《2000 年販毒及有組織罪行(修訂)條例草案》

在二零零二年二月二十二、二十七日及三月四日的《販毒及有組織罪行(修訂)條例草案》委員會會議上，委員曾討論下列事項：

(a) 提出檢控的基本準則；

(b) 向潛逃者發出關於沒收令訴訟的通知；

(c) 販毒得益的評計；

(d) 根據民事舉證準則向已去世或已潛逃的被告發出沒收令；

(e) 沒收令執行程序的應用；

(f) 不遵從限制令及抵押令的懲罰；以及

(g) 提供關於財產價值的資料。

委員在討論後要求當局就多個事項提供補充資料及作出澄清。下文闡述政府對條例草案委員會的要求作出的回應。

提出檢控的基本準則

2. 根據《販毒(追討得益)條例》(第 405 章)第 2(11)條及《有組織及嚴重罪行條例》(第 455 章)第 2(15)條規定，當局不能向因販毒罪行或指明的罪行而被捕並已獲保釋的人發出限制令。該人知道自己正被調查及其財產將來可被限制，當然會在保釋期間設法處置、移轉或隱藏其財產。因此，政府建議修訂《販毒(追討得益)條例》及《有組織及嚴重罪行條例》，以便向已被捕並獲保釋的人發出限制令。為制衡這項權力，現建議法庭在發出命令前，必須信納在該案件的情況下，有合理因由相信經進一步調查後，該人會被起訴。當局已應委員的要

求，根據這項建議進一步考慮以下兩個關於提出檢控的基本準則的方案是否可行：

(a) 修訂《販毒(追討得益)條例》新訂的第 9(1)(ba)條及《有組織及嚴重罪行條例》新訂的第 14(1)(ba)條，表明原訟法庭必須信納不能就該宗案件提出臨時檢控；以及

(b) 引用較低的準則，發出有限期的限制令，如要延長該限期，便引用較高的準則。

3. 考慮到有必要針對因販毒罪行或指明的罪行被捕並獲保釋的人的財產迅速採取行動，政府認為上文(b)項方案較為切合實際。正如我們在先前的條例草案委員會會議上解釋，提出臨時檢控的目的不是限制財產。不過，目前有時提出臨時檢控會為了該目的。此外，在某些情況下，如控方找到足夠證據提出臨時檢控，則執法機構很可能已花了很長時間進行了全面調查，因此可能已有足夠證據提出正式檢控。

4. 考慮到上述情況及委員的意見，政府**同意**按照上述(b)項方案修訂條例草案附表 1 第 7 條及附表 2 第 6 條。較具體來說，政府建議的修訂，是要表明基於《販毒(追討得益)條例》新訂的第 9(1)(ba)條及《有組織及嚴重罪行條例》新訂的第 14(1)(ba)條所述的理由而產生的限制令或抵押令，其有效期須在發出該命令當日起計一年後屆滿。只有在原訟法庭信納經進一步調查後，被告會被控以有關罪行的情況下，該限制令或抵押令的有效期才會藉申請獲得延長。延長的期限最多為六個月。對《販毒(追討得益)條例》作出這些修訂的委員會審議階段修正案草擬本，載於附件 A 第(c)條。如委員贊同這項建議，我們會對《有組織及嚴重罪行條例》的相關條文作出同一修訂。

向潛逃者發出關於沒收令訴訟的通知

5. 條例草案附表 1 及 2 第 3(a)條旨在修訂《販毒（追討得益）條例》第 3(2)(c)(ii)(B)條及《有組織及嚴重罪行條例》第 8(3)(c)(i)(B)(II)條，以便

清楚訂明，如要向一名確實下落不為人所知的人發出沒收令，應採取合理步驟以追尋該人的下落。就此來說，委員要求政府就“替代送達”及“當作送達”條文提供進一步的資料。

替代送達

6. 替代送達受《高等法院規則》（第 4A 章）第 65 號命令第 4 條規則規限，該條規定：

(a) 如就憑藉本規則的任何條文須作面交送達的文件或第 10 號命令第 1 條規則所適用的文件而言，法庭覺得基於任何理由將文件以訂明的方式送達該人並非切實可行，則法庭可作出將文件作替代送達的命令。

(b) 申請作替代送達的命令，可藉述明有關申請所依據的事實的誓章提出。

(c) 有命令根據本條規則就之作出的文件，其替代送達的完成方式是採取法庭所指示的使須予送達的人知悉該文件的步驟。

7. 替代送達一般包括在本地報章刊登廣告，或把文件留在或郵寄到收件人最後為人所知的地址。替代送達的申請由單方面提出，而這種送達方式通常用於民事訴訟中被告逃避送達文件的情況。

當作送達

8. 當作送達是指如證明已按某種方式送達文件，即當作已把文件送達該人。《藥物倚賴者治療康復中心(發牌)條例》（第 566 章）第 26 條是箇中例子，該條規定：

“本條例所授權或規定送達某人的通知或其他文件(不論如何稱述)，在該通知或其他文件的送達方式符合以下說明的情況下，***須當作已如此送達***（我們的重點）—

(a) 該人是個人，而該通知或其他文件是—

(i) 交付他的；

(ii) 留在他最後為人所知的地址的；或

(iii) 按上述地址以郵遞方式寄給他的；

(b) 該人是法人團體，而該通知或其他文件是—

(i) 交給或送達該法人團體的董事的；

(ii) 留在該法人團體最後為人所知的地址的；或

(iii) 按上述地址以郵遞方式寄給該法人團體的；及

(c) 該人是合夥，而該通知或其他文件是—

(i) 按照(a)段交付、留給或寄給任何屬個人的合夥人的；或

(ii) 按照(b)段交給、送達、留給或寄給任何屬法人團體的合夥人的。”

《進出口條例》（第 60 章）第 3 條及《貓狗條例》（第 167 章）第 16 條也有類似的條文。

考慮因素

9. 由於命令作替代送達的權力屬法庭所有，法庭可依據具體情況，監察有關過程和發出指示。因此，替代送達可說是較具彈性，但主要弊端在於往往需要較長時間和較多資源去執行。所需的證明一般包括在指定期間內，多次前往收件人為人所知的聯絡地址，因為只到過一次或幾次可能不足以支持有關申請。此外，亦須向收件人為人所知的聯絡人(例如其朋友或

家人等)查詢。因此，一般需時數星期或以上，其間須多次“外展”，才可說服法庭批准採用替代送達方式。相對來說，當作送達的好處在於一旦能證明已採用訂明的送達方式，便可當作已把文件送達。這個做法不但節省時間和資源，而且更具效率，同時又與政府就附表 1 及 2 第 3(a)條提出建議修訂要達到的目的相符。

10. 政府衡量過替代送達及當作送達的利弊後，認為當作送達可快捷有效地達致政策目的，那就是令執法及司法機構更清楚涉及的程序。為改善現時在條例草案附表 2 第 3(a)條提出的建議，政府**準備修訂**該條，規定在普遍流通的一份中文及一份英文報章刊登關於沒收令訴訟的通知，便可當作送達該通知。有關《販毒（追討得益）條例》的委員會審議階段修正案草擬本，載於附件 A 第(a)條。如委員同意這項修正案的要點，我們會對《有組織及嚴重罪行條例》作出類似的修訂。

販毒得益的評計

11. 委員在考慮條例草案附表 1 第 4 條時，要求政府提供法庭就限制令引用《販毒（追討得益）條例》第 4(2)及(3)條所述假設的先例。

12. 當局現列舉 Re Lau Koon-chiu [1990]1HKC377 一案，以回應上文第 11 段所述委員提出的要求。該案涉及《販毒（追討得益）條例》第 4 條及《有組織及嚴重罪行條例》第 9 條的假設，而該兩條條文的假設差不多一樣。案中被告被控以串謀販運危險藥物及串謀收取利益的罪行，涉及的販毒得益估計達 150 萬港元。當局取得限制令，凍結被告所有資產（約 500 萬港元）。該名被告後來以應付生活及法律開支為理由，申請更改限制令。他並且反對被凍結所有資產，原因是他被指稱從事販毒所收受的款項只為 150 萬港元。

13. 對於這宗案件，賴恩法官認為，在考慮哪些財產應予沒收時，《販毒（追討得益）條例》第 4(3)條所述的假設，可協助政府確定被告從事販毒所收受的款項或酬賞。他接着說，法庭不應發還任何被限制的財產，更不應在有關法律程序完結前，發還在六年內（即上述假設中提及的年期）

收受的財產。賴恩法官更認為，在限制令的階段，法庭無權決定被告可否推翻有關的假設。政府於是可引用《販毒（追討得益）條例》第 4 條的推定，申請限制令。祇有在沒收令的階段，法庭才可決定該等假設是否被推翻。賴恩法官的判決書副本載於附件 B。

根據民事舉證準則向已去世或已潛逃的被告發出沒收令

14. 委員在討論條例草案附表 1 第 5 條及附表 2 第 4 條時，要求政府提供法庭案件的資料，說明建議的修訂是必需的。Secretary for the Justice v Lee Chau-ping HCMP 4412/96 案件是其中一例，該案顯示兩位法官(即范達理法官及當時的高等法院暫委法官馬永新)對《販毒（追討得益）條例》第 5 條的條文有不同的詮釋。政府現時提出的建議旨在使有關法例清晰明確。

15. 該案的答辯人有份參與販運和製造危險藥物進入香港。當局發出了載列 20 項控罪的逮捕令。該案的被告發現自己被警方通緝後便不見蹤影。當局於是引用《販毒（追討得益）條例》第 3 條沒收財產。案件最初在一九九七年由范達理法官審理。該案的爭論點是，根據第 5 條作出的陳述書，在沒收令聆訊中是否能被法庭信納為呈堂證據。一九九七年四月二十五日，范達理法官拒絕接納根據第 5 條作出的陳述書為證據，並認為當時的第 5 條難以詮釋。范達理法官就第 5(7)條表示：

> "第(7)款所要達到的目的令人難以理解。除了令第(3)款產生效力外，該款便沒有其他作用，但第(3)款只在根據第(1B)款作出要求的情況下才產生效力。即使法庭確曾不合邏輯地施加該項要求，而答辯人顯然未能遵從，但第(3)款還指出，除申請人欲依據的指稱外，答辯人可被作為承認陳述書內的每一項指稱。"

16. 范達理法官認為問題在於如果被告潛逃，法庭可依據第 5(7)條，當作已向被告送達根據第 5 條作出的陳述書。不過，要實行第 5(3)條，必須先根據第 5(1B)條向被告發出指示，如果被告已經潛逃，則顯然不可能給他

指示，因此，第 5(3)條的當作承認條文便不能實行，於是亦不能當作被告已承認任何指稱。政府沒有就范達理法官的判決提出上訴。

17. 同一宗案件在一九九八年十月由高等法院暫委法官馬永新審理，他在一九九八年十二月三日宣判。馬永新法官的意見與范達理法官不同，他認為藉着實施第 5(7)條，法庭可在被告已潛逃的情況下，考慮根據第 5 條作出的陳述書。他總結說，第 5(1B)、(1C)、(2)、(3)、(4)、(5)及(6)條並不適用，相關的條文只得第 5(1)、(1A)及(8)款。有關判決書的副本分別載於附件 C及附件 D。

18. 此外，政府也考慮過委員的建議，並**同意**條例草案附表 1 第 5 條及附表 2 第 4 條的建議修訂，亦應涵蓋被告已去世的情況。為此目的而就《販毒（追討得益）條例》草擬的委員會審議階段修正案，載於附件 A 第(b)條。我們會對《有組織及嚴重罪行條例》作出類似的修訂。

沒收令執行程序的應用

19. 正如在先前的條例草案委員會會議上指出，現時《販毒（追討得益）條例》第 8(1)條及《有組織及嚴重罪行條例》第 13(1)(a)條有不足之處，原因是該兩條條文沒有提供任何綱領，讓法庭訂定被告須遵從沒收令的明確時限。因此，雖然法庭通常會在判刑證明書內指明被告須繳付沒收令所述款額的期限，但有時並沒有這樣做。事實上，法庭曾在以往的案件中認為本身無權訂明付款時限。R v. Kong Kwong-por (Re: DCCC No. 587 of 1996)便是箇中例子。在這宗案件，祁至德法官根據《有組織及嚴重罪行條例》第 8(7)(a)條發出沒收令，規定被告須繳付 200 萬港元。他又留意到，《有組織及嚴重罪行條例》沒有就根據第 8 條發出的沒收令訂明付款時限，作出規定(請參閱載於附件 E 的區域法院司法常務官在一九九七年四月二十三日發出的信件）。因此，為確保司法機構的詮釋保持一致，以及沒收令所述款額得以及時繳付，當局必須修訂《販毒（追討得益）條例》第 8(1)(a)條

及《有組織及嚴重罪行條例》第 13(1)(a)條，以便在這方面提供更清晰的指引。

20. 至於英國的情況，英國內政部的沒收事宜工作小組有關罪犯資產的第三份報告書指出，在繳付沒收令所述款額的時間方面，現時並沒有限制。即使被告銀行戶口備有資產，法官有時仍會給予被告長達三年的期間，以繳付沒收令所述款額[1]。此舉令執法過程出現不受歡迎和不必要的延遲，有違為沒收罪犯犯罪得益而訂立沒收法例的目的。有鑑於此，英國政府在《犯罪得益條例草案》建議修訂有關法例，規定除非被告可向法庭證明需更多時間才可付款，否則必須即時付款。如法庭信納被告需要時間，可給予最長六個月時間付款。如有特殊理由支持延長期限，法庭可再額外給予最長六個月時間。該項《犯罪得益條例草案》在二零零零年年底提交下議院，現正交由一個條例草案委員會審議。

21. 在香港，法庭通常命令被告在指定的期限內繳付沒收令所述款額，期限由一個月至數月不等，視乎所涉及財產的性質而定。如有關財產為現金或其他流動資產，期限會較短；如為土地房產，期限會較長。法官無須就給予被告遵從命令的指定時限，說明理由。有關期限通常由代表律政司司長的律師提出。唯一的考慮因素似乎是“合理性”。

不遵從限制令及抵押令的懲罰

22. 根據《防止賄賂條例》(第 201 章)第 14C 條，任何人如不遵從法庭發出的限制令，即屬犯罪，一經定罪，可處罰款 50,000 元或處以所處置或以其他方式處理的財產價值的罰款，兩款額以較大者為準，以及監禁一年。《防止賄賂條例》第 14C 條的副本載於附件 F。就此來說，委員或會知道，列明有關刑罰的第(6)款，是在一九七四年藉

---

[1] 這是工作小組依據一項問卷調查的觀察所得，報告書沒有提及須在三年期內繳付沒收令所述款額的案件名稱。

《防止賄賂(修訂)條例》(1974 年第 9 號)加入《防止賄賂條例》之內，而這些刑罰基本上反映當時的需要。另一方面，條例草案就不遵從《販毒(追討得益)條例》及《有組織及嚴重罪行條例》(附表 1 第 8 及 9 條、附表 2 第 7 及 8 條、附表 3 第 3(b)(ii)及(iii)條)下的限制令或抵押令所建議的刑罰，則考慮到現今的情況。這些建議刑罰與《販毒(追討得益)條例》及《有組織及嚴重罪行條例》的罪行嚴重程度及所涉及財產的價值相稱。

23. 委員或會知道，現時並沒有被報導的判決指出民事藐視訴訟如何對刑事審訊造成妨礙。從執行角度來看，藐視訴訟的答辯人如同時是刑事訴訟所針對的人，會對該人造成不合理的壓力，因而令人覺得進行藐視訴訟有欺壓成份。

<u>提供關於財產價值的資料</u>

24. 政府**同意**委員的建議，修訂條例草案，表明《販毒(追討得益)條例》第 10 條及《有組織及嚴重罪行條例》第 15 條所提述關於財產價值的資料，只涉及可隨時得到的資料，例如銀行帳戶結餘，而無須評計財產價值，這項修訂旨在令上述兩條條文更加清晰。

25. 關於在這方面為根據建議的新條款作出披露的人提供保障的問題，如該人已依據有關規管當局(例如香港金融管理局)發出的指引行事，他會獲得保障，無須就第三方提出的申索負上任何法律責任。不過，考慮到委員的關注，政府**準備提出建議**，修訂條例草案附表 1 第 8 條、附表 2 第 7 條及附表 3 第 3 條，以便為根據《販毒(追討得益)條例》新訂的第 10(12)條及《有組織及嚴重罪行條例》新訂的第 15(12)條作出披露的人提供保障，有關保障與《販毒(追討得益)條例》第 25A 條現時提供的保障相若。根據建議修訂，為遵從新訂的第 10(12)及 15(12)條而作出披露，不得當為違反合約或任何成文法則、操守規則或其他條文對披露資料所施加的任何規限。此外，有關的披露亦不得令作出披露的人須對該項披露，或該項披露所引致的就有關

財產而作出的作為或不作為所引致的任何損失，負上支付損害賠償的法律責任。

26. 為對《販毒(追討得益)條例》作出第 24 及 25 段闡述的建議修訂而擬訂的委員會審議階段修正案草擬本，載於附件 G。如委員同意，我們會對《有組織及嚴重罪行條例》的相關條文作出相同修訂。

27. 關於在《販毒(追討得益)條例》第 10 條及《有組織及嚴重罪行條例》第 15 條下提供虛假資料的刑罰問題，《刑事罪行條例(第 200 章)第 36 條訂明，任何人明知而故意在法定聲明、當時有效的成文法則規定作出的文件、口頭聲明或口頭答覆中，作出在要項上屬虛假的陳述，即屬犯罪。犯這項罪行的人一經循公訴程序定罪，可處監禁兩年及罰款。因此，任何人如在遵從《販毒(追討得益)條例》新訂的第 10(12)條及《有組織及嚴重罪行條例》新訂的第 15(12)條的一項規定時，明知而故意作出在要項上屬虛假的陳述，即屬違反《刑事罪行條例》第 36 條(b)段之下的規定。《刑事罪行條例》第 36 條的副本載於附件 H，供委員參考。

保安局
禁毒處
二零零二年四月

委員會審議階段

由保安局局長動議的修正案

條次	建議修正案
附表 1	(a) 在第 3(a)條中，在“下落”之後加入“或已在香港普遍流通的中英文報章各一份刊登致予該人的關於該等訴訟的通知”。
	(b) 在第 5 條中，在建議的第 5(9)條，廢除“(7)(b)”而代以“(7)(a)或(b)”。
	(c) 在第 7 條中 –
	(i) 在(a)(ii)段中，在建議的第 9(1)(ba)條中，在“下”之前加入“並在第(1A)款的規限”；
	(ii) 加入 —
	“(aa) 加入 —
	“(1A) 除第(1B)款另有規定外，僅因第(1)(ba)款的情況而產生的限制令或抵押令須於該命令作出的日期的首個週年日屆滿。
	(1B) 原訟法庭可延長第(1A)款所述及的限制令或抵押令的有效期，該項延期 —
	(a) 只可基於原訟法庭

納作進步調，告將被以關；

信在出一的查後被人會控有罪行及得6過。。。

(b) 不超個月。。。”

A **RE LAU KOON CHIU**

HIGH COURT – MISCELLANEOUS PROCEEDINGS NO 3085 OF 1989
RYAN J
1, 8 MARCH 1990

B **Criminal Law and Procedure – Dangerous drugs – Trafficking – Recovery of proceeds – Application for variation order to enable payment of maintenance expenses and legal fees – Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) s 4(3)**

C On the same day in which the applicant was charged with, inter alia, the offence of conspiracy to traffic in dangerous drugs, the Crown obtained an ex parte restraint order freezing all the applicant's assets (approximately $5m in value). The applicant then applied for a variation of that order to enable payment of maintenance expenses for himself and his family and legal fees. The applicant also submitted that it was wrong to freeze all his assets when the amount alleged D to have been received through drug trafficking was only $1.5m.

Held, allowing the application:

(1) The value of proceeds from drug trafficking was directed at 'any payments or rewards received at any time in connection with drug trafficking' and was not E limited to payments or rewards directly connected with the charges upon which the person was convicted.

(2) The court should be reluctant to release any property from restraint until the proceedings are concluded, except for funds necessary for maintenance costs and legal expenses.

(3) The judge hearing an application to vary a restraint order has no power at F that point in the proceedings to decide whether the applicant can rebut the presumptions in s 4(3) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (the Ordinance).

(4) Section 27 of the Ordinance has set out the conditions under which the High Court has power to award compensation but such power is limited to cases where there has been serious default on the part of any party connected with the G investigation or prosecution.

(5) The bill for legal expenses incurred to the date of hearing could be taxed forthwith and the Crown should not be shut out from the taxation.

Legislation referred to

H Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) ss 3, 4, 5, 6, 9, 10, 27

Application

This was an application made by the applicant for variation of a restraint order made under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405). I The facts appear sufficiently in the following judgment.

GJX McCoy (Woo Kwan Lee & Lo) for the applicant.
M Boucaut (Crown Prosecutor) for the respondent.

Ryan J: The applicant was on 16 November 1989 charged with the offences of conspiracy to traffic in dangerous drugs and with conspiracy to accept advantages. The offences are alleged to have been committed between 1 January 1979 and 30 June 1983 whilst the applicant was a customs senior inspector stationed at Kai Tak Airport. He is alleged to have received the sum of $3,000 per pound as a reward for assisting drug traffickers to traffic in heroin through the airport. These payments are said to total approximately $1.5m.

The Crown obtained ex parte a restraint order on 16 November 1989 freezing all of the applicant's assets. These are estimated to be approximately $5m in value.

The applicant has applied for a variation of that order to enable payment of maintenance expenses for himself and his family and legal fees. In addition, it is submitted that it is wrong for the court to freeze his total estate when the amount alleged to have been received through drug trafficking is only $1.5m.

Section 9 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (the Ordinance) confers powers on the High Court to make a restraint order where (a) proceedings have been instituted in Hong Kong against the defendant for a drug trafficking offence; (b) the proceedings have not been concluded; and (c) the High Court is satisfied that there is a reasonable cause to believe that the defendant has benefited from drug trafficking.

Section 10 of the Ordinance states that the High Court may, by order, prohibit any person from dealing with any realizable property subject to such conditions and exceptions as may be specified in the order. The court, therefore, has a discretion as to what property is to be made the subject of the order.

In considering what property ought to be restrained, it is necessary to refer to other provisions in the Ordinance. Section 3 provides as follows:

> (1) Where —
>
> (a) In proceedings before the High Court or the District Court a person is to be sentenced in respect of one or more drug trafficking offences and has not previously been sentenced in respect of his conviction for the offence, or as the case may be, any of the offences concerned; and
> (b) an application is made by or on behalf of the Attorney General for an order under this section, the High Court or the District Court, as the case may be, shall act as follows.
>
> (2) The court shall first —
>
> (a) impose such period of imprisonment or detention (if any);
> (b) make such other order in relation to sentence, not being an order provided for or referred to in subsection (6);

A as is appropriate in respect of the offence, or as the case may be, the offences concerned.

(3) The court shall then determine whether the person has benefited from drug trafficking.

(4) For the purposes of this Ordinance, a person who has at any time (whether B before or after the commencement of this Ordinance) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

(5) If the court determines that he has so benefited, the court shall determine in accordance with section 6 the amount to be recovered in his case by virtue of this section.

C

Section 6 provides:

(1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the High Court or the District Court, as the case may be, assesses to be the value of the D defendant's proceeds of drug trafficking.

Section 4 of the Ordinance sets out how the proceeds of drug trafficking are to be assessed. It is stated:

(1) For the purposes of this Ordinance —

E

(a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Ordinance) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking; and

(b) the value of his proceeds of drug trafficking is the aggregate of the F values of the payments or other rewards.

(2) The High Court or the District Court, as the case may be, may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that the G defendant shows that any of the assumptions are incorrect in his case.

(3) Those assumptions are —

(a) that any property appearing to the court —

(i) to have been held by him at any time since his conviction; or

(ii) to have been transferred to him at any time since the beginning of H the period of 6 years ending when the proceedings were instituted against him, was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him or another;

I

(b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him or another; and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a payment or reward, he received the property free of any other interests in it.

The inquiry as to the value of proceeds from drug trafficking is directed at 'any payments or rewards received at any time in connection with drug trafficking' and is not limited to payments or rewards directly connected with the charges upon which the person has been convicted. The Crown gets assistance in establishing what payments or rewards were so received from the assumptions in s 4(3). The court should, in my judgment, be reluctant to release any property from restraint (and certainly not property received within the six year period) until the proceedings are concluded, except for funds necessary for maintenance costs and legal expenses.

Mr McCoy further argues that a person can, at any time after the restraint order is made, show that the assumptions are incorrect in his case. I do not agree. The procedures set out in s 3 are that after conviction, the High Court or District Court proceeds to sentencing and then to a determination of whether the convicted person benefited from drug trafficking. It is then, and only then, that the provisions of s 6 and s 4 come into play. The judge hearing an application to vary a restraint order has no power, at that point in the proceedings, to decide whether the applicant can rebut the assumptions.

Section 27 gives the High Court power to award compensation to a person where proceedings are not instituted or the person is acquitted or, if convicted, the conviction is quashed or he receives a pardon. This power is, however, limited to cases where there has been some serious default on the part of any party connected with the investigation or prosecution.

I propose only to release from restraint funds sufficient to enable the payment to the applicant of maintenance costs and legal expenses. The maintenance payments have been agreed between the parties.

In respect of the legal expenses, as I advised at the earlier hearing, I agree with Mr McCoy that the applicant's legal advisers should not have to wait until the proceedings have been concluded, which might not be until 1991, before receiving any remuneration. The bill for legal expenses incurred to date can be taxed forthwith by a Master and thereafter at three-monthly intervals. The only matter which remains to be resolved is Mr McCoy's request for an order that the Crown be not entitled to appear at the taxation hearings. His submission is that the bill could reveal details of the applicant's line of defence and other privileged matters. I do not accept that the Crown should be shut out from the taxation. The Crown is a party to the proceedings and is entitled to be concerned that there is not an unnecessary or unjustified dilution of the assets. It will be for the Master to decide questions of privilege should they arise.

Reported by Raymond Lo Wai Keung

附件 C
1996, MP No. 4412

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

IN THE MATTER of the Drug Trafficking (Recovery of Proceeds) Ordinance, Chapter 405

BETWEEN

THE ATTORNEY GENERAL	Applicant
and	
LEE CHAU PING	First Respondent
TAM WAI HUNG	Second Respondent

Before the Hon Mr Justice Findlay, in Chambers

Dates of hearing: 17 and 23 April 1997
Date of handing down of judgment: 25 April 1997

Mr MC Blanchflower, Senior Assistant Crown Prosecutor, and Ms Louisa Lai, Senior Crown Counsel, for the applicant.

JUDGMENT

I have before me an ex parte originating summons taken out by the applicant dated 17 December 1996 under the Drug Trafficking (Recovery of Proceeds) Ordinance, Chapter 405 (the Ordinance) and rule 2A of Order 115 of the Supreme Court Rules. The applicant asks for orders that the first respondent pay $22,830,000, and the second respondent pay $630,000, to the Registrar.

In terms of Order 115, this application was heard in chambers, but, with the agreement of the applicant, I adjourn the matter into court for the purposes of delivering this judgment.

From an abundance of caution, in February 1997, notice of these proceedings was given to Mr Cheuk Tak-wah, the husband of the first respondent, Madame Hui Hoi-wah, a business associate of both respondents, Madame Luk So-ngor, the mother of the first respondent, and the court appointed receiver of the property of both respondents. Mr Lee Wai Kong, a brother of the first respondent, appeared at the request of Madame Luk So-ngor and Mr Cheuk Tak-wah, but they did not wish to make a representations; just to be told the outcome of the proceedings. Madame Hui Hoi-wah appeared by Mr Paul Leung of counsel, but he agreed that his client had no standing in these proceedings. That, to me, appears to be the position; that only the respondents, or the personal representatives of a deceased defendant, have standing to be heard in proceedings for a confiscation order. It may be, as in this case, that other persons claim an interest in property said to have been derived or realised from payments received in connection with drug trafficking, but they have the opportunity of being heard when the Attorney General takes steps to realise the property under section 12.

The scheme of Part II of the Ordinance, so far as it is relevant to this matter, is that, under section 3(1), where "proceedings for one or more dug trafficking offences have been instituted against a person but have not been concluded because the person has absconded and an application is made by or on behalf of the Attorney General for a confiscation order", the court must follow a specific procedure.

On such an application, the court has to determine whether the person has benefited from drug trafficking. In the cirumstances of this case, there are several things regarding which the court must be satisfied before it is able to proceed to the step of determining whether the person has benefited from drug trafficking –

1. The person against whom the order is sought has absconded;
2. not less than six months have elapsed beginning with the date which is, in the opinion of the court, the date on which that person absconded;

3. the exact whereabouts of the person are not known;

4. reasonable steps have been taken to give notice of "those proceedings" to that person;

5. having regard to all the relevant matters before it, the person could have been convicted in respect of the offence or offences concerned.

In the context, "those proceedings" referred to in item 4. seem to refer to the prosecution proceedings for a drug trafficking offence, not the proceedings for a confiscation order, in spite of the fact that this does not make much sense.

Once the court is so satisfied, the court then determines whether the person has benefited from drug trafficking; that is, whether he has received any payment or other reward in connection with drug trafficking carried on by him or another.

"If the court determines that he has so benefited, the court shall determine in accordance with section 6 the amount to be recovered", and shall order the person to pay that amount.

Section 4 provides that a person's proceeds of drug trafficking are any payments or other rewards received by him in connection with drug trafficking and any property derived or realised, directly or indirectly, by him from any of the payments or other rewards. The value of the proceeds is the aggregate of the values of the payments or other rewards and that property.

This section seems clear enough, although its effect seems to be that, if a defendant sells drugs for $50 million and buys a house with that money, the proceeds of drug trafficking are both the $50 million and the house, and the value of the proceeds is $100 million.

Under section 6, the amount to be recovered shall be the amount the court assesses to be the value of the proceeds of the trafficking. If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made, whether by an acceptance under section 5 or otherwise, the court may issue a certificate giving the court's opinion as to the matters concerned.

The standard of proof required to determine any question as to whether a person has benefited from drug trafficking or the amount to be recovered shall be on the balance of probabilities.

In the ordinary course, the way in which a court is satisfied about something is by evidence. In this case, no evidence has been presented. I have before me a meticulously prepared statement by Detective Senior Inspector Tse Leung-wah, together with many box files of witness statements and exhibits to which the inspector refers in his statement. This statement by Inspector Tse is said to be prepared for the purposed of section 5. There is no doubt that what Inspector Tse says, supported by the documents to which he refers, would, if admissible for this purpose, satisfy me to a high degree of everything in respect of which the applicant is required to satisfy me. The applicant clearly rests his case on this section 5 statement; there is nothing else upon which it can rest. The question is: Is the statement admissible for the purposes of satisfying the court of the essential facts?

Section 5 is not free from difficulties in construction. It is clear that amendments made in 1995 were designed to adapt the provisions for that case where the defendant had died or absconded, but the end product does not achieve this objective very well, if at all, I hasten to say that this may not be the fault of the draftsman. I know how pressures from legislators and unwelcome contributions to the drafting process during the legislative process can sometimes destroy a carefully crafted legislative structure.

Section 5(1) reads:

"(1) Where an application is made for a confiscation order, the prosecutor may tender to the High Court or the District Court, as the case may be, a statement of matters relevant to any of the following –

a) where section 3(1)(a)(ii)is applicable, determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;
b) determining whether the defendant has benefited from drug trafficking;
c) assessing the value of the defendant's proceeds of drug trafficking."

Section 5(1B) says –

> "(1B) Where any statement has been tendered under subsection (1) and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant –
> a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and
> b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposed to rely."

No such requirement has been imposed in this case. This is not surprising. The whereabouts of the respondents is unknown. It would not make much sense to impose such a requirement in these circumstances.

If the defendant accepts any allegation, the court may, for the purposes of determining whether the defendant could have been convicted, whether the defendant benefited from drug trafficking and assessing the value of the proceeds, as conclusive.

Under section 5(3), if the defendant fails to comply with a requirement under subsection (1B), he may be treated for the purposes of this section as accepting every allegation in the statement *apart from,* as far as is relevant here, any allegation that he could have been convicted, any allegation that he has benefited from drug trafficking and any allegation that any payment or other reward was received by him in connection with drug trafficking.

Section 5(7) provides, as far as relevant, that in as case such as this, section 5 "shall have effect as if a copy of the statement tendered under subsection (1) had been served on the defendant."

It is difficult to understand what purpose is served by subsection (7). Nothing flows from the provision except the effect of subsection (3). But subsection (3) only kicks in if there has been a requirement under subsection (1B). But even if such a requirement has been illogically imposed, with the obvious consequence of the respondents failing to comply, subsection 3 says the respondents may be treated as accepting every allegation in the statement *apart from* the some of the very allegations on which the applicant seeks to rely.

Frankly, section 5 leaves me baffled. It does not seem to be effective in achieving what I assume the 1995 amendments set out to achieve. I do not how I can construe the section so that the statement can be used to satisfy the court on the points on which it must be satisfied.

The effect of section 5 was not argued before me on 17 April 1997. It was assumed, I think, by Mr Blanchflower that the section worked as it seems it was intended to work, and I did not spot the difficulties during the course of argument. I thought I might have overlooked some way out of the problem. I believed the applicant should have the opportunity of addressing further argument to me on the point. Accordingly, I invited Mr Blanchflower to address further argument to me. He did so on 23 April 1997.

Mr Blanchflower agrees that he cannot rely on section 5(3). He argues, however, that the legislation contemplates that I can use the section 5 statement to satisfy myself on the matters upon which I am required to be satisfied although it cannot be said that there is an implied acceptance of any of the contents of the statement by the respondents. In other words, Mr Blanchflower contends that the section 5 statement can be used by the court although it is not evidence and although there is no express provision in the legislation allowing me to do this.

I can understand the convenience of doing this, but I cannot follow this course if the law does not allow it. Unfortunately, I do not think the law does allow it.

The legislation is peppered with requirement that I be "satisfied" of various things. Normally, a court cannot be satisfied of anything unless it is so satisfied by evidence, or the law clearly contemplates otherwise. Here, in my view the legislation does not clearly contemplate otherwise. Mr Blanchflower says that the court may have "regard to all the relevant matters before it". This, in my judgment, means "all relevant matters before it" by means of evidence or as provided for in section 5. If the legislature contemplated that a court could have regard to the section 5 statement without more, there would be no need at all for the elaborate provisions of section 5.

In the result, I find there is nothing properly before me on which I can act in this matter. The failure of section 5 to operate in this case means that there must be evidence on which I can act. It seems to me that this evidence may be by way of affidavit in support of the originating summons, but, because this is not an interlocutory matter, the affidavits may not contain hearsay evidence.

The applicant may wish to proceed on the basis of evidence. Accordingly, I adjourn this matter *sine die,* with liberty to set the matter down for further hearing for directions or the hearing of evidence.

JK FINDLAY
Judge of the High Court

Court of First Instance of Hong Kong

SECRETARY FOR JUSTICE v. LEE CHAU PING AND ANOTHER HCMP004412/1996 - [1998] HKCFI 771 (3 December 1998)

HCMP004412/1996

HCMP4412/96

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

MISCELLANEOUS PROCEEDINGS NO.4412 OF 1996

BETWEEN	{	{
{	SECRETARY FOR JUSTICE	Applicant
{	{	{
{	AND	{
{	{	{
	LEE CHAU PING	1st Defendant
{	TAM WAI HUNG	2nd Defendant

Coram : Deputy Judge Lugar Mawson in Court

Dates of hearing : 12, 13, 14 and 16 October 1998

Date of delivery of judgment : 3 December 1998

{

J U D G M E N T

{

This is an application made under s.5 of the *Drug Trafficking (Recovery of Proceeds) Ordinance Cap. 405* for confiscation orders under s.3 of the ordinance against the defendants, Lee Chau Ping and Tam Wai Hung. Lee Chau Ping and Tam Wai Hung absconded from criminal proceedings brought against them in Hong Kong and the prosecution does not know their whereabouts. As the facts in relation to both defendants are common, the applications are made concurrently.

Three preliminary issues arise for my determination :

1. The sufficiency of a statement made under s.5 of the Ordinance to satisfy me of the condition in s.3(2)(c)(iii) of the Ordinance, that the defendants, Lee Chau Ping and Tam Wai Hung, could have been convicted of a drug trafficking offence.

2. The standard of proof applicable under s.3(2)(c)(iii) of the Ordinance, in relation to the question of my being satisfied that an absconded person could have been convicted in respect of a drug trafficking offence

3. The standing of third parties in applications for confiscation orders under the Ordinance.

Sufficiency of the s.5 statement

In relation to the first preliminary issue, Findlay J., who first dealt with this application, said the Secretary for Justice could not rely on a statement made under s.5 of the Ordinance. In his judgment of 25 April 1997 he said:

> "Mr Blanchflower ... argues, however, that the legislation contemplates that I can use the section 5 statement to satisfy myself on the matters upon which I am required to be satisfied, although it cannot be said that there is an implied acceptance of any of the contents of the statement by the respondents. In other words, Mr Blanchflower contends that the court can use the section 5 statement although it is not evidence and although there is no express provision in the legislation allowing me to do this.
>
> I can understand the convenience of doing this, but I cannot follow this course if the law does not allow it. Unfortunately, I do not think the law does allow it.
>
> The legislation is peppered with the requirement that I be 'satisfied' of various things. Normally, a court cannot be satisfied of anything unless it is so satisfied by evidence, or the law clearly contemplates otherwise. Here, in my view the legislation does not clearly contemplate otherwise. Mr Blanchflower says that the court may have 'regard to all the relevant matters before it'. This, in my judgment, means 'all relevant matters before it' by means of evidence, or as provided for in section 5. If the legislature contemplated that a court could have regard to the section 5 statement without more, there would be no need at all for the elaborate provisions of section 5.

In the result, I find there is nothing properly before me on which I can act in this matter. The failure of section 5 to operate in this case means that there must be evidence on which I can act. It seems to me that this evidence may be by way of affidavit in support of the originating summons, but, because this is not an interlocutory matter, the affidavits may not contain hearsay evidence."

Findlay J.'s judgment was not appealed, since it was made in a criminal cause or matter, and there is no jurisdiction for the Court of Appeal to hear an appeal from it under s.13(3) of the *High Court Ordinance, Cap. 4*.

Mr Michael Blanchflower, who again appears for the Secretary for Justice, has raised the issue with me again and after having heard his argument, I am of the view that the Secretary for Justice can rely on the s.5 statement to satisfy me of the condition in s.3(2)(c) of the *Ordinance*, as well as all the other conditions on which I must be satisfied.

My reasons are :

Before September 1995, s.5 read :

"5(1) Where -

(a) the prosecutor tenders to the High Court or the District Court, as the case may be, a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking; and

(b) the defendant accepts to any extent any allegation in the statement, the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which the acceptance relates.

(2) Where -

(a) a statement is tendered under subsection (1) (a); and

(b) the court is satisfied that a copy of that statement has been served on the defendant, the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2) he may be treated for the purposes of this section as accepting every allegation in the statement apart from -

(a) any allegation in respect of which he has complied with the requirement; and

(b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another."

In September 1995 the *Ordinance* was amended to provide, amongst other things, for the making of confiscation orders against persons who had died, or had absconded. One protection afforded to the personal representatives of a deceased person and to an absconded person, was the condition that the court must first be satisfied that a person "could have been convicted" of the drug trafficking offence in respect of which proceedings had been instituted. In particular s.3(2)(c)(iii) reads :

"...having regard to all relevant matters before it, the person could have been convicted in respect of the offence, or as the case may be, the offences concerned."

Section 5 was amended to allow the court to be satisfied of the condition in s.3(2)(c)(iii) by means of a s.5 statement. Section 5(1) reads :

> "(1) Where an application is made for a confiscation order, the prosecutor may tender to the High Court or the District Court, as the case may be, a statement of matters relevant to any of the following -
>
> a) where s.3(1)(a)(ii) is applicable, in determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;
>
> b) determining whether the defendant has benefited from drug trafficking;
>
> c) assessing the value of the defendant's proceeds of drug trafficking."

In s.5(1) the phrase, *"a statement of matters"* parallels the introductory words in s.3(2)(c)(iii), *"having regard to all relevant matters before it"*. The reason for the parallel wording is that it was intended that the s.5 statement would be either the only, or the prime source, of the matters referred to in the introductory words.

Section 5(1) must be read with O.115, r.22(2)(c) of the *Rules of the High Court*, which reads :

> "(2) Any statement tendered to the Court by the Secretary for Justice under s. 5(1) shall include the following particulars, namely -
>
> (a) ...
>
> (b) ...
>
> (c) ... such information known to the person who made the statement as is relevant to -
>
> (i) where s. 3(1)(a)(ii) [that is an application for a confiscation order against a dead or absconded defendant] is applicable, the determination whether the defendant could have been convicted in respect of the drug trafficking offence or offences concerned;
>
> (ii) the determination whether the defendant has benefited from drug trafficking;
>
> (iii) the assessment of the value of the defendant's proceeds of drug trafficking."

There is no reference in either s.3(2)(c)(iii), s.5(1), or O.115, r.22, to *"evidence"*. This must be a deliberate choice of words : to make it clear that evidence is not required to be produced to a court in order for it to be satisfied of the condition in s.3(2)(c)(iii). If it had been intended that the court had to be satisfied by way of evidence, then the introductory words to s.3(2)(c)(iii) would have read *"having regard to all relevant evidence before it"*.

Other parts of s.5 support this view :

See :

> "5(1B). Where any statement has been tendered under subsection (1) and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant -

(a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and

(b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely."

And :

"5(2). Where the defendant accepts to any extent any allegation in any statement tendered under subsection (1), the court may, for the purposes of -

(a) where s.3(1) (a)(ii) is applicable, determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;

(b) determining whether the defendant has benefited from drug trafficking; or

(c) assessing the value of his proceeds of drug trafficking, treat his acceptance as conclusive of the matters to which the allegation relates."

And :

"5(3). If the defendant fails in any respect to comply with a requirement under subsection (lB) he may be treated for the purposes of this section as accepting every allegation in the statement apart from -

(a) any allegation in respect of which he has complied with the requirement;

(b) where s.3(1) (a) (ii) is applicable, any allegation that he could have been convicted in respect of the offence, or as the case may be, the offences concerned;

(c) any allegation that he has benefited from drug trafficking; and

(d) any allegation that any payment or other reward was received by him in connection with drug trafficking carried on by him, or another."

And :

"Section 5(7). In any proceedings on an application made for a confiscation order where s.3(1)(a) (ii) or (7) is applicable -

(a) if the defendant has died, subsection (lB) shall have effect as if it required a copy of the statement tendered under subsection (1) to be served on the defendant's personal representative;

(b) if the defendant has absconded and s.3(2)(c)(ii)(A) or (9)(b)(i) is not applicable to him, this section shall have effect as if a copy of the statement tendered under subsection (1) had been served on the defendant."

Where an application for a confiscation order is made after a defendant has been convicted of a drug trafficking offence, the prosecution may rely upon a s.5 statement or the evidence in the trial or both for the purpose of the

court determining whether the defendant benefited from drug trafficking. They may also use it for the purpose of asking the court to ascertain the value of that benefit and his proceeds from drug trafficking. In these circumstances, when the prosecutor tenders the statement to the court, a copy is served upon the defendant. And under s.5(1B) the court may require the defendant to indicate whether he accepts the allegations in the statement and if he doesn't, to give particulars of any matters on which he proposes to rely. Then, ss.5(2) and (3) come into operation.

In the case of a deceased person, under s.3(14), his personal representatives are entitled to be heard on the application for the purpose of opposing it, and to call, examine and cross-examine witnesses. In order for them to do this s.5(7)(a) requires service of the s.5 statement upon them and under s.5(1B) the court may require them to file a reply statement. Then, ss.5(2) and (3) come into operation.

However, in the case of an absconded person whose whereabouts are unknown, there is no one upon whom a s.5 statement can be served. Here, s.5(7)(b) permits the confiscation hearing to proceed in the absence of the defendant and the provisions of *"this section"* that is s.5 to have effect.

Sub-sections 5(2) and 5(3) are inapplicable in the case of an absconded person whose whereabouts are unknown. Since he was not served with a s.5 statement and directed by the court to file a reply to it, he can not fail to comply with s.5(1B). There is no question of an implied acceptance by him of any of the allegations in the statement.

In s.5(3)(b) the reference to *"where s.3(1)(a)(ii) is applicable"* is either to a person who has died [s.3(l)(a)(ii)(A)], or a person who absconded and whose whereabouts are known [s.3(2)(c)(ii)(A)(III)and s.3(9)(a)(b)(i)]. In their cases, the court is left to determine whether they could have been convicted of a drug trafficking offence on the basis of the s.5 statement.

Although the scheme of s.5 contemplates that the statement is served upon the defendant, the purpose of s.5(7)(b) is to prevent the statement being disregarded by the court, because it was not served on him. In the case of an absconded person whose whereabouts are unknown, service of the statement is impossible and to prevent non-service being a reason for the court to reject the statement, s.5(7)(b) deems the defendant to have been served with it. It Is reasonable to assume that s.5(7)(b) was designed to bring into play the provisions which operate in this case. If s.5(7)(b) was not in s.5, there would be a risk of the court disregarding the s.5 statement, because it had not been served on the defendant, notwithstanding that it was impossible to do so.

I am satisfied that in an application of this kind, where the defendant is an absconded person whose whereabouts are unknown, the provisions of sub-sections 5(1B), (1C), (2), (3), (4), (5) (in part) and (6) are irrelevant because there is no defendant present. The only relevant provisions are sub-sections 5(1), (lA) and (8).

In conclusion, I am satisfied that in the case of an absconded person whose whereabouts were not known, I may determine :

(a) whether an absconded person could have been convicted of a drug trafficking offence

(b) his benefit from drug trafficking

(c) the value of his proceeds of drug trafficking,

on the basis of the contents of a s.5 statement.

In deference to Findlay J, it is, I believe, correct to say that in April 1997 Mr Blanchflower did not have the luxury of time to mount the persuasive argument he advanced to me and in consequence Findlay J. was deprived of its assistance in arriving at his conclusion.

The standard of proof

The second preliminary issue concerns the standard of proof applicable under s.3(2)(c)(iii) of the *Ordinance*, in relation to the question of my being satisfied that an absconded person could have been convicted in respect of a drug trafficking offence. As the *Ordinance* is silent on the matter, Mr Blanchflower has asked me to rule upon it.

In doing so, it is necessary to consider the :

- nature of a confiscation hearing,

- purpose of a confiscation order,

- other sections of the *Ordinance*,

- nature of application.

As to their nature, s.3(11) of the *Ordinance* provides that a confiscation hearing is a criminal proceeding and a confiscation order is part of the sentence in a criminal case.

As to their purpose, a confiscation order made in relation to a deceased or absconded person affects property belonging to that person, or the persons holding it. The legislature's intention behind s.3(2)(c)(iii) is to ensure that a confiscation order is only made in a case where the court is satisfied that had the person not died or absconded, a confiscation order could have been made against him.

Other sections of the *Ordinance* expressly specify the standard of proof : s.3(12) provides that the applicable standard when determining : (a) whether a person has benefited from drug trafficking, or (b) the amount to be recovered, is on a balance of probabilities. Similarly in s.24D which relates to the forfeiture of seized property if a court is satisfied that the property (a) represents any person's proceeds of drug trafficking, (b) has been used in drug trafficking, or (c) is intended for use in drug trafficking subsection (4) provides that the standard of proof is on a balance of probabilities.

As to the nature of the application, a number of factors distinguish proceedings for an application for a confiscation order against an absconded person, from a criminal trial or a contested committal hearing.

In a criminal trial :

- The defendant is present.

- It is an adversarial process in which witnesses are examined and cross-examined.

- Common law and statutory rules of evidence apply.

- The prosecution must prove their case beyond a reasonable doubt.

- If convicted the defendant is at risk of being imprisoned.

In a contested committal hearing :

- The defendant is present.

- It is an adversarial process in which witnesses are examined and cross-examined.

- Common law and statutory rules of evidence apply.

- The prosecution must adduce evidence which establishes a *prima facie* case.

- If committed for trial, the defendant is at risk of being convicted of the offence.

In contrast, in an application for a confiscation order against an absconded person :

- The court must have regard to "relevant matters". The *Ordinance* deliberately uses the words "relevant matters", not "evidence".

- The relevant matters are intended to be contained in a s.5 statement. The *Ordinance*, therefore, expects the court to receive written submissions and not hear witnesses, assess credibility, weigh evidence, or rule upon the admissibility of evidence.

- Under s.3(2) (c) the court must be "satisfied" of other matters. For example : that the person has absconded, and if the person's whereabouts are known, that reasonable steps have been taken to secure his return.

- Under s.3(13) a finding that a person could have been convicted of the offence is not admissible in any proceedings for the offence.

- If the absconded person returns to Hong Kong he can be prosecuted for the drug trafficking offence which was the subject of the application for the confiscation order, see : s.27(1). A previous finding by a court under s.3(2)(c)(iii) is not a bar to prosecution.

In an application against a deceased or absconded person, there are four possible standards of proof :

- beyond reasonable doubt.

- balance of probabilities.

- a *prima facie* case.

- judicial standard.

Beyond reasonable doubt

I am satisfied that the legislature did not intend that I must be satisfied beyond a reasonable doubt that the absconded person could have been convicted of the offence, for these reasons :

- In applications of this kind there is no other person present in the proceedings, neither is their liberty at stake.

- The *Ordinance* neither impliedly, or expressly, requires a witness to give oral evidence at the hearing of the application. This is in contrast to a criminal trial, where the trier of fact must observe the demeanour of witnesses and assesses their credibility.

- In a criminal trial, only admissible evidence is received. In a confiscation hearing, hearsay evidence is admissible. In R. v. Lum Wai Ming H.C. No. 75 of 1991 (unreported) Deputy Judge Burrell (as he then was) said, at p.4 :

> "The enquiry is not governed by strict application of rules of evidence. Matters may be taken into account which might be inadmissible in a criminal trial if, in the view of the court, they are of assistance in the enquiry, provided they are admitted within the scope of Cap. 405 and considered judicially."

- Order 115 r.22(2)(c) of the *Rules of the High Court* provides that :

> "Any statement tendered to the High Court by the Secretary for Justice under section 5(1) should include the following particulars, namely - (*inter alia*)
>
> (a)...
>
> (b)....
>
> (c) such information known to the person who made the statement as is relevant to -
>
> ...
>
> (iii) where section 3(1)(a)(ii) is applicable, the determination whether the defendant could have been convicted in respect of the drug trafficking offence or offences concerned; "

In O.115 r.22 the word "information", not "evidence", is used, indicating that information which would be inadmissible in a criminal
trial may be admitted and considered in these applications.

By contrast, in R. v. Tam Kit Nim [1982] HKC 40, O'Connor J, in obiter interpreted the word "satisfied" in s.45(1)(a)(iii) of the *Mental Health Ordinance*, Cap 136 [which empowers a magistrate to commit a mentally disordered person to a psychiatric centre, where the person is charged before a magistrate with an act or omission as an offence punishable on summary conviction by imprisonment and the magistrate is satisfied that such person did the act or omission] to mean satisfied beyond reasonable doubt. He said at p.42 A-B

> "...a detention order under s.45 disposes of the charge once and for all. It would have the same effect as a conviction or acquittal, in so far as the possibility of further proceedings are concerned. The detention order may be for any period not exceeding the length of sentence which could have been imposed following a conviction. From a consideration of those factors, it would appear that the order is not an interlocutory order, but is one aimed at the final determination of criminal proceedings in a manner resulting in incarceration of the defendant. One would expect that the standard of proof required would be the standard in criminal cases and that the rules of evidence would apply."

I am satisfied that these applications are distinguishable from a mental health order applications, because :

- there is no final determination,

- a person's liberty is not at stake,

- the rules of evidence do not apply.

Balance of probabilities

As to the standard of proof of a balance of probabilities : in the earlier proceedings before Findlay J. it was accepted, without argument, by both judge and counsel, that this was the applicable standard. This standard means that evidence is weighed to see whether it is more likely than not, that the issue to be decided has been proved. In these applications, where the defendant has absconded and his whereabouts are not known, there is only one party before the court and it cannot weigh a defendant's case to see whether it is more likely than not that he committed the offence.

Where the *Ordinance* intends the standard of proof of a balance of probabilities to apply, it expressly provides so. For example, when the court is asked to determine whether a person benefited from drug trafficking [s.3(3)], or the amount to be recovered [s.3(5)], the standard of proof is stated to be a balance of probabilities, see : s.3(12). Likewise, in other provisions in the Ordinance, it is expressly provided that the word "satisfied" requires a standard of proof of a balance of probabilities. For example, when the court is asked to make a forfeiture order of property related to drug trafficking under s.24(D), it must be satisfied of the tainted source of the property on a balance of probabilities, see : s.24(D)(4). However, in these forfeiture proceedings there are two parties to the proceedings the Secretary for Justice and the person from whom the property was seized or a person who has an interest in the property this is not the case here.

Prima facie case

As to the standard of a *prima facie* case : in Murray v. Director of Public Prosecutions [1994] 99 CAR 396 (HL), Lord Mustill defined a "*prima facie* case" in these terms, at p.399 :

> "...it seems to me, therefore, that the expression 'a *prima facie* case' was intended to denote a case which is strong enough to go to a jury i.e. a case consisting of direct evidence which, if believed and combined with legitimate inferences based upon it, could lead a properly directed jury to be satisfied beyond reasonable doubt (or whatever formula is preferred) that each of the essential elements of the offence is proved."

In R. v. Alick Au Shui Yuen [1993] 2 HKC 219, the Court of Appeal decided that a *prima facie* test applied in deciding whether the words and acts of the appellant's co-conspirators were admissible against him, on the basis that those words and acts were in furtherance of the conspiracy. They rejected the standard of balance of probabilities, Sir T.L. Yang C.J. saying at p.226 E :

> "This is a concept normally associated with the final determination of a case, after weighing (on balance) both the evidence for one party and that for the other. '*Prima facie* case' seems to us to be preferable because it does not imply a final determination. It is also preferable to 'reasonable evidence' because it is precise and readily understood and applicable."

In this application there is no final determination of any one's guilt. The proceedings were instituted against Lee Chau Ping and Tam Wai Hung when magistrates issued warrants for their arrest, however, there are no charges in an indictment for them to plead to.

In hearing this application I am asked to conduct an inquiry : I have to be satisfied whether or not the absconded defendant could have been convicted of a drug trafficking offence. My role, in some respects, is similar to the role I have in determining applications by a defendant under s.16 of the *Criminal Procedure Ordinance, Cap. 221,* for his discharge on the basis that the evidence disclosed in the documents handed to the Court under s.80(1) of the *Magistrates Ordinance, Cap. 227*, is insufficient to establish a *prima facie* case against him. But, with this difference, in this application, the relevant matters I will consider are not evidence and there is no other party to the proceedings from whom I can hear representations.

Judicial standard

Instead of identifying a particular known standard, the fourth alternative is for me to adopt a judicial standard. That is : can I be satisfied, or can I make up my mind, upon the material presented in the s.5 statement, that Lee Chau Ping and Tam Wai Hung, could have been convicted of a drug trafficking offence? It would be dangerous for me to do this, because there are no known bounds to that approach.

I was initially of the view that the standard I should apply is that of a prima facie case. As Sir T.L. Yang C.J. said in Alick Au Shui Yuen, that standard is *"precise and readily understood"*. However, that standard is usually applied in applications where the consequence of a finding adverse to the defendant is that he is compelled to go on to a further stage in the judicial process. For example, committal for trial in the Court of First Instance after a preliminary hearing before a magistrate.

Here, although there is no question of Lee Chau Ping and Tam Wai Hung being found guilty of a drug trafficking offence, the consequence of my finding that they could have been found guilty the s.3(2)(c)(iii) test is that I will make an order confiscating their identified assets. This is a considerable penalty and I had reservations about applying a standard of proof commonly associated with preliminary issues to a matter, which has such weighty consequences.

Conclusion

At the preliminary hearing on October 1998, Mr Blanchflower argued that it was consistent with the scheme of the *Ordinance* for the standard to be the balance of probabilities. In the absence of clearer guidance, I agreed, but not without the reservations expressed above. I therefore accept that as being the standard applicable to the question of my being satisfied that Lee Chau Ping and Tam Wai Hung could have been convicted in respect of a drug trafficking offence at the hearing of the substantive application.

The standing of third parties

I turn to the third preliminary issue. As I have said, under s.3(1)(a)(ii) and s.3(1)(b), an application for a confiscation order may be made against a deceased or absconding person. In the case of a deceased person, under s.3(14), the personal representatives of the deceased are entitled to be heard on the application and to call, examine and cross-examine any witness for the purposes of opposing the application. In the case of an absconding person there is no specific provision governing the representation for, or on behalf of, the absconding person. Section 5(7)(b), already quoted, suggests that there is no such representation. Since the s.5 statement is deemed to be served on the defendant, the Secretary for Justice can proceed with the application without the absconding person or his representatives being present

In these applications, if I make the confiscation orders sought, then the certificates made pursuant to s.6(2) will contain particulars of Lee Chau Ping and Tam Wai Hung's property that may be realised to satisfy the confiscation orders.

Since third parties appear to have an interest in some of Lee Chau Ping and Tam Wai Hung's property, and gifts or dispositions were made by Lee Chau Ping to third parties, the former Attorney General in February 1997 notified the following third parties of the April 1997 hearing before Findlay J. and the fact that property in which they appear to have an interest may be included in a certificate made under s.6(2).

1. Cheuk Tak Wah - Lee Chau Ping's husband.

2. Hui Hoi Wah - a so called 'office assistant' formerly employed by Lee and Tam.

3. Luk Soo Ngor - Lee Chau Ping's mother.

4. Kenneth Morrison - The court appointed receiver of Lee and Tam's property.

On 11 March 1997 Mr Morrison notified the Attorney General that he did not intend to make any representations to the Court.

In his judgment of 25 April 1997 at p.22 A-J, Findlay J. commented upon the standing of third parties in the applications, as follows :

> "From an abundance of caution, in February 1997, notice of these proceedings was given to Mr Cheuk Tak-wah, the husband of the first respondent, Madame Hui Hoi-wah, a business associate of both respondents, Madame Luk Soo-ngor, the mother of the first respondent, and the court appointed receiver of the property of both respondents. Mr Lee Wai-kwong, a brother of the first respondent, appeared at the request of Madame Luk Soo-ngor and Mr Cheuk Tak-wah, but they did not wish to make representations; just to be told the outcome of the proceedings. Madame Hui Hoi-wah appeared by Mr. Paul Leung of counsel, but he agreed that his client had no standing in these proceedings. That, to me, appears to be the Position; that only the respondents, or the personal representatives of a deceased defendant, have standing to be heard in proceedings for a confiscation order. It may be, as in this case, that other persons claim an interest in property said to have been derived or realised from payments received in connection with drug trafficking, but they have the opportunity of being heard when the Attorney General takes steps to realise the property under section 12."

I respectfully agree with Findlay J., third parties have no standing in an application by the Secretary for Justice for a confiscation order against an absconding person. They cannot make representations on the conditions of making a confiscation order; for example, whether Lee Chau Ping and Tam Wai Hung could have been convicted of drug trafficking offences, or whether they benefited from drug trafficking and, if they did, the amount of their benefit. If confiscation orders are made against Lee Chau Ping and Tam Wai Hung, then an application under s.12 is made to the Court of First Instance for an order appointing a receiver to realise their property and pay the realised amounts to the Registrar of the High Court. Under s.12(8) the Court must not exercise this power unless a reasonable opportunity has been given to persons holding any interest in the property to make representations to the Court. That is the subsection, which protects third parties' interests in Lee Chau Ping, and Tam Wai Hung's property.

The substantive application

I turn now to the substantive application.

To recap, in applications against absconding persons, such as Lee Chau Ping and Tam Wai Hung are said to be, the conditions on which I must be satisfied are :

(1) That the application is made by the Secretary for Justice *[s.3(1)(b)]*.

(2) Proceedings for one or more drug trafficking offences have been instituted against them *[s.3(1)(a)(ii)]*.

(3) Those proceedings have not been concluded *[s.3(1)(a)(ii)]*.

(4) They have absconded *[s.3(1)(a)(ii)(B)]*.

(5) Six months have elapsed from the date they absconded *[s.3(2)(c)(i)]*.

(6) Their exact whereabouts are not known and reasonable steps have been taken to give them notice of the proceedings *[s.3(2)(c)(ii)(B)]*.

(7) They could have been convicted of a drug trafficking offence or offences *[s.3(2)(c)(iii)]*.

(8) They benefited from drug trafficking *[s.3(3)]*.

If items (1) to (8) are satisfied, then I have to determine :

(A) The value of their benefit *[ss.3(5), 5, & 6(1)]*.

(B) The amounts of the confiscation orders *[s.3(6)]*.

(C) The amounts that might be realised for the purposes of the making of the certificates *[s.6(2)]*.

In R. v. Ko Chi Yuen [1993] 2 HKCLR 101 at p.104, Leonard J. suggested how the s.5 statement should be drafted, he said :

> "In my view, a s.5 statement should be drafted in the same way as a Notice to Admit Facts. The prosecution should set out clearly and simply in a series of numbered paragraphs the allegations of fact upon which it relies. There should be no recital of hearsay or expression of opinion. Schedules and annexures, such as bank statements may be incorporated by reference."

Leonard J.'s views were made before the 1995 amendments permitting a confiscation order to be made against dead or absconding persons. In such cases, the conditions that must be satisfied, i.e. the person has absconded or the person could have been convicted of a drug trafficking offence, must, by necessity, be put forward in hearsay form.

In these applications the Secretary for Justice has filed and relies on the s.5 statement of Detective Senior Inspector Tse Leung Wah, dated 14 October 1998. I have also heard oral evidence from :

(1) Lee Wai Kwong, Lee Chau Ping's brother.

(2) Tsang Pui Sheung, Tam Wai Hung's estranged wife.

(3) Yu Yem Kin.

(4) Senior Inspector Ho Tze Ming, of the Hong Kong Police Force.

(5) Sgt. Thomas Hansen, of the Royal Canadian Mounted Police.

(6) Chief Inspector Cheung Yui Mo, of the Hong Kong Police Force.

(7) Mark Bowra a Certified Public Accountant with the Forensic Accounting Division of Messrs Peat Marwick, Certified Public Accountants in Hong Kong.

That the application is made by the Secretary for Justice

As to the first condition, I am satisfied that the application is made by the Secretary for Justice. Order 115, r.2A of the Rules of the High Court provides for the Secretary for Justice to make an application by way of originating summons for a confiscation order under s.3 where the person has died or absconded. An ex-parte originating summons in these applications was filed in the High Court by the former Attorney General on 23 December 1996.

That proceedings for a drug trafficking offence have been commenced against the defendants

As to the second condition, s.2(1) of the *Ordinance* defines a "drug trafficking offence" to mean :

"(a) any of the offences specified in Schedule 1;

(b) conspiracy to commit any of those offences;

.....

(e) aiding, abetting, counseling or procuring the commission of any of those offences."

Section 2(11) defines when proceedings for an offence have been instituted in Hong Kong. It includes under s.2(11)(a), when a magistrate issues a warrant or summons under s.72 of the *Magistrates Ordinance* in respect of the offence.

Warrants for Lee Chau Ping's arrest were issued on 30 September 1992, containing two counts (Exhibit 5) and 11 December 1992, containing 20 counts (Exhibit 6) alleging that she committed offences of conspiracy to manufacture a dangerous drug, conspiracy to traffic in a dangerous drug, and trafficking in a dangerous drug. A warrant for Tam Wai Hung's arrest was issued on 14 November 1992 (Exhibit 7) alleging that he committed an offence of conspiracy to manufacture a dangerous drug and an offence of conspiracy to traffic in a dangerous drug. These are all drug trafficking offences listed in Schedule 1 of the *Ordinance*. I am satisfied that the second condition has been proved.

That the proceedings against the defendants have not concluded

As to the third condition, s.2(12A) defines when proceedings have concluded in respect of persons who have absconded

"An application for a confiscation order made in respect of a defendant where section 3(1)(a) (ii) or (7) [defendant dies or absconds after conviction] is applicable is concluded -

(a) if the High Court (now the Court of First Instance of the High Court) or the District Court decides not to make such an order, when it makes that decision; or

(b) if such an order is made as a result of that application, when the order is satisfied."

No order has yet been made by the Court of First Instance and I am satisfied that the proceedings have not been concluded.

Section 3(15) permits the 1995 amendments to operate against persons who absconded before 1 September 1995. It reads :

"(15) Where -

(a) before the commencement of the *Drug Trafficking (Recovery of Proceeds) (Amendment) Ordinance 1995*, proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded because that person has absconded; and

(b) immediately before that commencement, any realizable property of that person is the subject of a charging order or restraint order,

- then the provisions of this *Ordinance* as amended by that *Ordinance* shall apply in relation to that person ..."

I am satisfied that the s.3(15) conditions are proved. Proceedings against Lee Chau Ping and Tam Wai Hung were instituted by the issue of the warrants for their arrest. They have not concluded, because they absconded. On 29 September 1992 the High Court made an ex-parte restraint order in respect of their realizable property and on 9 October 1992 an inter partes restraint order was made. On 22 October 1992 an ex-parte restraint order was made against Gooders Trading Ltd. and on 4 November 1992 an inter partes restraint order was made against Gooders Trading Ltd. None of the restraint orders have been discharged. On 15 March 1994 an order was made appointing receivers to manage the property covered by the restraint orders.

That the defendants have absconded

As to the fourth condition, s.2(1) defines "absconded" as follows :

"'absconded', in relation to a person, includes absconded for any reason whatsoever, and whether or not, before absconding, the person had been -

(a) taken into custody; or

(b) released on bail."

Here, the following facts are relevant. Lai Chi Ming ("Ming Ming") who helped with the first ice factory in Jiangmen was arrested in the mainland on 19 May 1992. On 9 September 1992 Wong Moon Chi's residence was searched.

Chief Inspector Cheng testified that Yu Yem Kin's flat at Grandeur Villa was searched on 14 September 1992. A man, Yu Wing Kwong, who was wanted in a murder case in the USA, was arrested and several women were taken in for questioning. The search was reported in the newspapers. Newspaper articles that refer to this search were found in Lee Chau Ping's house in Vancouver. *[Exhibit 27/B/494-501]*

Yu Yem Kin was arrested on 21 September 1992. On 21 September in Vancouver, that is 22 September in Hong Kong, a Hong Kong lawyer told Lee Chau Ping that Yu had been arrested. *[s.5 statement, p.58, para.244]*

On 28 September 1992 Tam Wai Hung called Au Keung Wah, and said that he was in trouble and had to leave Hong Kong. *[s.5 statement, p.57, para.240]* He has not been heard of since.

On 29 September 1992, when the Royal Canadian Mounted Police searched her residence in Vancouver, Lee Chau Ping knew that she was wanted by the Hong Kong Police and was suspected of committing offences in Canada. She has not been heard of since 10 October 1992 when Hui Hoi Wah saw her in Thailand.

I am satisfied that the evidence shows that Lee Chau Ping and Tam Wai Hung absconded in September - October 1992. A strong inference may be drawn that they absconded because they knew that other members of their ice manufacturing and trafficking syndicate had been arrested in Hong Kong and the mainland, and that their arrests were imminent.

That the defendants have absconded for not less than six months

As to the fifth condition, under s.3(2)(c)(i), I must be satisfied that the defendants absconded and that not less than six months have elapsed beginning with the date, which in my opinion, is the date on which they did so. I am satisfied that more than six months have elapsed since Lee Chau Ping and Tam Wai Hung absconded in September - October 1992.

That the exact whereabouts of the defendants are not known and reasonable steps have been taken to give them notice of the proceedings

As to the sixth condition, s.3(2)(c)(ii)(B) provides that, if a person's exact whereabouts are not known, then reasonable steps must have been taken to give him notice of "those proceedings". In his judgment, Findlay J., at p.3 D-F, observed that the phrase "those proceedings" appears to refer to the proceedings for the prosecution of a drug trafficking offence, not the proceedings for an application for a confiscation order.

Lee Chau Ping's brother, Lee Wai Kwong, does not know where she is and Tam Wai Hung's estranged wife, Tsang Pui Sheung, does not know where he is.

Evidence of the steps taken to notify Lee Chau Ping and Tam Wai Hung of the proceedings was given by Chief Inspector Cheng Yiu Mo, Senior Inspector Ho Tze Ming of the Hong Kong Police Force and Sgt. Tom Hansen of the Royal Canadian Mounted Police. It includes the facts that :

- Warrants for their arrest have been issued.

- Lee Chau Ping is the subject of an Interpol Red Notice.

- Both are on the "wanted" list of the Criminal Record Bureau.

- Both are on the Immigration Department's "stop" list.

- The Immigration Department's movement records do not show that they have entered Hong Kong in recent years.

- Repeated unsuccessful enquiries have been made of their family members as to their whereabouts.

- The Narcotics Bureau have requested assistance to locate them from the Public Security Bureau in the mainland, The Royal Thai Police, The Royal Canadian Mounted Police, the United States Drugs Enforcement Agency office in Bangkok and the Investigation Bureau of the Taiwanese Ministry of Justice.

Sgt. Hansen's statement, at para.11, which he read out to me, lists the exhaustive efforts of the Royal Canadian Mounted Police to arrest Lee Chau Ping.

I am satisfied that Lee Chau Ping and Tam Wai Hung's exact whereabouts are not known and that reasonable steps have been taken to notify them of the criminal proceedings instituted against them.

That the defendants could have been convicted of drug trafficking offences

As to the seventh condition; I have already ruled that the applicable standard of proof in relation to this issue is the civil standard of a balance of probabilities.

Summary

The following is a summary of the evidence put before me on this issue :

Yu Yem Kin said he first met Lee Chau Ping in 1978. He identified her photograph. She then worked in the medical clinic of a Dr Yu Hung Kei.

In 1982, in Japan, Yu was convicted of trafficking in ice and sentenced to five years' imprisonment. While in prison he met a Taiwanese prisoner who gave him a detailed hand written formula for making ice [Exhibit 35]. After serving his sentence he returned to Hong Kong and met Lee Chau Ping again.

PNK Development Ltd.

At the end of 1988, Au Keung Wah (a friend of Lee Chau Ping) introduced Tam Wai Hung to Hui Hoi Wah. Lee Chau Ping was present at the introduction. They agreed to set up a business to purchase cloth in China and sell it in Hong Kong. PNK Development Ltd. was incorporated on 22 November 1988 and commenced business on 12 December 1988. PNK's directors were: Tam Wai Hung, Hui Hoi Wah, Au Keung Wah and Cheuk Tak Wah (Lee Chau Ping's husband). Yu said that PNK's directors were all friends or relatives of Lee Chau Ping. Its first three employees were Tam Wai Hung, Hui Hoi Wah, and a receptionist. PNK only did two or three small transactions in cloth and after June 1989 this side of the business ceased.

On 30 November 1988 Lee Chau Ping bought premises at 11th floor, Good Dragon Building, Ki Lung Street, Sham Shui Po, in the name of Newpark Development Ltd., another company she owned. PNK moved into the premises in April 1989.

Lee Chau Ping paid PNK's expenses and the employees' salaries. She made all decisions relating to PNK. Lee Chau Ping and Tam Wai Hung made deposits in PNK's bank account. Lee Chau Ping treated PNK's bank accounts as her own.

In June 1991 Cheung Wing Yan, was hired as a clerk. It was her impression that PNK was a trading company; Tam Wai Hung was the director; and Hui Hoi Wah the manager. When Lee Chau Ping and Yu Yem Kin came to the company they spoke with Tam Wai Hung and Hui. Cheung issued PNK's cheques upon Hui's instructions. The cheques were signed by Tam Wai Hung and Hui.

Yu Yem Kin identified photographs of different equipment and materials found in factories in China, and said that they were purchased by PNK.

On two occasions, 26 October 1989 and 23 August 1990, Lee Chau Ping asked Hui to order silica gel from Leon Trading Company in Castle Peak, Kowloon. Silica gel is used to extract humidity from goods in order to keep them dry. On another occasion Lee Chau Ping asked Hui and Tam Wai Hung to purchase silica gel from a supermarket. Lee Chau Ping paid for the gel. It was taken to PNK's offices and later removed. Yu Yem Kin said that silica gel was packed with the manufactured ice.

Lee Chau Ping asked Hui to order vacuum pumps from Hong Kong Scientific Supplies Ltd. The pumps were delivered to PNK's offices, then they disappeared. Hui never saw any documents relating to the sale of these goods by PNK.

Sometime after June 1989 Lee Chau Ping came to PNK's offices with samples of palladium chloride, funnels and raw silk and asked Hui to look for them.

Hui, instructed Cheung Wing Yan, to order pumps, goggles and funnels from Hong Kong Scientific Company. Hui said they were to be sent to China.

Lee Chau Ping asked Hui to look for palladium chloride in Hong Kong. Hui found that Johnson Matthey Hong Kong Ltd. supplied it, and placed orders for it with them. Between September 1989 to August 1992 Johnson Matthey supplied PNK with 110 kilogrammes of palladium chloride. It came in 100 gram plastic bottles each with a Johnson Matthey label. If the quantity ordered was small, Hui would collect the order; if it was large it would be delivered to PNK's offices. Lee Chau Ping asked PNK employees including Hui to divide it into 50 gram or 25 gram bottles. The palladium chloride was placed in a safe to which Tam Wai Hung and Hui had access.

On 28 April 1992 PNK ordered 45 kilogrammes of palladium chloride from Johnson Matthey. PNK paid for the order. Hui, collected 15 kilogrammes in May 1992 and 5 kilogrammes in July 1992; the balance of 15 kilogrammes was not collected.

Hui said she never saw any documentation relating to the sale of palladium chloride by PNK. Neither did she see anybody take the palladium chloride from PNK's office.

Yu Yem Kin said that during the manufacture of ice, 50 gm and 25 gm of palladium chloride were added to 10 kilogrammes and 5 kilogrammes of ephedrine.

Bottles of palladium chloride sold by Johnson Matthey are shown in photograph no. 36 of Exhibit 13 of the photographs taken of the equipment and material in the Jiangmen factory.

Chan Man Fai, a Government Chemist, said that palladium chloride is used with hydrochloric acid as a catalyst in the manufacture of ice. Twenty grammes of palladium chloride is needed to make one kilogramme of methylamphetamine (ice).

In early 1990 Lee Chau Ping introduced Hui to Chui Lap Man of the Kou Hing Hong Scientific Supplies Ltd. in Hong Kong. From late 1989 to mid-1992, Kou Hing Hong Scientific Supplies Ltd. supplied PNK with funnels, rubber stoppers, face masks, plastic goggles, filters, test papers and vacuum pumps. The goods were ordered by Hui and delivered to PNK's office. Lee Chau Ping arranged for payment for these goods. There are no records of sales of these goods by PNK.

Vacuum pumps and test papers sold on 4 March 1992 by Kou Hing Hong Scientific Supplies Ltd are shown in photographs 31 and 35 of the photographs of the Jiangmen factory. Yu Yem Kin identified the test papers shown in the photographs.

Plastic stoppers sold on 30 March 1992 by Kou Hing Hong Scientific Supplies Ltd. are shown in photograph 30 of the photographs of the Jiangmen factory.

Porcelain funnels sold on 21 May 1992 by Kou Hing Hong Scientific Supplies Ltd. are shown in photograph 31 of the photographs of the Jiangmen factory.

Cheung Wing Yan saw Tam Wai Hung help to move pumps, goggles and funnels purchased from Hong Kong Scientific Supplies Ltd. and Kou Hing Hong Scientific Supplies Ltd. from PNK's offices.

The ice factories

Yu said that in 1988 he found the formula for manufacturing ice [Exhibit 31] which had been given to him by the Taiwanese prisoner in Japan. He asked Lee Chau Ping if she was interested in the formula. She said she was, and Yu gave the formula to her.

In 1988 Yu met his friend, Wat Tan, and Lee Chau Ping at the Ramada Hotel, Wan Chai, Hong Kong. Lee Chau Ping and Wat Tan talked about manufacturing ice. After Lee Chau Ping asked Yu if he was interested in the ice business. He said he was not, but then Lee Chau Ping said she would do it herself and Yu asked for a one third share.

At Jiangmen

Yu said that Lee Chau Ping decided to find a place in the mainland to manufacture ice. Lee Chau Ping was responsible for locating this; Lai Chi Ming ("Ming Ming") assisted her. They found a factory at Jiangmen.

Ming Ming employed the workers for the factory. They were friends of his and natives of Jiangmen.

Ming Ming had connections with the Jiangmen Medicine Factory. He was responsible for purchasing the materials for manufacturing ice, such as ephedrine, palladium chloride, and sodium hydroxide.

At first, the factory was unsuccessful. Yu said that once the Jiangmen factory was successfully producing ice Lee Chau Ping spoke to him about running the business and sharing the profits. Lee Chau Ping was to find customers and receive 66.6% of the profits, she agreed to give him 33.3% of profits, after deducting expenses

Tam Wai Hung helped her. He received and delivered the ice in Hong Kong. Yu identified Tam's photograph.

Most of the materials and equipment for the factory at Jiangmen were purchased in the mainland. It produced about 1400-1500 kg of ice. Yu received about HK$10,000,000 from the sale of this ice. Lee Chau Ping's 66.6% share of the profit from the Jiangmen factory would have been about $20,000,000.

At Shilong

Yu said that Lee Chau Ping spoke to him about problems at the Jiangmen factory. It was very smoky which aroused suspicion, and Ming Ming had secretly sold some of the ice. Lee Chau Ping wanted to get rid of Ming Ming, and she asked Yu to move the factory to another place. She also asked Chan Wai Tong (nicknamed "Li

Chai"), Wong Moon Chi and Wong Pui to help. Yu said it was Wong Moon Chi who found the factory in Shilong.

Chan Wai Tong arranged for the equipment and one ton of chemicals to be moved from the Jiangmen factory to Shilong. The factory was set up in about July-August 1991. Lee Chau Ping taught the workers how to make ice. Yu said Lee Chau Ping and he visited the factory about 3-4 times. Later he took over running the Shilong factory, including buying equipment and materials. There were difficulties in obtaining suitable equipment and materials in China. Lee Chau Ping purchased them in Hong Kong in PNK's name.

Yu arranged for his friend, Chiu Man Song, to smuggle the ice from Shilong to Sha Tau Kok and hand it over to NG Man Shing. He smuggled it to Hong Kong, where it was handed to Tam Wai Hung. Yu had a buyer, Lam Kwok Chan. At first, Lam placed orders for ice with Yu, later, he approached Tam Wai Hung directly. He bought about 500-600 kilogrammes of ice and paid Tam Wai Hung in cash. If Lam placed an order for more than 30 kilogrammes of ice, Tam Wai Hung would notify Yu. Later, Lee Chau Ping asked Lam to carry ice to the Philippines to hand it to her buyer there. He was paid $7,000 per kilogramme for doing this.

Yu said that the Shilong factory produced about 500 kg of ice in the first one or two months of operation, Lee Chau Ping and he shared the profits equally. They agreed to give 3% of the ice to Wong Pui, 3% to another and 6% to Chan Wai Tong. After paying expenses, he earned about $2,000,000 from the sale of his share of the ice made at Shilong. Lee Chau Ping's share of the profits would have been about $4,000,000.

At Taixu

Yu then had a disagreement over money with Chan Wai Tong, he told Lee Chau Ping that she should look for another factory.

Yu said that Chiu Man Song suggested going to his home town in Taixu, Fuzhou. Chiu found a place in Taixu, and the factory in Shilong was closed. Chiu employed the workers at the factory and Lee Chau Ping taught them how to make ice. Once it was operational, Lee Chau-ping purchased one ton of materials from Ming Ming. The factory produced about 500 kg of ice from these.

Lee Chau Ping and Yau Cho Yick were responsible for transporting the ice from the factory by boat.

Chiu Man Song and another worker at the factory, Yu Chin Pang, received 15% of ice made at Taixu. Yu said he and Lee Chau Ping shared the profits equally, he got about $3,000,000, her share would also have been about $3,000,000.

Yu said that subsequently, "Siu-Ko", the officer-in-charge of Public Security Bureau office in Taixu changed, and there were complaints about the smell from the factory.

At Longmen Village

Chiu Man Song suggested moving the factory to a factory in Changle, Xian. He and "Siu-Ko" were from that village. Yu inspected the place and asked Chiu to build the factory. The equipment from the Taixu factory was moved to Longmen.

Lee Chau Ping came to the factory and taught the workers how to manufacture ice. At first, they were unsuccessful and there was a lot of smoke. Lee Chau Ping asked her friend, Yung So Chat, ("Ah Kwok"), a Thai, for technical assistance. This worked and the factory made 1000 kg of ice from about two tons of raw

material. Public Security Bureau officers found about 300 kilogrammes of this when they raided the factory. About 700 kilogrammes of ice was sold.

Yu and Lee Chau Ping were to have shared the profits equally, but Yu didn't receive his share because he was arrested in September 1992. Yu estimated that Lee Chau Ping's net profit from the ice sold to be about $10,000,000.

At Zhanggang

During the time ice was being made at Longmen Village, Yu set up another ice factory in Zhanggang in a former salt factory. He said this factory only made ice up to the first stage of the manufacturing process.

The involvement of Chiu Pak Wing

Chiu Pak Wing had been a drug trafficker since 1988. He transported ice from Hong Kong to the Philippines for sale there.

In November 1989 he was introduced to Peter Chan ("Chan"). They gambled together and Chan borrowed money from Chiu. Chan told Chiu that he had a friend, "Ah Chi", in Hong Kong who could repay the money owed and supply him with ice.

In December 1989, after Chiu returned to Hong Kong, Wong Moon Chi, also known as "Ah Chi", called him and said he was Chan's friend. They met at the '123 Restaurant' in Mongkok. Chiu asked for repayment of the money Chan owed him; Wong said he would be repaid. Chiu told Wong he could sell 30 to 40 kilogrammes of ice in the Philippines every month. Wong said his syndicate could supply it and his boss "Ah Che" would talk to Chiu. When Chiu returned home at midnight Wong called him and told him to go to the Pok Hong Restaurant, Shatin, that day. Chiu went to the restaurant and met Wong who took him to a table where Lee Chau Ping and a man were seated. She was introduced to Chiu as "Ah Che" and gave Chiu the money Chan owed him. He told her that he needed 30 to 40 kilogrammes of ice a month, but the price had to be low and the ice of good quality. Lee Chau Ping said that she could meet his needs as she had a factory in China. She said she transported "goods" to the Philippines and Japan and buyers found her ice was good. She said she could supply any quantity of ice at HK$29,000 per kilogramme.

Charges 1 and 2 warrant dated 11 December 1992.

About two days later Chiu picked up about 30 grammes of ice from Wong as a sample given by Lee Chau Ping. He took it home, tested it and found it to be good quality ice. He confirmed this with Wong and said he would order an initial 10 kilogrammes.

Charges 3 and 4

In mid-January 1990 Chiu met Wong to discuss the first order. They drove to the Chuk Yuen Estate with an unknown man. He left the car and returned with a bag that he put in the boot of Chiu's car. Chiu examined the ice inside the bag and handed HK$290,000 to Wong. Packed within the 10 kilogrammes of ice were paper bags of silica gel. Chiu took the ice to the Philippines in a karaoke machine and handed it to P.K. Yuen.

Charges 5 and 6

In March 1990 Chiu placed a second order for 10 kilogrammes of ice with Ah Chi. Chiu parked his car in Middle Road Carpark, Tsimshatsui, and gave the parking permit, the car key and HK$290,000 to Ah Chi. The next day Ah Chi called Chiu and told him where his car was. He went there, inside the car's boot he found a bag containing ice. He took the ice to the Philippines and gave it to P.K. Yuen.

After this transaction, there was a period of six months during which Chiu had no transactions with Ah Chi.

Charges 7 and 8

In October 1990 Chiu telephoned Wong to arrange a third order of 10 kilogrammes of ice for HK$290,000. Chiu parked his car in the Energy Plaza Car Park and handed Wong the keys and $290,000. The next day Wong called and told him to pick up his car at the Middle Road Car Park. Chiu took the ice to the Philippines in a karaoke machine and gave it to P.K. Yuen.

Charges 9 and 10

In October 1990, shortly after the third order, Chiu called Wong and asked for more ice. He met Wong at the Energy Plaza and gave him HK$290,000 and the car keys. The next morning Wong called and said that the car was at Middle Road Car Park. Inside the boot of the car was a black bag with 10 packets of ice. Chiu hid the ice in a karaoke machine and took it to the Philippines where he gave it to P.K. Yuen.

Charges 11 and 12

In late October 1990 Chiu phoned Wong to place a fifth order of 10 kilogrammes of ice. Wong did not answer the call and Chiu left a message. Later, Lee Chau Ping called Chiu and said that she would deal with this transaction as Wong was not in Hong Kong. At an arranged time and place, Chiu met Lee Chau Ping and gave her HK$290,000, the car keys and the parking permit. The next day Lee Chau Ping telephoned Chiu and told him where the car was. In it were 10 packets of ice packed in an identical
manner to those in the earlier transactions with Wong. Later, Lee Chau Ping telephoned Chiu and asked if things were all right. Chiu hid the ice in a karaoke machine and took it to the Philippines.

Charges 13 and 14

In mid-January 1991 Chiu telephoned Ah Chi and placed a sixth order for 20 kilogrammes of ice. Later, Lee Chau Ping called Chiu and arranged a meeting at Hotel Nikko in Hong Kong. Chiu parked his car at Middle Road Car Park and took a taxi to the hotel. There he gave Lee Chau Ping a manila envelope containing HK$580,000, the car keys and the parking permit. During their discussion, Lee Chau Ping offered to supply ice directly to Chiu in the Philippines at the rate of 100 kilogrammes per month at a price of HK$42,000 per kilogramme.

The next day Lee Chau Ping called Chiu telling him where his car was. Chiu picked up the car and found 20 packets of ice in two black bags inside it. The ice was shipped in the usual manner to the Philippines.

Charges 15 and 16

In March 1991 Chiu ordered a seventh shipment of ice. He told Lee Chau Ping he wanted 10 kilogrammes on credit because he didn't have money. Later, Lee Chau Ping met Chiu at the Energy Plaza and collected his car keys and parking permit. She gave him her bank account number and her surname and agreed that he could remit the purchase price to her from the Philippines. The next morning she phoned him and said his car was at

the Middle Road Car Park. Inside the boot of the car was a black bag containing ice. Chiu took it to the Philippines and there remitted HK$290,000 to Lee Chau Ping's bank account.

Charges 17 and 18

In May 1991 Chiu phoned Wong to place an eighth order for 10 kilogrammes of ice. Wong met Chiu and collected the money and the car keys. The next day, 10 kilogrammes of ice were transferred in the same manner as before. Chiu hid the ice in a karaoke machine and took it to the Philippines, where he handed it to P.K. Yuen.

Charges 19 and 20

On 20 June 1991 CHIU called Ah Chi to place the ninth order for 10 kilogrammes of ice. Ah Chi met Chiu at Middle Road Car Park and collected the money, the car key and parking permit. In the afternoon of 21 June 1991 Chiu went to Middle Road car park and met Ah Chi. They examined the ice in the boot of the car. Chiu took the ice home and packed it in a karaoke machine. Later that day the Police arrested him.

Yu Yem Kin said that Wong Moon Chi purchased ice from Lee Chau Ping and him.

Shipments of ice to the Philippines

In early 1991 PW 2, Yau Cho Yick, met Lee Chau Ping in Aberdeen. They had known each other years' before. He told her that he had a fishing boat and could carry goods and asked her if she had any business for him. Yau's partner in the boat was So Leung. She told him to visit her office in Guangzhou City. He went there in mid-1991 and met Lee Chau Ping and Yu Yem Kin. Lee Chau Ping said Yu was her partner.

In early 1992 Lee Chau Ping asked him to transport ice for her from China by sea, she would pay him $2,000 per kilogramme. Yau refused, because he did not want to take the risk.

Between April and July 1992 Yau moved goods such as taps, light bulbs, and plastic basins from PNK's offices to Lee Chau Ping's factories in China.

Around May 1992 Lee Chau Ping told Yau to carry "raw materials" from China to waters near the Philippines. He asked So to take their fishing boat to Gangkou, China. There Lee Chau Ping's associates, Ching Chung Ying and Ah Fei, loaded four fruit boxes onto the boat. So sailed to the Philippines with Ah Fei on board supervising the trip. They planned to hand the boxes to another vessel at sea off the Philippines. The boat arrived at the destination and stayed there for three days, but Ah Fei could not contact the other vessel by radio. They returned to Gangkou and the four boxes were returned to Ching Chung Ying and So returned to Hong Kong.

Between May-June 1992, S0 made three attempts to deliver the boxes to vessels at sea off the Philippines. On the fourth attempt, the other vessel arrived and picked up the boxes. During the transfer four packages fell into the sea but were retrieved. So asked Ah Fei what was inside the packages, he said it was ice and the total quantity was about 100 kilogrammes.

Yu Yem Kin said that he paid Yau $50,000 for making these trips to the Philippines.

In August 1992 Lee Chau Ping telephoned Yau Cho Yick and asked him to transport "raw materials" and "finished products" from Fuzhou City to a vessel at sea. Yau knew that by "finished products" she meant ice. He learnt from "Ah Ying", Lee's associate in Fuzhou, that there were two tons of ephedrine and 310 kilogrammes of ice. In September 1992, on Yau's instruction, So went to Fuzhou City to hire a boat to transport the ice from Fuzhou City to Xisha. While he was in Fuzhou City Ching Chung Ying, another of Lee's associates told him,

that the Public Security Bureau was watching him (Ching). So told Yau about this and then went to Gangkou from where he returned to Hong Kong by boat. On returning to Hong Kong, on 29 September 1992, he was arrested.

Arrests and Searches

On 25 May 1992 Lee Chau Ping and her family left Hong Kong and immigrated to Canada. After she arrived in Canada she telephoned Hui Hoi Wah and told her that she wanted to wind-up PNK. She told Hui to call Yu Yem Kin concerning the disposal of the 15 kilogrammes of palladium chloride stored in PNK's offices. Yu told Hui to give the palladium chloride to Tam Wai Hung.

In late May 1992 Lai Chi Ming ("Ming Ming") was arrested in the mainland.

On 19 May 1992 Public Security Bureau officers in Jiangmen City, searched the factory in Jiangmen. They arrested a number of people, and seized 112.9 kilogrammes of ice and chemicals, including ephedrine. On 28 August a sample of 250 grammes was analysed at the Criminal Scientific Technology Identification Section, of the Public Security Bureau, the analysis confirmed it to be ice.

On 19 August 1992 Narcotics Bureau officers went to Jiangmen and took photographs of the factory and the ice seized by the Public Security Bureau. The photographs were shown to Ho Tak Ching, who worked for Johnson Matthey. She recognized the containers of palladium chloride to be Johnson Matthey's products. Chiu Lap Man, who worked for Kou Hing Hong Scientific Supplies Ltd. recognized the laboratory equipment as being that sold by Kou Hing Hong Scientific Supplies Ltd. to PNK.

The photographs were also shown to Yu Yem Kin. He said :

1. photograph no. 4 - shows the steel bucket used after the first manufacturing process, ephedrine, palladium chloride and hydrogen were put in the bucket;

2. photograph no. 26 - shows light bulbs used to dry the ice;

3. photograph 31 - shows the vacuum pump purchased from Hong Kong Scientific Company, and glass bottles similar to those purchased from Kau Hing Scientific Company; and

4. photograph no. 35 - shows test papers purchased from Kau Hing Scientific Equipment.

On 24 August 1992 Narcotics Bureau officers searched PNK's office and took photographs and seized a bundle of documents containing information on different kinds of chemicals and chemical equipment. The office was abandoned. Yu Yem Kin was shown these documents, he said they were records of expenses for purchasing materials for the manufacture of ice at the Jiangmen factory.

On 9 September 1992, Narcotics Bureau officers searched Wong Moon Chi's residence at Prince Edward Road, and seized two invoices for the purchase of a refrigerator and chemicals, including hydrochloric acid, sodium hydrochloride, sodium hydroxide and sodium chloride. All these chemicals are used to manufacture ice.

On 30 September 1992, Narcotics Bureau officers searched Hui Hoi Wah's flat in Hong Kong and four invoices sent by Kou Hing Scientifc Supplied Ltd. to PNK between 4 March 1992 and 21 May 1992, and PNK's Cash Book.

On 30 September 1992, acting upon the information provided by Narcotics Bureau, Public Security Bureau officers searched the abandoned factory at Longmen village. They found five refrigerators, a generator, four

ventilation fans, 31 boxes of ice; each containing 10 packets, 140 boxes of ephedrine, an electronic scale and a sealing machine. On 1 October 1992 they searched the factory at Zhanggang and found a quantity of ice and ephedrine.

On 6 November 1992 NB officers searched PNK's office for the second time. They found photographs of Yu Yem Kin, 16 chemistry books, scales, and four sheets of technical notes. The Government Chemist said these describe the process of converting ephedrine into ice.

Yu Yem Kin was shown the notes and said they were the formula for manufacturing ice that he had obtained from the Taiwanese prisoner in Japan and later given to Lee Chau Ping.

On 24 November 1992 Narcotics Bureau officers went to Fuzhou City to investigate Lee Chau Ping's case and took photographs of the exhibits and the ice seized by the Public Security Bureau. Yu Yem Kin was shown these, he said that :

1. photograph 3 showed bottles purchased from Kau Hing Scientific Equipments,

2. photographs 5-8 showed sundries and switches purchased from the Yuen Kee Metal Co,

3. photograph 15 - showed silica gel purchased by PNK in Hong Kong,

4. photograph 16 showed electric light bulbs used to dry ice, and

5. photograph 23 - showed a shaking machine used to shake the steel bucket after chemicals were added.

Tam Wai Hung's escape

On 28 September 1992 Tam Wai Hung telephoned Au Keung Wah, and said that he was in trouble and had to leave Hong Kong.

On 29 September 1992 Narcotics Bureau officers searched Tam Wai Hung's flat at A, 7/F, Block 4, Grandeur Villa, Yau Yat Chuen, Kowloon. Inside were Tam Wai Hung's estranged wife, Tsang Pui Sheung, and two other people, Tam was not there. During the search of the premises invoices and receipts from Kou Hing Hong Scientific Supplies Ltd. were found.

Lee Chau Ping's escape

On 14 September 1992 Narcotics Bureau officers searched Yu Yem Kin's residence and on 21 September 1992 he was arrested in Hong Kong.

On 21 September 1992 Hui Hoi Wah visited Lee Chau Ping in Vancouver. Hui intended to return to Hong Kong on 29 September 1992.

On 21 September 1992, in Vancouver (22 September in Hong Kong), Lee Chau Ping received a telephone call from a lawyer in Hong Kong telling her that Yu Yem Kin had been arrested. Lee Chau Ping told Hui, that PNK was being investigated.

On 29 September 1992 Sgt. Hansen and other Royal Canadian Mounted Police officers searched Lee Chau Ping's house at 151 West 45th Avenue, Vancouver, Canada. Lee Chau Ping, her parents, and Hui Hoi Wah, were there. Sgt. Hansen spoke of the seizure of exhibits inside the residence, including a note book and sheets of accounts. Yu Yem Kin identified entries in these. He said that the accounts sheet, were signed "Mei", a name

used by Hui Hoi Wah. The message at the bottom was addressed to "Elder Sister", Hui called Lee Chau Ping her elder sister.

After the Royal Canadian Mounted Police search on 29 September 1992 Lee Chau Ping was seen to leave the house and not return until the next morning. She told HUI that she needed to go away for a while and told Hui to go to Thailand.

Sgt. Hansen said that on 30 September 1992 Royal Canadian Mounted Police surveillance officers observed Lee Chau Ping in Vancouver. She visited a bank safety deposit box in the Canadian Imperial Bank of Commerce on Main Street and a law office in Chinatown.

On or about 1 October 1992 Hui, in Vancouver called her husband, in Hong Kong. He told her that if she returned to Hong Kong she would be arrested.

Sgt. Hansen said that when he conducted a second search of Lee Chau Ping's house on 7 October 1992, her parents and Hui were present. Her mother said that on 29 September the day after the previous search Lee had left the house saying she was going to get groceries, she never returned.

On 7 or 8 October 1992 Hui went to Thailand and met Lee Chau Ping. Lee Chau Ping told her that Ming Ming ("LAI Chi Ming") had been arrested in China for manufacturing ice. Lee Chau Ping told Hui that when Yu Yem Kin was in prison in Japan he obtained the formula for making ice and she had taught the formula to Ming Ming in Jiangmen, and to people in Fuzhou City.

Hui also said that at the end of 1992, when she was in Singapore, she had watched a television program about ice and seen Ming Ming featured in the programme. Lee Chau Ping had then telephoned her and told her that she, Lee Chau Ping, had to go because everything had been exposed.

Immigration Department records

Immigration Department records for the period 1 January 1987 to 31 December 1997 show that Lee Chau Ping and Tam Wai Hung frequently traveled to the mainland and Macau and that they traveled together on seven occasions between 6 September 1990 to 10 February 1992.

Determination

From the above, I am satisfied that the evidence is sufficient to prove on a balance of probabilities that Lee Chau Ping could have been convicted of the drug trafficking offences set out in the two warrants of arrest against her. Likewise, I am satisfied that the evidence is sufficient to prove on a balance of probabilities that Tam Wai Hung could have been convicted of the two drug trafficking offences set out in the warrant of arrest against him.

That the defendants benefited from drug trafficking

Definitions

As to the eighth condition, s.3(3) refers to "drug trafficking" not to "drug trafficking offence of which he was convicted". "Drug trafficking" is defined in s.2 to mean :

"doing or being concerned in, whether in Hong Kong or elsewhere, any act constituting a 'drug trafficking offence', or an offence punishable under a corresponding law, committed in Hong Kong, as well as an offence committed elsewhere."

Therefore, my determination of whether Lee Chau Ping and Tam Wai Hung benefited from drug trafficking is not confined to the proceeds arising from the particular offences of which each could have been convicted. For which I rely on the English authorities of R. v. Dickens [1990] 2 WLR 1385 (CA) and R. v. Tredwen [1994] 99 CAR 154 (CA) at 157. Though in these applications the distinction is not relevant since their benefits relate to the offences of which they are accused.

Section 4(1) defines a person's proceeds of drug trafficking :

"4(1). For the purposes of this *Ordinance* -

(a) a person's proceeds of drug trafficking are -

(i) any payments or other rewards received by him at any time...in connection with drug trafficking carried on by him or another; and

(ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and

(b) the value of the persons proceeds of drug trafficking is the aggregate of the values of -

(i) the payments or other rewards; and

(ii)that property."

Under s.3(4) a person who has at anytime received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

Assumptions

For the purpose of determining whether Lee Chau Ping and Tam Wai Hung benefited from drug trafficking, and if they did, of assessing the value of their proceeds of drug trafficking, I may make the assumptions contained in s.4(3), namely :

"(a) that any property appearing to the court -

(1) to have been held by him at any time

(A) since his conviction;

(B) where section 3(1)(a)(ii) [person absconded or died] is applicable, since the application was made for a confiscation order in his case; or

(ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him -

was received by him, at the earliest time at which he appears to the court to have held it, as his proceeds of drug trafficking.

(b) that any expenditure of his since the beginning of that period was met out of his proceeds of drug trafficking; and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as his proceeds of drug trafficking, he received the property free of any other interests in it."

The burden is upon the defendant to prove, on a balance of probabilities, that the assumptions are incorrect. In these applications, since Lee Chau Ping and Tam Wai Hung are not present to rebut the assumptions, they must stand. However, it is not necessary for me to rely solely upon the assumptions since I have Yu Yem Kin's evidence of Lee Chau Ping's and Tam Wai Hung's profits from drug trafficking.

Standard of Proof

Under s.3(12) the standard of proof required to determine whether person benefited from drug trafficking is a balance of probabilities. [see R. v. Dickens at p.1388]

Benefit

Lee Chau Ping

The following is a summary of the estimated quantity of ice manufactured at the various ice factories set up by Lee Chau Ping and Yu Yem Kin, and the net profit Yu claimed to have received :

Location	Established	Quantity of Ice Produced	Yu's Share of the profit	Percentage share
Jiangmen	mid 1989	1400-1500 kg	$10,000,000	33.3%
Shilong	July/Aug 1991	500 kg	$2,000,000	50%
Taixu	late 1991	500 kg	$3,000,000	50%
Longmen Village	early 1992	1,000 kg (700 kg sold)	Nil	Nil

Yu did not share in the proceeds of the 1,000 kg of ice manufactured at the factory in Longmen Village because he was arrested in September 1992. According to Yu, Lee Chau Ping's net profit from the 700 kg of ice produced and disposed of by this factory before it was raided by the Public Security Bureau, was $10,000,000.

Based upon Yu's evidence, Lee Chau Ping's estimated profit from manufacturing ice is :

Factory Location	%Share Of Profit	Net Proceeds
1st ice factory Jiangmen	2/3	$20,000,000
{ 2nd ice factory	{ 1/2	{ $4,000,000

Shilong		
{	{	{
3rd ice factory	1/2	$3,000,000
Taixu		
{	{	{
4th ice factory	Whole	$10,000,000
Longmen village		
{	{	{
Total	{	$37,000,000

The 5th ice factory at Zhanggang, failed to produce any ice suitable for sale.

Tam Wai Hung

Yu said Tam Wai Hung paid Lee Chau Ping and him about $23,000 per kilogramme, and Tam sold it for about $30,000 per kilogramme. Yu said that Tam purchased about 2,000 kilogrammes of ice from them. Based on that, Tam's estimated net proceeds of drug trafficking would be at least ($30,000 - $23,000) x 2,000 kg = $14,000,000.

I am satisfied that Yu Yem Kin's evidence shows on a balance of probabilities that Lee Chau Ping and Tam Wai Hung benefited from drug trafficking.

The value of the benefit

As may be seen from the preceding paragraphs, the information before me shows that Lee Chau Ping's proceeds of drug trafficking was approximately $37,000,000 and Tam Wai Hung's approximately $14,000,000.

The amounts of the confiscation orders

I must now, under s.3(5) of the Ordinance determine in accordance with s.6 the amount to be recovered by means of confiscation orders.

Section 6(1) provides that the amount to be recovered under the confiscation order is the value of the person's proceeds of drug trafficking. Or, under s.6(3), if the amount that might be realised at the time of the confiscation order is made is less than the amount the Court assesses to be the value of his proceeds of drug trafficking, then the amount to be recovered is :

> "(a) the amount appearing to the court to be so realised, or
>
> (b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might be so realised is nil."

The onus is upon the defendant to prove on a balance of probabilities under s.6(3) that the amount that might be realised is less than the value of his proceeds of drug trafficking. See: R. v. Ko Chi Yuen [1993] 2 HKCLR 101, at p.111. In these applications Lee Chau Ping and Tam Wai Hung are not present to take advantage of s.6(3) and to seek to prove that the amounts that might be realised are less than their proceeds of drug trafficking.

There are two means for calculating the amounts of the confiscation orders. Under s.6(1) I can make the orders in the respective amounts of Lee Chau Ping's and Tam Wai Hung's proceeds of drug trafficking, and issue a certificate under s6(2) of the amounts that might be realised. Alternatively, under s.6(3), I can make the orders for the respective amount that might be realised from the realisation of Lee Chau Ping's and Tam Wai Hung's property and issue a certificate under s.6(2) of the amounts that might be realised. Mr. Blanchflower submits that I should make the orders under s.6(1) as Lee Chau Ping and Tam Wai Hung are unable to satisfy me that the amounts that might be realised is less than their proceeds of drug trafficking.

Amounts that might be realised

Definitions

For purposes of a certificate made under s.6(2) the amount that might be realised at the time a confiscation order is made against the person is defined in s.7(3) to mean :

> "(a) the total of the values at that time of all the realisable property held by the person, less
>
> (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total of the values at that time of all gifts caught by this *Ordinance*."

Section 7(7) defines when an obligation has priority where court orders have been made against the person. It reads :

> "(7) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to
>
> (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
>
> (b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts."

Central to the determination of the amounts that might be realised is the definition of "realisable property" in s.7(1), the definition of that term is :

> "(a) any property held by the defendant;
>
> (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this *Ordinance*; and
>
> (c) any property that is subject to the effective control of the defendant."

"Property" is defined in s.2 to include both movable and immovable property within the meaning of s.3 of the *Interpretation and General Clauses Ordinance*.

Lee Chau Ping

I turn now to Lee Chau Ping's property.

Firstly there is the property she held in her own name. Section 7(1)(a) relates to this and for the purposes of that sub-section, s.2(7) provides that property is 'held" by any person if he holds any interest in it. Under s.2(1) an "interest" in relation to property, includes a right. The sum of $409,242,73 is held by the Receiver's in a bank account, together with the accrued interest, this represents Lee Chau Ping's property and is an amount that can be realised. *[s.5 statement, p.79 para.329]*

Companies

Secondly there is the property held in various companies she controlled. The evidence and information before me and particularly that of Mr Mark Bowra, who sets out the relationship between Lee Chau Ping and these companies shows that PNK Development Ltd., Newpark Investment Ltd., Wah Luen Hong, King Development Ltd., Youthtown Investment Ltd., and Gooders Trading Ltd., were all owned or controlled by Lee Chau Ping.

The general common law principle is that a company is a separate legal entity and must be treated like any other independent person with its own rights and liabilities distinct from those of its shareholders. See : Salmon v. Salmon & Co [1897] AC 22 (HL). However, the corporate veil may be lifted if there is a *prima facie* case that a defendant controlled the company, or that the company has been used for crime and that the company's accounts benefited a defendant. In Re H and others (restraint order : realisable property) [1996] 2 All ER 391, Rose LJ said at p. 402, line A :

> "As to the evidence, it provides a prima facie case that the defendants control these companies; that the companies have been used for fraud, in particular the evasion of excise duty on a large scale; that the defendants regard the companies as carrying on a family business, and that company cash has benefited the defendants in substantial amounts."

He concluded at p.402 e

> "In all the circumstances, I am entirely satisfied that it is appropriate to lift the corporate veil in this case and to treat the stock in the companies' warehouses and the motor vehicles as property held by the defendants."

PNK was principally used for Lee Chau Ping's drug trafficking activities. It was used to purchase equipment and chemicals used to manufacture ice. For example, from October 1989 to April 1992 PNK paid Johnson Matthey $2 million for palladium chloride. Her proceeds from manufacturing and trafficking in ice paid PNK's expenses and she treated PNK's accounts as hers. The other companies were financed from the proceeds of her drug trafficking, and were controlled by her and used for her convenience and profit. I am satisfied that the property belonging to these companies is Lee Chau Ping's property and represent amounts that might be realised.

Gifts

Thirdly there are gifts she made to her husband, Cheuk Tak Wah, and to Hui Hoi Wah her so-called "office assistant".

A gift is caught under s.7(9) if :

> "(a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or
>
> (b) it was made by the defendant at any time and was a gift of property -

(i) received by the defendant in connection with drug trafficking carried on by him or another; or

(ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection."

The value of a gift caught by the *Ordinance* is calculated in accordance with the provisions of s.7(5), which provides :

"(5)Subject to subsection (10), references in this *Ordinance* to the value at any time (referred to in subsection (6) as "the material time") of a gift caught by this *Ordinance* or of any payment or reward are references to -

(a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (6) applies, the value there mentioned, whichever is the greater."

and s.7(10) provides :

'(10) For the purposes of this *Ordinance* -

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and ..."

It is not necessary that the gift is still in the possession of the recipient, so long as it comes within s.7(9), see R. v. Dickens (above) at 1392D-1393

Cheuk Tak Wah

At pages 79-83 (paras. 332-349), the s.5 statement gives details of the gifts Lee Chau Ping made to her husband Cheuk Tak Wah. For the purposes of s.7(10)(a), I note that on 5 July 1988 one of her limited companies Youthtown Ltd., purchased a flat and car parking space at Dragon Court in Waterloo Road for $870,000 and "sold" it to Cheuk on 22 November 1989 for the same price -$870,000. I am satisfied that Lee Chau Ping made gifts to Cheuk Tak Wah in the sum of $973,909.09 and that this amount might be realised. The value of the gifts she made to Cheuk Tak Wah have increased due to the accrual of interest. Applying s.7(5), the value of those gifts is their present value, not their value when made.

Hui Hoi Wah

Lee Chau Ping placed substantial sums of money in the hands of this woman.

Under s.7(1)(c) "realisable property" includes property which is subject to the "effective control" of a defendant. Section 7(11) defines what is meant by "effective control" :

"(11) For the purposes of subsection (1) [definition of "realisable property"] -

(a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has -

(i) a legal or equitable estate or interest in the property; or

(ii) a right, power or privilege in connection with the property;

(b) without limiting the generality of any other provision of this Ordinance, in determining -

(i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or

(ii) whether or not there are grounds to believe that property, or an interest in property, is subject to the effective control of the defendant

regard may be had to -

(A) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;

(B) a trust that has a relationship to the property; and

(C) family, domestic and business relationships between person having an interest in the property, or in companies of the kind referred to in sub-paragraph (A) or trusts of the kind referred to in sub-paragraph (B), and other persons."

There can be no doubt that Hui's property which is now subject to restraint was under Lee Chau Ping's effective control *[s.5 statement, pp.87-90]*. The evidence shows that after Lee Chau Ping emigrated to Canada on 25 May 1992, PNK Ltd. was wound down. Hui effectively became Lee Chau Ping's "treasurer" in Hong Kong, receiving and dispersing her money, and accounting to Lee for it in Vancouver. This may be seen from the following items of evidence :

Hui had two bank accounts, a Hang Seng Bank Savings Account No. 329-6-020609, which was opened on 28 January 1992 EX 277/1/2885-2886 and a Hang Seng Bank Flexiphone Account No. 329-043160-888, which was opened 20 July 1992 EX 277/1/2887-2898.

The Royal Canadian Mounted seized from Lee Chau Ping's house in Vancouver :

1. EX 277/1/2884, 2894-2898, statements of Hui's Hang Seng Bank Accounts.

2. EX 26/B/488-493 a "Campus" brand notebook.

3. EX 278/J/3257 a Hang Seng Bank Customer's Receipt dated 1 July 1992 showing a transfer of CND$100,000 (HK$644,700) from HUI to LEE Chau-ping. This was found in her purse.

4. EX 295/J/3331-3333 a hand written accounting sheet, which was found in purple folder in her bedroom.

5. EX 296/J/3334 a Hang Seng Bank Customer's Receipt dated 12 August 1992, showing a transfer of CDN$20,000 (HK$130,440) from Hui to Lee.

6. EX 297/J/3335-3336 a copy of the front and back of a Hang Seng Bank cheque no. 092733 for $150,000 issued by Yu Wing Kwong

Hui's Hang Seng Bank Account No. 329-6-020609 shows the following transactions :

1. A deposit of $900,000 on 30 June 1992. Yu Yem Kin said that he paid this money into the account. The figure is shown in the "Campus" notebook as "30/6 paid Hui HK nine hundred thousand" EX 26/B/489. It is also shown in the Accounting Sheet as "30/6 Yu paid HK dollars" [EX 295/J/3332].

2. A withdrawal on 1 July 1992 of $644,800, this was for a transfer of CND$100,000 (HK$644,700 plus $100 cable charge) from Hui to Lee EX293/J/3324/6. The copy of the Customer's Receipt found in Lee's house relates to this transfer. EX 278/J/3257. And the transfer is shown in the Accounting Sheet as "1/7 telegraphic transfer CDN$100,000" [EX 295/J/3332]. Sgt. Hansen said that this transfer was used to purchase Lee Chau Ping's house at 151 West 45th Avenue, Vancouver on 16 July 1992.

3. Withdrawals of $l5,000 and $31,500 on 1 July 1992. These are recorded in the Accounting Sheet as "Mr Yu withdraw interest on behalf of Tung" and "Pay for Fat Boy's 3 air tickets" [EX 295/J/3332].

4. Deposits on 17 July 1992, these came from Tung Hon Ling, Chau Chi Wing (Tung's husband) and Lai Kei Beauty House. In her statement, Tung said that sometimes Hui gave her money to deposit into PNK's bank account, Tung also said that Lee was a customer of Lai Kei Beauty House, her beauty salon.

5. A deposit on 17 July 1992 of $250,000, this deposit of a cheque drawn on TUNG Hon-ling's Hang Seng Bank account.

Hui's Hang Seng Bank Flexiphone Account No. 043160-888 shows the following transactions :

1. A transfer on 20 July 1992 of $975,000 to a time deposit account. This sum was transferred from Hui's Hang Seng Bank Account no. 329-6-020609 to her Hang Seng Flexiphone Account and then deposited into the time deposit as CDN$l50,000 [EX 277/1/2886; 2895 (b)]. The time deposit is recorded in the Accounting Sheet as "20/7 fixed term 150,000 CDN" [EX 295/J/3332].

2. A deposit of $150,000 on 1 September 1992. A cheque drawn on the account of Yu Wing Kwong dated 28 or 29 August 1992 for $150,000 has endorsed on its reverse "329-043160-888", the number of the Flexiphone Account, [EX 297/J/3335-3336]. Yu Yem Kin said that Yu Wing Kwong borrowed $200,000 - $300,000 from Lee Chau Ping and that the cheque was a part repayment to her.

3. A withdrawal of $130,440 on 12 August 1992, this withdrawal came after cash deposits of $130,440 made into the savings account [EX 277/1/2894] were transferred to another account. On 12 August HUI transferred CDN$20,000 (HK$130,440 plus $100 cable charges) to Lee Chau Ping. The transfer is recorded in the Accounting Sheet as "12/8 telegraphic transfer 20,000" [EX 296/J/3334 & EX 295/J/3333]. Yu Yem Kin said that this represented a remittance to Lee Chau-ping after he sold his flat. This transfer is recorded in the "Campus" Notebook as "Remittance (Canada) twenty thousand (Yu)" [EX 26/B/491]. The copy of the Customer's Receipt found in Lee Chau Ping's bedroom relates to this transfer. Sgt. Hansen said that this sum was used to pay Lee Chau Ping's mortgage payments on her house in Vancouver.

Tam Wai Hung

I now turn to Tam Wai Hung's property, this comprises of monies held by the receivers in a bank account amounting to $691,138.24, together with accrued interest. Property found in safe deposit box no. 2733 maintained in Tam Wai Hung's name at the Standard Chartered Bank's Shek Kip Mei branch includes :

(1) Two Dupont cigarrette lighters.

(2) A gold plate with a dragon pattern.

(3) Four pieces of jade.

(4) A coin.

(5) A number of low denomination banknotes in various currencies.

(6) A private car, a Mitsubishi station wagon, registered number EF 122.

Certificate

Section 6(2) provides that if I am satisfied as to any matter relevant for determining the amount that might be realised at the time of the confiscation order is made, I may issue a certificate giving my opinion as to the matters concerned. And must do so if I am satisfied that the amount that might be realised at the time of the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking. The latter part of s.6(2) is only relevant where a defendant satisfies the court that the value of his property is less than his benefit from drug trafficking, and is not applicable to these applications.

I am satisfied that I should issue the certificates and make the confiscation orders requested by the Secretary for Justice.

In Lee Chau Ping's case the property that is to be realised and included in the certificate is summarised below. The amounts in the bank accounts include accrued interest.

1.	Bank Balances	$409,242.73
2.	Gifts to CHEUK Tak Wa	$973,909.09
3.	Monies held by Hui Hoi Wah	$160,868.87
{	{	CND$198,216.75
4.	Companies under Lee Chau Ping's effective control	{
{	PNK Development Ltd	$478,201.95
{	Newpark Investments Ltd	$17,577,221.00
{	Wah Luen Hong Ltd	$33,201.12
{	Gooders Trading Ltd	$3,215,445.96
{	Kingwick Development Ltd	$1,790.86
{	Youthtown Investments Ltd	$96.01

In Tam Wai Hung's case the property that is to be realised and included in the certificate is summarised below. The amount in the bank account includes accrued interest.

(1) Bank balance $691,138.24

{ { {

(2) The Property found in safe deposit box no. 2733 at the Standard Chartered Bank's Shek Kip Mei Branch.

{ { {

(3) The private car, registered number EF 122.

{

{

{ (G. J. Lugar-Mawson)

{ Deputy Judge of the Court of First Instance,
High Court

{

Representation:

Mr. M.C. Blancherflower and Miss E. Liu for Applicant

1st and 2nd Defendants (in person) absent

附件 E

ENQUIRIES : 25825324
詢問處
IN REPLYING PLEASE : DCCC 23rd April 1997
QUOTE THIS REFERENCE 587/96
覆函請敘明此檔號

Attorney General's Chambers,
Asset Recovery Unit,
7/F., High Block,
Queensway Government Offices
(Attn: Ms. Lynda M.A. Shine)

Dear Madam,

Re: DCCC No. 587 of 1996
R. v. KONG Kwong-por

I refer to your letter dated 16.4.1997.

I send you herewith a copy of the Schedule 5 Certificate for your retention. His Honour Judge Christie has made the following observations:

- Cap 455 makes no provision for fixing time for payment of a confiscation order under s. 8.

- The Court does have power to allow time for payment, pursuant to s. 114(1)(a) Cap. 221, which applies to confiscation orders by virtue of s. 13(1)(b) Cap.455.

- The power is discretionary.

- In a case where the defendant is liable to serve a term of imprisonment for the offences concerned, an order under s. 114(1)(a) Cap. 221 is unnecessary because s.13(4) Cap. 455 provides that imprisonment in respect of the confiscation order will commence after the term of imprisonment for such offences.

- In this case there are sentences of terms of imprisonment for the offences concerned, so I make no order for time to pay pursuant to s. 114(I)(a) Cap. 221 Therefore the words **"on or before the … day of …. 19.."** where they appear at the end of the prescribed form in Schedule 5 have no application to this case and should be deleted.

(S. W. LI)(Ms.)
for Registrar, District Council

c.c. Mr. Bernard Chung of counsel

Case No. DCCC 587/96

IN THE DISTRICT COURT OF HONG KONG

CRIMINAL JURISDICTION

R. v. KONG Kwong-por

CERTIFICATE OF SENTENCE IN RESPECT OF TERM OF IMPRISONMENT FIXED UNDER SECTION 13 OF THE ORGANIZED AND SERIOUS CRIMES ORDINANCE (CAP 455)

To the Commissioner of Correctional Services.

Whereas the District Court -

(a) on the 12th day of November 1996

(i) sentenced the defendant KONG Kwong-por in respect of the specified offences, within the meaning of the Organized and Serious Crimes Ordinance (Cap. 455), of 3 counts of Conspiracy to defraud; and

(ii) imposed a period of imprisonment of five and a half (5 1/2) years in respect of those offences; and

(b) on the 8th day of April 1997, His Honour Judge Christie, District Judge, made a confiscation order under section 8(7)(a) of the Organised and Serious Crimes Ordinance (Cap. 455) that that defendant pay the amount of $2,000,000.00 less costs to be taxed if not agreed.

This is to certify that on 8th day of April 1997, His Honour Judge Christie, District Judge, made an order under section 13 of the Organized and Serious Crimes Ordinance (Cap. 455) fixing a term of imprisonment of fifteen (15) months which that person is to serve if any of the amount to be paid under that confiscation order is not paid or recovered, such imprisonment to be served consecutively to the sentence of 5 1/2 years imposed on 12th November 1996.

Dated the 8th day of April 1997.

Assistant Registrar

0000345

條文內容

章：	201	標題：	防止賄賂條例	憲報編號：	25 of 1998 s. 2
條：	**14C**	條文標題：	***限制令**	版本日期：	01/07/1997

附註：
具追溯力的修訂—見 1998 年第 25 號第 2 條

(1) 在專員或他人代專員提出單方面申請下，法庭如信納以下情況，可根據本款作出命令(以下在本條及第 14D 及 14E 條的條文稱爲“限制令”) —
(a) 有任何財產是由因被指稱或懷疑犯了本條例所訂罪行而受調查或已因該罪行遭提出檢控的人(以下在所述條文稱爲“受疑人”)所管有或控制，或有人(以下在所述條文稱爲“第三者”)應將任何財產付予受疑人； (由第 1996 年第 48 號第 7 條代替)
(b) 第三者正爲受疑人或代其或承其命持有任何財產。
(2) 在作出限制令時，法庭可—
(a) 施加其認爲適當的條件；或
(b) 豁免其認爲適當的財產，使其不受該令規限(包括對定期付款的豁免)，
但在符合以上的規定下，獲按照第(3)款送達限制令的受疑人及任何第三者除按照法庭指示外，不得將該限制令內指明的任何財產處置或以其他方式處理。
(2A) 如限制令內加以訂定，該令亦適用於其中指明的財產的收入，一如適用於該項財產本身。 (由 1987 年第 50 號第 8 條增補)
(3) 限制令須送達該令所針對的受疑人及第三者，送達可用面交送達方式，或在專員或他人代專員提出單方面申請下，而在法庭亦信納無法尋得該人或該人並不在香港的情況下，則可採用由該法院指示的其他送達方式。 (由 1976 年第 15 號第 3 條修訂)
(3A) 凡限制令所指明任何財產屬不動產，該令須當作爲影響土地的文書，並須因此而根據《土地註冊條例》(第 128 章)按土地註冊處處長認爲適當的方式在土地註冊處註冊。 (由 1980 年第 28 號第 10 條增補。由 1993 年第 8 號第 2 及 3 條修訂)
(3B) 限制令所指明的任何財產，如包括銀行或接受存款公司欠限制令的收件人的任何債項或義務，專員可將限制令副本送達該銀行或接受存款公司；該副本的效力爲指示該銀行或接受存款公司不得在未經法庭同意下，就有關該限制令副本所

指明的人，全部或部分支付、了結、償付、解決或解除該債項或義務。 (由第 1996 年第 48 號第 7 條增補)

(4) 除第(5)款另有規定外，凡限制令是針對—

(a) 第(1)(a)款所述種類的財產的，其有效期由作出日期起計爲 12 個月，但如專員或他人代專員提出申請，法庭可延長其施行期間，每次爲期 12 個月；

(b) 第(1)(b)款所述種類的財產的，其有效期由作出日期起計爲 6 個月，但如專員或他人代專員提出申請，法庭可延長其施行期間，每次爲期 3 個月。 (由第 1996 年第 48 號第 7 條代替)

(5) 凡限制令—

(a) 是針對第三者或受疑人而發出，而該人已因本條例所訂罪行遭提出檢控；或

(b) 是對第三者或受疑人生效，而該人已因本條例所訂罪行遭提出檢控，

該令的有效期(除提出檢控第三者的情況外)須持續至該檢控的法律程序已有最後裁決爲止；如法庭根據第 12(3)或 12AA 條對該人作出命令，則該令的有效期須持續至該命令已撤銷、遵從或強制執行爲止(視屬何情況而定)。 (由 1987 年第 50 號第 8 條修訂)

(5A) 第(4)或(5)款並不阻止法庭在專員或他人代專員提出單方面申請下，就同一項財產再行作出限制令。 (由 1987 年第 50 號第 8 條增補)

(6) 凡獲按照本條第(3)或(3B)款或第 14D(5)條送達限制令副本的受疑人或第三者在該令有效期間，如並非按照法庭的指示，明知而將該令內指明的任何財產處置或以其他方式處理，即屬犯罪，一經定罪，可處罰款$50000 或處以所處置或以其他方式處理的財產價值的罰款，兩款額以較大者爲準，以及監禁 1 年。

(7) 在本條以及在第 14D 及 14E 條中，“法庭”(court) 指原訟法庭。 (由第 1996 年第 48 號第 7 條增補。由 1998 年第 25 號第 2 條修訂)

(由 1974 年第 9 號第 7 條增補。由第 1996 年第 48 號第 7 條修訂)

---

* 請參閱載於 1996 年第 48 號第 18 條的保留條文。該條轉錄緊接附表之後。

條次	建議修正案
附表 1，第 8 條	(a) 在建議中的第 10(12)(a)條中，在“陳述”之後加入“，但如第(12A)款另有規定則除外”。
	(b) 在建議中的第 10(12)條之後加入－ “(12A)現宣布如 － (a) 任何人並不知道第(12)(a)款的規定所關乎財產的價值；及 (b) 該人並沒有在該人所進行或擔任的行業、專業、業務或僱傭工作中，確定(a)段所述財產所屬種類的財產的價值， 則對該人而言，遵從該規定即不屬切實可行。“。
	(c) 在建議中的第 10(13)條之後加入 － “(13A)為遵從第(12)款的規定而作出的披露 － (a) 不得當為違反合約或任何成文法則、操守規則或其他條文對披露資料所施加的任何規限； (b) 不得令作出披露的人承擔以下事情而引致的任何損失負上支付損害賠償的法律責任 － (i) 該項披露； (ii) 該項披露所引致的就有關財產而作出的作為或不作為。”。

條文內容

章：	200	標題：	刑事罪行條例	憲報編號：	
條：	**36**	條文標題：	**虛假法定聲明及其他未經宣誓的虛假陳述**	版本日期：	30/06/1997

任何人明知而故意在非經宣誓的情況下，在下列項目中作出在要項上屬虛假的陳述—

(a) 法定聲明；或

(b) 當其時有效的成文法則授權或規定他作出、核簽或核證的摘要、帳目、資產負債表、簿冊、證明書、聲明、記項、預算、清單、通知、報告、申報表或其他文件；或

(c) 由或根據或依據當其時有效的成文法則規定他作出的任何口頭聲明或口頭答覆，

即屬犯罪，一經循公訴程序定罪，可處監禁 2 年及罰款。

(將 1922 年第 21 號第 7 條編入。由 1924 年第 5 號附表修訂)

[比照 1911 c. 6 s. 5 U.K.]