

Department of Justice's statement regarding criminal complaint against Chief Justice and two Magistrates

The following is a statement made today (October 14) by the Department of Justice (DoJ) in respect of the criminal complaint made by Mr Symon Wong against the Chief Justice and two Magistrates:

Background

In April 2015, a criminal complaint was made by Mr Symon Wong, then a Permanent Magistrate, against the Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, the Chief Magistrate Mr Clement Lee Hing-nin and Principal Magistrate Ms Bernadette Woo Huey-fang. Legal advice was sought by the police as to whether the complaint disclosed any criminal offence.

To avoid the perception of any real or apparent bias and having satisfied that the Director of Public Prosecutions has no conflict of interest, the Secretary for Justice has delegated to him the conduct of this case. The DoJ has also obtained independent legal advice from an overseas Queen's Counsel.

Put short, Mr Wong complained that as a result of the three aforesaid members of the Judiciary having got together to persuade him to send an email to withdraw his complaint against Deputy High Court Judge Mr Michael Stuart-Moore, he had been deprived of his legitimate right to pursue an internal disciplinary complaint against the Deputy Judge.

Having carefully considered all the available evidence, including the statements which Mr Wong has given to the police, and having considered also the legal advice given by the Queen's Counsel, the Director of Public Prosecutions has concluded that the complaint disclosed, both in law and in fact, no possible criminal offence against any of the persons

Mr Wong complained against, and the police have been so advised.

The DoJ's normal practice is not to go into details of a criminal complaint otherwise than in the course of a criminal trial. However, in light of the exceptional circumstances of the present case, including the fact that details of the complaint have already been disclosed in the public domain and that very serious allegations have been made against members of the Judiciary, the DoJ considers that it is in the public interest to outline the criminal complaint and the reasons for advising the police that the complaint, taken to its highest, disclosed no criminal offence.

Summary of Mr Wong's complaint

For the present purpose, Mr Wong's complaint can be summarised as follows (Note).

Mr Wong was the presiding magistrate in a criminal case in which the defendant faced charges of possession of apparatus fit and intended for the inhalation of dangerous drugs and possession of dangerous drugs. The defendant appeared in person on the trial date and applied for an adjournment so that he could seek legal representation. Mr Wong granted the adjournment but revoked the defendant's bail.

The defendant applied for a bail review pursuant to section 9J of the Criminal Procedure Ordinance (Cap 221) and the application was heard before Deputy High Court Judge Stuart-Moore. The Deputy Judge granted bail to the defendant and made criticisms of Mr Wong's revocation of the defendant's bail.

Mr Wong sent to the Chief Justice an email complaining about the criticisms made by Deputy Judge Stuart-Moore and asked for the matter to be investigated into. The email was copied to other judges, including the Chief Magistrate and

Principal Magistrate Woo (who was at the material time a good friend of Mr Wong).

Principal Magistrate Woo advised Mr Wong that his email to the Chief Magistrate was inappropriate and suggested that he should send another email in softer tone. Mr Wong agreed to her suggestion and showed her a draft later. Principal Magistrate Woo considered the draft email was inappropriate and said a very capable person would draft a letter for him.

When Principal Magistrate Woo presented Mr Wong with a draft letter to the effect that Mr Wong apologised for his original complaint and accepted his own responsibility for revoking the bail of the defendant, he was not happy with the contents as he thought it did not set out his position. Principal Magistrate Woo suggested him to delete the apology to Deputy Judge Stuart-Moore and send out the email. Mr Wong agreed to her suggestion, deleted the apology in the draft letter, reduced the rest of the contents of the draft letter into an email and sent it to the Chief Magistrate who afterwards forwarded it to the Chief Justice.

Mr Wong said Principal Magistrate Woo subsequently admitted to him that the letter was not drafted by the very capable person but by the Chief Magistrate.

Mr Wong also suggested that the writing style of the letter was that of a foreigner and hence could not have been drafted by Principal Magistrate Woo or the Chief Magistrate. Judging from the writing style, Mr Wong considered that it was very likely to have been drafted by the Chief Justice as he writes fluent English.

Mr Wong considered that the letter was sent to him with the calculative motive that no inquiry or disciplinary proceedings against Deputy Judge Stuart-Moore would be held. This was the basis of his complaint of perverting the course of public justice and misconduct in public office against the

three judicial officers. Furthermore, it was alleged that as the Chief Magistrate knew that the letter did not reflect Mr Wong's intention, when the Chief Magistrate forwarded his email to the Chief Justice, the Chief Magistrate was using a false instrument.

Advice of the overseas Queen's Counsel

The overseas Queen's Counsel was of the opinion that when Mr Wong adopted the contents of the draft letter in his email, he was accepting the advice of a close friend and must have known from the contents that he was withdrawing any complaint he had lodged against the Deputy Judge. A strong advice given by a close friend to persuade a person to withdraw a complaint, not accompanied by threat, bribe, a promise for financial reward or other unlawful means does not fall within the ambit of the offence of perverting the course of public justice: *R v Kellett* [1976] 1 QB 372. The misrepresentation as to who drafted the letter did not amount to an unlawful means.

In the circumstances, there was no basis to suggest that the Chief Magistrate knew that the email of Mr Wong was false in the sense that it did not reflect his revised and considered position.

As regards the complaint that it was the Chief Justice who had drafted the letter, the Queen's Counsel considered that the basis of Mr Wong's suggestion, namely the drafting style of the letter, was obviously hopeless.

The conclusion of DoJ

Having also considered the matter independently, the DoJ agrees with the opinion of the Queen's Counsel, including:

(1) The email was sent by Mr Wong with his full knowledge and acceptance of the contents. There was no suggestion that he sent the email otherwise than freely and voluntarily;

(2) There is thus no basis to suggest that the email was a false document. There is in addition no basis to suggest that anybody had knowingly used any false document;

(3) Further, in so far as the complaint against the Chief Justice is concerned, the allegation, based upon the drafting style of the letter, that he was the author of the letter, is entirely baseless;

(4) In any event, even if all the factual allegations made by Mr Wong can be established, both the purpose of and the means used by Principal Magistrate Woo and the Chief Magistrate in approaching Mr Wong to persuade him to withdraw the complaint against the Deputy Judge were not unlawful. Thus, their conduct did not have a tendency towards "impairing (or preventing the exercise of) the capacity of a court or competent judicial authority to do justice": *HKSAR v Wong Chi Wai* (2013) 16 HKCFAR 539;

(5) There is thus no basis to suggest that there had been any conspiracy to pervert the course of justice;

(6) There is thus further no basis to suggest that there had been any misconduct on the part of any of the three judicial officers;

(7) It follows that there was simply no misconduct on the part of any of the three judicial officers capable of forming the basis of the offence of misconduct in public office.

Note: The summary of Mr Wong's complaint, as set out in paragraphs 7 to 15 of this statement, contains allegations made by Mr Wong. For the avoidance of doubt, the fact that references are made to such allegations does not mean (and should not be taken to mean) that such allegations have been established.