

**Speech of the Chairman of the Hong Kong Bar, Paul Lam SC, at the
Prosecution Week 2017 Opening Ceremony, 23 June 2017**

Secretary for Justice, Director of Public Prosecutions, Vice President of the Law Society, Distinguished Guests, Ladies and Gentlemen:

I am honoured to be given the chance to speak at the Opening Ceremony of the Prosecution Week 2017. The theme for this year's Prosecution Week is "Rule of Law". It is therefore pertinent for me to say a few words about the relationship between prosecution and the Rule of Law.

The starting point must be Article 63 of the Basic Law, which provides that "the Department of Justice of the HKSAR shall control criminal prosecutions, free from any interference". And I emphasize the phrase "*free from any interference*". This provision reaffirms the fundamental principle of prosecutorial independence.

The principle of prosecutorial independence is indeed an important aspect of the rule of law. What Stock JA (as Stock NPJ then was) said in *Re C (A Bankrupt)* [2006] 4 HKC 582 at 590, para. 18, is worth repeating:

“The prosecutorial independence of the Secretary for Justice is a linchpin of the rule of law. He is in the discharge of that duty to be ‘actuated by no respect of persons whatsoever’... and ‘the decision whether any citizen should be prosecuted or whether any prosecution should be discontinued, should be a matter for the prosecuting authorities to decide on the merits of the case without political or other pressure. ... any practice savouring of political pressure, either by the executive or Parliament, being brought to bear upon the Law officers when engaged in reaching a decision in any particular case, is unconstitutional and is to be avoided at all cost.’...That these statements of fundamental principle were made in reference to the prosecutorial role of the Attorney General in England is of no present consequence for they reflect accepted and applied fundamental principle in this jurisdiction the continuation of what is preserved by the entire theme of the Basic Law as well, specifically, as by art 63...” (emphasis added)

The principle that ensures prosecutorial independence extends to preclude even judicial interference. Save in very exceptional circumstances, for example, where

there is cogent and credible evidence of bad faith, the courts will not entertain any challenge against prosecutorial decisions.

The prosecutorial independence is not and should not be seen as a privilege given to the Secretary. Rather, it is an essential feature to enable the Secretary to exercise his constitutional powers in this respect properly. Furthermore, the principle of prosecutorial independence entails important corresponding duties on the part of the prosecutors, in particular, they must not allow themselves to be influenced by irrelevant considerations such as “*the possible political effect on the government, any political party, any group of individual*” or “*possible media or public reaction to the decision*”. These duties are set out in detail in para. 1.2 of the Prosecution Code published by the Department of Justice.

In order to maintain the rule of law, it is therefore important for us to defend not only the independence of the Judiciary but also the prosecutorial independence of the Secretary for Justice.

In recent years, there had been a number of very high profile criminal cases that has caught the attention of the society at large. The decision to prosecute, or not to

prosecute; the timing of the prosecution; and indeed the eventual determination of such cases by the Judiciary, may find favour with some but not others.

While Hong Kong residents enjoy the freedom of expression, which is a fundamental human right which must be respected, it is worrying that, from time to time, there were reports that prosecutors, whether Government counsel or prosecutor on fiat, had been subject to verbal abuses and personal attacks both outside, and sometimes even inside, the Courts. Very often, these abuses and attacks were associated with accusations that a particular decision to prosecute or not to prosecute, or the timing of the prosecution, were politically motivated.

I suspect that some of these accusations were caused by a lack of proper understanding of the principle of prosecutorial independence. I take a very firm view that, without any solid evidential foundation and credible evidence, it is unfair and inappropriate to make any accusations as those that I have mentioned. In the absence of good and sufficient reasons, prosecutions must not be misunderstood or misrepresented as persecutions.

In most cases, it is impractical, impossible and undesirable for the Department of Justice to explain to the public the reasons for prosecuting a particular person or not prosecuting a particular person, or why a particular person is prosecuted at a particular point of time. It is therefore of particular importance to ensure that the general public will have a sufficient degree of trust and confidence in prosecutorial independence. Unfounded criticisms are liable to impair and damage the general public's trust and confidence in this respect. Bearing in mind that prosecutorial independence is an important aspect of the Rule of Law, the Rule of Law may also be adversely affected.

In the circumstances, to inspire greater public confidence in the rule of law in Hong Kong, it is critical to educate the general public on important principles concerning the rule of law, including the principle of prosecutorial independence. Events such as the Prosecution Week serve an important function in this respect.

I wish to express my gratitude to the Department of Justice for organizing this meaningful event. I believe all participants will find their experience rewarding. I would also like to take the opportunity to congratulate the prize winners of the Law Quiz, and to wish the Department of Justice every success in the upcoming Prosecution Week.