

Letterhead of Dixon Tang & Co. SOLICITORS

In association with Law Office of Lawrence H. Schoenbach, 111 Broadway, 13/F, New York, N. Y. 10006

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Line:
Your Ref: **Date:** 1/9/1998

Dr. the Hon. Leong Che Hung, J. P.,
Chairman,
House Committee,
Legislative Council,
Jackson Road, Central,
Hong Kong. Dear Dr. the Hon. Leong,

BY HAND

Re : Mr. Chim Pui Chung

Further to our letter of 11th August 1998, we wish to inform you that the Court of Appeal today ordered that the hearing of Mr. Chim's appeal be expedited. The Court ordered that it be heard on 12th November 1998. In addition, an application for bail pending appeal will be heard now on 22nd September 1998.

We also wish to draw to your attention a further matter in relation to the motion to be debated in Council on 9th September, concerning the Article 79(6) of the Basic Law. This provides, as you know, as follows:

“Article 79

The President of the Legislative Council of the Hong Kong Special Administrative Region shall declare that a member of the Council is no longer qualified for the office under any of the following circumstances:

...
...

- (6) When he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two-thirds of the members of the Legislative Council present; and

.../2

It is our opinion, which is confirmed by Leading Counsel, Mr. John Griffiths, S. C., that the words “When he or she is convicted and sentenced” therein necessarily mean conviction after the finalisation of the legal process i.e. not conviction before Judge and Jury but conviction sustained after appeal therefrom. It is only then that the conviction becomes “final”.

Apart from the matters of legal construction of the phrase, which show that this is its true meaning, this would accord with common sense, because it would be a ridiculous situation if a member of the Legislative Council were to be disqualified after conviction by a Judge and Jury (and perhaps a new election held prior to an appeal) and then it be ruled by the Court of Appeal that he or she had been wrongly convicted and was therefore innocent. The effect of such disqualification would be to deprive those who had voted for him or her of the Councillor of their choice without any justification.

In the above circumstances we respectfully suggest for the consideration of yourself and of the Council that any decision upon the motion due for debate on 9th September should be held over until the decision in the appeal on 12th November.

We would also respectfully wish to remind you that as the matter will be ‘sub judice’ on 9th September, we doubt members will wish to be warned that they should not express any views which might affect in any way Mr. Chim’s appeal either on conviction or sentence.

Lastly, we do believe that the possible course of adjourning the debate on 9th September 1998 to a subsequent date will certainly avoid any possible legal confrontation in court between the Council and Mr. Chim over the correct legal interpretation of Article 79 (6) of the Basic Law. Also, as it is our anticipation that the debate on 9th September 1998 might have an impact on Mr. Chim’s appeal, your early reply or views on our aforesaid proposal will be much appreciated.

Yours faithfully,

Dixon Tang & Co.

DT/tl