



# 香港地產建設商會

## THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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29 May 2012

The Editor  
SCMP  
via fax: 2250 3242 & email

Dear Sir

I refer to the article by HKU visiting professor Richard Cullen “Rule on flat sales does not flout free speech” (May 28).

While we have no doubt of Prof. Cullen’s credentials, we find his comments to be highly subjective and restrictive.

Prof. Cullen makes his point on the grounds that Australia’s interpretation of free speech is somehow superior to that of the United States or Canada, which he describes as “misguided”, and that Hong Kong should look to Australia when deciding what may or may not contravene our Basic Law as it pertains to freedom of speech. That presumption is seemingly not based on any precedent in the application of the rule of law in Hong Kong.

In the Medical Council case mentioned in his article, all three judges in the Court of Appeal confirmed, in unequivocal terms, that the right of commercial advertising is guaranteed by the Basic Law and the Bill of Rights. The Court of Appeal's decision was supported by a comprehensive review and analysis of precedent cases on human rights in different common law jurisdictions and the European Court of Human Rights. The Court of Appeal's decision remains the good and valid law of Hong Kong under our legal system. We are unable to see why Australia’s way of interpretation of free speech should be the only way to be adopted by our legal system as suggested by Prof. Cullen. Furthermore, Prof. Cullen’s article only looks at one aspect of the counsel opinion, which was written by one of the most experienced and reputable counsel in the UK and European Court of Human Rights specialized in human rights law, and



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fails to address other issues in that opinion, such as the fact that the proposed law applies only to certain segments of the market and not others.

He also overlooks the issue of exempting the Housing Authority from the proposed law for no convincing reason and of forcing developers to issue price lists on flats that they have no intention of selling. Under the proposed law, this could potentially put developers at risk of violating the law by providing misleading information, which would be a criminal offence punishable by up to seven years in jail.

We would be happy to discuss with Prof. Cullen at any time with a view of helping ensure the people of Hong Kong receive a law that is fair and constitutional.

Yours sincerely

Louis Loong  
Secretary General