

**Replies to supplementary written questions raised by Finance Committee Members
in examining the Estimates of Expenditure 2009-10**

**Controlling Officer : Director of Administration and Development
Session No. : 5**

Reply Serial No.	Question Serial No.	Name of Member	Head	Programme
S-SJ01	S027	HO Chun-yan, Albert	92	(2) Civil
S-SJ02	S028	HO Chun-yan, Albert	92	(3) Legal Policy
S-SJ03	S029	HO Chun-yan, Albert	92	(3) Legal Policy
S-SJ04	SV005	EU Yuet-mee, Audrey	92	
S-SJ05	SV007	TO Kun-sun, James	92	(1) Prosecutions

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
SUPPLEMENTARY QUESTION**

Reply Serial No.

S-SJ01

Question Serial No.

S027

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (2) Civil

Controlling Officer : Director of Administration and Development

Question :

Please provide the numbers of cases in which the Administration applied to the court for injunctions in order to avoid or prevent the occurrence of foreseeable crime in society in 2006, 2007 and 2008.

Asked by : Hon. HO Chun-yan, Albert

Reply :

Of the 3 years referred to in the question, the Department of Justice made 1 application for injunction in aid of the criminal law in 2008.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration
and Development

Date _____ 30 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
SUPPLEMENTARY QUESTION**

Reply Serial No.

S-SJ02

Question Serial No.

S028

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

On which bills did the Administration conduct legal research relating to human rights issues in 2008? Please list all the bills concerned and details of the research conducted.

Asked by : Hon. HO Chun-yan, Albert

Reply :

Requests for advice are demand led. Legal research is not treated as a discrete function, but is carried out in order to give advice as and when required.

All bills are cleared by the Human Rights Unit under Legal Policy Division from the human rights perspective to ensure compliance with human rights provisions of the Basic Law. Legal research covering a number of sources including overseas statutory provisions and the jurisprudence of various jurisdiction (such as judgments of the European Court of Human Rights and comments published by UN treaty monitoring bodies of various human rights conventions) is conducted in relation to the preparation of draft legislation in order to give advice as and when required. In 2008, legal research relating to human rights issues was conducted in relation to the preparation and deliberation of many pieces of draft legislation. Examples of these gazetted bills are -

- (i) Race Discrimination Bill; and
- (ii) Road Traffic Legislation (Amendment) Bill

Signature _____

Name in block letters _____ Susie Ho

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**CONTROLLING OFFICER'S REPLY TO
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Reply Serial No.

S-SJ03

Question Serial No.

S029

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

On which litigation cases did the Administration conduct legal research relating to human rights issues in 2008? Please list all the cases concerned.

Asked by : Hon. HO Chun-yan, Albert

Reply :

Human rights advice is given on litigation matters raising human rights issues. Invariably, research is conducted. These cases in which judgment has been delivered include -

- (i) CACV 94/07 - Rank Profit Industries Ltd v Director of Lands;
- (ii) CACV 354/07 - Wong Tze Him v Commissioner of Police & SJ;
- (iii) HCAL 51/2007, etc. - FB v Director of Immigration and Secretary for Security;
- (iv) HCMA 173/2008 - Secretary for Justice v Ocean Technology Limited; and
- (v) HCAL 79 and 82 of 2008 - Chan Kin Sum & ors v Secretary for Justice & anor.

Signature _____

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Reply Serial No.

S-SJ04

Question Serial No.

SV005

Head : 92 Department of Justice Subhead (No. & title) :

Programme :

Controlling Officer : Director of Administration and Development

Question :

With reference to the recent press reports that Mrs Grace Mugabe, the First lady of Zimbabwe, had allegedly attacked a journalist while on a shopping trip to Hong Kong, Hon Audrey EU requested the Administration to provide -

- (a) Written explanation of the Administration's decision not to prosecute Mrs Mugabe and its legal basis;
- (b) Information on whether the Government of the Hong Kong Special Administrative Region could, under the principle of "One Country Two Systems", refuse entry of Mrs Mugabe to Hong Kong in future, on the grounds that she was persona non grata because there was reportedly sufficient evidence for prosecution of her, and making reference to precedents that some overseas jurisdictions had also banned her from entry and a local case of a Vietnamese diplomat being banned from re-entry to Hong Kong after having committed a criminal act in Hong Kong in 2001; and
- (c) Information on whether the journalist concerned could seek redress by pursuing civil litigation or private prosecution.

Asked by : Hon. EU Yuet-mee, Audrey

Reply :

- (a) The journalists made a complaint to the police only 2 days after the alleged assault, by which time Mrs Mugabe had already left Hong Kong. HKSARG had been advised that Mrs Mugabe as the spouse of a foreign head of state, has been granted by the Central People's Government personal inviolability and immunity from prosecution by virtue of Article 22.1(3) of the PRC Regulations Concerning Diplomatic Privileges as applied to Hong Kong by Article 18.2 and Annex III of the Basic Law.
- (b) Each application to enter Hong Kong is considered by the Director of Immigration pursuant to article 154 of the Basic Law, the Immigration Ordinance, Cap. 115, and established policies, and in light of relevant circumstances.
- (c) Mrs Mugabe enjoys full immunity from criminal jurisdiction under the aforementioned Regulations. The journalists must take their own legal advice on whether any civil or other remedies are available to them.

Signature _____

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Reply Serial No.

S-SJ05

Question Serial No.

SV007

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

Hon James TO requested information on the number of cases for consideration of prosecutions in which the Department of Justice had raised concerns about the conduct of undercover police officers in their investigation and collection of evidence during operations against vice establishments and had referred relevant cases to the Police for follow-up actions.

Asked by : Hon. TO Kun-sun, James

Reply :

We understand that the guidelines issued by the Police make it very clear that undercover officers involved in anti-vice operations are strictly prohibited from having sexual intercourse or oral sex. Bodily contact may be allowed only if it is necessary to achieve the objective of the operation. Once the objective is achieved, such bodily contact should cease. In this regard, although Deputy Director of Public Prosecutions at the Finance Committee meeting referred to a general prohibition against police officers receiving masturbation services, there are exceptional circumstances where a police officer will find it necessary to receive the service, but in such circumstances, he must seek and obtain the prior permission of a senior officer of the rank of Senior Superintendent. In the course of advising on vice cases submitted for consideration as to prosecution, we have not come across cases in which there is evidence that police officers have breached the guidelines.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
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Date 30 March 2009