

# LEGAL QUAGMIRE: WHO IS IN VIOLATION OF THE LAW – INDEPENDENCE ADVOCATES OR THOSE WHO SEEK TO HAVE THEM BARRED FROM STANDING FOR ELECTION?

Wednesday 31<sup>st</sup> August 2016, 14:00 – 16:30  
Large Moot Court, 2/F,  
Cheng Yu Tung Tower, Centennial Campus

Is advocating independence contrary to the Hong Kong Basic Law?

Could I get into trouble for discussing my views on this controversial subject?

What is the source of authority for the Electoral Affairs Commission to require the completion of an additional form to stipulate the eligibility of a nominee seeking to stand as a candidate in the upcoming Legislative Council election?

Was the Returning Election Officer's exercise of power to disqualify some candidates advocating independence from standing for election in the upcoming Legislative Council election exercise legitimate or ultra vires?

What are the specific laws that outline these offences and the powers of officials to act against persons found engaging in such conduct?

**Opening Remarks:** **Puja Kapai**, CCPL Director and Associate Professor, Faculty of Law, HKU

**Moderator:** **Brian Fan**, Final Year, LLB Student, Faculty of Law, HKU

**Michael Davis**  
Senior Fellow, CCPL,  
Faculty of Law, HKU

**Simon NM Young**  
Professor and Associate Dean (Research),  
Faculty of Law, HKU

**Benny Tai**  
Associate Professor,  
Faculty of Law, HKU

**Eric Cheung**  
Principal Lecturer and Director of Clinical  
Legal Education, Faculty of Law, HKU

**Carole Petersen**  
Professor and Director, Spark M. Matsunaga Institute for  
Peace and Conflict Resolution  
School of Law, University of Hawaii

Talk of the independence of Hong Kong from the People's Republic of China has triggered much discussion within the community as to the propriety and legality of such advocacy and the pursuit of independence and self-determination in Hong Kong. Two days prior to the commencement of the nomination period for candidates of the 2016 election to the Legislative Council, the Electoral Affairs Commission (EAC) announced the introduction of an additional eligibility criteria for nomination of candidates: the 'Confirmation Form', which stressed candidates' acceptance of Article 1 of the Hong Kong Basic Law on the inalienability of Hong Kong from China. Much legal debate has surrounded both the legality and legitimacy of the form itself, its enforceability, and the equality of treatment accorded to candidates who had or had not completed the form, among other questions. Critics have labelled the move as an attempt to suppress the pro-independence movement, prompting speculation as to the government's next steps to curb such calls, seen by Beijing loyalists and officials as fanning the flames of secession.

More recently, the desire to prevent such a discourse from taking hold in Hong Kong's educational establishments, has led to the Education Bureau issuing a stern warning to teachers to ensure that they do not 'advocate' independence in schools and to urge them to responsibly 'tutor' students so that they can develop an 'appropriate' understanding and view of the topic.

This has thrown up numerous questions about the propriety and legality of discussing the independence of Hong Kong in various spheres and capacities in light of the rights to freedom of expression, freedom of assembly, political participation and the prospects for the application of China's national security legislation in Hong Kong.

This interactive discussion aims at engaging students and encouraging the development of critical thinking skills. Through a moderated discussion among expert panellists, led by a fellow student, followed by questions from the audience, the discussion will lead students through the process of assessing the validity of various arguments to help better understand the different points of view emerging in this ongoing debate.

**This event is open to HKU students and faculty only. Student and staff ID will be required for entry to the venue.**

**For Registration, Please visit:**

[https://hkuems1.hku.hk/hkuems/ec\\_hdetail.aspx?guest=Y&ueid=45470](https://hkuems1.hku.hk/hkuems/ec_hdetail.aspx?guest=Y&ueid=45470)

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