

Speech by Secretary for Justice at opening ceremony of Prosecution Week 2018 (English only)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the opening ceremony of Prosecution Week 2018 today (June 22):

Chairman of the Bar, Vice President of the Law Society, colleagues from various government departments, distinguished guests, ladies and gentlemen:

On behalf of the Department of Justice, it gives me great pleasure to welcome you all today at Justice Place for the opening of the Prosecution Week 2018. This is the 7th Prosecution Week since its inception in 2012. The purpose of this annual event is to illustrate to the public what criminal prosecution is about, and its importance in Hong Kong as an essential part of the rule of law, the very bedrock of the success of our society. We believe that by a better public awareness of our society's laws and our criminal justice system, the citizens of Hong Kong, especially our younger generations, would have a better understanding of and respect for the law and the legal consequences of conduct prohibited by law.

In Hong Kong, criminal prosecutions are handled by the prosecutors in the Prosecutions Division of the Department of Justice, headed by our Director of Public Prosecutions (DPP). Although the Secretary for Justice is responsible for the ultimate prosecutorial decisions, the DPP and the prosecutors are generally responsible for making such decisions on a day-to-day basis. Their work requires a high degree of professionalism, independence, and transparency.

These qualities echo the very theme of this year's Prosecution Week: "The Law's Transparency's Public Interest". Though the meaning of the theme might be obvious on its face, I wish to elaborate some salient points about criminal prosecutions that must not be overlooked.

First and foremost, one must be reminded of the source of the prosecutorial power and duty. It is Article 63 of the Basic Law. It provides that the Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference.

I must stress the part, "free from any interference", which is the basis of the constitutional protection of the independence of the prosecutorial power, free from interference from any individuals, institutions, or authorities from the Government outside the Department of Justice.

Therefore, irrespective of the social status, political inclination or indeed any other attributes of a suspect, prosecutors are required by law and the Basic Law in particular, to disregard all irrelevant considerations and

purported interference, if any, and to make a fair and impartial prosecutorial decision without fear or favour. Simply put, no one is above the law.

Having set out the source of duty and power, it is important to summarise certain factors to be taken into account when making a decision on whether or not to prosecute. Prosecutors must first look at the law to ascertain what are the legal requirements for the relevant act and/or intent that would have to be met for the particular incident or action to amount to a criminal offence.

Then it is the sufficiency of the evidence. Whether the evidence would be adequate to meet the legal requirements in terms of establishing the fact, or for an inference of certain fact to be drawn in relation to the particular element of the offence.

The analyses of the law and evidence will then have to be conducted for a legal opinion to be formed as to whether or not there is a reasonable prospect of conviction. This opinion is based on the evidence and the fact to be drawn from it, based on the expert opinion of the prosecutors in analysing it and with reasons in coming to a decision that a reasonable prospect of conviction is met or not met as the case may be. Looking at the evidence, there are two angles: admissibility of evidence and the other, the weight of the evidence.

When looking at the law, we know that it is never a straightforward black and white. So how the case law have elaborated on the elements of the offence will have to be taken into account. Needless to say, the possibility of a defence that may lead to acquittal will also have to be taken into account.

These factors or these principles are set out in the Prosecution Code that the DPP has just mentioned. It must be stressed that the test used by the Prosecutors cannot be equated with the one used by the Courts to convict, namely that of beyond reasonable doubt in the Court. Being satisfied of a reasonable prospect of conviction does not necessarily follow with a conviction by the Court. It is not the aim of the Prosecution to secure convictions at all costs, nor is the conviction rate a performance indicator for the prosecutor.

Even if there is sufficient evidence to prosecute or where there is a reasonable prospect of conviction that is very marginal, prosecutors may also have to take into account the public interest in deciding whether or to institute or to continue with a prosecution.

The concept of public interest is multi-faceted. There is no single definition to cover all situations, and each case must be viewed on its own facts. As stated in the Prosecution Code, there is a wide range of factors for the prosecutors to take into account when considering public interest in any given case. The DPP has already illustrated to you certain factors to be taken into account but one must bear in mind that the list is not exhausted.

There is case law that elaborates on the meaning of public interest which may have to be looked at in appropriate cases.

At this point, I wish to turn to the topic of "Transparency". Transparency is very important in many aspects for the Prosecution. Most importantly, it is to ensure members of the public and parties to a particular case that they are well informed within the permitted scope of the law. Transparency is one of the effective checks on the Prosecution in adhering to the legal principles under the law.

First, the Prosecutions Division lays out the relevant principles in the Prosecution Code, which is the fundamental guideline to be followed when deciding whether or not to make a prosecutorial decision. The Victim's Charter, which underscores the rights of a victim in a case, and in particular, their right to information also provides information on how these are to be looked at.

These publications aim to inform members of the public how prosecutorial decisions are generally made in accordance with laws and as stated in the Prosecution Code itself, "on behalf of the community, Prosecutors take on a heavy responsibility to ensure that justice is dispensed with equal measure and in an even handed manner at all times."

Secondly, in respect of a particular criminal case, it is inappropriate for the Prosecutions Division to disclose to the public the case materials, the reasons behind the prosecutorial decision, or to comment on any aspect of the case, as it would be unfair and prejudicing to the parties to the case. This is an important aspect that we must all respect this very approach of allowing the judicial system to deal with any conviction, acquittal or sentencing of the relevant person involved. This is our rule of law. In the event that a prosecution is not initiated or discontinued, it is generally not preferable to explain the reasons behind unless in exceptional circumstances.

On the other hand, the Prosecution is permitted, and in fact duty-bound, to be as transparent as possible to the defence. This is called the duty of disclosure, and the Prosecution has a proactive duty to inform the defence of all relevant information or material that is in the knowledge of, or possession, or control of the Prosecution, subject to the various legal privileges and immunities situation. With this duty of disclosure, a suspect can properly assess the Prosecution's case and to prepare his or her defence. It is also an essential element relating to the presumption of innocence, the right against self-incrimination, and the right to fair trial, which are all cornerstones of our criminal justice system and our rule of law.

Thirdly, the public can know more about the work of the Prosecutions Division in the context of transparency through community engagement, such as the Prosecution Week that we are about to launch this year. This is "Meet the Community" Programme that the Prosecutions Division has been working on. They have taken a huge initiative and effort in promoting the rule of law by bringing the public closer to see how the criminal justice system operates.

For instance, students from a number of local schools will participate in various lively and informative activities, such as talks at school, guided court visits, law quiz on general criminal law, etc.

In view of the recent rise in cases involving violence in public processions and the like, some of which turned into riots, it is right that this Department should be doing more to better inform the public about the nature of the criminal law and the legal system and, indeed, the legal consequences if the law is breached.

Starting from next Monday, the activities in the Prosecution Week will begin. Just as I have total confidence in the DPP and his colleagues in their daily prosecutorial work, I have the same confidence that they will bring the best experience possible to the students in learning about our criminal justice system.

At this stage, I must express my deepest gratitude to the DPP and the Organising Committee, and indeed, the number of staff that have put a lot of efforts in making this a reality.

In addition, I would like to thank the Bar Association and the Law Society, and our colleagues in other government departments and various law enforcement agencies for coming today as well as the continuously supporting and assisting in the running of the Prosecution Week. The society has a high expectation on us in maintaining an effective and fair criminal justice system, and it takes all stakeholders to join hands in meeting that expectation.

Last but not least, I wish to congratulate the winners of the Law Games this year. You have demonstrated a wealth of knowledge in criminal law at such a young age. I hope this is just the beginning for all of you to explore and perhaps later on to join Hong Kong's legal and judicial system with a view to becoming the leaders of Hong Kong in the future.

On this note, I formally declare the Prosecution Week 2018 open.

Thank you very much.