From the President
會 長 信 箋

To Editor/ Assignment Editor：

President's statement on interpretation of National Security Law by National People's Congress Standing Committee

In response to media enquiries relating to the Court of Final Appeal ("CFA")'s judgment of 28 November 2022 ("Judgment") on the application by the Secretary for Justice for leave to appeal from the decision of the Court of Appeal in the matter concerning the admission to the Hong Kong Bar of a British barrister to represent a defendant in his National Security Law ("NSL") trial, I would like to make the following statement.

It is not the practice of the Law Society to comment on individual cases, particularly those involving ongoing legal proceedings.

I would, however, first and foremost, point out that Article 85 of the Basic Law provides that the courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference.   I respect the Judgment and trust that the CFA has fully considered all relevant legal factors before making its decision.   I also note from the Judgment that the courts of Hong Kong are "fully committed to safeguarding national security and to acting effectively to prevent, suppress and impose punishment for any act or activity endangering national security as required by NSL 3".

I note that on the evening of 28 November the Chief Executive submitted a report to the Central People's Government and recommended that a request be made to the Standing Committee of the National People's Congress ("NPCSC") to issue an interpretation in accordance with Article 65 of the NSL ("Request"), in order to clarify the question "Based on the legislative intent and objectives of the NSL, can an overseas solicitor or barrister who is not qualified to practise generally in Hong Kong participate by any means in the handling of work in cases concerning offence endangering national security?".   As we understand from the Chief Executive's statement, the Request relates only to overseas solicitors or barristers who are not qualified to practise generally in Hong Kong.   It appears that the Request does not seek to alter the position

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of overseas solicitors and barristers who are already qualified to practise generally in Hong Kong.

Article 65 of the NSL expressly states that "[t]he power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress." Further, Article 62 of the NSL states that "[t]his Law shall prevail where provisions of the local laws of the Hong Kong Special Administrative Region are inconsistent with this Law." Unlike the Basic Law, the NSL does not have any provisions empowering the courts of Hong Kong to refer matters relating to the NSL to the NPCSC for interpretation.

I fully respect the power of the NPCSC to interpret the NSL, which was passed by the NPCSC itself and listed in Annex III to the Basic Law. Article 67(4) of the Constitution of the People's Republic of China clearly states that the NPCSC has power "to interpret the laws".

However, I am mindful that generally, legislative interpretations by the NPCSC, albeit made legally, may affect the perception of our common law system by the public, particularly those who are not familiar with our judicial and legal systems. The bedrock to the rule of law in Hong Kong encompasses the trust and confidence of the public and the international community towards our judges and the judicial and legal systems. I have full confidence in the independence and the role of the courts of Hong Kong and the judicial and legal systems of Hong Kong under "One Country, Two Systems" in accordance with the Constitution, the Basic Law and the NSL.

Yours sincerely,

C. M. Chan
President of The Law Society of Hong Kong
29 November 2022