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立法會議員湯家驊辦事處

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Dear *Ambrose & Ian,*

Re Convert Surveillance

Further to our discussion at the last Security Panel Meeting, I set out some of the authorities mentioned by me at the meeting:-

(a) R v. Valente (1985) 24 D.L.R. (4th) laid down 3 essential conditions of judicial independence:

1. security of tenure;
2. financial security; and
3. institutional independence

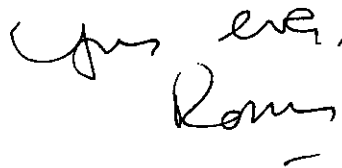
[N.B.: s. 11(d) of the Canadian Charter is similar to Article 14(1) of the ICCPR. "Independence" here denotes independence from the executive branch, in particular.]

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- (b) In R v. Beauregard (1986) 30 D.L.R. (4th) 481, the Canadian Supreme Court affirmed the principle in Valente. In his judgment, *Dickson C.J.C.* said (at p. 491), "Of recent years the general understanding of the principle of judicial independence has grown and been transformed to respond to the modern needs and problems of free and democratic societies Today, however, the principle is far broader There is, therefore, both an individual and a collective and institutional aspect to judicial independence courts are not charged solely with the adjudication of individual cases. That is, of course, one role. It is also the context for a second, different and equally important role, namely, as protector of the Constitution and fundamental values embodied in it – rule of law, fundamental justice, equality, preservation of the democratic process, to name perhaps the most important It is the lifeblood of constitutionalism in democratic societies."
- (c) In Scanfuture (UK) Ltd. [2001] I.C.R. 1096, it was thought the fact that the appointment was automatically renewed was a relevant safeguard but each case obviously will depend on its own facts.

I hope the above jurisprudence will persuade you that the present proposal as regards the constitution of a judges' panel to be appointed and renewed by the Chief Executive is not acceptable to those who have high regard for constitutionalism and the rule of law.



Hon. Ronny Tong, Q.C., S.C.