board.

In all the circumstances, the consensus of the Board was that the Appellant had conducted his appeals in a frivolous and vexatious manner and costs should be awarded to the Commissioner and The Law Society. The costs order should cover the period from the commencement of the appeals until 15 June 2000 including the present costs applications. The costs should be taxed, if not agreed, in accordance with the District Court scale pursuant to section 22(4)(b) of the Administrative Appeals Board Ordinance.



(The Hon Mr Justice LEONG JA)
Chairman
Administrative Appeals Board

13 July 2000