Speech by Mr Keith Yeung, SC, Director of Public Prosecutions

at the Closing Ceremony of the "2015 Criminal Law Conference"

on Saturday, 24 October 2015

Distinguished guests, ladies and gentlemen, friends,

This is really really not easy closing after four sessions of stimulating debates. I also note that it is already five o'clock and I don't want to detain you any further but I do need to because I need to do two things. Firstly, I want to thank our distinguished guests, our debaters and all our friends here for sacrificing a Saturday and to give us all these stimulating arguments and thoughts. Thank you very much. And secondly, it is also useful to do a short stock-take as to the various points that have been discussed and debated today.

Firstly, we started off with this question of hearsay, and in particular the fundamental human rights aspect of hearsay reform. Mrs Justice McGowan started off with sharing with us her clerk's disappointment when she was told about her inability to deliver her address in Cantonese. That reminds me of what happened to me two years ago shortly after I resumed office. I was asked to deliver an address in a university in Beijing and I came up with my draft and I showed it to Apollonia. I saw exactly the same disappointment on her face when I told her that I was going to deliver my speech in Beijing in English. It is all because of my complete non-existence of Mandarin skill.

Mrs Justice McGowan then shared with us the development of the law in the United Kingdom with reference to *Al-Khawaja* and *Horncastle*. Those cases demonstrated quite clearly the possible tension between hearsay reform and constitutional right to have a fair trial, in particular the perceived right to confront witnesses. This issue is very close to us. You have all heard about the Law Reform Commission Paper that came out in 2009. The Commission in fact in Chapter 11 specifically dealt with this issue of fundamental human rights in the context of hearsay reform, and in one of the footnotes, the Commission specifically referred to the case of *Al-Khawaja*. At that stage in 2009, *Al-Khawaja* had only reached the Chamber level of the European Court of Human Rights. Since then, there has been *Horncastle* from the Court of Appeal in England and Wales and the case went ultimately to the Supreme Court. Later, *Al-Khawaja* reached Grand Chambers. Subsequently, there was the Horncastle case going to the Chamber, and possibly to the Grand Chambers in the future. Now all these took place subsequent to the report, and all these we need to consider further when we come to working on our legislative proposal. And it is now I hope clear to everybody as to the selfish reason behind inviting Mrs Justice McGowan to speak with us on this point because had it been two years ago when she was still Chairman of the Bar of England and Wales, we would need to pay her a big brief for her to give us this particular opinion and I thank her for that.

For the second topic “the rehabilitative nature of the criminal justice system”, we had a very very interesting debate on the direction at which our current arrangement should be developed. The procedure of offering no

evidence / bind over (ONE/BO), discretion of courts not to record a conviction, power of magistrates to order an absolute discharge – are all these legitimate second chance or are they let off? Now we have heard the debate. The general consensus is that these are legitimate second chance. I have also voiced some concerns over the at times controversial procedure on ONE/BO and I have heard some suggestions. Until there is to be drastic reform, the consensus that I have heard is that we need to continue to do what we believe to be correct, and that we will continue to do. But can I issue one public appeal? Please, for all those requests, give them to us in good time rather than at four to five o'clock the day before the hearing, so that we can give them some proper consideration which they all require and deserve.

The third topic "reasonable prospect of conviction". It is very close to our heart as prosecutors. It is almost second nature for us. The question posed during the debate and subsequent discussions provided a very very valuable opportunity for us to re-think whether there is any need for us to adopt a perhaps different threshold test or split threshold test as to different types of offences. Although the outcome of the discussion that we have heard did not point to the need of any change at this point in time, it is still a very useful and constructive exercise for us to review and re-affirm the correctness of our approach. And may I also repeat the two catchphrases that I issued earlier. "Good will" : now that you have all the good will on our part, that if there is any evidence that the defence thinks we might not have at the time when we exercised our prosecutorial decision, by all means come

to us. And “intellectual honesty” : again, trust us in respect of all those cases; until the law and the practice are changed, we will stick to the process and we are all intellectually honest in that regard.

Then Money laundering. May I say this at the outset. Justice Weinberg, when inviting questions, said this : “Are there any aggrieved prosecutors?” Now you are listening from the counsel who represented the prosecution in both cases in which the appeals were adjudicated against that particular prosecutor; but even that you are not listening from an aggrieved prosecutor. The reason why is that over this period, I have attended quite a number of international conferences on this particular issue. I have heard a lot of comments and feedbacks from perhaps what Andrew had said and termed as “mature jurisdictions”, that money laundering being a grave crime, it calls for robust response, reverse onus, extremely tightly-written offence sections etc. But there is always one thought in my mind : I am so glad that here over these years we have been able to maintain an open and fair debate and judicial process, in which we consider and construe the matter in a fair way, bearing in mind the fairness to the defence, to the prosecution and fundamental human rights. And I, for the first one, will congratulate the courts, the system, the prosecution for having this mature way of looking at the matter. This is the way I look at it and this is the way I really praise our Hong Kong system.

Finally, as I have written in my welcome message in this booklet, this conference has provided an invaluable opportunity for us prosecutors to stay

attuned to the latest development of different views on the various issues discussed at the conference. We need to do that in order to perform better our roles as ministers of justice. Forgive me for reading this out because I am told that these two paragraphs will go into the press release, so therefore I have to read them out verbatim.

On this note I declare the conference close. But before we go, may I thank again the Bar Association, the Law Society, and definitely our distinguished guests Mrs Justice McGowan and Justice Mark Weinberg, who have come all the way from the United Kingdom and Australia. Last but not least, I thank all my colleagues within the Prosecutions Division who have spent a lot of time making all these possible, and you all for being here.

Thank You.