Summonses against two local newspapers under section 9P of Criminal Procedure Ordinance withdrawn
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The Department of Justice withdrew five summonses against the relevant parties of two local newspapers in respect of their alleged contraventions under section 9P of the Criminal Procedure Ordinance, Cap. 221, at Fanling Magistrates' Courts this morning (May 12).

Section 9P makes it an offence to publish a written report or to broadcast a report containing any matter in relation to bail proceedings other than that permitted under section 9P(2), namely:

(a) the name of the person being the subject of those proceedings;
(b) the offence with which the person being the subject of those proceedings is charged;
(c) the identity of the court and the name of the magistrate, District Judge or judge, as the case may be;
(d) the names of counsel and solicitors, if any, engaged in the bail proceedings;
(e) the result of the bail proceedings and where the person being the subject of those proceedings is admitted to bail subject to any condition under section 9D(2), the details of any such condition; and
(f) where the bail proceedings are adjourned, the date and place to which they are adjourned.

Section 9P was enacted to implement the recommendations made by the Law Reform Commission on "Bail in Criminal Proceedings". Any matter outside the scope of section 9P(2), and in particular the previous conviction of an accused, if reported or broadcast and thereby seen or heard by members of the public, a large part of whom are potential jurors, could have a prejudicial effect on the accused if he is eventually tried by a jury. It is such prejudice which section 9P aims at preventing.

Last October, the report of one local newspaper was referred to the Department of Justice by the Judiciary for consideration of possible breach of section 9P. Upon completion of the investigation by the Police, it was confirmed that two local newspapers had respectively published an article on a case involving sexual offences and had revealed the previous criminal record of the accused involved, which was made known to the magistrate in the course of the bail application. Prosecution of the relevant parties of the two newspapers was subsequently instituted.

After the summonses had been issued, the legal representatives of some of the parties involved made representations to the Department of Justice to the effect that because of the dearth of previous prosecution for alleged contravention of section 9P, some media harboured a perception that publication of matters outside the scope of section 9P(2) by news reporting agencies was, at least, tolerated. The Department of Justice is of the view that there is no basis for that alleged perception. The Department of Justice has never made any representation which could be said to have caused or led to such an alleged perception. However, the Prosecution decided to withdraw the summonses laid against the defendants after having considered the matter and all the relevant considerations, including: (1) the possible existence of such a perception among the local media community; (2) the question of fairness to the defendants in the present case; (3) the consideration that there was no intention to deliberately breach the law; (4) the chance of reoffending is low; and (5) no actual prejudice having been caused in the present case as the defendant involved in the relevant case concerning sexual offences subsequently pleaded guilty.

Whilst the Department of Justice fully respects the freedoms of speech and the press, it also has the responsibility to guarantee the proper administration of the

criminal justice system (including the duty to ensure that all criminal trials are fairly conducted). Accordingly, the department takes this opportunity to emphasise the important purpose which section 9P aims at achieving. For future contraventions of section 9P, prosecution action may be instituted in accordance with the Prosecution Code where justified by the evidence and public interest.

Ends/Thursday, May 12, 2016