



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : CITB CR 08/18/3  
本函檔號 OUR REF : LS/S/14/13-14  
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By Fax (2869 4420)

11 March 2014

Ms Manda CHAN  
Principal Assistant Secretary for Commerce and  
Economic Development (Commerce and Industry)  
(Special Duties)  
Commerce, Industry and Tourism Branch  
Commerce and Economic Development Bureau  
22-23/F, West Wing  
Central Government Offices  
2 Tim Mei Avenue  
Tamar  
Hong Kong

Dear Ms CHAN,

**Subcommittee on Toys and Children's Products Safety  
(Additional Safety Standards or Requirements) Regulation,  
Toys and Children's Products Safety Regulation (Repeal) Regulation and  
Toys and Children's Products Safety (Amendment) Ordinance 2013  
(Commencement) Notice**

Further to our previous letters to you on L.N. 17, in regard to the issue of statutory defence under section 8(7) of the Toys and Children's Products Safety Ordinance (Cap. 424), we have the following additional questions for your clarification.

**Section 8(7) of Cap. 424**

*Question 1*

The provision provides that in any proceedings against any person for an offence under section 8 in respect of any toys or children products, it shall be a defence for that person to show some specified matters. Is the defendant

required to prove on the balance of probabilities or adduce some evidence in order to meet the standard of proof required by section 8(7)?

The common law defence of honest and mistaken belief

*Question 2*

Under the existing Toys and Children's Products Safety Regulation (Cap. 424B), is the common law defence of honest and mistaken belief available to a defendant being charged with an offence under Cap. 424B? If not, why not. In *Hin Lin Yee v. HKSAR* (2013) 13 HKCFAR 142, Ribeiro PJ said at P.205 of the judgment that, if the presumption of mens rea is displaced, it would be a defence at common law, if the defendant can prove on the balance of probabilities that the prohibited act was done in the honest and reasonable belief that the circumstances were such that, if true, he would not be guilty of an offence.

*Question 3*

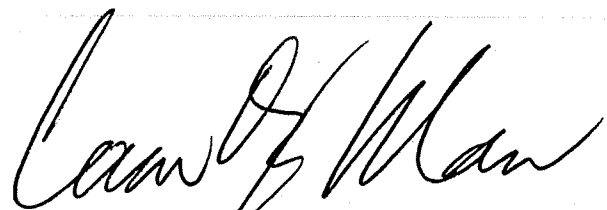
Whether or not the common law defence of honest and mistaken belief exists under the existing Cap. 424B, is such defence available to a defendant being charged with an offence under section 8 of Cap. 424, in addition to the statutory defence under section 8(7) of Cap. 424? If not, why not.

*Question 4*

If the common law defence of honest and mistaken belief exists in the existing Cap. 424B but does not exist under section 8 of Cap. 424, would you consider that the defendant's right of defence is prejudiced? If not, why not.

It is appreciated that your reply, in both languages, could reach us before the first meeting of the Subcommittee on L.N.17 to L.N.19 of 2014 to be held on **14 March 2014**.

Yours sincerely,



(Stephen LAM)  
Assistant Legal Adviser