

A **Ng Ka Ling & Others**
and
Director of Immigration (No 2)

B Li CJ, Litton, Ching and Bokhary PJJ and Sir Anthony Mason NPJ
 Final Appeal Nos 14–16 of 1998 (Civil)
 26 February 1999

C *Constitutional law — constitutional jurisdiction of courts — jurisdiction to interpret Basic Law derived by authorisation from Standing Committee under art.158(2), (3) — authority of Standing Committee to make interpretation under art.158 unquestioned — interpretation would have to be followed — Basic Law art.158(2), (3)*

D *Constitutional law — constitutional jurisdiction of courts — court could not question authority of National People’s Congress or Standing Committee to do acts which were in accordance with provisions of Basic Law and procedure therein*

E [Basic Law of the Hong Kong Special Administrative Region art.158(1), (2), (3)]

[A Chinese translation of this report is reported at (1999) 2 HKCFAR 143.]

F Mr Denis Chang SC, Mr Philip Dykes SC and Mr Sui Hay Kwok, instructed by Clarke & Liu and assigned by the Director of Legal Aid, for the appellants in Final Appeal (Civil) Nos 14 & 15 of 1998 and for the respondent in Final Appeal (Civil) No 16 of 1998

G Mr Geoffrey Ma SC and Mr Joseph Fok, instructed by the Department of Justice, for the respondent in Final Appeal (Civil) Nos 14 & 15 of 1998 and for the appellant in Final Appeal (Civil) No 16 of 1998

Legislation mentioned in the judgment:

H Basic Law of the Hong Kong Special Administrative Region art.158(1)–(3)

Li CJ:

This is the unanimous judgment of the Court.

I On 29 January 1999, the Court gave judgment in these appeals (see [1999] 1 HKLRD 315). On 24 February 1999, the Director of Immigration filed a notice of motion applying for clarification of that part of the judgment which relates to the National People’s Congress and its Standing Committee. The ground stated in the motion is that the matter is of great constitutional, public and general importance.

J This application invites the Court to take an exceptional course. After a judgment is given, it is for the public and the legal profession to consider that

judgment. Where appropriate, the Court can be asked to consider it in a subsequent case. However, we are faced with an exceptional situation. Various different interpretations have been put on the part of the Court's judgment referred to in the motion and this has given rise to much controversy. A

Having regard to these circumstances and the limitations on the proper exercise of judicial power, we are prepared to take the exceptional course under our inherent jurisdiction of stating the following. B

The courts' judicial power is derived from the Basic Law. Article 158(1) vests the power of interpretation of the Basic Law in the Standing Committee. The courts' jurisdiction to interpret the Basic Law in adjudicating cases is derived by authorisation from the Standing Committee under arts.158(2) and 158(3). In our judgment on 29 January 1999, we said that the Court's jurisdiction to enforce and interpret the Basic Law is derived from and is subject to the provisions of the Basic Law which provisions include the foregoing. C

The Court's judgment on 29 January 1999 did not question the authority of the Standing Committee to make an interpretation under art.158 which would have to be followed by the courts of the Region. The Court accepts that it cannot question that authority. Nor did the Court's judgment question, and the Court accepts that it cannot question, the authority of the National People's Congress or the Standing Committee to do any act which is in accordance with the provisions of the Basic Law and the procedure therein. D E