

**The Law Society of Hong Kong**

Submissions on: "Public Interest" consideration in Prosecution Policy:

***Equality before the Law***

The Law Society is aware that a decision "not to prosecute" by the Department of Justice in a recent high profile case has caused a great deal of concern and criticism within the community. This is unfortunate, as it has led to the view of some that there is "*one law for the highly connected and another for the ordinary man on the street.*"

As a direct result of criticism following earlier decisions by the Department of Justice concerning its decision not to prosecute certain cases, the Department published a booklet outlining the Department's policy guidelines on the prosecution of cases.

The important issue under discussion before the Panel is simply one of "*Equality before the Law*". The criteria on whether to prosecute or not should be exercised by the Secretary for Justice in a transparent and equal manner. The Department of Justice must ensure that the policy on prosecution should be *applied equally* to all persons in similar circumstances. Defendants from all walks of life should expect the same consideration to be given to their cases irrespective of his background.

It is the duty of the Department of Justice to ensure that the integrity of the Criminal Justice system in Hong Kong is upheld and that the cardinal principle of "*Equality before the Law*" is adhered to by the adoption of a transparent approach.

***Recommendation***

The Law Society would like an assurance from the Department of Justice that the discretion exercised in the recent case will be exercised in similar cases in the future.

The Law Society recommends that the Department of Justice should regularly publish the criteria upon which the discretion not to prosecute is exercised, illustrated by sample cases, if necessary on an anonymous basis.

**The Law Society of Hong Kong**  
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