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12 June 2009

Dr the Hon Margaret Ng
Room 116
New Henry House
10 Ice House Street
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Dear *Margaret*,

Thank you for your letter of 9th instant.

Your concern is appreciated but let me assure you that the evidence in this case was carefully assessed, not just internally but also externally, before it was concluded that in all the circumstances a prosecution was not appropriate.

This decision was reached after full consideration was given to the statements of the complainants and to their complaints that they were manhandled as innocent journalists and that a camera was improperly removed. Regard was also had, as prosecution policy requires, to the statements of the complainees and to their concerns for the safety of Miss Bona Mugabe who, at the material time, was about to leave the house to go to the university. Also considered were the statements of the other persons at the scene. The contents of a sound recording were also considered. All aspects of the case were fully evaluated.

As you know, in considering whether there is a reasonable prospect of conviction, the prosecution has to consider any defences which are plainly open to or have been indicated by the accused. In our review of the case, there was evidence pointing to the complainees being genuinely concerned for the safety of Miss Mugabe. They appeared to have believed that they were acting properly in intercepting the complainants whom they considered to be trespassing, and who in fact had not registered at the guard

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post when entering the complex, as required of visitors by the management. Although we recognised that some aspects of the complainers' alleged conduct might have caused the complainants to believe that disproportionate force had been used, we felt, in all the circumstances, that the correct approach was to look at what happened in the round.

Miss Mugabe was about to leave the house in a two-car convoy with her security personnel when the complainants suddenly appeared at the scene, and the complainers were apprehensive for her safety in the circumstances which confronted them. Regard, we considered, needed to be had to the difficulty they faced in weighing to a nicety each and every action they took to ensure her safety, particularly when they saw it as their duty to protect Miss Mugabe from any sort of danger, whether actual or perceived. Although the complainants were fully entitled to have their position respected, we also examined all the surrounding circumstances and the fears of the complainers for the safety of their charge. The statements of other witnesses at the scene helped us to appreciate the actions of the complainers.

It was against this background that the events that occurred needed to be viewed. We were satisfied that the complainers had real concerns for the safety of Miss Mugabe in all the circumstances that existed at that time. Contrary to what some have asserted, Miss Mugabe was in fact in the house as these events unfolded, waiting until she could depart, although in the event her trip to the university had to be aborted because of what occurred. It was important, in our view, that particular events not be viewed in isolation, but examined in full context. Once this was done, we realised that a prosecution was not appropriate.

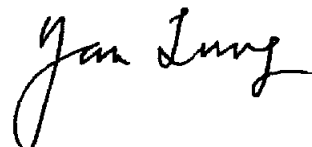
As you may be aware, the Director of Public Prosecutions, out of an abundance of caution, felt that it would be prudent to obtain an outside assessment of the case from a Senior Counsel at the private Bar who specialises in the criminal law. This is a course which, particularly in sensitive cases, has sometimes been advocated by legislators and others. After the Senior Counsel had considered the case, he advised the DPP that the case was '*borderline*' or '*marginal*', and that, in all the circumstances, the public interest did not require a prosecution.

I agree that it is important for the rule of law to be equally applied. In a prosecutorial context what this means is that nobody should be prosecuted unless this is justifiable on the basis of established prosecution policy guidelines. In the circumstances of this case, a prosecution could not be justified. I hope you will be as reassured as was I that this was the

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considered view not only of Senior Counsel within the Department, but also of Senior Counsel at the Bar.

Yours *Sincerely,*

A handwritten signature in cursive script, appearing to read "Yan Lung".

(Wong Yan Lung, SC)
Secretary for Justice

c.c. Clerk to LegCo Panel on Administration
of Justice and Legal Services