

Criminal

**BY FAX (28690720) AND BY POSST**

16 October 2000

Mr. Michael Scott  
Deputy Solicitor General (Acting)  
Department of Justice  
Legal Policy Division  
4/F, High Block  
Queensway Government Offices  
66 Queensway, Hong Kong

Dear Michael,

**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

Criminal  
LP 911/00/1C

**BY FAX (28690720) AND BY POST**

23 April 2002

Mr. Stephen Kai Yi Wong  
Deputy Solicitor General  
Department of Justice  
4/F., High Block, Queensway Government Offices,  
66 Queensway, Hong Kong.

Dear Mr. Wong,

**Evidence (Miscellaneous Provisions) Bill 2002 - Competence & Compellability of Spouses in Criminal Proceedings**

Further to my letter to you dated 13 March 2002, I am pleased to advise that the Society's Criminal Law & Procedure Committee has met to consider the proposed legislative amendments regarding "*Competence & Compellability of Spouses in Criminal Proceedings*" under Part I of the above draft Bill.

The Committee notes a new section 57A of the Criminal Procedure Ordinance was introduced to deal with its concern on the proposal making spouses compellable witnesses for the prosecution, namely, that it would infringe on the sanctity of marriage. It is however observed that the exemption provision imposes a heavy burden on the applicant to adduce proof to justify an exemption. Under section 57A, a spouse has to satisfy the court that there will be "*serious harm to the relationship between the spouses*" or "*serious emotional, psychological or economic consequences for one of the spouse*". In reality, it will be very difficult if not impossible for the spouse to satisfy such criteria particularly when minor offences are involved. The section 57A exemption will also effectively create a trial within a trial. Resources will be wasted and the impartiality of the Magistrate will be called into question. Members also fail to see how the court can "*in part*" exempt the husband or wife from the obligation to give evidence for the prosecution.

In the light of the above, the Committee will reiterate its previous objections to the legislative proposals regarding compellability of spouses as witnesses.

Yours sincerely,

Christine W.S. Chu  
Assistant Director of Practitioners Affairs