

A-G asked why case was dropped

By GREG TORODE,
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THE Attorney-General, Jeremy Mathews, has been asked to explain why he took no action against a senior officer of the Independent Commission Against Corruption (ICAC) alleged to have sexually assaulted women colleagues.

Simon Ip Sik-on, the legal representative in the Legislative Council and a member of the ICAC Operations Review Committee, urged Mr Mathews to give a "solid explanation" for the decision.

The woman's case, particularly inaction after an internal inquiry into it, was raised by Alex Tsui Ka-kit, former deputy operations director of the ICAC, after he was dismissed for a so-far undisclosed reason.

The Commissioner, Bertrand de Speville, issued a statement yesterday explaining that the Attorney-General, after seeing details of the assaults alleged to have occurred over a period of three years, had advised there should be no prosecution.

A statement by Mr Tsui, comprising about 50 pages and including claims that his former boss, Jim Buckle, had perverted the course of justice by covering up allegations in an ICAC investigation of the officer, is being studied by police.

Mr de Speville's statement denied that Mr Tsui's dismissal had anything to do the ICAC investigation of the assault case.

"Mr Alex Tsui is reported to have said that his dismissal was connected to the alleged sexual assault case... there is absolutely no truth in his assertions," the statement said.

"The investigation file was considered by the Prosecutions Division of the Attorney-

General's Chambers in May 1993, as is always done when a criminal allegation has been made. The Attorney-General's Chambers advised that there should be no prosecution.

"I then took disciplinary action. The matter was reported to the Operations Review Committee of the ICAC in the normal way. The committee endorsed the action taken," the statement said.

Mr Ip said he hoped Mr

"It's important to remember that he has to decide the chances of proving a case beyond all reasonable doubt."

Mr Ip said the independence of the Attorney-General was all-important and ultimately prosecution decisions had to be made by him.

"He shouldn't be placed under political pressure... if that happens you can get into all sorts of

Mathews would now explain some of the reasons behind the decision he took.

"If he simply said that he had decided against it then I would not be satisfied," Mr Ip said.

"But I don't think we could really argue if the A-G was to explain that he had closely examined the available evidence and looked at any ways it could be extended and still thought a prosecution could not be mounted.

danger constitutionally," Mr Ip said.

Mr Ip refused to discuss the harassment case, saying the work of the committee chaired by Mr de Speville was confidential.

However, sources close to the committee said the members had been shown only an abridged report and not the detailed evidence passed from the ICAC to the Attorney-General's Chambers.

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The group is one of five ICAC watchdog committees, specifically looking at individual operations.

It only advises the commissioner, not the Governor, who is advised by umbrella group, the Advisory Committee on Corruption.

Under its terms of reference it can advise how to pursue cases

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that on legal advice are not subject to prosecution or caution.

Legal Department sources said that, although unlikely, a decision not to prosecute could be reversed in special circumstances.

One source cited the 1990 case of Christopher Harris, a former senior Crown counsel whom the Attorney-General successfully prosecuted for sex procurement offences after initially ruling out a prosecution.

Mr Mathews yesterday defended his department's right to refuse to prosecute a suspect.

In a rare press conference, he revealed for the first time the policy behind decisions on whether someone should be prosecuted.

His department has been criticised both for launching unsuccessful prosecutions which have left taxpayers with big legal bills, and for failing to prosecute others when there appeared to be evidence.

Mr Mathews refused to comment on individual cases, but disclosed that first they considered whether there was sufficient evidence, and if there was, they looked at whether it was in the public interest to prosecute.

Factors such as the circumstances of the offence, the offender, and the victim must be considered along with how old the offence was, and the likely penalty, and may lead to a decision not to prosecute, depending on the facts of each case, Mr Mathews said.

Asked why he had decided to release such information now, Mr Mathews said there was growing interest in the rule of law.

He denied it was in any way connected with the disclosure from the ICAC that the Legal Department had seven months ago considered the case of an investiga-

tor alleged to have sexually assaulted colleagues and then advised he should not be prosecuted.

Mr Mathews was launching a booklet on guidance for Crown counsel on prosecution policy, some 2,500 copies of which will be distributed to the public.

It was not a response to any criticism of the department, Mr Mathews said, but was designed to help the public understand an important part of the rule of law which affects many people.

Mr Mathews said it was important that the public was assured such decisions

were made impartially and free from political interference.

"To prosecute anybody with the possible loss of his or her liberty is an important decision which may have serious consequences. It is therefore right that the greatest care should be taken with decisions to prosecute," he said.

"Decision-making is difficult; it is far from being an exact science, but it is a duty we perform day after day.

"It is a highly important duty because we are aware that by deciding to prosecute we may be putting the liberty of the offender at risk."

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