



## The Betty Letters

*My Dear Grandchild,*

*Being a woman, I could not help but speculate as to what was going through the mind of the Honorable Madame Justice Susan Kwan Shuk Hing () in reaching her determination in the matter of High Court Miscellaneous Proceedings Number 2382 of 2008. This was the matter of the saga of the attempted privatisation of PCCW Ltd () by the 2 majority shareholders where The Securities and Futures Commission stepped in, in an attempt to thwart the intentions of the majority shareholders. The Securities and Futures Exchange is of the opinion that the majority shareholders had been able to bring about a vote in favour the privatisation of PCCW Ltd by dint of causing the swing of the votes at General Meeting in favour of them, by hook or by crook. The Honorable Madame Susan Kwan Shuk Hing, in her findings, determined that Chung Nam Securities Ltd (), or employees of this company, had given shares in PCCW Ltd to certain clients on the understanding that they agreed to vote in favour of the privatisation of PCCW Ltd. The Honorable Madame Justice Susan Kwan Shuk Hing, in handing down her Judgement, said, inter alia: 'The splitting of shares is not prohibited in Hongkong ...'. The Honorable Justice found that Mr Eugene Chuang Yue Chien (), the head stockbroker of Chung Nam Securities Ltd, bought 125 board lots in the Issued and Fully Paid-Up Share Capital of PCCW Ltd in January, this year, and, then, parcelled them out to certain clients of Chung Nam Securities Ltd. One such client was an illiterate cleaner, Madame Wong Sau Chan, who did not even know that she had had an account with Chung Nam Securities Ltd. The Securities and Futures Commission maintained that the actions of the eminence gris, behind the actions of Mr Eugene Chuang Yue Chien, frustrated the aspirations of many minority shareholders of PCCW Ltd to their determinant. In other words, the actions of Mr Eugene Chuang Yue Chien and persons of his ilk were unfair to all shareholders for it benefitted the majority shareholders, being disadvantageous to many, if not most, of the minority shareholders. It must have seemed obvious to the Honorable Justice that Mr Eugene Chuang Yue Chien was merely a pawn in this game and that this 'puppet' was being cleverly manipulated by vested interests at PCCW Ltd or by a third party, close to vested interests at PCCW Ltd. Be that as it may, the Honorable Justice had little choice in the matter and had to rule in accordance with the law as it stands on the statute books. Because, at law, there is nothing illegal in the actions of those who determined to frustrate a fair vote at a general meeting of PCCW Ltd – whatever that may mean –in the matter of privatising this telecommunications company.*

*Now, it seems to me, knowing a little as to how a lady thinks (I am a lady, too, you understand), that the Honorable Madame Justice Susan Kwan Shuk Hing was faced with the dilemma in that, on the one hand, she was duty bound to follow the letter of the law, as it is written, as well as the intent of the law, but, in this case, there was a moral issue with which to contend in that, probably, what had transpired at the general meeting of the shareholders of PCCW Ltd was never intended by the drafters of the law. Of course, she could not know the exact, original intent of the draftsmen of the applicable law and the poor dear had only the statutes, ordinances and precedents with which to guide her determinations. However, if she felt that there was a moral issue at stake, as I am certain she so felt, it is possible that she wanted to leave the legal door wide open so that the Securities and Futures Commission could appeal her decision. If I had been she, I would have done, exactly, the same thing. There would have been only 3 considerations, as I see it:*

- a. *Rule in favour of the privatisation, stating and emphasising all of the gory facts that had come to the attention of the Court, thus praying that the Securities and Future Commission would appeal against the Judgement;*
- b. *Rule in favour of Securities and Futures Commission in aborting the privatisation, causing the majority shareholders of PCCW Ltd to appeal against the Court's determination; or,*
- c. *Make a ruling that was unacceptable to either or both the Securities and Futures Commission and the majority shareholders of PCCW Ltd, forcing the issue for both parties to appeal to a higher court.*

*The Honorable Madame Justice Susan Kwan Shuk Hing is not empowered to seek a change in an existing law because that is outside her purview, but she could make determinations and observations that could well cause certain people to consider whether or not a matter of public morality should be inculcated into the legal framework of an existing piece of legislation. Issues of public morality are difficult because the morals of a society change from time to time and from place to place. In Victorian England, for instance, a gentleman, who proposed marriage to a lady and, then, reneged could well be sued for Breach of Promise and/or Commitment. The case would, most likely, be heard in one of the highest courts of the land and the Court's determination, invariably, would be handed down in favour of the bilked lady who might have surrendered herself to her former lover, based on the promise of marriage. The cost of such an action to the Defendant was often very high and his name was, very often, published on the front page of The Times of London as being a man who was not to be trusted in the company of genteel ladies. Today, of course, a gentleman may well employ any and all lies in order to get a lady to surrender herself to his amorous intentions; and, it would not be considered a Breach of Promise or Commitment. Times have changed, you understand.*

*No doubt, the Securities and Futures Commission feels that times have changed in Hongkong, too, and it is high time to force a change in respect to what the Australians would call, 'Salting the mine'. This is when certain unscrupulous Australians would blast a hole in the ground with buckshot and gold dust so that prospective investors would think that there was gold in the hole when, in fact, there was only near-worthless rock. The situation as the Honorable Madame Justice Susan Kwan Shuk Hing saw it in this case must have been that she could do little to ameliorate the situation, which to her was morally unacceptable, so she determined to play a similar game as the eminence gris of PCCW Ltd, whoever he may be, and pull the strings on those 'puppets' who could, perhaps, redress the balance by demanding a modification to the existing law.*

*I just know how this frustrated lady of letters must have thought about this situation. She is correct – because I feel the same way. Maybe I should have been a judge. My next life, perhaps?*

*Talk to you, next week.*

*Chief Lady*

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