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2869 9457
2877 5029

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

By Fax (2869 0720) and By Post

30 April 2003

Dear Mr Wong,

Evidence (Miscellaneous Amendments) Bill 2002

I refer to Part I of the Evidence (Miscellaneous Amendment) Bill 2002 and would like to seek your clarification on the following matters:-

New Section 57

The term "co-accused" is defined in section 57(10) as "in relation to an accused, means a person standing trial together with the accused". Please clarify whether such definition includes an accused person who is jointly charged with another person for an offence but for some reasons these 2 accused persons are tried separately.

New Section 57A

Under section 57A(5), where the spouse of an accused is called to give evidence for the prosecution, or on behalf of co-accused, in circumstances in which he or she is compellable to give evidence under section 57(3), the court must be satisfied that the spouse is aware of his or her right to apply for an exemption under section 57A(1).

Please explain, in terms of criminal procedure, that who has the duty to advise the spouse of his or her right to apply for exemption and what is the standard of proof in this respect. Would the Administration make provisions for the procedure in the Criminal Procedure Rules or any other subsidiary legislation?

Section 52 of the Matrimonial Causes Ordinance (Cap. 179)

One of the consequential amendments sought to be made is to repeal section 52(1) and section 52(2) of the Matrimonial Causes Ordinance. Section 52(1) and section 52(2) of the Matrimonial Causes Ordinance provide as follows:-

"(1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period; but a husband or wife shall not be compellable in criminal proceedings to give evidence of the matters aforesaid.

(2) The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings."

Please explain the effect of the proposed consequential amendment on:-

- (i) the admissibility of the evidence of a husband or wife in any proceedings (civil or criminal) in relation to the question of whether or not marital intercourse took place between them during any period; and
- (ii) the question of competence in any proceedings (e.g. in civil or matrimonial proceedings) instituted in consequence of adultery.

I would be most grateful for your reply in bilingual form on or before 9 May 2003.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

c.c. Legal Adviser
CAS(2)3