

For discussion on

16 May 2000

**Panel on Administration of Justice and Legal Services
Of the Legislative Council**

**Marital rape under section 118
Of Crimes Ordinances (Cap. 200)**

Introduction

By letter dated 20 April 2000 from the Clerk to the Administration of Justice and Legal Services of the Legislative Council, the administration has been asked to consider the issues of marital rape and the competence and compellability of a person giving evidence against the person to whom they are married. Set out below is the position of the Administration on these topics.

Marital Rape

2. The view of the Administration is that under Hong Kong law a man who rapes his wife is liable to be convicted for rape. That was settled in English law by the House of Lords in *R v R* [1992] 1 AC 599. It is to be noted that the law of rape in Hong Kong is in exactly the same terms as the legislation considered by the House of Lords. The view of the Administration is that Hong Kong courts would place the same interpretation on our legislation. The Hong Kong Court of Appeal has already accepted the correctness of the judgment of the House of Lords in *HKSAR v Chan Wing-hung* [1997] 3 HKC 472, albeit that was a case which was not concerned with a charge of rape.

3. The view of the Administration is that, in light of this clear and authoritative interpretation of the law, it is not necessary to amend the law.

4. If there was a complaint by a wife that her husband had raped her then this would be fully and fairly investigated by the Police. If on the basis of the evidence collected there was sufficient evidence to justify a prosecution by reference to the well-known guidelines for prosecuting then the Director of Public Prosecutions would institute a prosecution. To the extent that this may not sufficiently be known to the general public, the Administration will promote greater awareness as and when necessary.

5. The Prosecutions Division has not in recent times declined to initiate a prosecution for rape on the basis of the marital relationship.

**Competence and compellability of spouses as witness
for the prosecution**

6. In relation to the issue of possible changes to the law concerning competence and compellability of a spouse to testify against an accused person to whom he or she is married, Honourable members will recall that in 1988, the Law Reform Commission published a report on the competence and compellability of spouses giving evidence. A bill was introduced by the Administration in 1990 to implement the recommendations but it was eventually defeated. The Administration is presently reviewing the relevant rules of evidence and the LRC's recommendations and will consider whether a further Bill should be introduced. The Administration should be in a position to revert to the Panel with further details before the end of December this year when the review and necessary consultation will have been completed.

7. However, it should be noted on the narrow issue of competence and compellability of a wife to testify against her husband on a charge of rape against the husband, the law is clear. As a result of section 57 of the Criminal Procedure Ordinance, Cap 221 a wife would be competent (but not compellable) to testify against her husband on such a charge.

Prosecutions Division

Department of Justice

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