

Council: no appeal on judicial review

Dear members,

By now you will be aware of the fact that the Institute decided not to appeal against the judgment by the Court of First Instance in the judicial review brought against the Institute by the legislative councillor (accountancy).

The ruling means that all members of the Institute, whether or not they are registered voters, will be receiving the councillor's newsletter unless they write to the Institute to specifically request that they be taken off the list.

It was a very difficult decision and I would like to share with you the thinking that went in to this decision.

On one hand, council members disagreed with the judgment, which we believe was flawed. Our lawyers were confident that we would finally win if we pursued to appeal. If we didn't challenge the judgment, there may be legal uncertainties and problems that we may have to face down the road.

On the other hand, we have to take a pragmatic approach and consider the consequences of not appealing. Lawyers were concerned about legal problems created by letting the judgment stand, but our lawyers assured us that we can deal with the residual issues as they come up; the council acknowledges this is a risk. The other risk we took into account was the effect on our reputation. The possibility of damage to our reputation seemed real and it was not a comfortable thought.

The council members debated long and hard about the merits and risks to both approaches. At the end of the day, the most



PHOTOGRAPH BY COLIN BEERE

important factor that affected the council's decision was to avoid being drawn into the political vortex that would have been created by an appeal. After all, the council's original decision in late 2006 of not to distribute Mandy Tam's newsletters was precisely to avoid this. We have a longstanding policy of striving to be apolitical; with an appeal, the Institute would be the object of political action and debate for months. The council weighed the issues and this risk seemed to outweigh the others.

Since we announced the decision not to appeal on 20 September, the feedback from our members has been very positive, with the decision viewed as a good one that will spare the profession time and aggravation.

The council is comfortable that it made the right decision by moving away from politics and litigation to focus on our professional interests and development.

All these considerations took time and I thank members for their patience. I would also like to thank those members who wrote to us for taking the time to think about this issue and explain their ideas.

Sincere regards,

A handwritten signature in black ink, appearing to be 'Mark Fong' in a stylized, cursive script.

Mark Fong

President, Hong Kong Institute of CPAs