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14 July 2014

Clerk to Panel on Administration of
Justice and Legal Services
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn : Ms Anki NG)

By Fax & By Email
Fax : 3151 7052

Dear Ms NG,

Panel on Administration of Justice and Legal Services

**Response to the view from a member of the public regarding
the common law offence of champerty**

I refer to your letter to the Secretary for Justice dated 14 May 2014 regarding the view from a member of the public that the common law offence of champerty should be abolished so as to enhance the public's access to legal services and to reduce their financial burden.

2. On the question of whether or not the common law offences of maintenance and champerty should be abolished, the Government has expressed its view in its papers submitted to the Panel and at the Panel's meeting held on 25 March 2014. Put shortly, the Government considers that the offences should be preserved because:

- (a) abolition of the common law offences of maintenance and champerty would involve broader legal and policy considerations, including those of recovery agents and litigation funding companies. Members of the Panel had expressed concerns on the activities of recovery agents and the Government has been taking actions against the unlawful activities of recovery agents to protect the public. The proposed abolition of the common law offences of maintenance and champerty go against the above direction; and

(b) the Court of Appeal held in the case of *HKSAR v Mui Kwok Keung* [2014] 1 HKLRD 116 that the public policy against champertous agreements between lawyers and their clients had not changed, and that the offences of maintenance and champerty were of particular application and significance in relation to legal practitioners due to their duties to the clients and the courts.

3. In view of the above, the Government considers it appropriate to preserve the common law offences of maintenance and champerty. However, we will monitor the development of the law in this aspect closely and continue to listen to the views of stakeholders and members of the public.

4. Last but not least, it does not appear that the abolition of the common law offence of champerty would be an appropriate way to “increase the public’s chance of receiving assistance from legal professionals” (in the words of the letter under reference). In fact, the activities of recovery agents give rise to the concern, among others, that the interest of the victims may be jeopardized as their legal rights to compensation may not be fully protected. As part of the efforts to enhance access to justice, the Government has put in place the Supplementary Legal Aid Scheme for provision of legal assistance to the “sandwich class” (the said scheme is under the policy portfolio of the Home Affairs Bureau). The financial eligibility limit of the Scheme was increased substantially in May 2011 and its scope was significantly expanded in November 2012. The Government will continue to review the various legal aid schemes and make further improvements as appropriate.

Yours sincerely,



(Gary Poon)
Administrative Assistant
to Secretary for Justice

c.c. Secretary for Home Affairs (Attn: Ms Aubrey Fung)