

**DON'T LET THE STANDING COMMITTEE  
OPEN ANY DOOR IN THE HKSAR**

The very idea of asking the Standing Committee of the National People's Congress (NPC) to re-interpret The Basic Law of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) is likely to be viewed, by the intelligentsia of the world, as being about as odious as the feelings that a minnow may well feel on spotting, what appears to be, a hungry trout.

But that is exactly what Chief Executive Tung Chee Hwa, Executive Councillor Tam Yiu Chung, and all the people on the PRC 'payroll', are proposing these days.

Executive Councillor Tam Yiu Chung was, recently, interviewed by an English-language newspaper in the HKSAR; and, the ideas that fell out his mouth are likely to cause icy goose bumps to appear, down the back of many a jurist.

Executive Councillor Tam Yiu Chung said, among other things, that, having the Standing Committee of the NPC rule on legal decisions of the Courts of the HKSAR might be a practical solution to a number of problems, which have been plaguing the HKSAR, of late.

One of the matters, which this Great Advisor to Chief Executive Tung Chee Hwa made clear mention, was the subject of the expected million-plus residents of the PRC, all of whom are expected to seek residence status in the HKSAR, following a recent determination of a lower HKSAR court.

Chief Executive Tung Chee Hwa looks unlikely to allow implementation of the determination of the Court of Final Appeal with regard to the (controversial?) right-of-abode question in the HKSAR.

The Court of Final Appeal upheld a lower Court's decision on the matter of the right-of-abode question in the HKSAR – and, since then, all Hell appears to have broken loose in various HKSAR 'camps'.

The fact that Chief Executive Tung Chee Hwa is unwilling to permit implementation, of a decision of the HKSAR's highest court, is frightening: It may mean that Chief Executive Tung Chee Hwa is accountable to nobody.

It may mean that he is able to make unilateral determinations about the HKSAR law; and, it would appear that he might consider himself to be outside the law of the HKSAR!

Executive Councillor Tam Yiu Chung said: 'The Basic Law has been written very clearly, but the problem is that the Court of Final Appeal (in the HKSAR) has interpreted it in another way ...'.

It would appear, *prima facie*, that Executive Councillor Tam Yiu Chung is contradicting himself because, if, as he attests, The Basic Law 'has been written very clearly', then how can the Standing Committee of the NPC interpret it any differently than the determination of the HKSAR Court of Final Appeal?

Unless, of course, it is Executive Councillor Tam Yiu Chung's implied proposal to have parts, or all, of The Basic Law rewritten, osmotically, by having new interpretations, placed on a number of Articles, specifically, Articles 22 and 24.

Recently, the Court of Final Appeal let the flood doors wide open, it has been suggested, when it made a ruling with regard to the right-of-abode question in the HKSAR.

This decision followed a lower court's determination, one which had been challenged.

Simply put, the Court of Final Appeal's ruling means that it would be impossible to allow one generation of PRC residents into the HKSAR, on a permanent basis, without allowing members of the second generation to join them, in due course.

Executive Councillor Tam Yiu Chung agrees that it would be impossible to ask the Court of Final Appeal to reconsider its determination because that would undermine the integrity and independence of the HKSAR Judiciary.

But, if the Standing Committee of the NPC made a ruling, contrary to the determination of the HKSAR Court of Final Appeal, it would appear that that act, in and of itself, was tantamount to overturning a decision of the highest court of the HKSAR.

In which case, Beijing would be acting as the HKSAR's Court of Final Appeal in the same manner that, prior to the PRC, taking over Hongkong in 1997, the Privy Council in London was Hongkong's final arbiter of legal disputes.

To have the Standing Committee of the NPC consider an already decided legal question in respect of The Basic Law of the HKSAR, with a view of overturning part, or all, of a prior determination of the HKSAR Court of Final Appeal, would mean, without question, that the Standing Committee had an inalienable right so to do.

The HKSAR Court of Final Appeal was supposed to be a substitute court for the Privy Council, following the assumption of sovereignty by the Government of the PRC in 1997.

But, now, it would appear that there is a suggestion that a group of Beijing, non-legal brains should have the inalienable right to challenge the HKSAR Court of Final Appeal, in certain matters.

Now, the question is bound to arise: If Chief Executive Tung Chee Hwa, Executive Councillor Tam Yiu Chung, and all the other little 'Yes-people', have their way, with regard to having the Standing Committee of the NPC scrutinize certain determinations of the HKSAR Court of Final Appeal, at what point may the Standing Committee squeeze the trigger in order to fire off another Beijing round, causing the HKSAR to kowtow to the decisions of the Standing Committee?

This is very much akin to the consideration of the US Government, many, many years ago, with regard to censorship: Where does one draw the line and say that something is to be considered obscene and of no prurient social benefit?

To censor and to impose sanctions on a medium for publishing a picture of a woman's bare breasts would mean that Michelangelo's classic statue of David must, also, be banned – because the symbol of Florence, David, even has his testicles and penis in clear view of those who stand in awe in front of the marble magnificence!

And, if David is to be banned, then Pope Julius II must, also, be taken to task – because Julius II was one of the most important patrons of Michelangelo when he painted the Sistine Chapel, resplendent in its images of bare breasts of both men and women: Because Michelangelo did not believe that God created woman so that babies could be born, fully clothed.

So where does one draw the line with regard to obscenity?

And, it follows: Where does one draw the line on allowing the Standing Committee of the NPC to consider a determination of the Court of Final Appeal of the HKSAR?

The answer is, of course, that the Standing Committee must never be permitted to be the de facto, or de jure, 'Privy Council' for the HKSAR, even though the HKSAR is part of the PRC.

It has been promised by the highest authority in the PRC, during the days of the Paramount Leader of the PRC, the late Deng Xiao Ping, that there shall be one country, two systems.

It would appear that to allow the Standing Committee to make one decision about an HKSAR legal matter, one covered, completely, by The Basic Law, is equal to opening the door of horrors, ajar ... and that, folks, would just be the beginning.

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