

**Extract of minutes of meeting of Administration of Justice
and Legal Services Panel held on 26 June 2001**

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V. Competence and compellability of spouses in criminal proceedings
(LC Paper Nos. CB(2)1889/00-01(01) and (02); Report on Competence and Compellability of Spouses in Criminal Proceedings published by the Law Reform Commission (LRC) in 1988 (attached at LC Paper No. CB(2)1889/00-01))

15. Deputy Solicitor General (DSG) briefed members on the Administration's paper (LC Paper No. CB(2)1889/00-01(01)). DSG said that the thrust of the LRC's recommendations was that a spouse would be both competent and compellable in all cases to testify for the other spouse, but compellable to testify against the other spouse only in cases involving offences that threatened their family. He drew members' attention to paragraphs 12 to 14 of the Administration's paper, which set out the Administration's position on whether there should be a general rule relating to spouse as compellable witness. A summary of the present law and the recommendations of the LRC were set out in the Annex to the paper.

16. DSG also informed members that the Administration had introduced a Bill in 1990, the Criminal Procedure (Amendment) Bill 1990, to amend the Criminal Procedure Ordinance (Cap. 221) to implement the recommendations made in the LRC Report, but the Bill was defeated. It was the intention of the Administration to reintroduce the Bill to implement the relevant recommendations.

17. The Chairman sought the views of the Hong Kong Bar Association on the matter.

18. Mr Edward LASKEY said that the Bar Association supported the proposals of the LRC, which represented a change of its stance 10 years ago when the matter was considered by the Bar Association. He explained that the present position of the Bar Association was that the proposals of the LRC were sensible, given the change of time and people's attitudes in relation to, for instance, the sanctity of marriage and family values. Nonetheless, the Bar Association felt that in implementing the legislative changes, there should be certainty as to the offences to which the new rules would apply. For instance, it would be desirable to clearly define in the law the offences which were deemed to "threaten" the family, or alternatively to provide a schedule setting out such specific offences.

19. Ms Emily LAU said that she particularly shared the views expressed by the Guardianship Board in response to the Administration's consultation exercise. The Board supported the proposed reform in respect of compellability, provided that compellability as witness for the prosecution was extended to cover crimes against mentally incapacitated adults living in the family, and not only limited to crimes against spouses, cohabitees and children.

20. Ms Emily LAU pointed out that, as stated in paragraph 10 of the Administration's paper, four organisations had raised objection to compelling spousal testimony for different reasons. She said that the Administration should take into account all the different views put forward when preparing the Bill for the scrutiny of LegCo.

21. DSG said that the intended Bill would endeavour to address the concerns about spouse as compellable witness. The Bill would not open the floodgates of compelling a spouse to give evidence in any situation, as compellability would be subject to restrictions, i.e. spouses should not be compellable to testify against each other, except in a limited category of cases affecting the family, such as cases involving physical or sexual violence against family members. The exceptional situations were explained in paragraph 12 of the Administration's paper.

22. DSG added that the Administration had yet to work on the contents of the Bill. He advised that the Administration intended to introduce the Bill into LegCo in the latter half of 2002.

23. Mr TSANG Yok-sing pointed out that the present position was that at common law, a person was not competent to give evidence for or against his or her spouse except in very limited circumstances. He asked whether by enacting legislation to provide for competence alone, of a spouse to testify against the other accused spouse, would solve most of the problems envisaged by the Administration.

24. DSG explained that the issue of competence was much less controversial than compellability. It was thought that the spouse who was torn between loyalty to his or her accused spouse on the one hand, and loyalty to an endangered party on the other, would suffer less conflict of loyalty if the law compelled his or her testimony. The present proposal to compel spousal testimony only in limited circumstances was to strike a balance between the interest of society in upholding the institution of marriage and the public interest of prosecuting and convicting offenders.

25. Legal Adviser pointed out that in the course of scrutinising the Criminal Procedure (Amendment) Bill 1990, the Administration agreed to introduce an amendment to the Bill to allow a spouse or a cohabitee of an accused to seek exemption from testifying for the prosecution. Under the proposed

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amendment provision, the court would be empowered to grant exemption as it saw fit. He suggested that the Administration should also take such a provision into consideration when preparing the Bill.

26. In concluding the discussion, the Chairman requested the Administration to provide the following information/documents for the consideration of the Panel in due course -

- (a) a copy of the Criminal Procedure (Amendment) Bill 1990;
- (b) copies of written submissions received by the Administration during the public consultation exercise;
- (c) a list of the crimes which in the opinion of the Administration justified compelling spousal testimony; and
- (d) an information note on experience in overseas common law jurisdictions and the development of similar legislation in those countries.

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27. The Chairman suggested that the Administration should also provide the above information/documents to the legal professional bodies for their further comments on the subject. She requested the Administration to provide a written report on the outcome of consultation for the Panel's consideration in due course.

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