

**LegCo Panel on Administration of Justice and Legal Services**  
**Jurisdiction to Award Costs in Criminal Proceedings**

**Introduction**

The Law Society is of the view that it is grossly unfair that the prosecution should rely on Secretary for Justice v. TANG Bun [1999] 3 HKC 647 to oppose a defendant's application for costs when a review is instituted by the prosecution under s. 104 of the Magistrates Ordinance, Chapter 227 and dismissed by the magistrate.

2. The Panel invited comments from the Administration on the matter including whether any change of the law or practice is desirable.

**The Law**

3. Secretary for Justice v. TANG Bun [1999] 3 HKC 647 held that courts had no inherent jurisdiction to award costs in criminal proceedings. A magistrate had no power or jurisdiction under the Costs in Criminal Cases Ordinance, Chapter 492 or in any other enactment to award costs of the review wherever the application for review was instituted by the prosecution, regardless of whether it succeeded or not, and he had no power to award costs in favour of one party or another.

4. The Costs in Criminal Cases Ordinance was enacted in 1997. It does not confer power or jurisdiction on a magistrate to award costs of review proceedings to a defendant upon dismissing an application for

review instituted by the prosecution. Before the enactment of the Ordinance, it was held in Attorney General v. IP Wai-kwong [1982] HKLR 93 that a magistrate had no power to award costs in relation to applications for review. There has never been a power to award costs to the defendant on a review initiated by the prosecution.

### **Conclusion**

5. The Magistrates, like the prosecution, are bound by these decisions of the courts. The prosecution is under a duty to advise a magistrate if there is no jurisdiction to make an order of costs. This is not a matter of practice, but one of law. There is no discretion in this area.

6. It appears, however, that it would be fair to enable defendants who have suffered loss as a result of an unsuccessful application for review by the prosecution to recover their costs. Subject to the views of the Panel, the Administration would be prepared to consider an appropriate amendment to the Costs in Criminal Cases Ordinance to give the magistrate the power to award costs when an application for review by the prosecution is dismissed.

Department of Justice

October 2001