

For discussion
on 25 March 2014

**Legislative Council Panel on
Administration of Justice and Legal Services**

Abolition of the common law offence of champerty

The Panel will discuss at its meeting on 25 March 2014 the item on “Abolition of the common law offence of champerty”. This paper briefs Members on the recent developments of the common law offences of maintenance and champerty in Hong Kong and summarises the Administration’s position in relation to the item.

The common law offences of maintenance and champerty

2. Maintenance can be defined as the giving of assistance or encouragement to one of the parties to an action by a person who has neither an interest in the action nor any other motive recognized by the law as justifying his interference. Champerty is maintenance for a share in the proceeds of litigation.¹

3. The offence of maintenance is to discourage “officious intermeddling” in litigation, in particular where this results in oppression of the person against whom the action is brought, while the offence of champerty also addresses the following additional concerns:

- (a) an agreement to share the spoils of litigation may encourage the perversion of justice and endanger the integrity of the judicial process;
- (b) a stranger to the litigation “trafficking” or “gambling” in the outcome of litigation.²

¹ *Winnie Lo v HKSAR* (2012) 15 HKCFAR 16, at paras. 10 and 11.

² *Unruh v Seeberger* [2007] 2 HKLRD 414, at paras. 100 and 101.

4. Under the laws of Hong Kong, the offence of maintenance or champerty are punishable by a fine and up to seven years' imprisonment.³

5. In determining whether an offence has been committed, the court has to look at the facts and circumstances of each case, and in particular, whether there was any genuine risk to the integrity of the judicial process and whether there was any reasonable cause or excuse for the conduct.⁴

Recent development of the offences in Hong Kong

6. In February 2012, the Court of Final Appeal ("CFA") confirmed in the case of *Winnie Lo v HKSAR* (2012) 15 HKCFAR 16 that the offences of maintenance and champerty were sufficiently certain to be constitutional. In that case, a recovery agent was convicted of champerty and of conspiracy to commit maintenance, but the conviction of a solicitor of conspiracy to commit maintenance was quashed on the facts.

7. As a postscript in *Winnie Lo*, Riberio PJ raised for consideration the question whether and to what extent criminal liability for maintenance should be retained in Hong Kong. His Lordship was of the view that the issues were complex and it was a fit topic to be referred to the Law Reform Commission ("LRC").⁵

8. In November 2013, the Court of Appeal ("CA") dismissed in the case of *HKSAR v Mui Kwok Keung* [2014] 1 HKLRD 116 the appeal of a barrister who was convicted of 5 counts of champerty and sentenced to 3¹/₂ years of imprisonment.⁶ The CA upheld the conviction on the ground, among others, that the champertous agreements concerned had presented an obvious and genuine risk to the integrity of the court's process.⁷

³ Criminal Procedure Ordinance (Cap. 221), s. 101I.

⁴ *Winnie Lo*, at para. 15.

⁵ *Winnie Lo*, at paras. 177 to 179.

⁶ In each of the charges, the defendant represented his clients who were claimants in personal injuries claims on a "no win, no pay" basis. Except for the claim in Charge 1 that had been time-barred, the defendant took 25% of the proceeds of each claim in Charges 2 to 4 and 62% of the proceeds in the claim in Charge 5. He was sentenced to 3¹/₂ years of imprisonment and ordered to pay compensation in the amount of around HK\$1.5 million, being the sum he took, to four of his clients.

⁷ There is a pending application for certificate to further appeal to the Court of Final Appeal.

9. The CA decided in *Mui Kwok Keung* that the public policy on champertous agreements between lawyers and their clients had not changed, and such agreements remained within the ambit of criminal law. In particular, the CA considered that the offences of maintenance and champerty were of particular application and significance in relation to legal practitioners as an interest in the outcome of the litigation might conflict with their duties to the clients and the courts.⁸ The CA held that:-

“A lawyer’s role [is] to advise his client with an unbiased judgment and to present and conduct his client’s case with the utmost care of his client’s interests. As an officer of the court, he also [has] a duty to present and conduct his client’s case with scrupulous fairness and integrity. Champertous agreements [allow] the duty and interest of solicitors and barristers to conflict with a resultant risk of abuse of legal procedure.”⁹

10. As a postscript in *Mui Kwok Keung*, the CA opined that as for the question of law reform, based on the facts of *Mui Kwok Keung*, there might be very good reasons for preserving the common law offence of champerty where legal practitioners were involved in champertous arrangements with their clients, and remarked that there might not be sufficient criminal sanctions and safeguards to deal with such conduct without the benefit of the common law offence.¹⁰

The Administration’s position

11. In the Administration’s view, abolition of the common law offences of maintenance and champerty would involve broader legal and policy concerns, including those of recovery agents and litigation funding companies. It should be noted that members of the AJLS Panel had previously urged the Department of Justice to take pre-emptive action against the unlawful activities of recovery agents.¹¹

⁸ *Mui Kwok Keung*, at paras. 51 to 53.

⁹ *Mui Kwok Keung*, at p. 118.

¹⁰ *Mui Kwok Keung*, at paras. 82 and 83.

¹¹ See paragraph 8 of LC Paper No. CB(2) 899/08-09(05) of February 2009.

12. In view of the CA's judgment in *Mui Kwok Keung* and the above mentioned in paragraph 11, the Administration considers that the common law offences of maintenance and champerty should be preserved for the time being. However, we will keep monitoring the development of the offences closely.

13. As regards the issue of recovery agents, the Administration maintains the position that recovery agents should be prohibited. This position is supported by the two legal professional bodies. It remains to be our view that persons injured in accidents, employees injured at work and victims of traffic accidents should seek legal advice or assistance from solicitors or the relevant government departments including the Legal Aid Department, the Labour Department and the Social Welfare Department. We will continue with our three-pronged approach for tackling the issue of recovery agents, involving public education, possible prosecution, and consideration for the need for legislation.

Department of Justice
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