

DoJ's statement on Chan Wei-guang case

In response to media enquiries concerning a case involving Ms Chan Wei-guang (KTCC 663/2014), a spokesman for the Department of Justice (DoJ) said the following today (July 18):

Ms Chan was charged on February 7 with one count of theft and the case was scheduled for trial on July 14. At the first pre-trial review held on March 17, Ms Chan's legal representative informed the Court that Ms Chan had applied to the matrimonial court for leave to release certain documents to the DoJ for consideration on the ground that those documents were relevant to her defence. Subsequently, Ms Chan's legal representative sent a letter dated May 12 to the DoJ providing voluminous documents in relation to the matrimonial proceedings (the documents).

On the other hand, in the light of representations made by the legal representative acting on behalf of the complainant of this case in June to the DoJ, the Police conducted further investigation. The Police submitted to the DoJ the outcome of their latest investigation last Wednesday (July 9).

Paragraph 10.1 of the current Prosecution Code states that: "A prosecutor remains under a duty continually to review a prosecution that has been commenced. The prosecution must be discontinued if, following a change of circumstances, a reapplication of the prosecution test at any stage indicates that the evidence is no longer sufficient to justify a reasonable prospect of conviction or the interests of public justice no longer require the prosecution to proceed."

In compliance with the guidance given by the Prosecution Code, counsel from the Prosecutions Division reviewed all the evidence, including the documents provided by Ms Chan and the outcome of the latest police investigation.

After careful consideration of the documents and the result of the police investigation, counsel from the Prosecutions Division considered the overall evidential position had changed. The main considerations included: (1) The fresh evidence cast doubt on the credibility of the original evidence at hand and there was a certain likelihood that the testimonies of certain witnesses would not be accepted by the criminal court as reliable evidence; (2) Despite the CCTV footage, the Prosecution was of the view that there was insufficient evidence to support a reasonable prospect of conviction in terms of proving the element of dishonesty against Ms Chan based on the documents and the outcome of the latest police investigation. Therefore, counsel from the Prosecutions Division considered that the case should not be proceeded with. Upon review of the totality of the evidence, the decision not to proceed was endorsed by the Director of Public Prosecutions.

The Prosecution wrote to the Court (with copy to Ms Chan's legal representative) on July 11 intimating the decision not to proceed further with the charge. After the disposal of the case in open court on July 14 and upon the request of the Principal Magistrate who presided over the case, a Deputy Director of Public Prosecutions wrote to the Court on July 17 to further elaborate on the reasons for not proceeding further with the case.

In a nutshell, the decision of not proceeding with the prosecution was made on the basis of fresh evidence which had come to light and in accordance with the Prosecution Code. Since the DoJ only received the enormous amount of documents from Ms Chan in May and the outcome of the Police's latest investigation was only made available last Wednesday (July 9), the decision not to proceed could only be made last Friday (July 11).

The DoJ noted an article entitled "大陸猛人關注案件：律政

司放生陳復生" was published in the July 16 issue of Next Magazine. The allegations or speculations contained in the article regarding the handling of the case by the department were grossly inaccurate and entirely groundless. The department made the following clarifications:

(1) During the whole criminal process, the DoJ never received any telephone calls or enquiries from a so-called "Mainland influential figure (大陸猛人)", and it has never contacted anyone not connected with the case.

(2) In handling the case, the DoJ did not receive any interference. On the contrary and as stated above, counsel of the Prosecutions Division had all along been handling the case independently in accordance with the Prosecution Code. The final decision not to proceed with the case had been endorsed personally by the Director of Public Prosecutions.

(3) The DoJ has never, in response to media enquiries, disclosed the new information pertaining to the case because it must abide by the law not to make such disclosure which required the endorsement of the court.

(4) The use of the term "letting off (放生)" in the article carries a connotation that the DoJ did not proceed with the prosecution even when the evidence was blatantly sufficient. Such an allegation was not only contrary to the truth but was also unfair to the DoJ (including counsel from the Prosecutions Division, the Director of Public Prosecutions and the Secretary for Justice).

Ends/Friday, July 18, 2014