

LC Paper No. CB(2)656/00-01(08)

Criminal
L/M (2) to LP 5014/19/1C II

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BY FAX (28690720) AND BY POST

Ms. Agnes Cheung
Senior Government Counsel
Legal Policy Division
Department of Justice,
4/F., High Block, Queensway Government Offices,
66 Queensway, Hong Kong.

Dear Ms. Cheung,

Marital Rape and Related Sexual Offences

Further to my letter to you dated 23 November 2000, I am pleased to advise that the Society's Criminal Law & Procedure Committee has considered the Administration's various proposals in the Consultation Paper on the above subject at its recent meeting.

The Committee agrees that the law should be clarified but has difficulty with the options put forward in the Consultation Paper. In particular, the Committee does not agree to the Administration's proposal for the word "*unlawful*" to be defined. Members can see problems with properly defining the word "*unlawful*". The term obviously does not exclusively mean "*within marriage*", as this would effectively limit the offence of rape to circumstances occurring between married partners. On the other hand, if it were an inclusive definition, query would arise on what is included or excluded and it will be unclear on what the definition is seeking to define. The Committee believes that what the Administration is seeking to clarify is that "*unlawful sexual intercourse*" include "*sexual intercourse within marriage*" as stated in the House of Lord decision but the House of Lords has already decided that the word "*unlawful*" is a surplusage. The Committee does not think that the offence should be clarified by putting a definition on the word "*unlawful*" as this may be inconsistent with the common law position.

The Committee would urge the Administration to revisit its various proposals in the light of the above and will give further comment on the issue upon receipt of the actual proposed amendments.

Yours sincerely,

Christine W. S. Chu
Assistant Director of Practitioners Affairs