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19 October 1999

Mrs. Percy Ma
Clerk to Panel on Administration of Justice
and Legal Services
Legislative Council Secretariat
3/F, Citibank Tower
3 Garden Road, Hong Kong

Dear Mrs. Ma,

Legislative Council
Panel on Administration of Justice and Legal Services
Meeting on 13 October 1999
1999 Policy Address

At the above panel meeting, I promised to provide further information regarding a couple of points on the protection of human rights as raised by some Honourable Members. I am now pleased to revert with the following responses:

“Gathering of Evidence by Law Enforcement Agencies

The Prosecution Division (PD) of the Department of Justice is actively involved in raising prosecutorial standards in Government law enforcement agencies. That involvement includes the promotion of a clearer understanding by law enforcement agencies of the rights of citizens, suspects and accused, the parameters of legitimate evidence gathering and interviewing of suspects and witnesses. The Department’s programme in this area is advanced on two fronts.

The first is by lectures. Thus far in 1999, the PD has provided the Police with 22 lectures, six of which were concerned with the topics of ‘Bills of Rights’ and ‘Rules and Directions for the Questioning of Suspects’. PD also organised four courses for the ICAC, which covered such topics as the recording of interviews with suspects and the correct means of gathering of evidence. In

addition, 21 training sessions were conducted for other Government departments, eight of which were about methods of collecting evidence and of interviewing suspects.

The second is by publications. In 1998, PD produced the Prosecution Manual 1998 for its prosecutors. The manual covers matters such as the 'Bill of Rights', the principles governing the admissibility of confessions, and the interviewing of witnesses. The manual was distributed to the law enforcement agencies to promote greater awareness of such matters amongst their operational officers. PD has also produced the Prosecution Policy booklet (1998), which prescribes the policy, principles and practices of the prosecuting authority. In addition, PD produces each month the Criminal Appeals Bulletin, which summaries the latest judgments of the courts, including those related to the conduct of investigations, the interviewing of suspects, and the gathering of evidence. This is distributed to the law enforcement agencies to keep their officers abreast of the latest developments.

Whilst it is our duty to advise law enforcement agencies on what is and what is not acceptable evidence, it is not for this Department, but for the courts to lay down the guidelines as to what extent evidence of agent provocateurs should be used and the way in which evidence should be procured.

Constitutional Development

One Member suggested that I had drawn an analogy between the enactment in the UK of the Human Rights Act and the NPCSC interpretation of the Basic Law. This is not correct. The comparison I made was between constitutional change in the UK and constitutional change in Hong Kong. The point I was making was that a common law jurisdiction such as ours is capable of dealing with constitutional change without losing its commitment to the fundamentals we all hold dear. I cited UK as an example.

The Member who commented on my statement correctly pointed out that the Human Rights Act superimposes restrictions on the UK's Executive. However, I would point out that there are far greater restrictions on the legal powers of the SAR Government than on those of the UK Government. In particular, the courts in Hong Kong (but not those in England) will refuse to enforce legislation that is inconsistent with human rights guarantees. Moreover, the SAR Government is restricted by the many guarantees set out in

the Basic Law, whereas there are fewer restraints on the UK Government.”

I should be grateful if you could convey the above information to the Panel Members as soon as possible.

Yours sincerely,

(Ms. Elsie Leung)
Secretary for Justice