

LCQ7: Publication of books by staff members of the Department of Justice

Following is a question by the Hon Cheung Kwok-kwan and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (April 29):

Question:

It has been reported that in September 2019, a Public Prosecutor under the Prosecutions Division of the Department of Justice (DoJ) co-published with a barrister in private practice a law popularisation book, which teaches young readers how to "keep away from legal traps and understand human right protection". Some members of the legal sector have queried whether some parts of the book are overgeneralised. For instance, the explanation in the book on whether a person, who has been found in possession of a fruit knife when stopped and searched by a police officer on the street, will be charged with the offence of "possession of offensive weapon in public place" is oversimplified. They have also queried whether that Public Prosecutor's expounding in the book on the rights of arrestees constitutes serious conflict of interests or roles with his duties in the DoJ. In this connection, will the Government inform this Council:

- (1) whether staff members of the DoJ are currently required to submit applications to their supervisors and obtain approval prior to publishing books pertaining to the law or containing their personal views on the law; if so, of the application procedure, the criteria for vetting and approval and the rank(s) of the approving officer(s), as well as whether an applicant is required to submit, for vetting, parts of the book intended to be published; if so, of the percentage of the content required to be submitted;
- (2) of the current mechanism for dealing with the situation where the content of a book published by a staff member of the DoJ may have constituted a conflict of interests or roles with his work in the DoJ;
- (3) of the number of books pertaining to the law published by staff members of the DoJ in the past decade according to the DoJ's records; among those books, the respective numbers of those (i) approved for publication and (ii) published without the necessary approval; whether the DoJ has held responsible the relevant staff members in the latter case;
- (4) whether staff members of the DoJ who have, without the necessary approval, published books that give rise to conflict of interests or roles with their work will be punished; if so, of the penalties and the number of such incidents in the past decade; and
- (5) as the aforesaid Public Prosecutor had obtained approval from the Director of Public Prosecutions before publishing the book, of the reasons

why the DoJ transferred the Public Prosecutor out of his current post subsequent to the publication of the aforesaid press report; whether the DoJ has learnt a lesson from that incident and will devise a new mechanism under which similar cases will be subject to more stringent vetting and approval procedure; if so, of the details; if not, whether and how the DoJ will follow up the matter?

Reply:

President,

According to the Civil Service Code issued by the Civil Service Bureau (CSB), civil servants are required to uphold the core value of commitment to integrity and ensure that no actual, perceived or potential conflict of interest shall arise between their official duties and private interests. According to the relevant civil service regulation, no civil servant may, without approval, publish in his own name, communicate to unauthorised persons, or make private copies of, documents or information obtained in his official capacity. A civil servant is required to obtain prior consent before taking up any paid outside work. The above principles are applicable to civil servants of different grades and ranks including prosecutors of the Department of Justice (DoJ).

The DoJ's prosecutors always abide by Article 63 of the Basic Law and shoulder the constitutional duty enshrined therein, and handle all prosecution work in a fair, impartial and highly transparent manner. When conducting prosecutions, the DoJ's prosecutors are required to act professionally in strict accordance with the law and the Prosecution Code (the Code).

The Code sets out the role and duties of prosecutors. The DoJ's prosecutors have always discharged their prosecutorial responsibilities in accordance with the relevant principles and have at all times exercised the highest standards of integrity and care in maintaining proper administration of justice. As the DoJ's prosecutors, they must ensure that their duties are discharged in a professional and impartial manner without being affected by their personal views expressed. In relation to legal matters, the Government's counsel shall remain independent and impartial, especially when there is a likelihood of handling relevant cases in future.

In relation to Hon Cheung Kwok-kwan's specific questions, the DoJ, after consulting the CSB, replies as follows:

(1) and (2) Same as other civil servants, the DoJ's prosecutors must obtain prior consent of his Head of Department (i.e. the Director of Public Prosecutions) before engaging on his own account in outside work (including publication) for remuneration of any sort, or accepting paid employment of any sort outside of his normal working hours.

When considering such applications, the Head of Department should take into account a number of factors, including whether the outside work proposed

may (or appears to) conflict with the officer's duties as a Government servant, and whether the arrangement proposed might be a source of embarrassment to the Government. In approving the relevant applications, the Head of Department may impose conditions as he thinks fit, for example, the applicant's outside work would generally take place outside of normal working hours, and no Government's resources would be used.

(3) and (4) Generally speaking, where there is any act, conduct or behaviour of an officer which contravenes the Civil Service Code or government regulations, his respective department will take appropriate follow-up actions in accordance with the established procedures. If there is evidence that a civil servant has misconducted himself upon investigation, the management will take appropriate disciplinary action, including imposing disciplinary punishment of verbal warning, written warning, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal, etc. The above mechanism is applicable to all civil servants including the DoJ's prosecutors.

Any officer who fails to comply with the regulations on outside work, such as undertaking outside work without his Head of Department's written consent, will be subject to disciplinary action in accordance with the above mechanism.

The case referred to in the question is now under the DoJ's investigation. As for other cases, according to our record, the DoJ in the past 10 years gave approvals to a total of 14 officers to undertake outside work related to legal publications. We are not aware of any non-compliance during the period.

(5) The DoJ places much emphasis on the professional conduct of prosecutors. In the event of non-compliance by the DoJ's officer, the DoJ will duly follow up without tolerance.

The DoJ attaches great importance to the matters arising from a prosecutor's publication which are being handled seriously in accordance with the established internal procedures.

To avoid possible public perception as a result of the relevant prosecutor's publication that he may not be able to perform his official duties in an impartial manner, that officer would not handle cases involving public order events.

As usual, the DoJ will handle each application for paid outside work prudently under the existing mechanism taking into account actual experience, and impose appropriate conditions as may be necessary to the approvals so as to ensure that the relevant outside work would not and would not appear to be in conflict of interest or role with the applicant's duties.