

Letterhead of The Law Society of Hong Kong

LC Paper No. CB(2)1202/01-02(01)

Our Ref. :

Your Ref Criminal

Direct Line CB2/PL/AJLS

25 February 2002

BY FAX (25099055) AND BY POST

Mrs. Percy Ma
Clerk to LegCo Panel
 on Administration of Justice
 & Legal Services
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mrs. Ma,

LegCo Panel on Administration of Justice and Legal Services Meeting on 25 February 2002

Thank you for your two letters dated 1 and 22 February 2002 to our Secretary General Mr. Patick Moss and the documents provided on the subject “*Competence and Compellability of Spouses in Criminal Proceedings*” .

As you can see from the Administration’s paper (LC Paper No. CB(2)1889/00-01(01)), the Society’s Criminal Law & Procedure Committee has previously expressed its views on the subject during the last consultation exercise in later 2000. Whilst you will find the Committee’s stance in a letter dated 16 October 2000 to Mr. Michael Scott of the Department of Justice (enclosed under Enclosure B of the said Administration’s paper), I take the liberty to attach a copy of the letter for your ease of reference.

I would confirm that having considered the further papers provided, the Society’s Criminal Law & Procedure Committee maintains its previous stance as expressed in the attached letter and the Society will not be sending any representative on the subject at today’s LegCo Panel meeting.

Yours sincerely,

Christine W.S. Chu
Assistant Director of Practitioners Affairs

c.c. Mr. Andrew Lam, Chairman of the Criminal Law & Procedure Committee
 Mr. Kevin Steel, members of the Criminal Law & Procedure Committee
 Mr. Patrick Moss, Secretary General

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16 October 2000

BY FAX (28690720) AND BY POST

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