

Speech by Director of Public Prosecutions, Mr David Leung, SC

at the Opening Ceremony of the Prosecution Week 2018

on 22 June 2018 (Friday)

Secretary for Justice, Chairman of the Bar, Vice President of the Law Society, colleagues in the Department of Justice and from other government departments, distinguished guests, ladies and gentlemen:

First of all, on behalf of the Prosecutions Division (PD), I would like to thank you all for coming today to the Opening Ceremony of the Prosecution Week 2018.

The PD of the Department of Justice has organized this annual event for the 7th consecutive year since 2012. Our aim is to promote the Rule of Law and to enhance the public awareness of the Hong Kong criminal justice system. With a properly informed public in understanding how the criminal justice system operates, the stronger the public confidence in criminal justice system and the Rule of Law is in Hong Kong. Borrowing from the words of the Chief Justice in his address to the newly appointed Senior Counsel earlier this month,

without the confidence of the community, “the system – however good it is and however lauded it is by others – will have failed”¹.

To achieve this goal, PD has always been carrying out its duties to the highest professional standard in accordance with the Law. In the *Prosecution Code*, it has stated in the very first paragraph the duties and standard of Public Prosecutors:-

“A prosecutor is required to act in the general Public Interest, but independently as a “Minister of Justice”. In making decisions and exercising discretion a prosecutor must act fairly and dispassionately on the basis of the Law, the facts provable by the admissible evidence, other relevant information known to the prosecution and any applicable policy or guidelines.”

This leads me to introduce to you the theme of this year’s Prosecution Week: “**The Law • Transparency • Public Interest**”. This theme succinctly sums up how a prosecutorial decision is made:-

¹ Original passage please see: www.info.gov.hk/gia/general/201806/09/P2018060800495.htm

First, in determining whether a person has committed an offence, it is necessary to consider the Law not only relating to the elements of an offence but also to the rules of evidence. If the evidence is sufficient to secure a reasonable prospect of conviction, we then proceed to consider other relevant considerations as I mentioned earlier. If the evidence is insufficient, the file closes at this point.

Second, in the process of making such determination, Transparency is the key in assuring parties to a case as well as the general public that the determination of a prosecutorial decision is up to the highest professional standard. Although the reasons for decisions are generally not publicly available, the criteria contained in various guidelines and policies in making those decisions are. By following the *Prosecution Code*, and other policies, such as the *Victim's Charter*, the public can be assured that any criminal case landing on the desk of a Prosecutor would receive the same standard of treatment, without prejudice or favour to the victim or suspect. It is the kind of Transparency that would keep up the accountability of PD in handling all cases in a fair

and dispassionate manner.

Transparency is important in gaining public confidence as justice needs to be seen to be done. However, just as the *Prosecution Code* has pointed out, “the benefit of justice being seen to be done must not be allowed to result in justice not being done.” That is why Reasons for Prosecutorial Decisions are generally not publicly available. Some of the good reasons include:-

- It may prejudice ongoing investigations or the integrity of law enforcement
- It may adversely affect the interests of a victim of crime, a witness, a suspect or an accused
- It may adversely affect the administration of justice (especially in the case of a decision not to prosecute where public discussion may amount to a public trial without the safeguards of the criminal justice process)

Third, in any prosecutorial decision that a Prosecutor makes, the consideration of Public Interest must be the final check to ensure

justice and fairness be done. It means that sometimes even if there is sufficient evidence to prosecute, there might be other reasons not to prosecute that are premised on the ground of Public Interest.

Generally speaking, the more serious a crime is, the less likelihood there will be that the Public Interest will allow of a disposal less than prosecution. It is a balancing exercise in determining where Public Interest and Justice lies in a particular case, and there is no hard and fast rule for all. There is no exhaustive list for consideration, and each case depends on its own facts. But just as I said earlier, there is an open guideline in the *Prosecution Code* in determining where Public Interest lies in a particular case, and generally, some of the considerations include:-

- the nature, circumstances and seriousness of the offence;
- the level of the suspect's culpability;
- the attitude, age, physical or psychological condition of the suspect, a witness or a victim;
- the likely final disposition of the case;

- special circumstances that would affect the fairness of any proceedings; and lastly
- the availability and efficacy of alternatives to prosecution.

For example, the use of bind-over procedure or superintendent's caution can be considered for young and teenage offenders in cases of minor or even trivial criminality.

It is important to stress that Prosecutors do not consider and would not be influenced by irrelevant considerations, in whatever nature they are, or whoever they are coming from. In particular, political or individual interests are of no concern for any Prosecutor. All prosecutorial decisions are made on the highest professional standard considering only the Law, the Evidence and the Public Interest. Nothing Else.

Not only in decisions of prosecutions where Prosecutors cannot and would not take into account irrelevant considerations, the same standard applies to decisions in whether to appeal a decision of a lower court on a point of law, or to apply for a review of a particular sentence if it is not authorized by law, wrong in principle, or manifestly excessive or inadequate. Overall, the primary duty of the Prosecutors as appellate counsel is to assist the appeal court as

required to achieve a just and proper disposal of the appeal.²

I hope what I had said just now about the public prosecution service in Hong Kong and how a prosecutorial decision is made would ease the minds of many who previously had concerns about the independence and integrity of the Prosecution, especially in recent cases of substantial political and media attention.

Just as I said in the beginning, the purpose of the Prosecution Week is a forum for enhancing public awareness in the criminal justice system. Just this morning, a quiz called the Law Games was held. In the week to come, my colleagues in the PD have arranged various educational activities for hundreds of local secondary school students, including court visits and mock trials.

Last year we introduced the Law Games, and it was very well received amongst the schools and students. The Law Games consisted of a number of scenario questions as well as general criminal law questions, and the questions were premised in the students' everyday life situations so that they could learn

² This sentence is quoted from the Preface of the Criminal Appeals Manual.

more about what is right and wrong in a very practical and useful manner that is familiar to them.

This year, we decided to host the competition again, and it was successfully completed this morning. Over 107 students from 17 secondary schools in Hong Kong took part in it. I am very glad to see many students demonstrate such a strong interest in the criminal law. In particular, I congratulate the winners of the Law Games this year, and you will be able to meet them soon when they come up to the stage to receive their prizes.

Last but not the least, I must thank you all again for attending today's ceremony. Especially to the Secretary for Justice, Chairman of the Bar and the Vice President of the Law Society, for their continuing support in PD's Prosecution Week since its inception. I must also thank the Organizing Committee as well as the supporting staff for making this annual event so successful and educational for our students in Hong Kong.

Without further ado, may I invite the Secretary for Justice, Ms Teresa Cheng, SC, to the stage to say a few words.