

DoJ decides not to prosecute Michael Wong

The Department of Justice (DoJ) has decided not to prosecute former High Court Judge Mr Michael Wong for alleged impropriety in connection with his applications to the Government for reimbursement of Leave Passage Allowance (LPA).

In response to media enquiries, a DoJ spokesman confirmed today (January 25) that the Director of Public Prosecutions (DPP), Mr Grenville Cross, SC, had made the decision after receiving separate advices from a Deputy Director of Public Prosecutions in Hong Kong, and a Queen's Counsel in London, and himself conducting an independent review of the case and the law.

His decision had been endorsed by the Secretary for Justice, Mr Wong Yan Lung, SC, the spokesman said.

The spokesman said that after the ICAC submitted a final report on its investigation into the case last November, the DPP instructed the Deputy Director of Public Prosecutions, Mr Harry Macleod, who is the head of the unit specialising in commercial crime and ICAC cases, to advise on the case.

“The DPP was satisfied that Mr Macleod was not familiar with Mr Wong, and was in a position to provide an independent and objective assessment of the case.

“Mr Macleod's opinion was that the evidence did not suffice to justify criminal proceedings against Mr Wong because it could not be proved that Mr Wong intended to deceive when he submitted the claims for reimbursement to Government,” the spokesman said.

In view of the sensitivity of the case, the nature of the evidence and the level of public concern, the DPP decided to instruct a Queen's Counsel in London, Mr Martin Wilson, QC, who was also not familiar with Mr Wong, to consider the allegations and the evidence and to provide him with an assessment.

Mr Wilson's advice was that the evidence available to the prosecution did not rise above the level of suspicion and did not provide a reasonable prospect of conviction, the spokesman said.

Mr Wilson advised the DPP that in seeking reimbursement from the Treasury, Mr Wong was making claims in respect of flights which he had taken and for which, in principle, he was entitled to seek appropriate reimbursement. In order to prosecute him successfully, it would be necessary to prove:

- (a) that Mr Wong did not, as claimed, make the reimbursement to his daughter,
- (b) that when Mr Wong made the claims under the LPA he knew that he had neither repaid her, in cash or kind, nor intended to do so, and
- (c) that Mr Wong acted dishonestly.

In relation to (a), (b) and (c), Mr Wilson commented that "all would have to be established to the criminal standard of proof and there is no direct evidence whatsoever to support any of them. A court could be invited to draw an inference of guilt, but the answer would be that strong suspicion justifies investigation but not conviction. My view is that, on the evidence, a court would not be likely to conclude that, on the evidence available, it could properly draw the inference of guilt."

The DPP, in making the decision, said he was mindful that prosecution policy had to be applied without fear or favour.

"A prosecution should only be instituted against a person if there is sufficient evidence. No one should be prosecuted unless there is at least a reasonable prospect of securing a conviction. A mere suspicion of guilt does not satisfy the basic prosecutorial criteria, nor does a bare prima facie case," he said.

“Just as no one is to be treated as being above the reach of the law, so, also, and just as importantly, no one is to be treated as being beneath the protection of the law.”

Mr Cross said that normally the DoJ would not indicate in any detail the basis of particular prosecutorial decisions. “This practice reflects the traditions of the common law world which recognise that once a decision has been taken not to prosecute a person the position of the suspect must be safeguarded.

“However, on rare occasions, of which this is one, rather more detail as to the basis of the decision reached will be given. In this case, the nature of the complaints against Mr Wong is already in the public domain, as is his denial of impropriety, so we have made an exception and disclosed the basis upon which the decision not to prosecute was reached,” Mr Cross said.

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