



Panel on Administration of Justice and Legal Services

Issues arising from the remarks of Ms. Elsie Leung Oi Sie

at a public forum on 6 October 2012

Law Society's Press Release dated 10 October 2012

In our Press Release dated 10 October 2012 the Law Society of Hong Kong noted various press reports sparked by the recent comments in a public forum made by Ms Leung Oi Sie Elsie, currently the Deputy Director of the Basic Law Committee of the HKSAR of the Standing Committee of the National People's Congress of PRC ("NPCSC").

The Law Society of Hong Kong did not have a full transcript of Ms Leung's comments and was not in a position to fully respond to Ms. Leung's comments.

The Law Society of Hong Kong notes that under the Basic Law, Hong Kong courts are authorized by the NPCSC to interpret on their own, in adjudicating cases, the provisions of the Basic Law which are within the limits of autonomy of Hong Kong.

The Law Society of Hong Kong believes that the independence of the Judiciary in Hong Kong is deeply established, and the quality, integrity and credibility of our judges is recognised and respected by the international community.

It is a well-known fact that the community has expressed its concerns over the effects of interpretations of the Basic Law by the NPCSC on the independence of the Judiciary and the rule of law which is recognised as a core value of Hong Kong. The Law Society stated the Government should act cautiously when considering whether to seek any future interpretation of any provisions of the Basic Law.

On the question of Mainland mothers giving births in Hong Kong, given established legal principles, the Law Society of Hong Kong considers that a referral to the NPCSC to interpret Article 24(2)(1) of the Basic Law will undermine the authority and standing of the Court of Final Appeal and likely damage the rule of law in Hong Kong.

Ms Elsie Leung's response

We note Ms. Leung sent a private letter to both the President of the Law Society and the Chairman of the Bar Association on 11 October 2012. The Law Society will not comment on this letter.

Freedom of Speech

The Law Society respects Ms. Leung's right to exercise her Freedom of Speech which is a constitutional right enshrined in Article 27 of the Basic Law.

The Law Society also notes Ms Leung's submissions that her views were personal and were made as part of a talk for educational purposes.

However, Ms Leung is currently the Deputy Director of the Basic Law Committee which is an advisory body to the Standing Committee of the National People's Congress. Article 158(4) states:

"The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving and interpretation to this law."

The Basic Law Committee has a constitutional role to play in relation to any interpretation of the Basic Law. As the Deputy Director of the Basic Law Committee, Ms Leung's comments in a public forum concerning the Basic Law will inevitably cause speculation on whether they represent the unofficial views of not only the Basic Law Committee but also of pro-Beijing commentators given her close ties to Beijing. Amidst the public concerns arising from the speculation, the Law Society considers that it has a duty to reiterate its position on future interpretation of the Basic Law as set out in the Law Society press statement dated 10 October 2012.

This is a healthy debate of important issues. It is not an attempt to prevent anyone from exercising their constitutional rights to speak freely.

The Law Society of Hong Kong
27 November 2012

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