新聞稿 (2007 年 8 月 28 日)

譚香文歡迎高院判決
盼與公會共同爭取會計師權益

立法會(會計界)議員譚香文歡迎高等法院今天就其提出的司法覆核所作出的裁決，香港會計師公會拒替她寄發議員通訊給會員的決定屬不合法及不合理，公會必需替她寄發訊。譚議員認為判決公道、合理，並且確立了功能組別的立法會代表與其業界選民一個公平、透明的溝通機制。她期望公會盡快恢復替她發議員通訊給會員。

譚議員在記者會上表示：「高院的裁決，將有助她重新打開跟公會 26,000 多名會員溝通的渠道，因為自從公會去年十月決定不再替她寄發議員通訊之後，她一直要自行逐一搜集會計師的聯絡地址，迄今她只有約 5,900 名會計師的郵寄地址，亦即她未能跟二萬多名會計師接觸，透過通訊溝通的渠道大受限制。」

她高興地表示，高院的裁決令困擾她多個月的選民溝通問題迎刃而解，尤如「藍天重現」。裁決亦顯示高院接納她的理據，就是公會的決定損害會員跟其立法會代表接觸的權益。

展望未來，譚議員衷心希望能夠與公會冰釋前嫌，共同為業界爭取最大的權益。她亦會一如過往，致力收集業界對重大社會問題和政策的意見，在立法會內向政府反映，並繼續運用她會計的專業知識，監察政府善用公共資源。

譚解釋: 「今年一月入稟高院，申請司法覆核，對我是一個相當困難的決定。我並非基於任何個人利益或政治考慮，而是顧及整個會計界，以至社會的整體利益，因為公會在沒有徵詢會員、亦沒有徵詢我的情況下，單方面決定不再替業界的立法會代表寄發議員通訊予選民，這既防礙了立法會代表與選民溝通的渠道，亦剝奪了選民獲取資訊的權利，有損會計界權益。選民是有權知悉其代表在立法會及業界內的工作情況。」

她強調，尋求司法覆核是她迫不得已的決定，因為自從公會在去年十月公布不再替她寄發通訊後，她至今年一月，一直花了四個多月的時間跟公會理事會斡旋、聯繫，希望透過協商的方式，可以妥善解決公會拒發通訊的問題，可惜一直不得要領。而公會在過去十多年來，一直有為兩位前任會計界議員黃匡源及李家祥先生寄發議員通訊。

「因此，為爭取一個跟選民合理、又行之有效的溝通渠道，以及追求社會公義，我不得不冒上敗訴要損失巨額金錢的後果，訴諸法律行動，討回公道。」

她重申：「這不單是我個人的利益問題，而是功能組別的有關專業團體，有責任協助其議會代表跟選民溝通，是一個代議制度上的問題。」她高興今次法院的判決，為日後可能出現的同類個案確立一個案例，就是功能組別的有關專業團體不應無理限制和剝奪其議會代表跟選民溝通的權利，資訊自由流通對政制的健康發展十分重要。

譚議員表示，政府應就今次個案，妥善解決功能組別議員與其業界團體及選民的溝通問題。若功能組別仍然存在，政府便應修改有關立法會條例，列明功能組別的專業團體有

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責任協助其立法會代表與選民順利溝通，包括寄發議員通訊給業界選民。政府亦應研究修例，訂明議員在有需要時，例如在選舉結束後，仍可利用選民登記名冊的資料跟選民溝通，例如寄發通訊予選民。

附件：譚香文議員與「香港會計師公會」就寄發通訊事宜的發展經過

(以上新聞稿由譚香文議員辦事處發出)
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譚香文議員與「香港會計師公會」就寄發通訊事宜的發展經過:

日　期	事　宜
2004 年 11 月至 2005 年 12 月	香港會計師公會(簡稱公會)定期替譚香文郵寄通訊予公會會員
2005 年 12 月上旬	譚香文欲透過通訊，收集會計界選民對政改方案的意見，但公會拒絕發放這份通訊
2006 年 3 月	公會與譚香文達成協議，替她寄發的通訊開始附有標籤，表明通訊內容與公會無關，並要求譚香文負擔寄發通訊的郵費和行政費用
2006 年 10 月 9 日	公會在未有事先知會譚香文的情況下，向全體會員發出電郵，表示停止替譚寄發通訊
2006 年 10 月 10 日	公會行政總裁張智媛小姐在《信報》發表文章，指控譚惡意攻擊公會，言論政治化，公會表示與譚劃清界線，停止替譚寄發通訊
2006 年 10 月 11 日	張智媛小姐在香港電台一個直播節目中改變說法，表示若譚願意承擔所有郵費，可以替譚寄發通訊
2006 年 10 月 16 日	譚去函公會，查詢寄發通訊的安排
2006 年 10 月 17 日	譚於《信報》撰文回應張小姐的 10 月 10 日文章
2006 年 10 月 18 日	張小姐詢問譚是否願意承擔寄發通訊的郵費，並表示會把有關議題交公會理事會討論

2006 年 10 月 20 日	譚回覆張，表示願意承擔所述郵費
2006 年 10 月 25 日	公會回函指理事會基於替譚寄發通訊可能違反《個人資料(私隱)條例》，故決定不替譚寄發通訊
2006 年 10 月 25 日	譚去函公會要求澄清，為何公會改變一貫替立法會會計界代表寄發通訊的政策，以及將來為立法會代表寄發通訊的政策
2006 年 10 月 26 日	譚去函邀請公會全體理事會成員到立法會共晉午餐，惟各理事均拒絕聚會
2006 年 11 月 3 日	譚去函個人資料私隱專員及選舉管理委員會，查詢議員與選民溝通渠道事宜
2006 年 11 月 11 日	公會向會員發出電郵，表示會員如有興趣接收譚的通訊，可以填妥表格，回覆公會
2006 年 11 月 13 日	私隱專員回覆譚，拒絕評論個案
2006 年 11 月 14 日	選舉管理委員會回覆譚，拒絕評論個案
2006 年 11 月 22 日	譚就立法會功能組別議員與其選民的渠道，在立法會提出書面質詢。政府回覆指選民登記冊資料只可作選舉用途
2006 年 11 月 22 日	譚去函公會，引述法律意見，反駁公會基於私隱理由拒絕替她寄發通訊的理據
2006 年 11 月	譚透過中間人聯絡當時的公會會長陳茂波先生，要求會面，並親自與當時兩位副會長，方中先生及唐家成先生聯繫，要求約見，惟未得三人正面回應
2007 年 1 月 15 日	譚與公會新任會長方中共晉午餐，並談及公會會否考慮為她寄發通訊，方即時拒絕
2007 年 1 月 16 日	譚去函公會，就 1 月 15 日與方中先生會面表達意見，並表示考慮就公會停發通訊的決定，尋求司法覆核
2007 年 1 月 20 日	譚去函公會，再次要求公會考慮替其寄發通訊，要求公會於 2007 年 1 月 23 日中午前回覆，並再次表示考慮尋求司法覆核

2007 年 1 月 22 日	譚得知公會將於 1 月 23 日舉行理事會會議，遂再去函公會，把公會回覆其要求之限期延至同日下午六時
2007 年 1 月 24 日	譚在限期前沒收到公會的正面回覆，於當日下午入稟高等法院，申請司法覆核
2007 年 7 月 24 日及 25 日	高等法院正式開庭聆訊譚提出的司法覆核
2007 年 8 月 28 日	高等法院裁定譚香文勝訴，公會拒替她寄發通訊的決定不合法、亦不合理，公會需替她寄發通訊給會員

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Press Release (28 Aug 2007)

Satisfied by Judicial Review,

Vows to Continue Fight for Accountants' Best Interests

Mandy Tam Heung-man, the legislator representing the accountancy functional constituency, welcomes today's judicial review by the High Court of actions undertaken by the Hong Kong Institute of Certified Public Accountants (HKICPA).

The High Court has ruled that: "The decision of the HKICPA Council to terminate the distribution of Ms Tam's newsletters was made in consequence of errors of law, and is accordingly irrational". It also states that: "MS Tam is entitled to have the status quo restored, and her newsletters must be distributed by the Institute."

Mandy, who wishes that the HKICPA resume distributing her newsletters as soon as possible, says: "This ruling is fair and reasonable. I trust that the principle asserted by the High Court in its judgment today will mean that communication channels are strengthened between all functional constituency legislators and their constituents."

In a press conference held after the verdict was delivered, Mandy emphasized that the High Court's ruling will help her develop her links with the 26,000 plus members of the HKICPA. Her ability to communicate with these members was greatly undermined by the HKICPA's October 2006 decision to cease distributing her newsletter. Mandy says: "Without the assistance of the Institute with delivery, there were over 20,000 members of my constituency that I was unable to contact through my newsletter. Today's finding suggests that the High Court accepts my belief that the interests of HKICPA members were not best served by

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eroding their ability to receive information from their representative in the Legislative Council."

Mandy is happy that the ruling has helped to address the communications shortcoming and is looking forward to developing a harmonious working relationship with the Institute in order to better represent the interests of the accounting profession.

She reasserts her commitment to representing the profession, gauging and enunciating to government and the wider community the views of accountants on major policy and social issues. She will also continue to apply her professional accounting expertise to monitor the use of public money.

"Resorting to judicial review in January was a very difficult decision for me, and was one I made without personal interest or political consideration. The HKICPA's action was undertaken without consulting either myself or its members. It seriously compromised communication between voters and their LegCo representative, and also deprived my constituents of their right to information," explains Mandy. "Voters are entitled to a good understanding of their representative's work in LegCo. In no way do I believe that the Institute's unilateral action could be said to have benefited the accounting profession."

Mandy stresses that she was compelled to resort to judicial review after four months spent negotiating with the HKICPA's Council with a view to finding a feasible solution regarding the distribution of her newsletter. Regrettably no agreement could be reached. "For over a decade the HKICPA helped distribute to its members the newsletters of my LegCo predecessors, Peter Wong and Eric Li.

"In order to ensure reasonable, useful and practical communication channels with my constituents, it became necessary, as a matter of social justice, for me to pursue this judicial review – at the risk, I would add, of considerable personal financial loss," says Mandy.
"I cannot emphasize enough that this is not purely a matter of personal interest, but about the bigger issue of effective democratic representation – how a legislator from the functional constituency communicates with his or her voters through the assistance of relevant professional bodies."

The free flow of information is indispensable to healthy political discourse, and Mandy trusts that the ruling will set a firm precedent that ensures professional bodies within the functional constituencies cannot unreasonably restrict the right of representatives to communicate with their constituents.

Mandy suggests that the government should address communication problems between legislators from functional constituencies and their constituents if the system is to adequately serve society. The government should amend the relevant Ordinance to ensure that professional bodies are obliged to assist LegCo representatives in communicating with their constituents, whether by distributing newsletters or other means. The government should also consider amending the electoral ordinance to allow legislators to use the Registers of Electors to send newsletters to their constituents when appropriate.

Encl.: Chronological order of the interaction between Mandy Tam and HKICPA regarding its decision to stop distributing Mandy's newsletters

(The above press release is issued by the Office of Mandy Tam)

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Chronological order of the interaction between Mandy Tam and HKICPA regarding its decision to stop distributing Mandy's newsletters:

Date	Event
Nov 2004 – Dec 2005	HKICPA distributing Mandy's newsletters to members
First half of Dec 2005	Mandy intends to collect accountants views on political reform via her newsletters but HKICPA refuses to distribute these newsletters
Mar 2006	An agreement reached between Mandy and HKICPA: HKICPA will add a disclaimer to her newsletters so that its members will know newsletters represent her own views and not those of the HKICPA. Mandy also happy to pay postage and related administration costs
9 Oct 2006	Without informing Mandy in advance, HKICPA sends email to its members about its decision to stop distributing her newsletters
10 Oct 2006	In an article published in the *Hong Kong Economic Journal*, Ms Winnie Cheung, the Chief Executive & Registrar of HKICPA, accuses Mandy of criticizing the HKICPA maliciously. This allegation is a basis of the HKICPA decision not to distribute her newsletters in the future.
11 Oct 2006	In a live RTHK program, Ms Winnie Cheung alters her stance by saying that HKICPA can distribute Mandy' s newsletters if she is willing to pay the cost of postage.
16 Oct 2006	Mandy sends a letter to HKICPA, asking about arrangements for distributing the newsletters.
17 Oct 2006	Mandy writes an article in *Hong Kong Economic Journal*, responding to Ms Winnie Cheung' s views
18 Oct 2006	Ms Winnie Cheung enquires whether Mandy is willing to bear the cost of postage and discloses that the issue will be tabled to the HKICPA Council for discussion
20 Oct 2006	In a reply to Ms Winnie Cheung, Mandy repeats that she is willing to pay the postage

25 Oct 2006	In a reply to Mandy, HKICPA says that due to the Personal Data (Privacy) Ordinance, it decided that they will no longer distribute Mandy' s newsletters to members
25 Oct 2006	In a letter to HKICPA, Mandy asks why the Institute has changed its policy and decided not to distribute newsletters of a LegCo representative. She also asks what kind of policy will be implemented in the future
26 Oct 2006	Mandy sends a letter to the HKICPA Council inviting all its members to a breakfast meeting at the Legislative Council building. However, members decline` the invitation
3 Nov 2006	In separate letters to the Privacy Commissioner for Personal Data and the Electoral Affairs Commission, Mandy enquires whether there is any policy setting out communications procedures between a legislator and his/her constituents
11 Nov 2006	HKICPA sends an email to its members, saying that if any member wishes to receive Mandy' s newsletters, he/ she can fill in a form and reply to the Institute
13 Nov 2006	In a reply to Mandy, the Privacy Commissioner for Personal Data refuses to comment on individual cases
14 Nov 2006	In a reply to Mandy, the Electoral Affairs Commission also refuses to comment on individual cases
22 Nov 2006	In LegCo, Mandy raises a written question about communications procedures between a legislator and his/her constituents; the Government replies that the Registers of Electors can be used only during an election, but not after an election
22 Nov 2006	In a letter to the HKICPA, Mandy quotes legal advice by saying that there is a lack of strong argument in stopping the distribution of her newsletters to the Institute' s members on the grounds of privacy
Nov 2006	Through intermediaries, Mandy tries to approach the then President of HKICPA Mr Paul Chan and the then Vice Presidents Mr Mark Fong and Mr Carlson Tong to arrange a meeting. However, no formal responses are received
15 Jan 2007	In a lunch meeting with the newly-elected President Mr Mark Fong, Mandy asks whether the Institute will consider again distributing her newsletters, Mr Fong responds in the negative

16 Jan 2007	In a letter to HKICPA, Mandy expresses her views to Mr Mark Fong regarding their meeting on Oct 15 and discloses that she is considering seeking a judicial review of the Institute's decision to stop distributing her newsletters to members
20 Jan 2007	In another letter to the HKICPA, Mandy calls on the Institute to distribute her newsletters to its members again, and asks the Institute to give its reply on or before noon of 23 Jan 2007. She also repeats that she is considering judicial review
22 Jan 2007	Mandy writes another letter to the HKICPA after learning that its Council will hold a meeting on Jan 23. In the letter, Mandy postpones the deadline for the HKICPA's reply to 6 pm of the same day, Jan 23
24 Jan 2007	Without obtaining any reply from HKICPA after the deadline, Mandy files her judicial review in the High Court
24 July to 25 July 2007	Two-day judicial review begins at the High court
28 Aug 2007	High Court announces that Mandy wins the case and she is entitled to have the status quo restored, and her newsletters must be distributed by the Institute