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Urgent by fax

22 May, 2002

Mr Paul Woo,
Clerk to Bills Committee,
Legislative Council Secretariat,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.
(Fax No.: 2509 9055)

Dear Mr Woo,

**Part V (Marital Rape) of
Statute Law (Miscellaneous Provisions) Bill 2001**

I refer to the letter dated 21 May 2002 from Mr Sin Wai Man to the Bills Committee further to the Administration's letter to you of the same date.

The statement in our letter that the Administration welcomes Mr Sin's support "relating to the new proposed section 118(3A)" derived from the sentence in paragraph 7 of his letter dated 23 April 2002, "Addition of the new proposed s.118(3A) would convey the message to the public and law enforcement personnel that marital rape is, indeed, an offence". I apologise that this statement by itself does not reflect Mr Sin's support for combining the new proposed section 118(3A) with other amendments, although there is discussion concerning his further suggestions, including a new section 117(1B), in the next paragraphs and the letter generally.

The problem that the Administration sees with adding a new section 117(1B) defining “unlawful sexual intercourse” (including further to the earlier versions proposed by the Administration) is that this would go beyond, and complicate, the intended object of making it expressly clear that marital rape is an offence. As the consultative and legislative committee process has shown, such possible definition raises complex and controversial questions about its precise scope and effect and, in a version confined to sections 118-121, about the extent to which a marital exemption applies or should apply in cases of incompetence to consent for reasons of age or mental incapacity. In the Administration’s view, it is important that amendments of this scope should not be attempted without a prior comprehensive policy review of sexual offences and consultation with the public.

Yours sincerely,

(Michael Scott)
Senior Assistant Solicitor General

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