

**A Statement by the
Director of Public Prosecutions**

**The Case of
Mr. Michael Wong Kin-chow**

Introduction

In November 2003, complaints of impropriety were made to the ICAC against Mr. Michael Wong Kin-chow. In consequence, the ICAC conducted an investigation. This, in the event, centred on the issue of whether Mr. Wong had, on three occasions, deliberately made improper applications to government for reimbursement of Leave Passage Allowance (LPA), in respect of air-trips which he and his family had made between 1998 and 2001.

2. Mr. Wong, a judicial officer for many years, retired as a judge of the Court of Appeal of the High Court on 16 August 2001. Thereafter, he was re-employed by the judiciary as a deputy judge of the Court of First Instance from 25 February 2002 to 24 May 2002, and again from 23 September 2002 to 20 December 2002. From 1 August 2003 to 6 November 2003, Mr. Wong served as chairman of the Equal Opportunities Commission (EOC).

3. The ICAC investigation related to separate claims for LPA made by Mr. Wong between August 1998 and February 2001, while in service as a judge of the Court of Appeal. If established, the conduct complained of would have been prosecutable under section 9(3) of the Prevention of Bribery Ordinance, Cap 201, on the basis that Mr. Wong, as an agent of the judiciary, had sought to deceive his principal into granting him LPA by the use of false documentation. The suggestion was that Mr. Wong knowingly deployed false documents in respect of three separate trips for which he sought reimbursement of LPA.

4. After the ICAC had completed its investigation, a finalised report was submitted to the Director of Public Prosecutions (DPP) for consideration in November 2005.

5. The DPP decided thereafter that there was not a reasonable prospect of securing a conviction against Mr. Wong on the evidence as a whole in respect of any offence.

Criteria for Prosecution

6. Paragraph 7.1 of *The Statement of Prosecution Policy and Practice* (2002) stipulates :

The prosecutor must consider two issues in deciding whether to prosecute. First, is the evidence sufficient to justify the institution or continuation of proceedings? Second, if it is, does the public interest require a prosecution to be pursued? That policy is consistent with the policies applied by prosecution agencies throughout the common law world.

Disclosure of Reasons for Decision

7. Save in exceptional circumstances, it is not the practice of those who have responsibility for the conduct of public prosecutions in Hong Kong to 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. The only proper place for issues of guilt or innocence to be determined is in a court of law, and not through public debate or media comment. 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, and the basis upon which the decision was reached will, exceptionally, be indicated.

The Relevant Law and the Investigation

8. It is an offence under section 9(3) of the Prevention of Bribery Ordinance, Cap 201, for an agent, with intent to deceive his principal, to use any receipt, account or other document :

- in respect of which the principal is interested; and
- which contains any statement which is false or erroneous or defective in any material particular; and
- which to his knowledge is intended to mislead the principal.

9. The investigation into the complaints against Mr. Wong concentrated, in the event, on concerns that, in 1998, 2000 and 2001, while still in service as a judge of the Court of Appeal, he deliberately used false documents to

obtain reimbursement of LPA in respect of air tickets. These related to :

- a claim in August 1998 for \$44,800 for flights to China
- a claim in July 2000 for \$117,080 for flights to Europe
- a claim in February 2001 for \$118,000 for flights to Europe and the United States.

10. Invoices and receipts from travel agents were attached by Mr. Wong to the applications as supporting documentation in each instance.

11. As a result of the claims made, Mr. Wong was reimbursed a total of \$171,666. The reimbursements paid to Mr. Wong were less than the amount claimed because the credit balances in his LPA account in the qualifying periods were less than the cost of the travel. Mr Wong's eligibility for LPA was :

- 16 September 1997 to 15 September 1998 : \$101,928
- 16 September 1999 to 15 September 2000 : \$84,160
- 16 September 2000 to 15 August 2001 : \$77,012.

Mr. Wong Explains

12. Although Mr. Wong declined to be interviewed by the ICAC, he, and his daughter, Rosaline Wong, provided statements to the Independent Panel of Inquiry on the Incidents relating to the Equal Opportunities Commission, on, respectively, 21 September 2004 and 26 October 2004.

13. Mr. Wong indicated that Rosaline Wong had started to handle his air ticket bookings and those of his wife in 1998 or 1999 because he was getting older and was very busy as a trial judge. Mr. Wong told his daughter that he and his wife were each entitled to an annual first-class air passage of about \$42,000 to \$43,000, and he reminded her to provide him with the invoices and receipts from the travel agents for the purpose of claiming reimbursement. As to the mode of repayment, Mr. Wong did not specifically give Miss Wong a cheque each time, but reimbursed her in kind by paying for her shopping and other expenses up to an amount equivalent to her expenditure on the air tickets.

14. Mr. Wong denied impropriety of any sort in his response to the Independent Panel of Inquiry. He declared that *'I have dedicated myself to Government, public and charitable services for the past 37 years. I have an unblemished record which speaks for itself. My conscience is clear'*.

15. Miss Wong herself confirmed Mr. Wong's account. She indicated

to the Independent Panel of Inquiry that she had told her father that she would like to help him with his travel arrangements and passage bookings. Although Mr. Wong had offered to give her a cheque each time to settle the amount, Miss Wong declined as she felt it would be better for her father to make reimbursement by paying for some of her shopping or other expenses when she requested. She said the amounts her father paid for her shopping and other expenses were, in fact, more than sufficient to cover the cost of the air tickets. Miss Wong denied emphatically that her father had improperly accepted air-tickets or other gifts from her or from a third party.

Representations of Mr. Wong

16. On 24 February 2005, lawyers acting for Mr. Wong made representations to the DPP. It was said that the complaints against Mr. Wong were groundless, and that he had already explained his position to the Independent Panel of Inquiry. The representations included :

- that Rosaline Wong accompanied Mr. Wong and his wife on each of their three trips in 1998, 2000 and 2001
- that Mr. Wong reimbursed his daughter in full for the expenditure she had incurred by paying her shopping and other expenses
- that Mr. Wong paid for Miss Wong's jewellery in the sum of \$215,000, in December 2000, which covered the travel expenses of the 1998 and 2000 trips, and that he paid \$139,865.65 for her handbags in August 2001, which covered the cost of the 2001 trip. Documentation was supplied to confirm the payment of these sums, which more than covered the expenses of the three trips.

Department of Justice Processes the Case

17. After the ICAC submitted its finalised report, the DPP instructed Mr. Harry Macleod, Deputy Director of Public Prosecutions and Head of the Commercial Crime Unit, to advise on the case. The DPP was satisfied that Mr. Macleod was not familiar with Mr. Wong. Mr. Macleod was able to provide an independent and objective assessment of the case.

18. Mr. Macleod submitted his finalised opinion to the DPP in mid-November 2005. He advised the DPP not to prosecute Mr. Wong. That was on the basis that the evidence did not suffice to justify criminal proceedings against him. It could not be proved that Mr. Wong intended to deceive when he

submitted the claims for reimbursement to government for the three trips. The prosecution could not show that he knew or believed that the documents he provided were other than genuine.

19. As the DPP felt he would be assisted by an outside opinion, he decided to instruct a Queen's Counsel in London to consider the allegations and the evidence and to provide him with the benefit of his assessment. In so deciding the DPP bore in mind the sensitivity of the case, the nature of the evidence, and the level of public concern. The legal expert to be instructed was Mr. Martin Wilson, QC. He, like Mr. Macleod, was not familiar with Mr. Wong.

20. Mr. Wilson enjoys great stature in the law. He is an experienced criminal lawyer, having been appointed Queen's Counsel in 1982. He has sat as a Recorder (part-time judge) of the Crown Court of England and Wales. Mr. Wilson has the advantage of a familiarity with the criminal law and circumstances of Hong Kong, and has both prosecuted and defended in criminal cases in this jurisdiction in recent times. In particular, in the mid-1990's he prosecuted successfully the Bumiputra Malaysia Finance Limited (BMFL) case, which resulted in the convictions of George Tan, former chairman of the Carrian Group of Companies, and of Rais Saniman, a director of BMFL, for conspiracy to defraud BMFL. Mr. Wilson was instructed to examine all aspects of this case and to advise the DPP if a prosecution of Mr. Wong was appropriate.

21. Mr. Wilson submitted his opinion to the DPP in December 2005. He advised that the evidence was not sufficient to justify the institution of a prosecution against Mr. Wong. He concluded that *'the evidence available to the prosecution does not rise above the level of suspicion and does not provide a reasonable prospect of conviction.'*

22. 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 reimbursements 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.

23. 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.'*

24. In essence, Mr. Wilson's advice to the DPP was that it could not be proved that :

- (a) Mr. Wong did not believe that the invoices had been met when he submitted the claims for reimbursement
- (b) Mr. Wong did not believe the documents he presented were genuine, and
- (c) Mr. Wong did not believe that he was under an obligation to repay, or had repaid the party who had settled the invoice, whether through his daughter or otherwise.

Director of Public Prosecutions Reviews the Case

25. After Mr. Macleod and Mr. Wilson had each separately advised the DPP not to prosecute Mr. Wong, the DPP himself independently reviewed the case, the law, the circumstances and the submissions. As part of that process, he reminded himself that suspicion, even strong suspicion, is not a sufficient basis for instituting a prosecution of any person. Any prosecution must be grounded in solid and cogent evidence. The DPP reached the following conclusions :

- if the evidence against Mr. Wong was such as to justify a prosecution, his prosecution would be in the public interest
- prosecution policy had to be applied without fear or favour, and while Mr. Wong was to be given no special treatment, he would not be prosecuted unless there was a reasonable prospect of conviction
- it was apparent that Mr. Wong was entitled, as a judge of the High Court from 1985 to 2001, to first-class air passages once each year for himself and his wife
- Mr. Wong could only be reimbursed with sums which did not exceed his LPA entitlement

- there was uncontradicted material to show that in the late 1990's Mr. Wong had entrusted his daughter with the task of making his travel arrangements for him and his wife, and that Miss Wong duly did this and accompanied her parents on each of the three trips
- it appeared that Mr. Wong relied on Miss Wong to ensure that the payments were made to the travel agents, and he was not aware of the exact sums paid to them for air tickets and incidental expenses
- Mr. Wong did not seemingly consider it to be problematic for him to reimburse his daughter for her shopping and other expenses once he had received reimbursement from the government, and such conduct is not contrary to law
- there was some documentation to show that Mr. Wong had more than reimbursed Miss Wong for the expenses she had incurred on his behalf
- both Mr. Wong and Miss Wong indicated that it was she who provided him with the necessary accounting documents, and there was no evidence to show that he did not believe these documents to be genuine and correct when he submitted his claims for reimbursement to the Treasury
- it could not be shown that Mr. Wong had acted with impropriety in a criminal sense or that he had knowingly allowed someone other than his daughter to pay for his air-tickets.

26. It was in these circumstances that the DPP decided that a prosecution of Mr. Wong for an offence under the Prevention of Bribery Ordinance could not be justified. The DPP accepted as correct the reasoning of Mr. Macleod and Mr. Wilson. The evidence was not such as to enable criminal proceedings properly to be initiated against Mr. Wong.

27. The DPP explained his decision to the Secretary for Justice (SJ). Having studied the materials, the SJ endorsed the decision of the DPP.

Conclusion

28. A prosecution should only be instituted against a suspect 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. 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. To prosecute a suspect in the absence of enough evidence would represent a violation of the duty to protect the citizen which is the responsibility of those in whom is vested the control of public prosecutions. As there is not sufficient evidence to justify a prosecution of Mr. Wong for any offence, he will not be subjected to criminal proceedings.

29. The decision taken has been communicated to the ICAC and to Mr. Wong's lawyers.

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Department of Justice
25 January 2006