

LCQ5: Protection for victims of sexual offence cases

Following is a question by the Dr Hon Elizabeth Quat and a reply by Solicitor General, Mr Wesley Wong, SC (in the absence of the Secretary for Justice), in the Legislative Council today (December 2):

Question:

Some concern groups for women's interests have pointed out that the investigation process and trial proceedings of sexual offence cases have caused embarrassment and humiliation to quite a number of the victims concerned, thus making them feel being "assaulted a second time". For instance, the attitude and behaviour of police officers often make the victims feel disrespected, and the victims are tormented by repeated demands to retell the course of their traumas. Moreover, when the victims give evidence during court proceedings, they are often questioned on their sexual experience and they are not provided with any privacy protection measures, which makes them extremely distressed. Besides, the existing legislation on sexual offences overlooks the possibility of the victim being a male. In this connection, will the Government inform this Council:

(1) whether the authorities will enhance the training for police officers on the skills of and knowledge in handling sexual offence cases, and consider referring sexual offence cases involving adult victims to a dedicated investigation team, with reference to the handling of the cases of sexual abuse of children;

(2) given that section 154 of the Crimes Ordinance provides that except with the leave of the judge, no evidence and no question in cross-examination shall be adduced or asked at the trial, by or on behalf of any defendant at the trial, about any sexual experience of a complainant with a person other

than that defendant, whether the authorities will draw up detailed guidelines to state clearly the circumstances under which the judge may grant such leave; whether the authorities will extend the definition of "witness in fear" in the Criminal Procedure Ordinance to cover all victims in sexual offence cases so that live television link is provided for them on a mandatory basis in giving evidence; whether the authorities will consider amending the relevant legislation to stipulate that in order to protect the privacy of victims in sexual offence cases, the court must shield such victims behind screens when they give evidence and provide special passageways for them to enter and leave the court; and

(3) given that the consultation paper on Rape and Other Non-consensual Sexual Offences published by the Law Reform Commission in 2012 recommended that any reform of the substantive law on sexual offences should be guided by a set of guiding principles, including gender neutrality and avoidance of distinctions based on sexual orientation, whether the authorities have plans to carry out reforms on the laws on sexual offences based on those guiding principles; if they do, of the details; if not, the reasons for that?

Reply:

President,

The reply of the Department of Justice (DoJ) to the three-part question raised by the Dr Hon Elizabeth Quat is as follows:

(1) According to information provided by the Security Bureau, the Police attach great importance to professionalism in handling sexual offence cases, and the provision of relevant training to frontline officers. To enhance their skills and professional sensitivity in handling sexual violence cases, the Police have introduced various measures, including requiring recruit police constables and probationary

inspectors to take an additional training session on professional sensitivity in handling victims in sexual violence cases since March this year.

The Police also review from time to time the handling procedures and the use of resources for handling sexual violence cases. Cases are assigned to suitable criminal investigation teams for investigation, having regard to their complexity and seriousness, to ensure effective investigation and delivery of services that meet the needs of victims. At this stage, the Police have not considered setting up designated teams to handle the investigation of sexual violence cases.

In terms of procedural arrangements, the Police will make every possible effort to provide reasonable protection to the privacy of complainants in sexual offences and to reduce their embarrassment and stress. Upon receipt of a report, the Police will arrange for a same sex police officer with relevant training to interview the sexual violence victim, and will try their best to avoid further traumatic experience arising from the investigation process. Moreover, the investigating officers will introduce the victims to crisis intervention services provided by non-governmental organisations and may make appropriate case referrals.

(2) According to section 154(1) of the Crimes Ordinance (Cap. 200), if at a trial before the Court of First Instance any person is for the time being charged with an offence of rape or indecent assault to which he pleads not guilty, then, except with the leave of the judge, no evidence and no question in cross-examination shall be adduced or asked at the trial, by or on behalf of any defendant at the trial, about any sexual experience of a complainant with a person other than that defendant. Section 154(2) continues to specify that the judge shall give leave only on an application made by or on behalf of a defendant, and only if he is satisfied that it would be unfair to that defendant to refuse to allow the

evidence to be adduced or the question to be asked. Since such decisions are judicial decisions based on the actual evidence and defence in individual cases, the Judiciary considers it inappropriate to formulate detailed instructions lest they will restrict judicial discretion or give rise to unfairness.

The provision of screens or special passageways for victims of sexual violence in criminal proceedings is currently governed by common law and is a matter left to a judge's discretion. As for the arrangement for victims to give evidence by live television link, it is governed by section 79B of the Criminal Procedure Ordinance (Cap. 221). The court will carefully consider such an application by the prosecution, and the views of the defendant, with due regard to the facts of the case and the needs of the complainant, before deciding whether to adopt any special measure(s). Based on their need, the victims concerned can apply to the judge for the adoption of the above-mentioned special measures.

As the department responsible for criminal prosecution in Hong Kong, DoJ has a duty to safeguard the fairness and equity of the criminal justice system. Our prosecutors respect the rights of crime victims and witnesses at all times. On the one hand, we protect the fundamental right of defendants to a fair trial, and at the same time, we treat victims and witnesses with compassion and understanding, encouraging and facilitating them to testify in court. To this end, the current Prosecution Code specifically includes a chapter on the handling of victims of crime and vulnerable witnesses, reminding prosecutors that they should have regard to The Victims of Crime Charter and the Prosecutions Division's The Statement on the Treatment of Victims and the Witnesses, and attend to and address the special needs of the persons concerned. The Prosecution Code also sets out in detail the possible protection that may be considered to be provided to victims and witnesses. The Prosecutions

Division will also make suitable application to the court for a victim or witness who has a need for special arrangements for testifying in court.

Dr Hon Quat requested providing in the law that the arrangement for the use of shield, live television link in giving evidence and the provision of special passageways should be provided to victims of sexual crime automatically. Under section 79B of the Criminal Procedure Ordinance, where a witness in fear is to give evidence in proceedings in respect of any offence, the court may, on application or on its own motion, permit the person to give evidence by way of a live television link, subject to such conditions as the court considers appropriate in the circumstances.

The proposals put up by the Dr Hon Quat (in particular those that would debar the defendant and his counsel from seeing the witness's response, etc.) would involve the fundamental right of a defendant to a fair trial, and also concern the public interest in open justice. They may also deprive the judge of his discretion, and the complainants of their choice, in respect of the adoption of special measures, and hence should be handled with care. Any legislative measures that we take to protect complainants in sexual offence cases must be reasonable and proportionate to the case in question.

According to our understanding, the Judiciary has recently issued drafts of amended or new Practice Directions of relevance to stakeholders for consultation. After the implementation of the proposed change, the consideration of the need for screens as shields will become a standing procedure in every sexual offence case. According to the Judiciary's plan, it will consider promulgating the Practice Directions in early 2016, after having considered the comments of the stakeholders.

(3) The Review of Sexual Offences Sub-committee of the Law Reform Commission has commenced a large-scale comprehensive review of the sexual offences in Hong Kong and related consultation which consists of four stages, with a view to ultimately preparing and issuing one global report. The first stage consultation has been undertaken. However, to discuss whether the Government has any plan to carry out reforms on law on sexual offences based on a set of guiding principles (including gender neutrality and the avoidance of distinctions based on sexual orientation) would be premature prior to the completion of the four-stage consultation and the final report.

Ends/Wednesday, December 2, 2015