

LETTERHEAD OF LAW SOCIETY OF HONG KONG

Our Ref : Criminal
Your Ref :
Direct Line :

BY FAX (28690720) AND BY POSST

16 October 2000

Mr. Michael Scott
Deputy Solicitor General (Acting)
Department of Justice
Legal Policy Division
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66 Queensway, Hong Kong

Dear

Competence and Compellability of Spouses in Criminal Proceedings

I refer to your letter dated 17 July 2000 in connection with the captioned matter. I apologize for the delay in providing the Society's response to the Consultation Paper.

The Paper was discussed by members of the Law Society's Criminal Law & Procedure Committee on 9 October 2000. Members have the following views:-

- (1) Spouse as a competence witness for the accused. The general agreement that the proposal on competence is quite sensible and should be introduced.
- (2) Spouse as a compellable witness for the accused. It was agreed that in relation to the compellability of spouses as witness for the prosecution is unacceptable as it infringes upon the sanctity of marriage.
- (3) Compellability of a spouse to give evidence for the defence: It was decided that, on balance, the law should be changed, subject to the proviso that "*the failure of the wife or the husband of the accused to give evidence shall not be made the subject of any comment by the prosecution*".

I trust the above will be of assistance to you in taking this matter forward.

Yours sincerely,

Joyce Wong
Director of Practitioners Affairs