

LETTERHEAD OF Hong Kong Bar Association

Your Ref:CB2/BC/6/98

21st November 1998

Mrs. Sharon Tong
Clerk to Bills Committee,
Legislative Council,
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong.

Dear Mrs. Tong,

Bills Committee on the Adaptation of Laws (No.2) Bill

We have been asked to comment on the proposed repeal of *s.41 Crimes Ordinance, Cap. 200* which enables a judge or magistrate to direct a prosecution for perjury.

We would support the proposal on the grounds that the provision is obsolete but not on the grounds that it is inconsistent with *Article 63 Basic Law*.

We do not think that *Article 63 Basic Law* gives the Secretary of Justice a monopoly over all prosecutions. The right of a person to start a private prosecution is a valuable one and must be protected. We think that the power of the Secretary for Justice to take over and bring to an end a private prosecution is the way that 'control' within the meaning of *Article 63* is exercised. It is a kind of 'negative vetting'.

We would support the proposal that the section be repealed on the ground of obsolescence. The provision is based on s.9 of the English *Perjury Act 1911* which we see was repealed by *s. 28 Prosecution of Offenders Act 1985*. We assume the rationale for the repeal was that, given that there existed a modern and professional prosecution agency, there was no need to leave decisions like this to a judge or magistrate who, in the eyes of the person to be prosecuted on a judicial direction, was probably biased against him. Obviously, the repeal of this section will not prevent a judge or a magistrate referring a case to the Secretary of Justice if he or she thinks that a party or a witness has committed perjury in the course of proceedings.

Yours sincerely,

Audrey Eu, S.C.
Chariman