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By Fax (2845 0387)

Ms Christine W S Chu
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road
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Hong Kong

via Miss Agnes Cheung, SASG/GLP(Ag.)

Dear Ms Chu,

Evidence (Miscellaneous Amendment) Bill 2002
Part II : Use of Live Television Link in Criminal Proceedings

Thank you for your letter of 25 February 2003 and the various concerns you raised are noted.

At the moment Hong Kong courts are not empowered to issue a witness summons outside Hong Kong in criminal proceedings. Any procurement of giving of evidence by an overseas witness would have to be by way of letter of request or pursuant to any mutual legal assistance agreement which Hong Kong may have with the jurisdiction in which the witness resides. This mode of taking of evidence would only allow the evidence to be recorded in a written format and there is no chance for the jury or the trial judge to observe the demeanor of the witness at all. The proposed alternative of giving evidence by live television link is an attempt to improve on the existing mechanism where circumstances permit.

It is admittedly more difficult to prosecute a witness for the offence of perjury if he is outside Hong Kong and it would be impossible or costly to extradite the person to Hong Kong. However, the same problems would arise even if a witness comes to Hong Kong to give evidence and perjured himself. The jurisdiction of Hong Kong courts to prosecute him for perjury can be equally lost if the witness leaves Hong Kong subsequently.

It is our proposal that the permission for the use of live TV link will only be granted at the discretion of the court. The proposed section 79I of the Criminal Procedure Ordinance (clause 16 of the Evidence (Miscellaneous Amendments) Bill 2002) provides that the court “**may**” on the application of a party permit the use of live TV link. It is also proposed that a provision will be added to the subsidiary legislation to be made under the proposed section 79L of the Criminal Procedure Ordinance to provide that the other party to the criminal proceedings will be given a chance to object to the application. The court, when deciding on an application, will take into account all factors such as those mentioned in your letter.

It is accepted that a video link can never replace the atmosphere and personal contact in the courtroom and that a close up of the face of a witness may not be sufficient. However, on a pure technical consideration, video link evidence is not novel in Hong Kong. Vulnerable witnesses have already been giving evidence via live TV link under Part IIIA of the Criminal Procedure Ordinance. In any event, when the court makes a decision as to whether an application for the use of live TV link should be granted, it would most probably also take into account the difference between a witness physically inside the courtroom and a witness appearing through a video link.

I hope the above would go towards allaying your concerns, which are both legitimate and welcomed.

Yours sincerely,

(Miss Selina Lau)
Government Counsel
Legal Policy Division